

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) No.386/2007**

22nd July, 2010

SURESH & OTHERS

..... Petitioners

Through: Mr. G.D.Gupta Sr. Advocate
with Mr. M.L.Ohri, Advocate

VERSUS

UNION OF INDIA & OTHERS

....Respondents

Through: Ms. Manpreet Kaur and
Mr. H.K.Gangwani, Advocates
for Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

% **JUDGMENT**

SANJAY KISHAN KAUL, J. (ORAL)

1. The petitioners were working as Assistants in the office of Directorate General of Income Tax (Investigation). A set of such similarly placed Assistants in the same department filed an OA earlier seeking parity with Assistants of the

Central Secretariat who had been given the revised pay scale of Rs. 1640-2900 while denying the same to the Assistants in the Directorate General of Income Tax (Investigation). The applicants therein sought the directions of the CAT for OM dated 31.7.1990 to apply to them equally.

2. The Division Bench of the CAT analyzed this dispute specifically taking into consideration the work profile of the Assistants in the office of the Central Secretariat and the Assistants in the office of the Directorate General of Income Tax (Investigation). The Tribunal found in favour of the applicants vide a common order passed in OA 144-A/1993, 985/1993 and 548/1994 titled as ***V.R.Panchal and others Vs. Union of India*** decided on 19.1.1996. This order was sought to be assailed by the Union of India in SLP 2835/1996. The order passed by the Supreme Court in this appeal on 11.7.1996 records as under:-

“Delay condoned.
The Special leave petition is dismissed on merits.”

3. The aforesaid thus shows that the order passed in ***V.R.Panchal & others*** case (supra) was affirmed on merits by the Supreme Court. The judgment was also implemented qua the petitioners therein.

4. The grievance of the petitioners herein was that they are identically situated to ***V.R.Panchal & others*** case (supra) and that this decision ought to have been applied to them equally and they should have also been granted the same pay scale

even if they had not approached the CAT. We may notice in this behalf that when some of such similarly situated persons approached the CAT, the benefit was granted to them. The Union of India filed a writ petition under Article 226 of the Constitution of India challenging the order of the CAT and that writ petition was dismissed for non-prosecution.

5. An important development which took place was the reference to a Full Bench of the CAT in respect of Stenographers Grade-II and Assistants working in some of the subordinate and attached offices with the Government of India in respect of the following question :-

“Whether Stenographers and Assistants of subordinate and attached offices of Government of India are entitled to the pay scale of Rs. 1640-2900 applicable to Stenographers and Assistants working in Central Secretariat Service.”

6. The reference was more than in one matter where applications for relief had been filed before the CAT by Stenographers Grade-II and Assistants of the Central Electricity Authority, Assistants, Directorate of Income Tax (Income Tax and Audit) Stenographers, Grade-I of the Indian Meteorological Department etc. This reference was answered in favour of the Union of India. We may notice at this stage that the plea arising from the order in *V.R.Panchal & Others* case (supra) against which SLP had been dismissed on merits, was noticed by the Full Bench. There has been unfortunately however no detailed discussion in this behalf as to the impact thereof but suffice to say that the OAs considered by the Full Bench

were stated to have facts and circumstances which were distinguishable and thus the order of the Supreme Court in SLP, dismissing the challenge to the Tribunal order in *V.R.Panchal & Others* case (supra) even on merits was treated not as a binding precedent to follow in the facts of the case before the Full Bench on the ground that the applicants who are Stenographers Grade-II claiming higher replacement scale which is actually the pay scale for the promotional posts of Stenographers Grade-II in non Secretariat offices.

7. The petitioners, when they approached the CAT by filing an OA No. 218/2005 aggrieved by the non implementation of *V.R.Panchal & others* case (supra) qua them were faced with this judgment of the Full Bench. The petitioners however, pleaded that neither they nor any other Assistants from the Directorate General of Income Tax (Investigation) were before the Full Bench and thus the Full Bench could have no application to the facts of their case. It was also canvassed that the Full Bench itself had observed that ratio of *V.R.Panchal and others* case (supra) which was affirmed by the Supreme Court on merits applied to its own facts i.e. Assistants in the office of Directorate General of Income Tax (Investigation) which is a post occupied by the petitioners.

8. The OA filed by the petitioners was however dismissed by the impugned order dated 17.7.2006 by a Division Bench of the CAT only on the ground that the Full Bench of the CAT would apply to the case of the petitioners without

consideration of the merits of the claim of the petitioners. We are also informed by the respondents by a reference to the counter-affidavit that different Benches of the CAT in their own facts have applied this Full Bench judgment and that view has been upheld by this court.

9. We are thus faced with the situation where on one hand we have the judgment in ***V.R.Panchal & others*** case (supra) as affirmed by the Supreme Court on merits albeit by a non-reasoned order in respect of Assistants of the Directorate General of Income Tax (Investigation) while on the other hand a Full Bench of the CAT has considered a reference arising from the parity claimed by Stenographers and Assistants of Subordinate and attached offices of Government of India which was answered against them which included the Assistants of Directorate of Income Tax (Income Tax and Audit) Division though not of the Investigation Division.

10. Learned senior counsel for the petitioner before us has strongly canvassed the view that the petitioners cannot be treated differently from other Assistants who succeeded in ***V.R.Panchal & others*** case (supra) and in that behalf has relied upon the observations of the Supreme Court in ***P. Savita and others Vs. Union of India and others AIR 1985 SC 1124***. The facts of the said case show that the Third Pay Commission classified the Senior Draughtsman in the Ministry of Defence and Production in two groups and recommended higher pay scale for one

group not on any merit-cum-seniority basis, but only on seniority-cum-fitness basis. The work performed by both these types of draughtsman was the same with both set of Draughtsman discharging the same functions and duties. Such a grouping was held to be violative of Article 14 of the Constitution of India and it was observed that in the performance of the same duties of the same post there cannot be two pay scales.

11. On facts, learned senior counsel for the petitioner submitted that the presence of the Assistants of the Directorate of Income Tax (Income Tax and Audit) Division before the Full Bench cannot prejudice the case of the petitioner as there is a finding of fact in *V.R.Panchal & others* case (supra) of the task performed by the Assistants of the Investigation Division being identical to the work performed by the Assistants of the Central Secretariat Service.

12. Learned counsel for the respondent on the other hand seeks to support the view taken by the CAT in the impugned order by relying on the judgment of the CAT which has found favour by this court in different proceedings in the context of different services. In the alternative, it is submitted that the impugned order has given no factual finding and has passed its judgment only on the views expressed by the Full Bench of the CAT and thus the matter should be remanded back to the CAT to be examined on merits.

We find substance in the contention of the learned senior counsel for the petitioner that the impugned order could not have been passed merely on the basis of the judgment of the Full Bench of the CAT especially in view of the findings in ***V.R.Panchal & others*** case (supra) which stood affirmed on merits by the Supreme Court. This view was further reinforced by certain observations in the Full Bench judgment of CAT which we have referred to above where the Full Bench judgment seems to suggest that the ***V.R.Panchal & others*** case (supra) would apply on its own facts. There has been no consideration of the comparison of duties of the Assistants in the Directorate of Income Tax Investigation Division with other Divisions like the Income Tax and Audit Division or the other non-successful petitioners before the Full Bench who were Assistants of Subordinate and attached offices of Government of India. We, thus, find that the impugned order cannot be sustained and is liable to be set aside.

13. The next question arises as to what course of action has to thereafter follow. Taking into consideration the submissions of learned counsel for the respondent we are inclined to adopt the second course of action of remanding the matter back to the Central Administrative Tribunal. The CAT will have to examine the case of the petitioners keeping in mind specifically that ***V.R.Panchal & others*** case (supra) is in respect of the Investigation Division itself and that judgment stands affirmed by the Supreme Court on merits, although by a non-speaking order and the observations made in ***P. Savita & others*** case, would thus be relevant to the

issue. It is also the case of the petitioners, which will have to be examined, that their duties are not identical to that of the Assistants in the Income Tax and Audit Division and the effect thereof.

14. The impugned order dated 17.7.2006 is accordingly set aside and the matter remanded back to the Central Administrative Tribunal to decide the controversy on merits keeping in mind our aforesaid observations. The parties are left to bear their own costs.

15. OA No. 218/2005 be listed before the appropriate Bench of the CAT, Principal Bench, New Delhi, for directions on 9th August, 2010 and we would expect that since it is a case of remand, the CAT would decide the matter expeditiously.

SANJAY KISHAN KAUL, J

JULY 22, 2010
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VALMIKI J. MEHTA, J.