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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 23rd November, 2010

+ **W.P.(C) 5023/2010**

DEVENDER MOHAN Petitioner
Through: Mr.P.P. Khurana, Sr. Advocate
with Ms.Tamali Wad, Advocate

versus

UOI AND ORS Respondents
Through: Mr.Rakesh Tiku, Advocate with
Ms.Sapna Chauhan, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether 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?

PRADEEP NANDRAJOG, J. (Oral)

1. Heard learned counsel for the parties. Since we are remitting the matter before the Tribunal for fresh adjudication we speak the least, lest any observation made by us unintentionally treads upon the toe of either party.
2. Petitioner Devender Mohan, was at the relevant time working as Scientific Officer/Engineer Grade-SB under the National Informatics Centre, a department of the Ministry of Communication and Information Technology.
3. It is known to one and all that in respect of pay revision of Central Government employees, Pay Commissions are constituted, to which a reference is made. These Pay Commissions hear representatives of the employees and make

recommendations to the Central Government pertaining to the pay scales in which Central Government employees have to be placed. Upon acceptance of the recommendations of the Pay Commission, with or without modifications, revised pay scales are implemented.

4. It is not in dispute that w.e.f. 01.01.1986 such recommendations of the Fourth Central Pay Commission which were accepted by the Central Government were implemented. It is also a fact that the acceptance of the recommendations were implemented w.e.f. 1.1.1986 notwithstanding the same being accepted by the Government somewhere in the year 1989.

5. It is known to one and all that Information Technology made an entry in India with gusto somewhere in the year 1982. Various posts in the field of Information Technology were created and a large number of them were in the cadre of Data Entry Processors (EDP) and a few in the other disciplines including the post of Scientific Officer held by the petitioner. National Informatics Center (NIC) was formed. These posts were newly created and thus while making recommendations to the Fourth Central Pay Commission they were excluded from the reference made to the Pay Commission with the idea that a separate Committee would be constituted to decide on the pay-scales in which these posts had to be placed.

6. It is not in dispute that no reference was made to the Fourth Central Pay Commission pertaining to the pay scale to be made applicable to the posts of Scientific Officers/Engineers Grade-SB under the National Informatics Centre i.e. the post held by the petitioner.

7. Sheshgiri Committee was constituted with a mandate to make recommendations to the various posts in the field of Information Technology which made recommendations on 11.09.1989. The said Committee recommended replacement

pay scales for a large number of posts which included the post of Data Entry Operators (EDP) as also the post of Scientific Officers/Engineers Grade-SB and many others.

8. Accepting the recommendations of the Sheshgiri Committee the revised pay scales were put into place but w.e.f. 11.09.1989 for all the posts and for unexplainable reasons NIC implemented the pay-scales w.e.f. 1.9.1990.

9. Various persons who were affected made representations that revised pay scales be made effective from 01.01.1986. The representations were turned down.

10. Some sat quiet. Some approached the Central Administrative Tribunal.

11. The petitioner was one such person who approached the Tribunal by and under OA No.495/1998. His claim was that the revised pay scales granted to him upon acceptance of the Sheshgiri Committee recommendations be made applicable retrospectively w.e.f. 01.01.1986 and not 01.09.1990.

12. OA No.495/1998 was dismissed by the Tribunal vide order dated 06.03.1998 on the ground of limitation. It was held that Devender Mohan i.e. the petitioner having approached the Tribunal after 7.5 years when cause of action accrued, could not maintain the action.

13. It may be noted that the Tribunal did not take note of the legal position that a claim for wages having recurring impact on future salary as also pension, give rise to a continuing wrong and while granting relief back-wages could be denied.

14. Be that as it may, the petitioner challenged the decision passed by the Tribunal by and under WP(C) No.3723/1998 which suffered a dismissal in limine vide order dated 05.02.1999.

15. The Division Bench of this Court held that the Tribunal was justified in dismissing OA No.495/1998 as being barred by limitation. Suffice would it be to state that the dismissal in limine

was without considering whether a continuing wrong was being done and relief could be granted but by denying back-wages. It may be noted that petitioner's contention that persons in the EDP cadre who had approached the Tribunal had been granted relief of increase in wages w.e.f. 01.01.1986 was short-circuited by the Division Bench by holding that the post held by the petitioner is in a different cadre viz-a-viz the EDP cadre.

16. Now, the petitioner never claimed parity with the EDP cadre. What the petitioner was urging was that just as the posts in the EDP cadre so was his post excluded from the reference before the Fourth Central Pay Commission and that all these posts were the subject matter of pay revision to be considered by Sheshgiri Commission. It was in this context the petitioner was urging parity with respect to the date of implementation being 01.01.1986.

17. The petitioner sought a review of the order dated 05.02.1999. The review sought was unsuccessful, evidenced by the fact that on 17.08.2004, the Division Bench refused to re-open the matter, but observed that it would be open to the petitioner to approach the competent authority for considering his case on the analogy of similar cases.

18. Suffice would it be to state that the analogy sought by the petitioner was with reference to various persons in respect of whose posts Sheshgiri Committee recommendations were implemented w.e.f. 11.09.1989 but the Tribunal had directed the same to be made applicable w.e.f. 01.01.1986, which decisions passed by the Tribunal were accepted and implemented by the Department.

19. It may be noted here that these posts qua which petitioner was placing reliance pertained to different departments, but what was being highlighted by the petitioner was that pay revision for said posts as also his, was the subject matter before

the Sheshgiri Committee and thus the commonality which the petitioner was projecting was with reference to the fact that recommendations of the Sheshgiri Committee were directed to be implemented w.e.f. 01.01.1986 and not 11.09.1989. Thus, according to the petitioner it was irrelevant that the posts were in different departments.

20. The petitioner made a representation dated 21.09.2004 in which he highlighted various orders passed by the Tribunal which were implemented. The petitioner specifically highlighted the case of one Sh.J.K.Rawat, an employee of the National Informatics Centre, in respect of whom revised pay scale was made applicable w.e.f. 01.01.1986. The petitioner also relied upon the case of Sh.Manoj Kumar Mittal & Ors., being OA No.2371/1998, allowing which the Tribunal directed to correct the date of implementation of the pay-scale w.e.f. 01.01.1986 and not 01.01.1990. Needless to state, reference was made by the petitioner to Sh.Manoj Kumar Mittal & Ors., as also to the case of J.K.Rawat to highlight that pertaining to the same department i.e. NIC, similar benefits had been granted.

21. The representation was rejected vide order dated 10.03.2005, holding that the petitioner was reopening a case which had already been turned down. An additional reason was given. The additional reason is in para 5 of the order dated 10.03.2005 which reads as under:-

“5. Shri Devinder Mohan has quoted the full bench judgment of Central Administrative Tribunal, Principal Bench, New Delhi and claims that he is equally entitled for correct fixation of pay and consequential monetary benefits flowing from pay fixation from re-fixation. The full bench judgment is relating to the applicants who are not, covered under the Flexible Complementing Scheme whereas Shri Mohan, Scientist-C in the National Informatics Centre is covered under the Flexible Complementing Scheme for promotions, etc.”

22. This necessitated a second round of litigation fought by the

petitioner by and under OA No.1599/2009.

23. The claim has been dismissed by the Tribunal vide impugned order dated 02.02.2010 holding that the issue raised by the petitioner was considered when OA No.495/1998 was filed by him. The claim was held to be barred by limitation and thus the stale claim could not be revived. The petitioner has challenged the order dated 02.02.2010.

24. The fact that various posts, in respect to the issue of pay revision, were not referred to the Fourth Central Pay Commission and one such post was the one held by the petitioner is not in dispute. It is also not in dispute that various posts, reference whereof for purposes of pay revision was made to the Sheshgiri Committee were posts in different departments is also not in dispute. It is also not in dispute that Sheshgiri Committee's recommendations were made on 11.09.1989 and most of the departments implemented the same w.e.f. 11.09.1989. National Informatics Centre made applicable the recommendations w.e.f. 01.09.1990. It is also not in dispute that various persons had approached the Tribunal and had obtained relief that recommendations of the Sheshgiri Committee qua them should be made applicable w.e.f. 01.01.1986. It is also not in dispute that J.K.Rawat as also Manoj Kumar Mittal and a few other employees of National Informatics Centre had approached the Tribunal where directions issued were to make available to them the higher pay scales w.e.f. 01.01.1986 and not 01.09.1990.

25. The issue thus would be: Whether the petitioner should be dealt with differently.

26. Luckily for the petitioner, a second life was granted to him when disposing of RA No.101/1999, the Division Bench of this court permitted the petitioner to approach the competent authority for reconsideration of his case on the analogy of

similar cases.

27. Thus, limited to the analogy with similar cases, the petitioner got a right to make a representation and needless to state, an obligation was cast upon the respondent to decide the same with reference to the stated similar cases on which the petitioner relied.

28. We find that while passing the order which was under challenge before the Tribunal, the department has not dealt with the similar cases on which the petitioner was relying. Suffice would it be to note that the reason why the competent authority declined relief on merits was the one noted in para 5 of the order, contents whereof have been noted by us hereinabove in para 21 above.

29. Unfortunately, at the second round of litigation the Tribunal lost sight of the fact that the second birth to the petitioner, required the Tribunal to decide the issue predicated by the petitioner with reference to the analogy sought with similar situated persons. Further, the Tribunal was required to decide the validity of the reasoning in para 5 of the order dated 10.03.2005. Needless to state the contents of para 5 of the order dated 10.03.2005 required to be adjudicated with reference to the defence taken by the department in the counter affidavit filed opposing OA No.2371/1998 filed by Manoj Kumar Mittal and others, wherein the defence of Flexible Complementing Scheme for promotions was raised and was rejected by the Tribunal as not a valid ground to deny benefit to Manoj Kumar Mittal and others, as per the decision of the Tribunal dated 09.09.1999 allowing OA No.2371/1998.

30. Accordingly, observing that if the Tribunal holds in favour of the petitioner at the remanded stage, it would be within the domain of the Tribunal to mould relief in respect of back-wages on account of the facts noted hereinabove, the Tribunal is

directed to decide on merits the claim raised by the petitioner; , merits being restricted to the parity sought with other similarly situated employees and while deciding the same the validity of the reasons in para 5 of the order dated 10.03.2005 would be decided and for which the Tribunal would consider the defence taken by the respondent in the OA filed by Manoj Kumar Mittal & Ors. and the decisions pronounced by the Tribunal in the claim filed by Manoj Kumar Mittal & Ors..

31. We dispose of the writ petition setting aside the impugned order dated 02.02.2010 and we restore OA No.1599/2009 to be decided on merits keeping in view the observations made by us hereinabove.

32. Before concluding we may record that facts noted by us have been limited to decide the issue before us. Since we are not deciding on merits, nothing stated by us hereinabove would be treated as an impression on the merits of the rival contentions urged. The Tribunal would re-decide the issue uninfluenced by any observations made by us in the order passed today.

33. No costs.

34. Dasti.

PRADEEP NANDRAJOG, J

SIDDHARTH MRIDUL, J

NOVEMBER 23, 2010

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