

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

#10.

+ W.P.(C) 10728/2009

Date of Decision: 23.09.2010

THE DG, ALL INDIA RADIO & ORS. Petitioners

Through: Mr.S.M.Arif, Adv.

versus

G.S.BEDI & ORS. Respondents

Through: Mr.S.M.Dalal, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

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

: **MOOL CHAND GARG, J.(Oral)**

1. It is often said that the Government breeds litigation and is one of the biggest litigants before the Court/Tribunals. Many a times the litigation so initiated at the instance of the Government is not based upon cogent reasons and is not even justified.

2. The facts are not in dispute and we may briefly note the same before reflecting upon the reasoning of the Tribunal to determine whether the reasoning and the conclusion arrived at by the Tribunal is correct.

3. Prior to the implementation of the recommendations of the 5th Central Pay Commission there existed the pay scale ₹ 2000-3200 and the pay scale ₹2000-3500. The former was the pay scale to feeder posts to the latter pay scale. In para 46.13 of its report the 5th CPC recommended that for purpose of implementing its recommendations the Government could adopt one of the two alternatives proposed by the Commission. Firstly, to merge the two pay scales and treat both at ₹2000-3500 and thereafter apply the replacement scales proposed by the Commission i.e. ₹6500-10500 or in the alternative to treat the pay

scale ₹2000-3500 at par with the scale ₹2500-4000 and apply the replacement scale ₹7500-12000.

4. It was apparent that those in the pay scale ₹2000-3200 would have desired that their pay scale be merged with the scale ₹2000-3500 and those in the pay scale ₹2000-3500 would have opposed it as this would have meant that while making applicable the recommendations of the 5th CPC their scale would be treated at ₹2500-4000 and when they would have got the scale ₹7500-12000.

5. Even the Government acted clever, for it would have made sense for it to have merged the pay scale ₹2000-3200 with the pay scale ₹2000-3500 which it did and upon so doing face litigation by the Senior Administrative Officers who filed O.A.No.974/2002 questioning the merger. They failed when the said O.A. was dismissed on 15.04.2002. They persisted. W.P.(C)3610/2002 filed by them challenging the order dated 15.04.2002 met with success. Vide order dated 25.09.2002 a Division Bench of this Court quashed the decision of the Governments to merge the posts of Administrative Officer with that of the Senior Administrative Officer i.e. to merge the posts in the scale ₹2000-3200 with the scale ₹2000-3500. SLP(C)No.2375/2003 filed by the Government was dismissed. Thus, it is apparent that the first alternative suggested by the 5th CPC could not be implemented and it was the second which had to be implemented. If this be so it would be apparent that the respondents claim that since they were in the pay scale ₹2000-3500, the replacement scale applicable to them ought to be ₹7500-12000. The Government did so but w.e.f. 26.04.2004. This has been faulted by the Tribunal and the reasoning of the Tribunal, with reference to the further facts need to be noted. The justification of the Government was that since the decision of the Division Bench of this Court was sought to be got implemented under contempt proceedings initiated in this Court in which on 02.02.2004 the Government gave an undertaking to implement the decision of the Division Bench, the Government decided to implement the decision w.e.f. 26.04.2004. It was urged that the Single Judge of this Court before whom the contempt petition was listed, discharged the notice of contempt when informed that the decision of the Division Bench was implemented w.e.f.

26.04.2004.

6. The Tribunal having taken note of the facts that since the merger of the 2 posts which was the alternative provided for vide para 46.13 of the report of the 5th CPC was set aside by Division Bench of this Court in W.P.(C)3610/2002, the pay scale of the 2 posts which were carrying the pay scale of ₹2000-3500 and ₹2000-3200 as on 01.01.1996 for the purpose of replacement pay scale of ₹7500-12000 would have to be considered as the pay scale of ₹2500-4000. The Tribunal did not find good reasons to accept the submission made by the petitioners that the replacement should be permitted w.e.f. 03.02.2004 merely because in a contempt petition filed before this Court the Single Bench of this Court observed that by granting the pay scale of ₹7500-12000 w.e.f. 03.02.2004 after the judgment was delivered by the Division Bench of this Court no contempt was committed while giving liberty to the respondents to file a substantive petition in case they so want as is apparent from the orders passed by the S. Ravindra Bhat, J in its order dated 29.08.2006 in Contempt Case (Civil) 505/2003.

7. Taking note of the recommendations of 5th CPC in para 46.13 of its report, the Tribunal has observed that in offices having posts in both the pay scales of ₹2000-3500 and ₹2000-3200, the former being promotion grade for the latter, the pay scale of higher post shall be revised to ₹2500-4000, if the functional considerations so dictate, otherwise, both the grades could be merged in the pay scale of ₹2000-3500. The Government decision on the Fifth Central Pay Commissions recommendations was notified on 30th September, 1997. The recommendations with regard to pay scale of ₹2500-4000 were notified and accepted vide para 3 of the Resolution and vide S.No. 14 (S-14) of the enclosures to the Resolution, which reads as follows:-

“3. The recommendations of the Commission was revised pay scale S-14 shall not be operative for CSS and also for other services where the cadre controlling authority does not deem it necessary.

ANNEXURE-PART-A (PAY & DA)

Sl.No.	Recommendation of the Fifth Pay Commission	Decision of the Government.
1.	Pay Scale	
1.	Revised Scales of Pay	

i.	The Commission has recommended the following revised scales for civilian Central Government employees		Accepted, subject to following modifications
Sl.No.	Existing Scale of Pay	Grades	Revised Scale of pay
14.	₹2500-4000 (proposed new pre-revised scale)	S-14	₹7500-12000

8. Noting the submissions of the respondents that from the reproduction of the recommendations as above and which stood accepted by the Government vide para-3 of the resolution, the Ministry of Finance had no role to interfere with the grant of normal replacement of scales of pay as accepted and notified in the Resolution and normal replacement has to be w.e.f. 01.01.1996 as per para 4 of the resolution which reads as under:

“4. The Commission’s recommendations and Government decision thereon with regard to revised scales of pay and dearness allowance for civilian employees of the Central Government and personnel of All India services as indicated in Part-A of the Annexure shall be made effective from 01.01.1996.”

9. The Tribunal further observed that

4. From pleadings made as above, it is further the case of the applicants that wherever the retention of both the posts, the former in the scale of ₹2000-3500 and the latter in the scale of ₹2000-3200, is deemed necessary, the former being the pre-revised pay scale would stand coined to pre-revised pay scale of ₹2500-4000, which was to be revised under normal replacement to the revised pay scale of ₹7500-12000. In such a situation, the existing scale of ₹2000-3500 coined to ₹2500-4000 had the approval of Government/Cadre Controlling Authority. Once the pay scale of ₹2500-4000 became a part of the pre-revised (existing) pay scale of the category of Senior Administrative Officer, the normal replacement would apply to the pay scale of ₹7500-12000 and that was to be done by the respective Ministries/Departments themselves w.e.f. 01.01.1996 as per notification and Resolution, which position has since been confirmed by DoP&T in sub-para (i) of OM dated 25.05.1998. Cadre Controlling Authority ordered merger of the posts of Administrative Officer and Senior Administrative Officer in one pay scale of ₹2000-3500 for normal replacement to revised scale of pay of ₹6500-10500, whereas the necessity to keep the promotional post of Senior Administrative Officer was agreed upon prior to the pay commission and also after the Pay Commission. The merger of posts of Administrative Officer and Senior Administrative Officer was challenged by the applicants’ Association before this Tribunal, vide OA No. 974/2002, which was dismissed on 15.04.2002. Aggrieved, the applicants filed Writ Petition (C) No. 3610/2002 before the Honble High Court of Delhi which was decided on 25.09.2002 by upsetting the order passed by this Tribunal. SLP (C) No.

2375/2003 filed against the order of High Court of Delhi before the Honble Supreme Court was dismissed vide orders dated 10.03.2003. Primarily, it is the case of the applicants that in consequence of setting aside of the order of merger of two posts, as mentioned above, the applicants were entitled to pre-revised scale of ₹2500-4000 which was revised by the Fifth Central Pay Commission to ₹7500-12000 and which had to be made available to the applicants w.e.f. 01.01.1996.”

10. While referring to the decision given by the learned Single Judge of this Court while dismissing the contempt petition filed by the respondents holding that since there was a substantial compliance of the order of the Division Bench, no contempt was made out but given liberty to the respondents to rake up the issue about the date of implementation of the revised pay scale, the Tribunal has observed that in the said order the learned Single Judge did notice the contentions of the respondents that the order giving the desired pay scale from 03.02.2004 would not amount to full compliance as the benefits have been granted only prospectively, and the judgment of the High Court had to be read as a whole and so viewed, that higher pay scale was to accrue w.e.f. 01.01.1996. In this regard the Tribunal rightly made a note of the directions of the learned Single Judge while dismissing the contempt petition, the operative part of the said order reads as under:-

“In view of the above submission and observation, the petition is dismissed. It is open to the petitioner to approach the competent forum in respect of cause of action dated 04/02/04. In such an eventuality the Tribunal would consider their application on merits. The petition is disposed off.”

11. It was on account of this order the respondents filed subject O.A. being O.A.No.111/2007 which stands disposed of by the Tribunal vide order dated 24.10.2008 assailed before us by way of the present writ petition.

12. The Tribunal taking note of the controversy in the right perspective, thus, held that:

...the post of Administrative Officer, being the feeder grade of Senior Administrative Officer, was in the scale of Rs.2000-32000 whereas the post of Senior Administrative Officer was in the scale of Rs.2000-3500 prior to Fifth Central Pay Commission. Fifth Central Pay Commission has recommended merger of both the old pay scales into new pay scale of Rs.6500-10500 and also coined a new old pay scale of Rs.2500-4000 in place of pay scale of Rs.2000-3500 (old) for purpose of its replacement to a revised scale of pay of Rs.7500-12000 in cases where the next grade posts in the old pay scale of Rs.2000-3500 (Rs.2500-4000) was

necessarily required to be kept by the Cadre Controlling Authority. In offices having posts in both pay scales i.e. Rs.2000-3500 and Rs.2000-3200, the former being promotional grade for the later, the pay scale of higher post should be revised to Rs.2500-4000, if the functional considerations so dictate. Otherwise, both the grades could be merged in the pay scale of Rs.2000-3500. The merger as done by the respondents did not find favour with the Division Bench of the Delhi High Court and, as mentioned above, the judgment recorded by it has been affirmed by the Honble Supreme Court as the SLP filed against the same has been dismissed. It could not be disputed during the course of arguments that the pay scale recommended against the pay scale drawn by the applicants while holding the post of Senior Administrative Officer was Rs.2500-4000 replacement scale of which has been recommended by the Fifth Central Pay Commission as Rs.7500-12000 and further that the recommendations of the Fifth Central Pay Commission have been indeed implemented from 01.01.1996. That being the situation, it appears that the applicants have a cast iron case to be placed in the pay scale of Rs.7500-12000 which indeed has been done also from 03.02.2004 and not from 01.01.1996 in the case of the applicants.”

13. Having examined the matter thoroughly, we donot find any infirmity in the order passed by the Tribunal.

14. Nothing has been brought to our notice by learned counsel for the petitioner that there is any infirmity in the aforesaid order passed by the Tribunal. Evenotherwise for the discussion had above, we concur that the findings of the Tribunal and accordingly upheld the said order of the Tribunal and dismiss the writ petition, of course, with no order as to costs.

C.M.No.9707/2009

Dismissed as infructuous.

MOOL CHAND GARG, J

PRADEEP NANDRAJOG, J

SEPTEMBER 23, 2010

‘anb’