

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

+ **W.P.(C) 6343/2010**

UOI

..... Petitioner

Through: Mr.A.K.Bhardwaj, Adv.

versus

KULDEEP SINGH

..... Respondent

Through: Mr.L.R.Khatana, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

ORDER

20.09.2010

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1. This writ petition has been filed by the petitioner under Article 226 of the Constitution of India aggrieved of the order passed by the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") dated 21.04.2010 in OA No. 2951/2003, whereby the Tribunal has given directions to extend the benefits of the revised pay scale to the Accounts Officers working in CAT on the principle of 'Equal Pay for Equal Work' in accordance with the Office Memorandum dated 28.02.2003 by which pay scales have been revised of the said cadre on notional basis w.e.f. 1.1.1996 and on actual basis w.e.f. 19.02.2003.

2. The aforesaid order was passed by the Tribunal without awaiting the outcome of the SLP which is pending before the Apex Court in respect of the decision given by the Karnataka High Court in Union of India Vs. Sri Unni Menon (W.P.No. 33496/2000) decided on 18.04.2004. In fact, on the basis of the said judgment, the Tribunal had kept the aforesaid Original Application pending awaiting the judgment of the SLP as per the order passed by the Tribunal dated 8.9.2004.

3. It may be observed here that being aggrieved of the decision taken by the petitioner in having not conferred benefit of OM dated 28.02.2003 for upgradation of the pay scales of junior accounts officers notionally w.e.f. 1.1.1996 and on actual basis w.e.f.

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19.2.2003, the respondents filed OA No. 2951/2003 before the Tribunal seeking similar benefits invoking the doctrine of "Equal Pay for Equal Work". The aforesaid Original Application was disposed of by the Tribunal taking note of the judgment delivered by the Karnataka High Court in the case of Sri Unni Menon (supra) against which order the petitioner filed an SLP which was pending before the Apex Court with liberty to the respondent to revive it on availability of the decision in SLP.

4. Even though the judgment in the case of Sri Unni Menon (supra) has not yet been delivered by the Apex Court, the respondent relying upon another judgment of the Apex Court delivered in the case of State of Mizoram and Anr. Vs. Mizoram Engineering Service Association and Anr., 2004 (6) SCC 218 and the judgment delivered by the co-ordinate Bench of the Tribunal in the case of S.R. Dheer & Ors. Vs. Union of India & Ors. decided on 19.02.2009 sought compliance of Office Memorandum dated 28.02.2003 by reviving OA No.2195/2003 with a prayer that they should also be given the pay scale of ₹6500-10500 on notional basis w.e.f. 1.1.1996 and on actual basis w.e.f. 19.2.2003 on the basis of the OM as aforesaid issued by the Ministry of Finance and Company Affairs, Department of Expenditure dated 28.2.2003.

5. The respondents pleaded that in the case of State of Mizoram (supra), the Apex Court held that the denial of pay scale on the ground that service is not an organized one could not be an impediment for invoking the doctrine of 'Equal Pay for Equal Work'. Similar views were taken in the case of S.R. Dheer (supra).

6. On that basis the Tribunal revived OA No. 2951/2003 and allowed the prayers made by the respondents with directions to the petitioners to grant the benefit of upgraded pay scale of ₹6500-10500 to the respondent on notional basis w.e.f. 1.1.1996 and with actual benefits w.e.f. 19.02.2003 with arrears within a period of two months from the date of receipt of copy of the order.

7. The Tribunal has reached to the aforesaid conclusion primarily on the basis of the judgment delivered by the Apex Court in the case

of State of Mizoram (supra) where the higher pay scale were denied to the Engineering service in the State on the plea that it was not an organized service. The Apex Court in the aforesaid case ruled as follows:-

"6. Great stress was laid on the fact that Engineering Service in the State was not an organized service and therefore, it did not have categorization by way of entrance level and senior level posts and for that reason the higher scale of Rs. 5900-6700 which was admissible for senior level posts could not be given in the Engineering Service. The main reason for dubbing Engineering Service as an unorganized service in the State is absence of recruitment rules for the service. Who is responsible for not framing the recruitment rules? Are the members of the Engineering Service responsible for it? The answer is clearly 'No'. For failure of the State Government to frame recruitment rules and bring Engineering Service within the frame-work of organized service, the engineers can-not be made to suffer. Apart from the reason of absence of recruitment rules for the Engineering Service, we see hardly any difference in organized and unorganized service so far as Government service is concerned. In Government service such a distinction does not appear to have any relevance. Civil Service is not trade unionism. We fail to appreciate what is sought to be conveyed by use of the words 'organised service' and 'unorganised service'. Nothing has been pointed out in this behalf. The argument is wholly misconceived."

8. In the regard, the Tribunal further observed:-

12. If one has regard to the above, having failed to declare the accounts service of the Tribunal as organized service, which is not only regular accounts service but also governed by the notified rules, first of all, it has to be treated as an organized service. Even if the issue is sub judice before the Apex Court, the same would not come in the way of the applicant to be accorded the benefits of higher pay scale on the principles of equal pay for equal work as failure to frame the rules by the Government and bring the accounts service of the CAT as an organized service, cannot be blamed on the applicant. Learned counsel states that in one of the decisions of the Tribunal in OA 208/1997 in J.R. Chobedar Vs. Union of India & Ors. decided on 24.02.2004 pertaining to the accounts service in Border Security Force, the issue of organized and unorganized service has not been found to be apt in law and relying upon the decision of the Apex Court in Randhir Singh Vs. Union of India & Ors. (1982 (1) SLR 756), equal pay for equal work was allowed to grant the revised pay scales. This decision of the Tribunal when assailed in the High Court of Delhi in WP (C) No. 20065-67/2004), a

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judgment dated 25.01.2005 not only affirmed the decision of the Tribunal but the following observations have been made:

"Similarly, on 7th December, 1995, the BSF, Pay and Accounts Division also taking into consideration the rejection by the Ministry of Finance disposed of the application of the respondent that it cannot be treated as an organized accounts service. On the basis of the aforesaid, it was contended before us that the finding of the learned Tribunal in the impugned order is not as per the report of the Pay Commission and BSF and there was no cadre of the Accounts Officer in the BSF and the anomaly has come up in view of the re-structuring of the cadre. In our view the reliance by the petitioner on the letter dated 6th September, 1995 (supra) is misplaced. The point raised by the learned counsel for the petitioner was considered in depth by the Tribunal and on the basis of the material before the Tribunal, the Tribunal gave the opinion that if certain sales were missing that will not take away the trait of the organized cadre. It was also considered that the method and manner of promotion has nothing to do with a cadre being organized or not. If it has other traits that it is a cadre comprising of reasonable number of persons, they have specific rules in this regard and there is no other factor which prompts one to conclude that it is an unorganized cadre. Relying upon the judgment of this Court in T.N. Natarajan and Ors. v. Union of India and Ors. in CWP 176/1979 decided on 3rd September, 1980 which also dealt with a similar controversy, it was held by the Tribunal by a reasoned order that the cadre of the respondent was an organized cadre.

4. We find no infirmity with the impugned order. No other point has been urged before us. We find no merit in the petition. Dismissed."

13. The aforesaid decision was also upheld by the Apex Court in CC 6923-6925/2005 by an order dated 29.07.2005. Learned counsel states that in all fours, the present issue is covered by the aforesaid ratio. Shri Khatana further relies upon the decision of the Tribunal in OA 969/2006, R.K. Sharma & Ors. Vs. Union of India & Ors. decided on 10.05.2007 whereby on the basis of the judgment in J.R. Chobedar (supra), the applicants, Junior Accounts Officers, were allowed to grant the higher pay scale of Rs.6500-10500. While it was challenged before the High Court in WP (C) No.7231/2007, decided on 29.05.2009, not only the decision of the Tribunal has been upheld but the issue regarding financial constraints has been repelled on the basis of State of Mizoram (supra)....."

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9. Before the Tribunal, the petitioners had opposed the prayers made by the respondents on the ground that only the Accounts Officers of the organized Accounts Cadre were granted the upgraded pay scale and since the Accounts Officers of the Tribunal were not members of the organized Accounts cadre their upgradation would not be justified. It was pleaded that as per 6th Pay Commission recommendations, no parity between various posts in organized and unorganized Accounts Cadre were recommended. It was thus pleaded that as the Accounts Officers in the Tribunal had no pre-existing relativity prior to 1.1.2006 with the SOs/PSs in the Tribunal as well as the SOs/PSs of the CSS, their claim was turned down.

10. However, as stated above, the cadre of SOs/PSs has been accepted as an organized cadre in view of the decision of the Tribunal in S.R. Dheer's case (supra). It has not been brought to our notice nor it was brought to the notice of the Tribunal that the said judgment stands appealed against by the petitioners before the Apex Court and in any event even if it might have been appealed against unless there is a stay order in that case or in the case of Unni Menon (supra), the decision of the Tribunal, which is based upon the judgment of the Apex Court in the case of State of Mizoram (supra), cannot be faulted with.

11. We agree with the Tribunal that any administrative jurisdiction executed cannot take defence of financial constraints for grant of fundamental right of parity in pay scale, as ruled in Haryana State Minor Irrigation Tubewells Corporation & Ors. Vs. G.S. Uppal & Ors. (2008 (7) SCC 375). When an administrative authority acts whether it includes the Cadre Controlling Authority or Ministry of Finance, any order passed on administrative side on all fours is to be decided on the touchstone of reasonable object sought to be achieved, as ruled in Noida Entrepreneurs Assn. Vs. Noida & Ors. (2008 (1) SCC (L&S) 672). The equality in law has to prevent hostile discrimination which has no reasonable nexus with the object sought to be achieved, which is an act on administrative side, cannot pass the twin test in the wake of Article 14 of the Constitution of India.

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12. Some other observations made by the Tribunal needs notice. We may refer to paragraph 17 of the impugned order, which reads as under:-

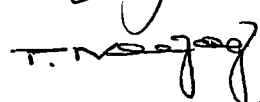
17. In judicial functioning, if a decision arrived at earlier like in the present case, is sub judice in the Supreme Court, it is open for us to modify the orders in view of subsequent events and changed circumstances. As the decision of the High Court of Karnataka in Unni Menon (supra) ruled against for the purposes of grant of parity of pay, service in Accounts Cadre as an organized one since not having been overturned and modified by the Apex Court, may not hold a valid precedent, but decision in Mizoram's case (supra) covers the issue. In the event of a decision arrived in sub judice SLP, law shall take its own course. However, from the stand taken by the respondents, it is clear that denying the pay scale and benefit of O.M. dated 28.02.2003 to the applicant, is solely on the ground that the Accounts Cadre in the Tribunal is not an organized cadre. However, what has been allowed to the Junior Accounts Officers in other Ministries/Central Government Departments as well in Organized Accounts Departments, is the pay scale of Rs.6500-10500. CAT (Staff) (Conditions of Service) Rules, 1985, more particularly Rule 4, provides that the conditions of service of officers and other employees of the Tribunal, including accounts cadre, in the matter of pay and allowances, etc. are to be regulated in accordance with the rules and regulations, as are for the time being applicable to officers and employees belonging to Group A, Group B, Group C as well as Group D of the Central Government, which leads no doubt in our mind that when statutory rules on subordinate legislation have been framed by the Government, the administrative orders would not override it. As such, whatever the pay scales are promulgated for the accounts cadre in other Ministries and Departments, the same would have to be mutatis mutandis adopted in the accounts cadre of the CAT, especially when there is no case made out by the respondents as to the functional requirement of accounts cadre in Tribunal being at variance and distinction in discharge of duties and responsibilities attached to the posts in accounts cadre with that of their counterparts in other Departments and Ministries. It is to be noted that as per Notification dated 17.12.1998 promulgating Central Administrative Tribunal (Staff) (Conditions of Service) Amendment Rules 1998 a JAO has been placed in the pay scale of Rs.5500-9000 but an explanatory memo refers to the CAT (Staff) (Conditions of Service) Rules of 1985 whereas the accounts cadre officers are to be placed and extended the revised pay scale, as recommended by the Vth CPC. Vth CPC would have allowed lesser pay scale but once the pay scales of Junior Accounts Officers have been revised from Rs.5500-9000 to Rs.6500-10500 by the Central Government to their

employees, in various departments and Ministries, the same cannot be denied to the applicant as the objection of organized service would have no impediment as what is required under the statutory rules of the Tribunal is parity with the counterparts on extension of pay scales by Government orders. The pay scales have not been accorded to the applicant with a stipulation that the accounts service in the CAT is not an organized service. Rather, the question of unorganized or organized service would have no bearing in granting a higher pay scale to the applicant because accounts cadre in the Tribunal is a regular one governed by notified Government rules which are the essential ingredients and components. As such, the accounts service in the Tribunal has to be treated as a deemed organized cadre for the purposes of pay and allowances.

13. Before us, the only additional submission which has been made by counsel appearing for the petitioner is that once the Tribunal earlier adjourned the matter awaiting the orders in the SLP filed in the Unni Menon's case (supra) and in view of the decision of the co-ordinate Bench of the Tribunal in S.R.Dheer's case (supra), it was not proper on the part of the Tribunal to have reviewed its own decision. However, we find that the order of the Tribunal is based upon the judgment of the Apex Court and subsequent judgment of the Tribunal passed in the case of S.R.Dheer's case (supra) which is with respect to SOs/PSs in the Tribunal itself. The order passed by the Tribunal does not call for any interference at our end except to modify it by clarifying that the implementation thereof would be subject to orders which may be passed by the Apex Court in the SLP against the decision in Unni Menon's case. Accordingly, the writ petition is dismissed with no orders as to costs at this stage itself.

C.M.No.12601/2010 (stay)

Dismissed as infructuous.


MOOL CHAND GARG, J

PRADEEP NANDRAJOG, J

SEPTEMBER 20, 2010/'dc'

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