

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

Judgment Reserved on December 06, 2013

Judgment Delivered on December 12, 2013

+ W.P.(C) 17207/2006

**DRAUGHTSMENS' ASSOCIATION
SURVEY OF INDIA & ANR.**

.... Petitioners

Represented by: Ms.Jyoti Singh, Sr. Advocate
with Mr.Sudarshan Rajan and
Mr.S.Ritam Khare, Advocates

versus

UNION OF INDIA & ANR.

..... Respondents

Represented by: Mr.Sumeet Pushkarna, Advocate
with Ms.Sara Sundaram and
Mr.G.C. Nayak, Under
Secretary

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition is to the orders dated February 27, 2006 passed in O.A.No.457/2005 and to the order dated August 18, 2006 passed in R.A.No.63/2006 in O.A.No.457/2005 by the Central Administrative Tribunal, whereby the Tribunal dismissed the O.A and R.A. filed by the petitioners.

2. The claim of the petitioners before the Tribunal was for a direction against the respondents to extend the benefit of the judgment and order dated May 30, 2003 in O.A.No.14/2002 passed by the Guwahati Bench of the Tribunal, to all Draughtsmen Grade II of the Survey of India with

arrears of pay and interest. The benefit was also sought for those Draughtsmen who had retired or died with all consequent benefits revised terminal benefits etc.

3. A Board of Arbitration had given an award inter alia directing revising of pay scales of Draughtsmen Grades I, II and III in Central Public Works Department. A Committee of the National Council (Joint Consultative Machinery) was set up to consider the request of the staff side to revise the scales of pay of Draughtsmen working in all Government of India Offices. The Ministry of Finance vide memorandum dated March 13, 1984 conveyed the decision of the President to extend the revised pay scales to Draughtsmen working in other departments of the Govt. of India provided their recruitment qualifications are similar to those prescribed in the case of Draughtsmen in Central Public Works Department. Those who did not fulfil the recruitment qualification were to continue in the pre-revised scales.

4. Another O.M. dated October 19, 1994 was issued by the Govt. of India conveying the decision to the effect that Draughtsmen in Grade I, II and III in the offices and department of the Govt. of India would be placed in the pay scales as mentioned in the said order. The details of the said order are as under:-

“2. The President is now pleased to decide that the Draughtsmen Grade I, II, III in offices/departments of the Government of India other than in CPWD may also be placed in the scale of pay mentioned above subject to the following:

(a) Minimum period of Service for Placement: 7 years from the post carrying scale of Rs.975-1540 to Rs.1200-2040 (pre-revised Rs.260-430 to Rs.330-560).

(b) Minimum period of service for placement: 5 years

from the post of carrying scale of Rs.1200-2040 to Rs.1400-2300 (pre-revised Rs.330-560 to Rs.425-700)

(c) Minimum period of service for placement: 4 years from the post of carrying scale of Rs.1400-2300 to Rs.1600-2660 (pre-revised Rs.425-700 to Rs.550-750).

3. Once the Draughtsmen are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the recruitment rules.

4. The benefit of this revision of scales of pay would be given with effect from 13.5.82 notionally and actually from 1.11.83.”

5. Around 73 Draughtsmen Grade II under the Director, Survey of India, North Eastern Circle, Ministry of Science and Technology filed an O.A. 52/1996 before the Guwahati Bench of the Tribunal in the name of Mr.T.R.Sharma & Ors. v. Union of India & Ors. claiming a scale of ₹425-700 as per para 2(b) of the O.M. dated October 19, 1994.

6. The said O.A. was allowed by the Guwahati Bench of the Tribunal on July 17, 1997 and the respondents were directed to place the applicants in the O.A. in the pay scale as per clause 2(b) of the O.M. dated October 19, 1994.

7. The respondents filed a writ petition in the Guwahati High Court bearing No.4733/1992 challenging the order passed by the Guwahati Bench of the Tribunal. The writ petition was dismissed on July 31, 1999. The Special Leave Petition filed by the respondents before the Supreme Court numbered as SLP No.2082/2000 was also dismissed by the Supreme Court on March 31, 2000.

8. The petitioners herein also instituted a fresh O.A.No.2094/2001

before the Principal Bench of the Tribunal seeking extension of the aforesaid order as the benefit of the judgment of the Guwahati Bench dated July 17, 1997 was not extended to them. The O.A. No.2094/2001 was allowed by the Tribunal vide its order dated February 07, 2002. It is not in dispute that the aforesaid direction of the Tribunal dated February 07, 2002 was complied with and the petitioners were given the grade of ₹1400-2300 (revised)/₹425-700 (pre-revised).

9. As a matter of fact it is necessary to state here that a new O.M. dated June 01, 2001 was issued by the Govt. wherein it was decided that the Draughtsmen who were not given the benefits under the earlier O.M. would also be given benefit. It was made clear that in the O.M. dated June 01, 2001 those Draughtsmen who got the benefit under the O.M. dated October 19, 1994 would not be covered. The extract of the relevant O.M. is reproduced hereunder:-

“In pursuance of an award of the Board of Arbitration, Draughtsmen in Grades I, II and III in the Central Public Works Department in the 3rd CPC pay sales of Rs.425-700, Rs.330-560 and Rs.260-430 respectively were placed in the higher pay scales of Rs.550-750, Rs.425-700 and Rs.330-560- respectively. Orders were also issued subsequently in this Department’s O.M.No.F.5 (59)-E.III/82 dated March 13, 1984 extending these scales of pay to Draughtsmen in all the Government of India Offices notionally from May 13, 1982 and actually from November 1, 1983, subject to their recruitment qualifications being similar to those applicable in the Central Public Works Department.

6. Draughtsmen who have already been covered by the orders continue in the O.M.s dated March 13, 1984 and October 19, 1984 shall eligible to the placed only in the applicable revised scales of already approved for the common category of Draughtsmen in pursuance to the recommendation of the Fifth Central Pay Commission.”

10. Mr.T.R.Sharma and 62 others filed a fresh O.A. bearing

No.14/2002 before the Guwahati Bench of the Tribunal inter alia seeking that they be given the next higher grade of Draughtsmen in the pay scale of ₹5500-9000 which is the revised scale of Draughtsmen Grade III in terms of O.M. dated October 19, 1994. The said Original Application was allowed vide order dated May 30, 2003 and the respondents were directed to grant revised higher scale to the Draughtsmen. The relevant portion of the judgment of the Tribunal Guwahati Bench is reproduced as under:-

“A perusal of paras 2 and 3 of the O.M. dated 19.10.1994 makes the position clear. The O.M. communicated the decision of the President of India to revise the pay scale of Draftsman Grade I, II and III in all Government of India Offices on the basis of Award of the Board of Arbitration in the pay scale of CPWD. By that the minimum service for placement for carrying the post was defined. The order was for placement in the scales, that means to put in the proper position. The scale only mentioned the succession or progression of the rates of pay. Para 3 of the O.M. resolves the doubt, whereby it indicated the decision of the authority in placement of the Draftsmen. It was made clear the once the Draftsman were placed in the regular scale, i.e. the scale cited in the communication, further promotions would be made against available vacancies in higher grade in accordance with the normal eligibility criteria. The expression ‘regular’ is an adjective which means “evenly” or “uniformly arranged” recurring at fixed times like regular incumbents etc. The aforementioned O.M. only indicated that pay scales conform to some accepted norms. Minimum period of service for placement were defined for Draftsman in Grade I, II and III. In Debashis Kar’s (supra), similar argument was advanced on behalf of the Union of India which was turned down. Paras 2 and 3 of the O.M., read conjointly leaves no scope to refuse the benefit of para (c) of the O.M. dated 19.10.1994 to the applicants.”

11. The respondent approached the Guwahati High Court by way of

the writ petition bearing No.9786/2003. The said writ petition was dismissed by the High Court vide order dated December 09, 2003 by observing as under:

“The respondents who were Draftsman Grade II in Survey of India Department has been given pay scale of Rs.425-700/- on completion of 5 years of service, as provided under the Circular of the Govt. Of India dated 19.10.1994. In that pay scale the respondents have further completed 5 years of service and claimed the pay scale of Rs.1600-2600/-, as provided under Circular dated 19.10.1994. The Central Administrative Tribunal, Guwahati bench complying the circular of the Govt. Of India has directed payment of the pay scale of Rs.1600-2600/- to the Draftsman Grade II. Admittedly, the respondents were in the pay scale of Rs.425-700/-. On completion of their 5 years of service and on completion of further period of 4 years they are entitled to get the revised pay scale as provided under Clause 2(c) of the Circular. We may make it clear that this is a revision in the pay scale on account of the particular number of years of service rendered by the respondents and it does not mean that they have been given promotion to the higher post. The Central Administrative Tribunal has rightly given the pay scale to the respondents. We do not find any good or sufficient reason to interfere with the order passed by the Tribunal.

12. The respondents challenged the order of the High Court dated December 09, 2003 by filing SLP No.5398/2004 which was also dismissed by the Supreme Court on July 19, 2004. The order of the Tribunal dated May 30, 2003 in Original Application No.14/2002 was implemented insofar as the applicants in the Original Application.

13. Since the petitioners were denied the benefit of the judgment dated May 30, 2003 in Original Application No.14/2002 of the Guwahati Bench of the Tribunal vide order dated July 26, 2004 requested the respondents to implement the same with regard to similarly placed

Draughtsmen. The request of the petitioners was not acceded to, because of which they filed Original Application No.457/2005 before the Principal Bench of the Tribunal. It was the case of the petitioners that they are similarly situated like the applicants in O.A No.14/2002 decided by the Guwahati Bench of the Tribunal inasmuch as they have also fulfilled the eligibility condition laid down under para 2(c) of the O.M dated October 19, 1994. According to them the respondents themselves ought to have extended the benefit of the judgment of Guwahati Bench in terms of the law laid down by the Supreme Court in the case reported as (1975) 4 SCC 714 Amrit Lal Berry vs. C.C.E., (1987) 4 SCC 431 K.I.Shephard vs. Union of India and JT 1987 (1) SC 147 Abid Hussain vs. Union of India. The respondents on the other hand opposed the claim of the petitioners in the O.A. It is their case that subsequent to O.M dated October 19, 1994 the respondents have issued O.M dated June 01, 2001. On merits it is the case of the respondents that with the recommendations of the 5th Central Pay Commission with effect from January 01, 1996 the O.M dated October 19, 1994 stand superseded. The O.M dated June 01, 2001 stipulates that Draughtsmen who have been granted the benefits under O.M dated October 19, 1994 would be excluded from the purview of O.M dated June 01, 2001. In other words, they state that the petitioners having been given the benefit of the O.M dated October 19, 1994 the grant of higher grade under the O.M dated June 01, 2001 is not available.

14. The Tribunal went into the questions whether the petitioners are similarly placed as the applicants in O.A No.14/2002 decided by the Guwahati Bench of the Tribunal and secondly whether the petitioners are guilty of suppressing material facts in not disclosing the issuance of O.M

dated June 01, 2001.

15. The Tribunal in para Nos.12 and 13 concludes as under:

12. It is not in dispute that the applicants did not disclose the factum of issuance of memorandum dated 01.6.2001 which superseded earlier memorandum dated 19.10.1994. No explanation has come forth from the applicants as to why they did not disclose such fact. In our considered view applicants are guilty of suppressing this material fact from the Tribunal.

13. A close perusal of the aforesaid OM dated 1.6.2001 reveals that the said OM, in specific, excluded those officials who had already derived the benefits from OM dated 19.10.1994 and further stated that: "the revised pay scales shall also be extended to them only on their fulfilling the revised eligibility criteria now prescribed in paragraph 3 above." When it is the applicants' own case that the said OM indeed superseded the earlier OM dated 19.10.1994 and had not been considered by the Guwahati Bench of this Tribunal, how could the benefits prescribed under para 2 (c) of the OM dated 19.10.1994 could be extended at this stage. The contention raised, is mis-placed and misconceived. It is not disputed that the applicants were granted the benefits under the aforesaid OA dated 19.10.1994 and also pursuant to directions issued by this Tribunal in OA No.2094/2001. On a pointed query raised by the Bench as to what is the precise date when such benefit had been granted to the applicants, no answer came forth. We may note that immediately thereafter, the pay scales were revised with effect from 01.1.1996. Perusal of aforesaid OM dated 01.6.2001 also leads to inescapable conclusion that the revised pay scales are available to officials "on their fulfilling the revised eligibility criteria" prescribed under Para-3 of the said OM. On perusal of the table noted under Para-5 hereinabove, we find that the eligibility for grant of such scale has undergone change from four years to six years. If the applicants were granted the benefit of the scale of Rs.5000-8000/- (pre-revised 1600-2600/-) only in the year 1994 then even as per the earlier criteria they must wait for four years, which time would expire only after 01.1.1996. Since in the meantime the

pay scales were revised, one cannot be allowed to contend that he would continue to be governed by the old OM dated 19.10.1994. We may also note that the effect and impact of OM dated 01.6.2001 had not been the subject matter before the Guwahati Bench in OA No.14/2002 and as such the same was not considered. On these facts the applicants cannot be allowed to contend that the said OM should be ignored even by this Bench and they being allegedly similarly placed to the applicants in the said OA are entitled to extension of benefit of the said judgment. In our considered view, the applicants are not similarly placed to the applicants in the OA No.14/2002. Moreover, the relief claimed in the present proceedings would also be hit by the principle of constructive res judicata in terms of Section 11, Code of Civil Procedure. The judgments relied as such have no application in the facts and circumstances of the present case.

16. Ms.Jyoti Singh, learned Senior counsel appearing for the petitioners would contend that their claim is based upon the benefit granted to the applicants in O.A No.14/2002 by the Guwahati Bench of the Tribunal. She would state that the persons who have been given the benefit pursuant to the judgment of the Guwahati Bench are junior to the petitioners herein. According to her the grant of higher scale to persons junior to the petitioners have created an anomaly inasmuch as the junior are drawing higher pay than the seniors i.e. the petitioners. She would rely upon the judgment of the Supreme Court reported as (2006) 9 Scale 626 Union of India vs. Madras Telephone SC & ST Social Welfare Association to contend that the benefit of the order of the Tribunal dated May 30, 2003 in O.A No.14/2002 of the Guwahati Bench of the Tribunal need to be given to the petitioners as well.

17. On the other hand, Mr.Sumit Pushkarna, learned counsel appearing for the respondents would submit that the issue in question stood decided by a judgment of the Supreme Court reported as (2010) 9

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18. According to him the issue is no more res-integra in view of the judgment of the Supreme Court in R.Vasudev Murthy's case.

19. It may be relevant to note here that Ms.Jyoti Singh, learned counsel for the petitioners would dispute the applicability of the judgment of the Supreme Court in R.Vasudev Murthy's case on the ground that the Supreme Court was concerned with the Draughtsmen working in the Department of Telecommunication, whereas the petitioners herein are the employees of the Survey of India. She would further submit that the recruitment rules in the Department of Telecommunication are different from the recruitment rules in the Survey of India.

20. In R.Vasudev Murthy's case (supra) the Supreme Court was concerned with the proper interpretation of O.M dated October 19, 1994. The department concerned was the Department of Telecommunications. Prior to issuance of O.M dated October 19, 1994 the Department of Telecommunications issued a notification dated August 23, 1993, in the light of various orders of the Central Administrative Tribunal and various High Courts. By the said notification the department had fixed a ration of 60:30:10 for Draughtsmen Grade III, Draughtsmen Grade II and Draughtsmen Grade I respectively. Another notification was issued on July 06, 1994 by the Department of Telecommunications in exercise of powers conferred by the proviso to Article 309 of the Constitution of India whereby the method of recruitment to the post of Draughtsmen Grade III, Draughtsmen Grade II and Draughtsmen Grade I was to be regulated in the ratio of 60:30:10.

21. While interpreting the O.M dated October 19, 1994, the issue

before the Supreme Court was whether the Draughtsmen Grade II would be entitled to upgradation in pay scale automatically after completion of 4 years of service equivalent to the Draughtsmen Grade I. The Supreme Court in para Nos.19 and 20 of the judgment of R.Vasudev Murthy's case (supra) has held as under:

19. In our considered opinion, the said O.M. does not give an absolute and blanket right to these Draughtsmen to claim upgradation/revision in the salary as soon as they put in requisite years of continuous service on the respective post to become eligible either for higher pay scale or for promotion. Unless, there are requisite vacancies in the respective cadres of Draughtsmen Grade III, Grade II and Grade I, the Draughtsmen cannot be granted the said relief. This is what we have been able to decipher from the O.M. dated 19.10.1994, after critical and thorough examination thereof.

20. Thus, in our opinion, the true, effective, operative and correct interpretation of the said O.M is that, as and when vacancy arises in the cadre of Grade I Draughtsmen, after putting in requisite minimum service as per said Notification, then and only then the Draughtsmen Grade II would be entitled for the higher pay scale not otherwise. To clarify it further, we hold that the entitlement for upgradation of salary is dependent on the number of vacancies available and not otherwise. It is also to be noted that eligibility to claim higher pay scale/upgradation is one thing but availability of vacancy is another. One may be eligible to claim higher pay scale or upgradation but it is of course subject to availability of posts. If posts are not available then, no benefit could be accrued to the Draughtsmen.

22. From the facts and the conclusion arrived at by the Supreme Court in R.Vasudev Murthy's case (supra) it is seen that the applicability of benefits under O.M dated October 19, 1994 is not automatic but subject to availability of vacancies in the respective cadres of Draughtsmen Grade III, Draughtsmen Grade II and Draughtsmen Grade I respectively.

23. We note that in terms of earlier litigation initiated by the

petitioners vide O.A No.2094/2001, the petitioners got the higher scale of ₹425-700 (revised pay scale of ₹5000-8000). The grant of pay scale of ₹425-700 (revised pay scale of ₹5000-8000) is not an issue before us. The question that arises for consideration is whether the petitioners would be entitled to further upgradation to the pay scale of ₹550-750 (revised scale of ₹5500-9000) automatically without insisting on the availability of vacancies in the higher grade.

24. We had put a specific query to the learned counsel for the petitioners as to what is the eligibility period prescribed under the recruitment rules for promotion to the post of Draughtsmen Grade I. Her answer was that it is 6 years. In other words, this eligibility is at variance with the eligibility prescribed in the O.M dated October 19, 1994 for grant of scale of ₹550-750 (revised pay scale of ₹5500-9000).

25. In terms of the judgment of the Supreme Court in R.Vasudev Murthy's case the draughtsmen whose case is being espoused by the petitioners would not be entitled to further upgradations automatically.

26. It is noted that the judgment in R.Vasudev Murthy's case was rendered on August 06, 2010 whereas the Guwahati Bench of the Tribunal decided the O.A No.14/2002 on May 30, 2003 and the High Court dismissed the writ petition against the same on December 09, 2003 and finally the Supreme Court dismissed the SLP on July 19, 2004 much before the Supreme Court had decided in 2010 the issue related to O.M dated October 19, 1994.

27. We note that a separate O.A No.180/2005 was before the Central Administrative Bench, Calcutta Bench by some of the similarly placed Draughtsmen Grade II seeking the benefit of the Guwahati Bench of the Tribunal in O.A No.14/2002 dated May 30, 2003. The same was allowed

by the Calcutta Bench on August 21, 2009 in terms of the directions of the Guwahati Bench in O.A No.14/2002 dated May 30, 2003. W.P.C.T No.28/2010 filed by the respondents against the said judgment was dismissed by the High Court at Calcutta on February 25, 2010. The Supreme Court also dismissed the SLP of the respondents on August 09, 2010. It appears that the judgment of the Supreme Court in R.Vasudev Murthy's case was not brought to the notice of the Supreme Court when the Supreme Court dismissed the SLP arising from the order of the High Court at Calcutta dated February 25, 2010 in W.P.C.T No.28/2010.

28. In view of our above conclusion, we are of the view that the case in hand is covered by the opinion of the Supreme Court in R.Vasudev Murthy's case vide para Nos.19 and 20 which has already been reproduced above. We may only note that the claim of the petitioners is not based upon O.M dated June 01, 2001.

29. Further we note for benefit that the Tribunal has denied the relief to the petitioners on the ground that the proceedings are also hit by the Principles of Constructive Res-Judicata. We agree with such a conclusion inasmuch as the petitioners having approached the Tribunal seeking a benefit of grant of pre-revised pay scale of ₹425-700 should have raised the claim for further higher grade of ₹550-750 in the earlier proceedings. They having not done, they could not have made a claim in fresh proceedings.

30. The aforesaid is insofar as the entitlement of the petitioners to the higher scale of ₹550-750 (revised pay scale of ₹5500-9000).

31. Insofar as the submission of Ms.Jyoti Singh, learned senior counsel for the petitioners that the grant of higher scale to the juniors in terms of the judgment of the Guwahati Bench of the Tribunal and

Calcutta Bench of the Tribunal has resulted in an anomaly inasmuch, the juniors are getting more pay than the seniors i.e. the petitioners herein, has some merit. We note that this issue was neither raised nor urged by the petitioners before the Tribunal. Even in the present writ petition no such plea has been taken. We only find that a reference to this aspect has been made by the petitioners in rejoinder to the reply filed by the respondents in C.M No.18323-24/2011 (page 436 of the paper book). In the absence of any factual foundation before the Tribunal and even in the present writ petition, the respondents are handicapped for not giving a response to the same. It is a settled position in law that a question of law can be raised at any time of the proceedings but a question of fact which requires investigation and inquiry and for which no pleadings have been averred by a party, such issue cannot be determined by a Court, in this case by us.

32. The concept of step up of pay has originated by the issuance of O.M dated February 04, 1966 by the Government of India under FR 22. The same reads as follows:

“(18) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior. – (a) As a result of application of FR22-C. [Now FR22(I) (a) (1)].- In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;*
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;*
- (c) The anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.*

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.”

33. A perusal of the instructions reveals that the pay of a senior would be step up if the conditions laid down in the instruction are fulfilled. In the absence of any pleadings, it is difficult for us to say whether those conditions have been fulfilled by the petitioners. This aspect has to be considered by the respondents who are in the custody of records, as such are better placed to ascertain the factual aspect and take a stand accordingly. We are of the view that the respondents are required to consider the aspect of anomaly which has crept in due to grant of higher pay scale to persons junior to the petitioners in terms of the order of the Guwahati Bench and the Calcutta Bench of the Tribunal and pass appropriate orders in that regard.

34. Accordingly, we dispose of this writ petition by calling upon the respondents to consider the aspect of anomaly in the pay of the

petitioners qua their juniors as pointed out by learned counsel for the petitioners and pass appropriate orders within a period of 3 months from the date of receipt of copy of this order and communicate the same to the petitioners.

35. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

DECEMBER 12, 2013
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