

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8459 of 2014

Om Prakash Sinha, S/o Late Jadunandan Prasad, resident of Mohalla- Chitragupta Nagar, Janki Apartment, Flat No. 304-A, Kankarbagh, Patna

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Water Resources, Shram Shakti Bhawan, New Delhi
2. The Chairman, Central Water Commission, Sewa Bhawan, R.K. Puram, New Delhi
3. The Director (Administration), Central Water Commission, Sewa Bhawan, R K Puram, New Delhi
4. The Chief Engineer, Lower Ganga Basin Organisation, Central Water Commission, 177/6, S.K. Puri, Patna
5. The Superintending Engineer cum Director, Monitoring Directorate, Central Water Commission, Kasturba Path, S.K. Puri, Patna
6. The Executive Engineer, Middle Ganga Division- 5, Central Water Commission, 148/Anandpuri, West Boring Canal Road, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. S.K. Bariar, Advocate
Mr. Hemant Kumar Karan, Advocate
For the U.O.I. : Mr. S.D. Sanjay (Addl. S.G.)
Mr. Rajesh Kumar Verma (CGC)

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 17-03-2016

The writ petitioner, who is an employee of the Central Water Commission and working as a Junior Hindi Translator, has filed this writ petition being aggrieved and dissatisfied with the order dated 19.02.2014, passed by Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 395/2011, whereby his original application challenging the office memorandum dated 23.05.2011



reducing his grade pay from Rs. 4600/- to Rs. 4200/- and directing recovery of Rs. 31,106/- wrongly paid, has been refused to be interfered with. Petitioner is further aggrieved by the order dated 25.02.2014, passed by the Central Administrative Tribunal, Patna Bench, Patna in Review Application No. 10/2014 which was filed for review of the order first mentioned and was rejected by the Tribunal.

We have heard learned counsel for the writ petitioner and learned Additional Solicitor General for the Union of India at length and with their consent are disposing of this writ petition at this stage itself.

For the sake of convenience, we would first deal with the matter of the review application. Original Application having been decided against the writ petitioner, he came to know that there was an order of the Full Bench of the Central Administrative Tribunal, Ernakulam Bench, which was directly on the issue and in favour of the petitioner, the applicant before the Tribunal. That was neither disclosed by the Union of India nor was known to the applicant, as such, in view of the aforesaid Full Bench of the Tribunal Ernakulam Bench, directly on the issue, the Tribunal should review its order. In our view, the Tribunal rightly rejected the review application, inasmuch as, it is well settled that the parameters for review as contemplated under Section 22(3)(f) of the Administrative



Tribunal Act, confer jurisdiction on the Tribunal to review its orders, which jurisdiction is similar to the review jurisdiction as recognized under order XLVII of the Code of Civil Procedure, 1908, there cannot be a review on discovery of any judgment, as it is not an error apparent on the face of record. Thus, the Tribunal was right in dismissing the review application. Therefore, the petitioner is correct in challenging the substantive order of the Tribunal as well.

To us, the problem is simple and has a simple answer. Before proceeding further, we may notice one aspect. The Full Bench judgment of the Central Administrative Tribunal, Ernakulam Bench was subject matter of challenge before the Division Bench of Kerala High Court. The Division Bench of Kerala High Court affirmed the Full Bench judgment in OP (CAT) No. 142 of 2014(Z) by the judgment and order dated 1st of April, 2015. There the case was identical. It also dealt with Junior Hindi Translator and identical controversy was there.

It is not in dispute that the petitioner originally was in the pay scale of Rs. 5000-8000/- when the report of the 6th Pay Commission introducing the concept of pay band and grade pay came in. Its recommendation was of merging four pay scales i.e. Rs. 5000-8000, Rs. 5500-9000/-, Rs. 6500-6900/- and 6500-10,500/- and then to grant them in the revised formula Pay Band-2, with Grade Pay of

Rs. 4200/-. Thereafter the office memorandum dated 13th November, 2009 was brought about which itself indicates the reason which would be apparent from the 'subject' head given therein :

“Subject : Grant of the revised pay structure of grade pay of Rs. 4600 in the pay band PB-2 to posts that existed in the pre-revised scale of Rs. 6500-10500 as on 1.1.2006 and which were granted the normal replacement pay structure of grade pay of Rs. 4200 in the pay band PB-2.”

This office memorandum then explains that how the pre-revised pay-scales were merged. Upon merger they were to be granted Pay Band-2 with Grade Pay of Rs. 4200/- but as there were different grades of employees in the pre-merged scale, it would be appropriate to grant them Grade Pay of Rs. 4600/-. This was a conscious decision being taken by the Government of India only to clear confusion. It was said in the circular that if in Pay Band-2, Grade Pay of Rs. 4600/- is granted then in the pre-revised scale, it would be equivalent to pay scale of Rs. 7450-11500/-. It is pursuant to this decision of the Government of India that the petitioner's grade pay was increased from Rs.4200 to Rs. 4600/-. But upon this misinterpretation that if Rs. 4600/- is given as grade pay, it would be equivalent to pre-revised scale of Rs. 7450-11500/-, subsequently, the Department reversed its decision because in the pre-revised pay scale



petitioner was in the Pay Scale of Rs. 5000-8000/- and not in the Pay Scale of Rs. 7450-11500/- and therefore, the Department reduced the grade pay of the petitioner from Rs. 4600 to Rs. 4200/-. The Tribunal fell in error in accepting the same. The reason why they were in error of because the mention of pay scale of Rs. 7450-11500/-, as pre-revised pay scale, was just to show the equivalence of the changed level of pay. What was said in the circular, was that they were entitled to Pay Band-2 with Grade Pay of Rs. 4200/- but there being certain problems, a conscious decision was taken to upgrade their grade pay to Rs. 4600/- which if done they would be entitled to be in Pay Band-2 with Grade Pay of Rs. 4600/- in the pre-revised scale of Rs. 7450-11500/- which was by way of illustration. This is also the view of the Division Bench of the Kerala High Court. However, the submission of the Additional Solicitor General is the same, as was canvassed by the Department before the Tribunal of the Patna Bench.

For the reasons aforesaid, we are of the view that the Tribunal was clearly in error and petitioner has made out a case for interference.

We may also note one other principle on which we would place our decision. When courts are dealing with a common statute of All India application, there must be unanimity of judicial decisions because the same statute should not be implemented

differently in different parts of the country, unless it is shown that the decision of a Court which is not a binding precedent, is wrong. Having seen the judgment of the Kerala High Court with which we are in respectful agreement, and we see no reason to differ. We follow the same even though it is not binding on us. This writ petition is allowed. The order of the Tribunal dated 19.02.2014 as also the office memorandum dated 23.05.2011 are set aside.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh/AFR

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