

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

W.P.No.2122 of 2015

1. Atomic Energy Employees Association
Rep. by its General Secretary,
C.U.Jayakumar,
JCM Office, CDO Building, IGCAR,
Kalpakkam - 603 102.
 2. P.Pazhani Petitioners
- Vs.
1. Union of India
Rep. by the Secretary
Atomic Energy Commission,
Department of Atomic Energy,
Anushakthi Bhavan,
C.S.M.Marg, Mumbai - 400 001.
 2. Under Secretary
Atomic Energy Commission,
Ministry of Atomic Energy,
Anushakthi Bhavan,
C.S.M.Marg, Mumbai - 400 001.
 3. The Director
Indira Gandhi Centre for Atomic Research,
Department of Atomic Energy,
Kalpakkam - 603 102.
 4. The Secretary
Trombay Council & Trombay Scientific Committee,
BARC, Central Complex,
Mumbai - 400 085.
 5. The Registrar
The Central Administrative Tribunal,
Chennai Bench, High Court, Complex,
Chennai - 600 104. Respondents

(P2 is impleaded as per order, dated
20.07.2016 by ASJ & PKJ in
WMP.No.18490 of 2016 in

W.P.No.2122 of 2015)

Writ Petition filed under Article 226 of the Constitution of India, seeking an order to issue a writ of certiorarified mandamus, calling for the records relating to the order, dated 11.07.2014 passed in O.A.No.1492 of 2011 by the Central Administrative Tribunal, Chennai, quash the same and consequently, direct the third respondent to grant pay fixation under FR 22 (I) (a) (1) to the employees of the third respondent, who were promoted between 01.01.2006 and 31.12.2008.

For Petitioners : Mr.S.T.Varadarajulu
For Respondents: Mr.G.Rajagopalan,
Addl Solicitor General
assisted by
Mr.J.Madanagopal Rao, SCGSC for
R1 to R4
R5 - Tribunal

ORDER

(Order of the Court was made by P.KALAIYARASAN, J)

This writ petition has been filed under Article 226 of the Constitution of India, seeking to issue an order in the nature of writ of certiorarified mandamus, calling for the records relating to the order, dated 11.07.2014 passed in O.A.No.1492 of 2011 by the Central Administrative Tribunal (Chennai Bench) and quash the same and consequently direct the authorities to grant pay fixation under FR 22 (I) (a) (1) to the employees.

2. The facts of the case in nutshell are as follows :

(i) The third respondent organisation, namely Indira Gandhi Centre for Atomic Research, Department of Atomic Energy have been governed by the policy, rules and regulations, framed from time to time by the Ministry of Atomic Energy, Union of India.

(ii) The issue involved in this case is relating to the promotion and fixation of pay of Tradesman, who have been subsequently re-designated as Technician in Department of Atomic Energy (DAE). Earlier, Technician cadres were designated as Tradesman Grade 'A' to 'K'. The initial recruitment for those cadre starts with Grade A or B, depending upon the qualification required for filling up the posts. The petitioners were initially appointed as Tradesman Grade A or Grade B. They are entitled for merit based promotion to next higher grades, i.e., up to Tradesman Grade 'K', based on merits and on completion of residency period.

(iii) On promotion from one grade to another, they will be entitled to fixation of pay under FR 22 (I) (a) (1). Up to the implementation of the revised pay Rules, 2008, the pay of the petitioners was fixed correctly in the promotion scale of Tradesman Grade F. After 29.08.2008, their pay was not fixed in accordance with FR 22 (I) (a) (1). After implementation of the VI Pay Commission, the pre-revised scales of pay were merged and put in the common pay band / scale.

(iv) The revised scale of pay for Technician Gr.E to Technician Gr.G is Rs.9300 - 34800. By orders, dated 20.10.2010 and 12.08.2011, the fixation under FR 22 (I) (a) (1) was flouted and increments given to Tradesman Gr.F is taken away by saying that Grade pay of Tradesman 'E' and 'F' are same. The respondents have started to recover the amount from the salary of the petitioners / applicants. The re-fixing and recovery of salary is against the principles of natural justice. The persons promoted from Grade 'E' to Grade 'F' during the period from 01.01.2006 to 29.08.2008 were adversely affected due to merger of posts as per VI CPC.

3. The Central Administrative Tribunal (Chennai Bench), after considering the divergent contentions of both sides, dismissed the Original Application. Aggrieved against the said order, the petitioners / applicants have come forward with this writ petition.

4. The learned counsel appearing for the petitioners contends that by merger of two posts, the benefit by way of promotion given for each post has been taken away, which is violative of Article 14 and 16 of the Constitution of India; that the department of space, realising the mistake in merger of posts, demerged the scales of pay, whereas it has not been done for the petitioner / applicants, which is discriminatory and opposed to Article 21 of the Constitution of India and that the benefit of fixation of pay under FR 22 (I) (a) (1) is required to be resolved by demerging of the scales of pay.

5. The learned Additional Solicitor General appearing for the respondents 1 to 4 per contra contends that the applicants were given an option to elect to switch over to revised pay from the date of their promotion and in such cases they are not entitled to arrears, w.e.f 01.01.2006 till the date of promotion and they have not given option, that if promotional increments to those petitioners / applicants on their promotion in the pre-revised scale of pay is given, an anomalous situation will arise to the effect that their seniors who are holding the post of Tradesman F, SA/B and Assistant Foreman prior to 01.01.2006 will draw less pay and after considering the entire facts, the Tribunal has rightly

dismissed the Original Application.

6. There is no dispute that prior to VI Central Pay Commission, there were different scales of pay. In the VI Pay Commission, pre-revised scales of pay were merged and put in the common pay band / scale. Technician Gr.A to Technician Gr.D - Rs.5200-20200; Technician Gr.E to Technician Gr.G - Rs.9300-34800/-; Senior Technician Gr.H and Senior Technician Gr.J - Rs.9300 - 34800. Thus, as per the VI Central Pay Commission, Technician Gr.E to Technician Gr.G have been merged to one pay band. Though the VI Pay Commission was implemented on 29.08.2008, it was given effect to from 01.01.2006. During the intervening period, i.e., from 01.01.2006 to 29.08.2008, the petitioners / applicants were promoted from Technician Gr.E to Gr.F and their pay was fixed to the promotional cadre under FR 22 (I) (a) (1).

7. The writ petitioners seeks to quash the promotion norm, dated 20.03.2009 issued by the authority so as to demerging the pay scales of pay and to quash the order of the authority, dated 12.08.2011, wherein recovery of the excess amount due to fixation of pay under FR 22 (I) (a) (1) for the promotion between 01.01.2006 and 29.08.2008 was ordered. The writ petitioners want the demerger of scales of pay as per the pre-revised scales of pay, which is not acceptable on the following reasons:

(i) It is well settled that the Court can interfere if there is violation of Article 14 and 16 of the Constitution of India. The Hon'ble Supreme Court in Union of India v. T.V.L.N.Mallikarjuna Rao, reported in (2015) 3 SCC 653, held in paragraph 26 as follows :

"The classification of posts and determination of pay structure comes within the exclusive domain of the executive and the Tribunal cannot sit in appeal over the wisdom of the executive in prescribing certain pay structure and grade in a particular service. There may be more grades than one in a particular service."

(ii) Rationalizing of merging of different scales of pay does not violate in any way either Article 14 and 16 of the Constitution of India, as contended by the petitioners and as already pointed out, this Court cannot sit in appeal over the policy decision in determining the pay structure by the Government or the authority.

(iii) The contention of the respondents that granting promotional increments to the petitioners / applicants and their promotion in pre-revised scales of pay from the date of

their promotion will create anomalous situation to the effect that their seniors who were holding post of Tradesman Gr.F, SA/B and Assistant Foreman prior to 01.01.2006 will get less pay should not be lost sight off.

8. Here in this case, the authority issued a official memorandum, dated 17.11.2009, giving option to his employees to elect pre-revised scale and the same reads thus :

"In this connection, it is clarified that as per proviso to Rule 5 of CCS (RP) Rules, 2008 in case where a Government servant has been placed in a higher pay scale between 1.1.2006 and the date of notification of the Rule on account of promotion, upgradation of pay scales Etc., the Government servant may elect to switch over to revised pay structure from the date of such promotion / upgradation etc., However, in such cases, the Government servant shall not be entitled to arrears w.e.f 1.1.2006 till the date of promotion / upgradation. Accordingly, the employee can opt to have the pay fixed in the revised pay structure from the date of his promotion. In the case employee opts to have his pay fixed from the date of promotion, he will not be entitled to arrears on account of pay revision from 1.1.2006 up to the date of his promotion."

9. After giving option to elect the pre-revised scale of promotion on 17.11.2009, the authority issued the Official Memorandum, dated 12.08.2011 to adjust the excess amount paid due to fixation of pay under FR 22 (I) (a) (1). Thus, after giving option to the petitioners / applicants to elect either pre-revised merged scales or revised scales, the authority directed to adjust the excess amount paid due to fixation of pay under FR 22 (I) (a) (1). it is pertinent to note that the petitioners / applicants had not elected the fixation of pay in the pre-revised scale with the conditions stipulated in the option.

10. Though the learned counsel appearing for the writ petitioners has argued that there is discrimination between the petitioners under the DAE and the Department of Space. According to the petitioners, the merger of different scales were demerged in the Department of Space, after realising the grievances of the employees, whereas such a measure has not been taken by the DAE. The entire facts including the circumstances under which the Department of Space took such a decision has not been placed before this Court and therefore, the contention cannot be gone into by this Court.

11. The learned counsel appearing for the petitioners has brought to the notice of this Court subsequent happenings to the impugned order. The Ministry of Finance, Government of India issued Official Memorandum, dated 16.10.2015 by which, the promotees between 01.01.2006 and 29.08.2008 were given protection. Paragraph 5 and 6 of the Memorandum reads thus :

"5. The matter has been considered in the light of the provisions contained in the OM No.20020/4/2010-Estt.D, dated 13.09.2012 issued by the Department of Personnel & Training, which has been issued in the context of the posts / grades merged in pursuance of the recommendations of the 6th Central Pay commission. This OM provides, *inter-alia* that the status of the government servant as on 29.08.2008 including those who have earned promotion between 1.1.2006 and 29.09.2008 will be protected as appointment / promotions are made as per the provisions of the recruitment rules applicable to the post / grade.

6. Accordingly, it has been decided that in cases where promotion took place in the pre-revised pay structure during the period between 1.1.2006 and the date of notification of CCS (RP) Rules, 2008, when the pre-revised and revised pay scales were different and the posts carried the character of feeder and promotional grades, pay fixation on such promotion shall be allowed under Rule 13 of the CCS (RP) Rules, 2008 subject to the following conditions :

(i) The promotion had taken place between 1.1.2006 and the date of notification of CCS (RP) Rules, 2008 as per the Recruitment Rules then in vogue, which clearly provided for such posts being promotional grade for the feeder grade from where the promotion took place and where the posts were subsequently merged in a single post / grade consequent upon promulgation of the CCS (RP) Rules, 2008.

(ii) FR 22 (I) (a) (1), which was applicable for fixation of pay on promotion before promulgation of CCS (RP) Rules, 2008, was invoked for fixation of pay in these cases in the pre-revised structure during the period between 1.1.2006 and the date of notification of the CCS (RP) Rule 2008.

(iii) The concerned employees had opted to come over to the revised pay structure from a date occurring prior to the date of notification of CCS (RP) Rules, 2008.

(iv) The concerned Recruitment Rules have been

amended subsequently to provide for merged of these grades in to a single grade / post."

12. The Government of India, Department of Atomic Energy issued Official Memorandum, dated 24.08.2016, wherein it clarified and included various Technical posts including the post of Technician Gr.E promoted to Technician Gr.F between 01.01.2006 and 29.08.2008 under the protection of the above said official memorandum, dated 16.10.2015. In this memorandum, paragraph 5 reads thus :

"5. Accordingly, the Department, vide note No.19/1/2013-SCS/17633 dated 23.12.2015 had sought comments of Trombay Council for extending the benefit of M/o Finance OM dated 16.10.2015 to Technical posts, as the M/o Finance OM, dated 07.01.2013 was not made applicable to Technical posts in the Department in view of revised norms issued by Trombay Council. Secretary, Trombay Council vide Note No.BARC / CAO (P) / 2016 / 1887, dated 12.09/02.2016 had submitted his comments. The comments received from Trombay Council have been examined in consultation with CCA, DAE and it is decided in the Department to extend the benefit of M/o Finance OM, dated 16.10.2015 to various technical posts including the post of Technician 'E' promoted to Technician F between 01.01.2006 and the date of notification of CCS (RP) Rules 2008, i.e., 29.08.2008 (formally re-designated as F1 of the Department after modifying the promotion norms to next higher grade) as they are fulfilling the conditions stipulated in para 6 (i) to (iv) of OM, dated 16.20.2015."

13. Thus, protection has been given to the petitioners who have been promoted between 01.01.2006 and 29.08.2008 from Technician Gr.E to Technician Gr.F and therefore, the pay already drawn by fixing the pay as per FR 22 (I) (a) (1) under pre-revised scale is not liable to be recovered. Therefore, it is suffice to observe that the authorities having given protection to the promotion to the petitioners as per Rules, will not make any recovery of the excess amount already paid due to fixation of pay in the promotional cadre in pre-revised scale, as per FR 22 (I) (a) (1).

14. For the aforesaid reasons, this writ petition is liable to be dismissed.

In fine, with the above observations, this writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The Secretary
Union of India
Atomic Energy Commission,
Department of Atomic Energy,
Anushakthi Bhavan,
C.S.M.Marg, Mumbai - 400 001.
2. The Under Secretary
Atomic Energy Commission,
Ministry of Atomic Energy,
Anushakthi Bhavan,
C.S.M.Marg, Mumbai - 400 001.
3. The Director
Indira Gandhi Centre for Atomic Research,
Department of Atomic Energy,
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BARC, Central Complex,
Mumbai - 400 085.
5. The Registrar
The Central Administrative Tribunal,
Chennai Bench, High Court, Complex,
Chennai - 600 104.

1 cc to Mr.S.t.Varadarajulu, Advocate, sr.52135
1 cc to J.Madanagopal Rao, Advocate, sr.52472

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kra 27.09.2016