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

\+ **WRIT PETITION (C) No. 466/2012**

Date of decision: 15th December, 2016

BD SHARMA ..... Petitioner

Through Mr. G.D. Chawla, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondents

Through Mr. Vivek Goyal, CGSC & Ms. Vanya Khanna, Advocate for UOI.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

The petitioner-B.D. Sharma was appointed as Painter (Civilian) on 12th December, 1963. He was promoted as Highly Skilled Grade-II Painter on 15th October, 1984 and Highly Skilled Grade-I Painter on 5th October, 1998. The petitioner superannuated on 31st December, 2001.

2. Nearly eight years after his retirement, on 19th May, 2009 the petitioner filed OA No. 1856/2009 seeking enhancement of pension in view of the restructuring scheme of artisans introduced vide Air Headquarters order dated 2nd June, 2003. The scheme was retrospectively applied and effective from 1st January, 1996. The petitioner had asserted grant of scale of Rs.5500-9000 with effect from 1st January, 1996. The prayer clause in the OA No. 1856/2009 filed before the Tribunal, was as under:-

"8. Relief Sought:-

In view of the facts mentioned in para 4, 5 and 6, above, the applicant Most Respectfully pray for the following humble relief:-

(a) That as per the restructuring of cadre of Artisans introduced vide Air Hqrs. order dt. 02.06.2003, the applicant is eligible for upgradation as Master Craftsman (M.S.M) against 10% of authorised establishment of Highly Skilled posts in the scale of pay of Rs.5500-9000, effective w.e.f. 01.01.1996. He is also eligible to consequential arrears of pay, pension, Gratuity, Leave Encashment etc. resultant to placement in the upward scale of pay of Master Craftsman (M.S.M).

(b) That in the fixation of his pay in the scale of pay of Rs.5000-150-8000, his pay was to be fixed at Rs.5750/- w.e.f. 01.10.2001, under provision of F.R. 22(1)(a)(1), which the respondents repeatedly reduced to Rs.5600/-, Rs.5450/- and Rs.5400/- as on 01.10.2001, without providing any opportunity of show cause or hearing the applicant. He may be awarded interest @ 15% p.a. on undue reduction of his pay from 5750/- to Rs.5400/-.

(c) The pay of applicant may be refixed at appropriate stage in the grade of Master Craftsman viz. Rs.5500-9000, from due date and recoveries of Rs.1738/- as also others not notified to the applicant and recovered from his retiral dues, may be ordered to be refunded to him as early as possible and his pay refixed in proper order, as per Air Hqrs. order dt. 02.06.2003 (Annexure A-6).

(d) Allow any other and further relief as this Hon'ble Tribunal, may deem fit and proper in the circumstances of this case in order to safeguard the interests of justice in the case.

and

(e) Allow costs of this Application."

3. The Tribunal partly allowed OA No. 1856/2009 by order dated 28th April, 2010 on the following terms:-

"13. Considering the above facts and circumstances of the case and our analysis and findings on the issues, we come to the conclusion that the Applicants case has sufficient merits. Resultantly, the Original Application is allowed in terms of the following directions to the Respondents:-
Pay of the Applicant would be fixed as indicated in Paragraph 11 of this order, as per which, he would be entitled for the basic pay of Rs. 5300/- as per the 2nd Financial upgradation under ACP Scheme with effect from 9.8.1999, and thereafter appropriate increments to be granted as on 1st October of the year and thereby he would be entitled to get his basic pay fixed at Rs. 5450/- (1.10.1999), Rs. 5600/- (1.10.2000) and Rs. 5750/- (1.10.2001). At the time of his retirement (31.12.2001), his basic pay would be Rs. 5750/-.

The Respondents are directed to revise the Pension Payment Order of the Applicant on the basis of the directions at (i) above.

The arrears of pay admissible to the Applicant as per the directions at (i) above and the arrears of pension admissible to him as per direction at (ii) above and the amount already recovered from the pension by the Respondents need to be paid to the Applicant within a period of three months from the date of receipt of copy of this order."

4. The Union of India filed Writ Petition (C) No. 7185/2010, which was allowed with an order of remand dated 15th December, 2010. This order refers to the circulars dated 20th May, 2003 and 2nd June, 2003. By the first circular, a three-tier pay structure for skilled artisans was formulated; (i) Skilled : Rs.3050-4590; (ii) Highly Skilled : Rs.4000-6000 and (iii) Master Craftsman : Rs.4500-7000. By the circular dated 2nd June, 2003, those employed in the common category of Highly Skilled Grade-I

and Grade-II were entitled to second financial upgradation in the scale of Rs.5000-8000. It was noticed that the petitioner had claimed that with effect from 5th October, 1998, his pay was upgraded to the scale of Rs.4000-6000, which was applicable to Highly Skilled and was fixed at Rs.5100. He was subsequently upgraded to the scale of Rs.5000-8000 on 1st October, 2001 and his pay was fixed at Rs.5,600. The grievance of the petitioner was against wrongly fitment in the scale of Rs. 5000-8000 and that his pay should have been fixed in the scale of Rs.5500-9000 applicable to Master Craftsmen as per the office order dated 2nd June, 2003, and consequential benefits which would ensue. The Court observed that the petitioner's pleadings on entitlement to pay scale of Rs.5500-9000 were ambiguous but it appeared that the claim was predicated in terms of paragraph 4.17(b) of the OA that the two grade structures of skilled and unskilled artisans in the ratio 65:35 was maintained, and 10% of posts had to be in the highest scale (Master Craftsmen). The order dated 15th December, 2010 affirms that the petitioner had never claimed or stated that he or any other person had been placed in the pay scale Rs. 5500-9000.

5. The Division Bench of this Court in their order dated 15th December, 2010 referred to Paragraph 3 of the counter affidavit filed by the respondents, which is to the following effect:-

> "3. Upon Office Order No. NE/04/2003 dated 04.06.2003 the audit authority vide letter dated 17.10.2003 pointed out that the petitioner was entitled to pay fixation of Rs.5150/-

with effect from 09.08.99 and was entitled for next annual increment as on 01.08.2000 in view of which the petitioner was entitled for fixation of Basic Pay at Rs.5450/- as on 01.08.2001 (Annexure-R-14). Therefore in pursuance of the objections raised by the audit authority the order dated 04.06.2003 passed by the respondents was an inadvertent error as per details furnished below:-

Date	**Event**	**Pay as on date**
09.08.99	Pay in the pay scale of Rs.4000-100-6000	Rs.4900/-
09.08.99	Granted second ACP in the pay scale of Rs.5000-150-8000 and pay fixed accordingly	Rs.5150/-
01.10.99	Erroneously granted annual increment of Rs.150/- only after 2 months instead of 12 months from the date of ACP	Rs.5300/-
01.10.2000	Granted annual increment of Rs.150/-	Rs.5450/-
01.10.2001	Granted annual increment of Rs.150/-	Rs.5600/-

Whereas, the correct pay fixation after grant of ACP should have been as under:-

Date	**Event**	**Pay as on date**
09.08.99	Pay in the pay scale of Rs.4000-100-6000	Rs.4900/-
09.08.99	Pay after grant of second ACP in the pay scale of Rs.5000-150-8000 with date of next increment as on 01.08.2000.	Rs.5150/-
01.08.2000	Pay after grant of annual increment of	Rs.5300/-

	Rs.150/- with date of next increment as on 01.08.2001.	
01.08.2001	Pay after grant of annual increment of Rs.150/-	Rs.5450/-
31.12.2001	Attained the age of superannuation before earning any further increment and as such pay to be taken into consideration for the purpose of grant of pension.	Rs.5450/-

Notwithstanding with above, it is humbly submitted before this Hon'ble Court in order to rectify the mistake crept in while fixing the pay of the petitioner at Rs.5,600/- as on 01.10.2001 the respondents passed a fresh Office Order No. NE/09/2003 dated 27.10.2003 in manner revising his pay scale and submitted the same to the PCDA (P), Allahabad for revision of the pension of the petitioner accordingly (Annexure-R-15). Thereupon PCDA (P), Allahabad issued revised corrigendum P.P.O. No.AF/7400/2003 dated 25.02.2004 (Annexure R-16) and the same was given effect in pursuant to the interim direction dated 29.08.2006 of Hon'ble High Court of Delhi in Contempt of Court Petition No.88/2003 in C.W.P./6582/2002 which was pending before Hon'ble High Court of Delhi for disposal. Upon which PDA, the Punjab National Bank has revised his pensionary benefits and a recovery of Rs.12,472/- was affected from the pension account of the petitioner against the over drawn of pension and arrears that accrued to him consequent of corrigendum P.P.O. No.AF/06724/2003 dated 22.09.2003. It is also pertinent to mention herein that the Hon'ble High Court of Delhi was pleased to dismiss the Contempt Petition No.88/2003 in CWP/6582/2002 on 10.11.2008. The copy of order dated 10.11.2008 passed by Hon'ble High Court of Delhi is annexed as (Annexure-R-17)."

The High Court observed that as per the authorities, the petitioner had received two financial upgradations; the last being in the scale of Rs.5000-8000 with effect from 09.08.99. The petitioner had disputed and denied that he had received the second financial upgradation under the Assured Career Progression Scheme. Noticing that the aforesaid core issue had escaped notice, the matter was remanded to the Tribunal for fresh consideration. Noticeably, the petitioner had not challenged the order/decision of the Tribunal dated 28th April, 2010 in OA No. 1856/2009. The Union of India had filed the writ petition, and challenged the partial relief.

6. The impugned order dated 9th November, 2011 notices the factual averments and goes into the question whether the petitioner was entitled to upgradation to the post of Master Craftsman in the scale of Rs.5500-9000 with effect from 1st January, 1996 and rejects the same on the ground that the petitioner had retired on 31st December, 2001 and hence his claim for promotion as Master Craftsman was not acceptable. On the second aspect, regarding fixation of pay in the scale of Rs.5000-8000 and calculation of increments, the matter has been examined by the Tribunal in detail and the plea of the petitioner has been rejected. However, on the question of recovery of arrears, the petitioner has been granted benefit with a direction that over payment, if any, made would not be recovered from the petitioner and if it has already been recovered, the same would be refunded. The operative portion of the order dated 9th November, 2011 reads:-

> "15. Considering the above facts and circumstances of the case and our analysis and findings on the issues, we come to the considered conclusion that the applicant's case has merit. The pay correction submitted by the respondent at para 3 of the counter has correctly brought out that the applicant's entitlement and we direct that applicant's basic pay to be at (a) Rs.4900/- on 09.08.1999 in the pay scale of Rs.4000-100-6000; (b) Rs.5150/- on 09.08.1999 due to grant of second ACP in the pay scale of Rs.5000-150-8000 w.e.f. from that date; (c) Rs.5300/- on 01.08.2000 after grant of annual increment of Rs.150/-; (d) Rs.5450/- on 01.08.2001 due to increment; and (e) Rs.5450/- on 31.12.2001, the date of his retirement. In the result, the order dated 20.9.2006 refixing his pay at Rs.5400 as on 01.10.2001 is not correct and is, therefore, quashed. Accordingly the applicant's basic pay on the date of his retirement being Rs.5450/, his retirement benefits would be as per the said basic pay. The respondents are directed to revise his pension, gratuity, leave encashment and commuted pension accordingly. Before issue of fresh Pension Payment Order of the applicant and actual statement of his dues/excess payment amount, the details shall be furnished to the applicant and on receipt of his response; the final order on the issues should be passed. While deciding the issues, our direction within in respect of the overpayment if any made, should not be recovered from the applicant and if already recovered, the same needs to be returned."

7. During the course of hearing, learned counsel for the respondents has urged and pointed out that 10% of erstwhile Highly Skilled Grade-I posts were to be converted or treated as Master Craftsman. As there were only three posts of Highly Skilled Grade-I, it was not possible to create even a solitary post of Master Craftsman as the resultant figure was only

0.3. Hence, placement to the grade of Master Craftsman of any highly skilled employee was not possible. For the reasons set out below, we need not examine this issue, for the petitioner was given benefit of financial upgradation under the Assured Career Progression Scheme (ACP Scheme) and was in the higher pay scale than the one applicable to Master Craftsman. The contention would also fail, if we confine ourselves to the direction given in the order dated 15/12/2012, in W.P. (C) No. 7185/2010 remanding the matter to the Tribunal. No other contention is raised. Computation and calculations made by the Tribunal are not questioned.

8. The petitioner-B.D. Sharma, it is accepted, was granted financial upgradation under the ACP Scheme on completion of 24 years of service with effect from 9th August, 1999 in the pay scale of Rs.5000-8000, a fact disputed in the first round of litigation. As a result of OM dated 2nd June, 2003, the grade of Highly Skilled I and II were merged in the scale of Rs. 4000-6000. The promotion earned from Highly Skilled-II to Highly Skilled I was to be ignored. Thus those initially recruited in the Skilled Grade (Rs. 3050-4590) were eligible for first and second financial upgradation in scales of Rs. 4000-6000 and Rs. 5000-8000 respectively. The pay scale of Master Craftsman was Rs.4500-7000, which is lower than the pay scale which the petitioner was granted on grant of second ACP (Financial upgradation) with effect from 9th August, 1999. This being the position, we would not go into the question whether or not 10% upgradation should

have been made to create the post of Master Craftsman with effect from 1st January, 1996 as this issue is of academic nature. Pertinently, in this case we are only considering the pension payable to the petitioner after his retirement. The petitioner was given the second financial upgradation and placed in the scale of Rs.5000-8000, which is higher than the pay scale applicable to the post of Master Craftsman of Rs.4500-7000. The pension payable to the petitioner would not increase even if we accept the claim of the petitioner that the post of Master Craftsman should have been created even when there were only three posts in the category of Highly Skilled Grade-I.

9. The respondents have accepted the impugned order and directions. It appears that the respondents have duly complied with the impugned order. If not, we would only direct the respondents to comply with their own order treating the petitioner as entitled to grant of financial upgradation in the scale of Rs.5000-8000 with effect from 9th August, 1999 in terms of the impugned order. The said compliance would be made notwithstanding the fact that we have dismissed this writ petition.

10. In view of the aforesaid position, we do not find any merit in the present writ petition and the same is dismissed affirming the order and the directions given by the Tribunal in paragraph 15 of the impugned order.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

DECEMBER 15, 2016/VKR