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

+ W.P.(C) 6754/2016 & CM APPL. 27763/2016

% ***Judgment dated 03rd August, 2016***

N. K. GUPTA & ORS. Petitioners

Through : Mrs. Meenu Mainee, Adv

versus

SECRETARY, RAILWAY BOARD & ANR

..... Respondents

Through : Mr. Jagjit Singh, Sr. Std. Counsel
(Railways) with Mr. Preet Singh and
Ms. Kiran Kaushik, Advs.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. The present writ petition has been filed impugning the orders dated 28.04.2015 in OA 3808/2012 and the subsequent order dated 29.03.2016 in RA 159/2015 passed by the Central Administrative Tribunal (*in short the 'Tribunal'*) whereby the original application and the review application filed by the petitioners herein stand dismissed.
2. A short question arises for our consideration, whether the cadre restructuring of the Railway Board Secretariat Stenographers Service (*in short 'RBSSS'*) was coeval with the restructuring of Central Secretariat Stenographers Service (*in short 'CSSS'*), i.e. was the former to be effected from the same date of the latter or the RBSSS could have been effected from a subsequent date.
3. The necessary facts, which are required to be noticed for disposal of this writ petition, are that the petitioners are stenographers of RBSSS

who retired during the period from 25.02.2011 and 05.12.2011. Owing to stagnation prevailing in the various grades of CSSS, the Government of India undertook a cadre review and accordingly, the DoPT issued an order dated 27.01.2011 communicating the decision of the Government to create additional posts of Senior Principal Private Secretary and Principal Private Secretary. The cadre strength was finally revised by a OM dated 25.02.2011 by the DoPT.

4. Following the restructuring of the CSSS cadre, the Ministry of Railways decided to constitute a high level committee to assess and analyse the decision taken by the Government and give recommendations for replicating the same in the RBSSS. The committee was constituted by the order dated 29.03.2011 and was to submit its report within a period of 15 days from the date of the order. The report could not be received within the prescribed time and was received much later. Finally on 05.12.2011, the respondents issued an order restructuring the RBSSS, to be implemented from the same date. By the time, the petitioners had retired and could not benefit from the restructuring. Aggrieved the petitioners had approached the Tribunal by filing an OA which stands dismissed as also the consequent RA, which has led to the filing of the present writ petition.
5. The counsel for the petitioner submits that the Tribunal has failed to consider that they have been deprived of the benefit of the cadre restructuring owing to the delay occasioned on the part of the committee and the railway board. She submits that the committee was given the mandate of submitting the report within 15 days which it evidently failed to do so and only submitted its report on 18.07.2011, i.e. after about three months from the expiry of its mandate.
6. The counsel for the petitioner further submits that the service

conditions of the stenographers in the CSSS and the RBSSS were identical in all aspects and stagnation had led to the need for a cadre restructuring. The petitioners struggled by demanding restructuring and were later deprived of the same only due to the delay on the part of the respondents. She submits that accordingly, the order dated 05.12.2011 to the extent the same was made applicable prospectively is bad in law and is liable to be set-aside. To this end, Learned counsel also relies upon the order dated 29.03.2011 whereby the high powered committee was constituted. She submits that the terms of reference specifically mentions that the committee is supposed to ‘replicate’ the decision in CSSS. More particularly, the petitioners have drawn our attention to the following paragraph:

“2. The Terms of reference of the Committee will be as under:-

- i) To suggest the modalities for replicating in RBSSS the decision of the Government (Union Cabinet) approving cadre restructuring in the case of CSSS vide DOP&T’s OM No.20/51/2009-CS II (A) (Vol.II) dated 25.02.2011, and*
- ii) To make any further suggestions towards additional improvement in RBSSS for the purpose of improving the efficiency of the Organisation keeping in view the expansion of Indian Railways Network.”*

(Emphasis Supplied)

7. Learned counsel for the petitioner has also relied upon the following observations of the Supreme Court:

- a. In ***Union of India v. Sadhana Khanna***, (2008) 1 SCC 720: 2009 (1) S.L.J. 180 (SC):
“employees must not be allowed to suffer for laxity on the

part of the government”

b. In *State of Jammu & Kashmir & Ors. v. Sat Pal*, (2013) 11 SCC 737: 2013 (3) S.L.J. 341 (SC):

“a person not responsible for any mistake/delay can not be faulted.”

c. In *Union of India & Ors. v. Shantiranjn Sarkar*, (2009) 3 SCC 90:

“The respondents can not take advantage of their own mistakes/wrong and equitable relief has to be granted.”

8. Per contra, Mr Singh, learned counsel for the respondents submits that the order of the Tribunal is a well reasoned order and should not be interfered with under proceedings under Article 226 of the Constitution. He submits that the implementation of the cadre restructuring of the CSSS had no bearing upon the RBSSS as both are distinct cadres. There can be no automatic application of the restructuring order of CSSS to the RBSSS.
9. On the merits of the matter, Mr Singh submits that the CSSS and RBSSS, though patterned on similar lines, are distinct services under DoPT and Ministry of Railways respectively. Both are governed by their own rules and decisions taken in CSSS are not automatically applicable to RBSSS. They are applicable only after a decision is taken by the competent authority after considering all the prevailing circumstances in the cadre. Further, such decisions are only prospective in nature. He also submits that cadre restructuring in a complex and lengthy process which requires careful deliberations coupled with consultation and approval from various authorities. Therefore, the process cannot be completed in haste.
10. We have heard the counsel for the parties, considered their rival submissions and also examined the impugned orders and the

documents filed on record. The only dispute between the parties pertains to the date of applicability of the order dated 05.12.2011 whereby the RBSSS has been restructured on the same lines as the CSSS. The petitioners contend that the restructuring was to be applicable from the date of the restructuring of CSSS cadre, i.e. 25.02.2011. According to them, they have been deprived of their legitimate due because of the delay on the part of the high powered committee as well as the respondents. The respondents on the other hand have urged that the two cadres are independent of one another and any decision in the CSSS cannot automatically be made applicable to the RBSSS without the approval of the competent authority. He has also drawn our attention to the complexities involved in cadre restructuring, which cannot be done with haste.

11. There is no dispute as to the fact that the high powered committee was supposed to submit its report within 15 days, which it failed to do so. Even then, we do not agree with the petitioners that the same extends any right to them to claim benefit of the subsequent cadre restructuring.
12. Even the judgments sought to be relied upon do not come to the aid of the respondents. It is settled law that one cannot pick out a word or sentence from a judgment devoid of its context and treat the same as law. Judgments cannot be dissected and its lines read in isolation without any regard to their context. It would be useful to reproduce the following observations of the Supreme Court in ***CIT v. Sun Engineering Works (P) Ltd.***, (1992) 4 SCC 363:

“39. ...It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete ‘law’ declared by this Court. The judgment must be read as a whole and the observations from the judgment have to

be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. In Madhav Rao Scindia v. Union of India [(1971) 1 SCC 85 : (1971) 3 SCR 9] this Court cautioned:

“It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment.”

(Emphasis Supplied)

13. Coming to the judgments sought to be relied upon by the counsel for the petitioner. In ***Sadhana Khanna (Supra)*** the Supreme Court was faced by the issue pertaining to promotion of candidates junior to the respondent therein. The Supreme Court had held that the respondent cannot be blamed if his appointment letter was issued late. The *ratio* sought to be extracted by the counsel for the petitioner cannot be extended to cases of cadre restructuring. The following paragraph encapsulates the controversy before the Supreme Court:

“11. It may be noted that the respondent was offered appointment vide letter dated 5-7-1983 which is after 1-7-1983 from which the eligibility was to be counted. Hence, it is the department which is to be blamed for sending the letter offering appointment after 1-7-1983. In fact, some of the candidates who were junior to the respondent were issued letters offering appointment prior to 1-7-1983. Hence it was the department which is to be blamed for this. Moreover, in view of the office memorandums of the Department of Personnel and Training dated 18-3-1988 and 19-7-1989 the respondent was also to be considered, otherwise a very incongruous situation would arise, namely, that the junior will be

considered for promotion but the senior will not.”

14. In **Sat Pal (Supra)** the Supreme Court was faced with a situation wherein the PWD had failed to fill vacancies on time and a candidate had not been selected despite him being eligible for the same. The respondent therein was not selected despite the person above him in the merit list being offered appointment and rejecting the appointment. The Supreme Court was primarily concerned by the applicability of waiting/ merit list and was not concerned with cadre restructuring. The relevant paragraphs read as under:

“10. It is not a matter of dispute that the respondent Sat Pal participated in a process of selection for recruitment against the post of Junior Engineer (Civil), Grade II. It is also not in dispute that his name figured in the merit/select list of Scheduled Caste candidates. Trilok Nath, who had been offered appointment against the post of Junior Engineer (Civil), Grade II on 22-4-2008 did not join despite the said offer of appointment. The instant fact is fully substantiated from the order dated 5-5-2008 issued by the Chief Engineer, R&B Department, Jammu. Even though candidates who were higher in merit were offered appointment to the post of Junior Engineer (Civil), Grade II, for which recruitment was held, some of such posts remained vacant on account of the fact that persons higher in merit to the respondent Sat Pal had declined to join, despite having been offered appointment. At least one such vacancy offered to Trilok Nath never came to be filled up. In such a situation, respondent Sat Pal whose name figured in the merit/select list, ought to have been offered appointment against the said post. The claim of respondent Sat Pal could not have been repudiated, specially on account of his assertion, that his name in the merit/select list amongst Scheduled Caste candidates immediately below the name of Trilok Nath was not disputed even in the pleadings before this Court. It is not the case of the appellants before this Court that any other candidate higher than Sat Pal in the merit/select list is available out of Scheduled Caste candidates, and can be offered the post against which Trilok Nath had not joined.

...

18. In view of the factual and legal position discussed by us hereinabove, we are of the view, that in the facts and circumstances of this case, it would be just and appropriate to direct the appellants to appoint the respondent Sat Pal against the post of Junior Engineer (Civil), Grade II. The aforesaid offer of appointment will relate back to the permissible date contemplated under the rules laying down conditions of service of the cadre to which the respondent Sat Pal will be appointed. Naturally, the respondent will be entitled to seniority immediately below those who were appointed from the same process of selection. Since Sat Pal has not discharged his duties, he would be entitled to wages only with effect from the date of the instant order.

15. In ***Shantiranjan Sarkar (Supra)*** the respondent therein had been deprived of the post of 'Postman/Mail Guard' owing to the lapse of the appellants therein as he had been treated in the general category and not in the SC category. It was in this factual background that the Supreme Court came to the conclusion that the petitioners therein/Union of India cannot be allowed to deprive the respondent candidate from the benefit of reservation due to their own mistake. The relevant paragraphs read as under:

“10. The High Court in its impugned order categorically held that the appellants at no point of time denied or disputed that the respondent had obtained marks more than 30% but less than 45%. The High Court furthermore noticed that the Notification dated 9-6-1989 issued by the Director of Postal Services, A&N Islands in categorical terms stated that his status of the Scheduled Castes should be accepted and recognised in the departmental examination. A member of a Scheduled Caste, thus, notified in any of the States within the territories of India, having regard to the provisions contained in Article 341 of the Constitution, was entitled to get the benefit of the said status for the purpose of entering into the Central Civil Services. The High Court furthermore has rightly held that as a member of the

Scheduled Caste, the respondent was entitled to the benefit of the lower percentage of marks viz. 30% in the departmental examination for promotion from the post of extra-departmental Mail Guard to the post of Peon or Group D.

11. If, thus, for the reasons known to the respondent that he was entitled to the benefit of the status of the Scheduled Caste in the Andaman and Nicobar Islands, irrespective of the fact that the advertisement issued recognised only two categories of reserved categories viz. Scheduled Tribes and "OC", there was no reason to deprive the respondent from the said benefit. The respondent, therefore, was not appointed because of a mistake committed on the part of the authorities of the appellants. They, thus, cannot be permitted to take advantage of the same.

12. In that view of the matter, the delay in filing the original application should not be held to be a bar in granting him an equitable relief. The Union of India as a benevolent litigant cannot be permitted to take advantage of its own wrong. Furthermore, the appellants are guilty of suppression of material facts before this Court. It, in its list of dates, did not state that the original order of the High Court dated 9-7-2004 had been recalled and reviewed by the Division of the said Court by an order dated 30-10-2004."

16. From the foregoing, it is clear that none of the judgments sought to be relied upon by the petitioners are applicable to the facts of the present case as they were pronounced in completely different factual matrixes and questions posed.
17. Even otherwise, the petitioners have failed to show as to how they claim applicability to the order dated 05.12.2011 from that of cadre restructuring in CSSS. Merely because there may have been parity in pay scales between the two cadres in past, it does not automatically extend all decisions taken in CSSS to the RBSSS. The Tribunal had rightly observed that cadre restructuring is a complex process which is carried out after considering the prevalent circumstances in every

cadre. It can be done only after due deliberation upon the workload in each service, functional requirements as well as the financial implications involved. Further, even a comparative analysis of the restructuring would show that the number of posts upgraded, downgraded or abolished are different. Therefore, we are unable to accept the contention of the petitioners that the parity between the two cadres extends to the number of posts in each or the date of applicability of restructuring orders. Merely the usage of the word 'replication' in the order dated 29.03.2011 does not make any difference.

18. In view of the foregoing, we find no infirmity in the orders passed by the Tribunal. Hence, there is no ground to interfere in the proceedings under Article 226 of the Constitution of India.

19. The writ petition is accordingly dismissed at this preliminary stage.

CM APPL. 27763/2016 (EXEMPTION)

20. Application stands disposed of in view of the order passed in the writ petition.

G.S.SISTANI, J

I.S. MEHTA, J

AUGUST 03, 2016

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