

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.P.No.6801 of 2017
and
WMP.No.7370 of 2017

- 1.Union of India rep. by
its Secretary,
Ministry of Defence,
Department of Defence Production and Supplies,
South Block, New Delhi- 110 001.
- 2.The Chairman,
Ordnance Factory Board,
10-A S.K.Bose Road,
Kolkatta - 700 001.
- 3.The General Manager,
Ordnance Clothing Factory,
Avadi, Chennai- 600 054. ... Appellants

vs.

- 1.Ordnance Clothing Factory
Workers' Union represented by
its General Secretary, Mr.C.Srikumar
- 2.N.Ramprasad
Chargeman
Ordnance Clothing Factory,
Avadi, Chennai - 600 054.
- 3.The Central Administrative Tribunal,
rep. by its Registrar,
Madras Bench,
Chennai - 600 104. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the order passed by the third respondent in O.A.No.310/00199/2014 dated 13.04.2016 and quash the same.

For Petitioners : Mr.Venkataswamy Babu
For R1 & R2 : Mr.D.Muthukumar for M/s.Paul & Paul

ORDER

(Order of the Court was made by HULUVADI G. RAMESH,J.)

This writ petition is filed against the order passed by the Central Administrative Tribunal of Madras Bench ('the Tribunal' for brevity) in O.A.No.310/00199/2014.

2.The petitioners herein are the respondents in the O.A and the respondents 1 and 2 herein are the applicants therein.

3.The relief prayed for in the Original Application is as below:

"for a direction to the respondents to calculate and pay Night Duty Allowance to the members of the first applicant Union as well as the second applicant as admissible on the basis of the revised basic pay and allowances as implemented from 01.01.1996 and from 01.01.2006 with all attendant benefits like arrears, etc."

4.The Original Application was considered and after meticulous analysis of the facts and circumstances, the Tribunal passed the following order:

"The respondent shall pay the Night Duty Allowance calculating the allowance based on the changes in the pay of the employees consequent upon the advent of V & VI Pay Commissions and accordingly, the arrears to be calculated and paid to the applicants within a period of four months from the date of receipt of the order copy."

5.Few Facts that are necessary for deciding this writ petition, are, as under:

5.1 The first respondent herein namely Ordnance Clothing Factory Workers Union is a registered Union and the second respondent herein is working in the Ordnance Clothing Factory, which is coming under the Ministry of Defence.

5.2 As recommended by IV Pay Commission, Night Duty Allowance (NDA) was paid to the employees working in both industrial and non-industrial categories.

5.3 While so, the pay structure of the Central Government employees came to be revised twice i.e., one from 01.01.1996 and another from 01.01.2006, pursuant to the recommendations of V and VI Pay Commissions respectively.

5.4 However, there was no revision of pay with regard to

NDA. That issue was referred for arbitration. The learned Arbitrator passed an award dated 09.08.2005 ordering payment of NDA with effect from 01.01.1996 on revised scale of pay.

5.5 Since the award so passed was not implemented, one of the Union from the Engine Factory, Avadi filed O.A.No.1391 of 2010, which was allowed by the Tribunal, by directing the management to pay NDA from 01.01.1996 and 01.01.2006, as per V and VI Pay Commissions' recommendations respectively along with the arrears from 01.01.1996.

5.6 The first petitioner herein has implemented the order of the Tribunal only to the employees, who were parties to the said O.A. and not implemented the same in respect of other employees. Aggrieved over the same, the respondents 1 and 2 herein filed O.A.No.310/00199/2014 seeking extension of such benefit to the employees belonging to Ordnance Clothing Factory, Avadi as well.

5.7 The Tribunal, following its earlier order passed in O.A.No.1391 of 2010, which was allowed relying on the decision of the Central Administrative Tribunal, Jodhpur Bench in O.A.No.34 of 2008 dated 05.11.2009, which was confirmed by the Hon'ble Supreme Court, allowed the Original Application. Hence, this writ petition by the respondents in the O.A.

6. Heard the learned counsel for the parties and perused the record.

7. The only issue that arises for consideration is as to whether the Madras Bench of the Central Administrative Tribunal was correct in directing the petitioners to pay arrears of NDA retrospectively. In all other aspects, the issue is covered by the order passed by the Jodhpur Bench of the Tribunal, which was upheld by the Hon'ble Supreme Court.

8. The petitioners would contend that since there are financial implications involved, certain privileges granted to the employees in Engine Factory, Avadi cannot be extended to the employees working in Ordnance Clothing Factory. They would further contend that during the pendency of the Original Application before the Tribunal, the matter was considered and a decision was taken by the Ministry of Defence on 21.05.2015, as per which, all the employees were entitled to draw NDA based on the revised pay and allowances drawn by them with effect from 01.01.2006 and payment of arrears will be made from April 2007. Therefore, the learned counsel for the petitioners prayed that the order of the Tribunal has to be modified with respect to the date from which the payment of NDA on the revised pay scale, came to be effected.

9. Opposing the relief sought for by the petitioners, the learned counsel for the respondents 1 and 2 would contend that the issue involved herein has attained finality and hence, no

interference is warranted. He would further contend that once the order of the Tribunal was implemented in respect of the employees working in a factory, the petitioners ought to have extended the same benefit to the employees working in another factory situated in the same area, whereas, they adopted different yardstick for different factory, which is arbitrary, illegal and discriminatory in nature.

10.It is an admitted fact that before passing the impugned order by the Tribunal, the Ministry of Defence has taken a policy decision with regard to payment of NDA on the revised pay structure, to the employees only with effect from 01.01.2006 and payment of arrears from April 2007. For better appreciation, the relevant clause of the Instruction No.148/2015/Per/Policy dated 21.05.2015 issued by the Ministry of Defence is extracted hereunder:

"All categories of eligible civilian employees (IEs/NIEs) are henceforth entitled to draw NDA based on the revised pay and allowances drawn by them with effect from 01.01.2006 and payment of arrears will be made from April 2007 in terms of Hon'ble CAT, Jodhpur Bench order dated 05.11.2009 in O.A.No.34 of 2008 filed by Shri Ram Kumar and others which was upheld by the Hon'ble Supreme Court of India."

11.It is specifically alleged by the respondents that certain privileges granted to the employees of Engine Factory, Avadi were not extended to the employees working in Ordnance Clothing Factory, situated in the same area, which is arbitrary, illegal and discriminatory in nature, whereas, the same is refuted by the learned counsel for the petitioners that there are financial implications involved in payment of revised NDA with effect from 01.01.1996, as ordered by the Tribunal, which would be a great burden on the Exchequer and the Ministry of Defence cannot bear it. We find considerable force in the contention so raised on the side of the petitioners.

12.In our considered view, the employees working in Engine Factory, Avadi approached the Tribunal in the year 2010 and obtained an order in their favour on 08.08.2012, which was implemented by the Ministry of Defence vide order dated 04.10.2013. But, the respondents 1 and 2 herein kept silent for all these years and suddenly, knocked the doors of the Tribunal in the year 2014 and got an order in their favour only on 13.04.2016. In the mean while, policy decision was taken by the Ministry of Defence on 21.05.2015, with regard to payment of NDA on the revised pay structure, only with effect from 01.01.2006 and payment of arrears from April 2007, having regard to the expenditure involved, financial implications and other relevant considerations. As such, there is no inequality, arbitrary or

discriminatory in nature, as alleged by the respondents 1 and 2 herein.

13. That apart, it is well settled that the policy decision taken by the Government, particularly, with reference to the financial matters, cannot be subjected to judicial review by the Courts, in exercise of power conferred under Article 226 of the Constitution of India.

14. Thus, for the discussions held above, the order impugned herein is liable to be modified. Accordingly, the order of the Tribunal dated 13.04.2016 is modified as follows:

"The petitioners herein (respondents in the O.A.) shall pay the Night Duty Allowance based on the revised pay and allowances drawn by the employees with effect from 01.01.2006 and payment of arrears from April 2007, to the respondents 1 and 2 herein (applicants 1 and 2 in the O.A) within a period of four months from the date of receipt of a copy of this judgment."

15. The Writ Petition is disposed of in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

rk

To

The Registrar, Central Administrative Tribunal,
Madras Bench, Chennai - 600 104.

+ 1 cc to M/s.Paul & Paul Advocate, SR.74279

+ 1 cc to Mr.Venkataswamy Babu, Advocate, SR.73235

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PVS (CO)
NR 07/12/2017