

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7301 OF 2002

The Union of India and ors.	...Petitioners
Versus	
Narendra Gupta and ors.	...Respondents

Mr. Vinod Joshi a/w. Ms Lata Patne for the Petitioners.
Mr.S.P. Saxena for all the Respondents.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

Date of Reserving the Judgment : 26th July 2018
Date of Pronouncing the Judgment : 03rd August 2018

JUDGMENT :

- 1] Heard learned counsel for the parties.

- 2] This petition had in fact been disposed of by judgment and order dated 3.2.2006. However, the Hon'ble Supreme Court, by its judgment and order dated 15.12.2009 set aside the judgment and order dated 3.2.2006 and remanded the matter for deciding the writ petition afresh on merits after taking into consideration the Defence Research Development Service Rules, 1979 (said Rules). The parties were also granted liberty to file further pleadings that may be necessary for the complete adjudication of the issues arising in the writ petition.

3] The challenge in this petition is to the judgment and order dated 20.10.2001 made by the Central Administrative Tribunal (CAT), Mumbai dismissing O.A. No. 669 of 1997 instituted by the respondents. The CAT, by the impugned judgment and order, has directed the petitioners to pay to the respondents “*training allowance*” in terms of O.M. dated 31.3.1987 and O.M. dated 9.7.1992.

4] Mr. Vinod Joshi, learned counsel for the petitioners, submits that in terms of clause 2(i) of O.M. dated 31.3.1987 permanent faculty members of training institute are not entitled to any training allowance. He points out that all the respondents are permanent faculty members at the Institute of Armament Technology (IAT) established by the Ministry of Defence Training and Teaching of Group-A Officers. He therefore, submits that none of the respondents are entitled to any training allowance, which is not meant to be awarded to permanent faculty members in terms of O.M. dated 31.3.1987 and O.M. dated 9.7.1992.

5] Mr. Joshi points out that the petitioners are employees governed by the said Rules. He points out that in terms of Rule 2(9), the expression “*service*” is defined as the Defence Research and Development Service. He points out that the respondents are

members of such service in terms of Rule 5 of the said Rules. On this basis, Mr. Joshi submits that all the respondents, have to be regarded as permanent faculty members at IAT. Mr. Joshi submits that since permanent faculty members are not entitled for training allowance in terms of O.M. dated 9.7.1992, the CAT exceeded its jurisdiction in making the impugned judgment and order.

6] Mr. S.P. Saxena, learned counsel for the respondents, submits that there is nothing in the said Rules on basis of which it could be said that the respondents are permanent faculty members at IAT. He points out that the respondents were appointed as Scientist at Naval College of Engineering and not at IAT. He points out that the permanent faculty members at IAT are designated as Lecturer or Professors. He points out that the respondents joined the IAT as faculty members, but were never designated or absolved as permanent faculty members at IAT. In these circumstances, the respondents were clearly entitled for training allowance and there is no infirmity whatsoever in the view taken by the CAT in the impugned judgment and order.

7] Mr. Saxena points out that the position of the respondents is not at all different from Scientist similar to the respondents joining Ordinance Factory Staff College at Ambazari, Nagpur, who are

being paid training allowance by the petitioners. He points out that such training allowance is paid to several other officers/scientists from other departments, who may have joined as faculty members in training institution. He submits that denial of training allowance to the respondents would amount to discrimination. For all these reasons, Mr. Saxena submits that there is no good ground to interfere with the impugned judgment and order made by the CAT.

8] The rival contentions now fall for our determination.

9] There is no serious dispute that the respondents came to be appointed as Scientists at Naval College of Engineering. In paragraph 13 of the impugned judgment and order made by the CAT, there is a note that appointment letters in respect of the respondents came to be produced by the petitioners herein along with their affidavit at Annexures R3/1 to R3/48d. The CAT has noted that from these appointment letters, it was seen that some of the respondents were appointed as Scientists 'B' and some Scientists 'C' and some as Senior Scientific Officers. The petitioners had produced these appointment letters before the CAT in support of their contention that the posts of Scientist 'B' were equivalent to the posts of faculty members and therefore, the respondents, ought not to be held as entitled to receive any training allowance. However,

there was no dispute that the respondents had been appointed as Scientists at Naval College of Engineering and not at IAT training institute.

10] Clause 2(i) of O.M. Dated 31.3.1987, upon which, reliance was placed by Mr. Joshi provides as follows:

“2(i) When an employee of Government joins a training institution meant for training government officials, as a faculty member other than as a permanent faculty member, he will be given a “training allowance” at the rate of 30 per cent of his basic pay drawn from time to time in the revised scales of pay”.

11] The O.M., makes a distinction between the employee of the Government who joins a training institution meant for training government officials, as a faculty member and the permanent faculty member of such a training institution. The O.M. then provides that the permanent faculty members of the training institute will not be entitled to any training allowance. However, employees of the Government who join the training institution meant for Government officials, as faculty members, will be entitled to such training allowance.

12] From the record, it does appear that the respondents were not the permanent faculty members of the training institution – IAT. The respondents admittedly, were Scientists appointed at Naval College of Engineering. At some point of time, much after their original

appointments at Naval College of Engineering, they joined the IAT, which is a training institution meant for training of Government officials, may be, as faculty members. There is no dispute that the respondents were never initially appointed as faculty members at the training institution nor is there is any specific order absorbing them as permanent faculty members at the IAT. In the absence of such significant circumstances, there is no good ground to interfere with the impugned judgment and order made by the CAT granting the respondents training allowance.

13] The Defence Research and Development Service Rules, 1979, no doubt, provide for the constitution of Defence Research and Development Service. Rule 2(9) in fact, defines “service” to mean the Defence Research and Development Service. Rule 5 explains categories of employees who may be called as the members of such service. Rule 5 reads as follows:

“5. Member of the Service :-

(1) The following scientists shall be members of the service:-

(a) Scientists appointed to the Service at the promulgation of these rules under rule 7 from the date of such promulgation;

(b) Scientists appointed to duty posts after the promulgation of these rules from the date they are so appointed.

(2) A scientist appointed under clause (a) of sub-rule (1) of this rule shall, on such promulgation, be deemed to be a member of the Service in the corresponding grade.

(3) A scientist appointed under clause (b) of sub-rule (1) of this rule shall be a member of the Service in the corresponding grade, from the date of such appointment.

(4) Apart from the above, the Government may when considered necessary, appoint eminent scientists as consultants or as Emeritus Scientists on terms and conditions to be decided by the Government in each case."

14] On the basis of Rules of 1979, it is possible to hold that the respondents are members of the Defence Research and Development Service. However, that by itself, is not sufficient to deny the respondents benefit of training allowance in terms of O.M. dated 31.3.1987 and 9.7.1992. As noted earlier, the O.M., makes distinction between an employee of the Government, who joins training institute as a faculty member and a permanent faculty member of such training institution. The O.Ms provides for training allowance to former category, but not to the later. Therefore, even if we are to proceed on the basis that the respondents are members of Defence Research and Development Service by virtue of their appointments as Scientists at Naval College of Engineering, that by itself, will not be sufficient, to deny them training allowance in terms of O.Ms. dated 31.3.1987 and 9.7.1992.

15] Besides, Mr. Joshi, had no answer to Mr. Saxena's contention that Scientists, similarly placed scientists, who have joined

Ordinance Factory Staff College at Ambazari, Nagpur are being paid training allowance, which is sought to be denied to the respondents. On the basis of Mr. Joshi's contention, even the Scientists, who have joined the Ordinance Factory Staff College at Ambazari, Nagpur will also qualify to be regarded as members of Defence Research and Development Services. However, consequent upon their joining the Ordinance Factory Staff College at Ambazari, Nagpur, such Scientists, are paid training allowance by the petitioners. In the absence of any distinguishing features between such Scientists and the respondents, the petitioners cannot deny training allowance to the respondents. Such denial would indeed amount to treating equals as un-equals thereby violating Article 14 of the Constitution of India.

16] For all the aforesaid reasons, we see no good ground to interfere with the impugned judgment and order made by the CAT. This petition is therefore, dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

**Sunita
Kishandas
Chandka**

CHANDKA/SHERLA

Digitally signed by
Sunita Kishandas
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