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

+ **W.P.(C) 1612/2018**

H. V. DASAN AND ORS. Petitioner
Through: Mr. Soumyajit Pani, Advocate and
Mr. Chittaranjan Singh, Advocate.

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. Vikram Jetly, CGSC.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **11.07.2018**

CM APPL. 6627/2018 (by the petitioners for condonation of delay in filing the writ petition)

1. For the reasons stated in the application, the same is allowed. The delay of 24 days in filing the writ petition is condoned.
2. The application is disposed of.

W.P.(C) 1612/2018

1. The petitioners, who were applicants before the Tribunal in O.A. No.789/2013 and 4130/2013, are aggrieved by a common judgment dated 28.01.2015, passed by the Central Administrative Tribunal disposing of the three original applications bearing O.A. Nos.971/2012, 789/2013 and 4130/2013. The petitioners are also aggrieved by an order dated 17.08.2017,

dismissing their Review Applications.

2. The grievance of the petitioners before the Tribunal was that there was a great disparity between the minimum pay of the Pay Bands PB-3 and PB-4, which had been granted by the Government to its employees, who were earlier in Grades S-21 and S-24 respectively. Learned counsel for the petitioners had contended before the Tribunal that both the Grades of S-21 and S-24 ought to have been placed in the Pay Band i.e. PB-4, as had been recommended by the 6th CPC but the Government, by ignoring the said recommendations, had arbitrarily placed the employees in S-21 Grade in PB-3, while placing the employees in S-24 Grade in PB-4.

3. The aforesaid submission was however, rejected by the Tribunal by the impugned judgment dated 28.1.2015, by observing that there are limitations placed on the Courts in determining the issue of pay parity which is the function of an expert body, for the reason that such parity, can be granted only after considering the nature or quantum of work, source and mode of recruitment/appointment, qualifications, responsibilities, reliability, experience and other functional needs, etc. The Tribunal further observed that since the petitioners themselves were not in any homogenous group and were working in different grades having different qualifications and experience etc., their claim for parity of pay scales with those in S-24 to S-27 Grades, who had been placed in PB-4, was found to be unsustainable.

4. Aggrieved by the aforesaid judgment, the petitioners had approached this Court by filing **W.P.(C) No.9765/2015** entitled H.V. Dasan & Ors. Vs. Union of India and Anr., which was disposed of by the Division Bench vide

order dated 14.10.2015, with liberty granted to them to re-agitate their case before the Tribunal by filing a Review Application. As a sequel thereto, the petitioners had filed a Review Application before the Tribunal, stating *inter alia* that their case was different from the one pleaded by the applicants in O.A. No.971/2012 in as much as the said applicants were working in lower grades, whereas most of the petitioners are working in Grade S-21 and though this aspect was taken note of by the Tribunal in para 6 of the impugned judgment, but no specific findings had been returned thereon. Additionally, it was argued on behalf of the petitioners that allowing the higher pay band to Lt. Cols/Cols and denying the same to civilians was an aspect that had not been examined by the Tribunal.

5. The said Review Application was also rejected by the Tribunal vide order dated 17.08.2017. The reliance placed by the petitioners on the recommendations made by the 6th CPC, which the Government did not accept, was dealt with by the Tribunal by observing that the Pay Commission is only a recommendatory body and it is not incumbent for the Government to accept each and every recommendation made by the said body. While rejecting the Review Application, the Tribunal made the following observations:-

“4.1 A mere reading of the aforesaid paras would reveal that we have come to the conclusion that ‘equal pay for equal work’ cannot be applied in this case as those working in grade S-24 and above had different duties and responsibilities as well as experience level as compared to the applicants, who were working in lower grades. On that basis, the OAs have been dismissed. Thus, we have found that since the applicants were

working in lower grades and having different nature of duties, they cannot seek parity with their seniors in so far as pay scales and grant of pensionary benefits were concerned. This view has also been subsequently upheld by Hon'ble High Court while deciding WP(C) No. 10148/2015 filed in the case of S.N. Dixit and Ors. (supra) challenging our order. Hon'ble High Court has clearly observed that Article 14 was not applicable in this case. In this view of the matter, it was not material whether the applicants were working in S-21 or in lower grades. All of them would in any case not be similarly placed as those working in grades S-24 to S-27 with whom they were comparing themselves. Since the very locus standi of the applicants to claim parity with those working in S-24 and S-27 has not been accepted by us, it was not necessary for us to return finding on each and every issue raised by them. Thus, we do not find any merit in the contention of the review applicants that their case was different from the case of applicants of OA-971/2012 and, therefore, deserved to be dealt with separately. Also, there is not merit in their contention that their written submissions, in particular, their argument about granting higher pay band to Lt. Cols/Cols has not been considered by this Tribunal.

5. No other ground was pressed before us. In any case, we find that other grounds mentioned in the review applications as well as in written submissions given by the review applicants, an attempt has been made to re-argue the matter without pointing out any error apparent on the face of the record in the judgment. This is beyond review jurisdiction."

6. Aggrieved by the impugned judgment dated 28.01.2015 as also the order dated 17.08.2017 passed by the Tribunal rejecting their Review Application, the petitioners have preferred the present petition, wherein similar pleas have been taken as were taken in the Review Application.

7. Mr. Jetly, learned counsel for the respondents opposes the present petition and states that the issue raised by the petitioners in the present

petition has already been examined by the Coordinate Bench in **W.P.(C) No.10148/2015** entitled S.N. Dixit & Ors. Vs. Union of India and Ors., wherein a challenge had been laid to a judgment dated 28.01.2015 passed by the Principal Bench of the Central Administrative Tribunal and the petitioners therein had sought directions to the Union of India to increase their pension by 300%. Pertinently, the petitioners in the captioned writ petition were employed with the Ministry of External Affairs, Government of India and had superannuated during the years 1991-1998. Prior to the revision of pay, which was effected w.e.f. 01.01.2006, the said petitioners, who were in the Grade of S-12, S-19 and S-22, were drawing pension @ of 50% of their pay scales, which was revised by implementation of the report and recommendations of the Sixth Central Pay Commission w.e.f. 01.01.2006. The grievance raised by the petitioners in the captioned writ petition was that the percentage of increase in their pension was much lesser than the percentage of increase granted to those employees, who were in the pre-revised pay scale of S-24 to S-32 which was violative of the equality clause guaranteed under Article 14 of the Constitution of India.

8. After examining the pleas of the petitioners therein with regard to the disparity in the revision of pay scale, it was observed by the Division Bench that the said petitioners were employed before their retirement in the Grades of S-12, S-19 and S-22 whereas they were seeking parity in percentage terms with those in Grades of S-24 to S-32. The said disparity had increased due to shift from pay-scales to pay-bands and the consequent adjustments that took place.

9. Noting that the petitioners in the aforesaid case and those who were drawing the pre-revised pay scales of S-24 to S-32, were differently placed and they could not claim parity with them, the Division Bench had rejected the aforesaid petition vide judgment dated 13.1.2016, by observing that in any case, there can be no uniformity in the increase of the pay scale of the employees. It is deemed apposite to reproduce herein below the reasoning given in the aforesaid judgment:-

*“From the aforesaid paragraphs, it is evident that the Petitioners are seeking parity with employees who were drawing a higher pre-revised pay scale than what became admissible to the officers in the grades of S-24 and S-32. Admittedly, the Petitioners before retirement were employed in the grades of S-12, S-19 and S-22 whereas they are seeking parity in percentage terms with those in grades of S-24 to S-32. The disparity in percentage increase between different pre-revised pay scales pursuant to the implementation of the report of the SCPC is merely due to the shift from a system of pay-scales to pay-bands and consequent adjustments. Moreover, the Petitioners and those drawing the pre-revised pay-scales of S-24 to S-32 were always differently situated and the Petitioners cannot therefore claim parity with altogether different pay-scales. The petitioner’s pension would be more in quantum terms than their juniors, and less than their seniors. The charts filed by the petitioners would show that increase ratio in grades S-12, S-19 and S-22 pursuant to SCPC varied between 185% to 217%. There was no uniformity in the increases inter se. Percentage of increase of grades S-24 and S-32 leave varied between 220% to 337% as per the calculations made by the petitioner. There is again no uniformity in the said increases. **There are several factors and issues which would have determined the relevant and revised applicable grades and bands. The increases need not be identical and cannot be struck down on the test predicated on the criteria that all increase must be by an identical percentage. This contention***

alone by itself would not justify invoking Article 14 of the Constitution. We would hesitate to enter into a fishing and roving enquiry, examine the entire PB and grade structure premised only on this argument.

In fact, the logical conclusion of the argument of the Petitioners would mandate that pay-scale of all employees should be revised by the same percentage ratio which is contrary to and would negate the recommendations of the SCPC itself. The entire SCPC would have to be rewritten. The Petitioners cannot claim parity and proportionate increase bench marked against the highest percentile increase as this would lead to absurdity and would fall foul of the cherished principle of equality.” (emphasis added)

10. We are inclined to agree with the submission made by the learned counsel for the respondents that the issue raised in the present petition has already been examined and rejected for valid reasons by a Coordinate Bench of this court in the case of S.N. Dixit (supra), wherein similar relief as sought by the petitioners herein, has been declined. In our considered view, merely because the petitioners in the present petition claim that they had retired in the Grade of S-21, whereas the captioned decision has dealt with the case of petitioners, who were employed in the Grades of S-12, S-19 and S-22 and were seeking parity with those in Grades of S-24 and S-32, cannot be a distinguishing factor. In any case, the Grade of S-22 is higher than the Grade of S-21, in which the petitioners were earlier placed and once the claim of those in Grades that are higher than the petitioners, seeking parity with those in Grade S-24 has been rejected by a Co-ordinate Bench, the question of granting any such relief to the petitioners before us, does not arise.

11. We are not inclined to entertain the present petition, for the very same reasons as noted by the Coordinate Bench in the judgment dated 13.01.2016 in the case of S.N. Dixit (supra). As a result, the impugned judgment dated 28.1.2015 is upheld and the present petition is dismissed as meritless.

HIMA KOHLI, J

REKHA PALLI, J

JULY 11, 2018
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