

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 1603 of 2019

1. Dinesh Kumar Das S/o Shri Bedan Das Aged About 37 Years R/o Jaihind Vihar Colony, Shivnand Nagar, Raipur, District- Raipur, Chhattisgarh.
2. Vimal Prakash S/o Shri Rakesh Kumar Rastogi Aged About 43 Years R/o Jaihind Vihar Colony, Shivnand Nagar, Raipur, District- Raipur, Chhattisgarh.
3. Kapileshwar Roy S/o Shri Mauje Roy Aged About 41 Years R/o Jaihind Vihar Colony, Shivnand Nagar, Raipur, District- Raipur, Chhattisgarh.
4. Santosh Kumar Bhardwaj S/o Shri Kirtan Lal Bhardwaj Aged About 39 Years R/o Jaihind Vihar Colony, Shivnand Nagar, Raipur, District- Raipur, Chhattisgarh.
5. Abhishek Singh S/o Shri J. R. Bodh, Aged About 31 Years R/o Mitani Vihar Daldal Seoni, Raipur, District- Raipur, Chhattisgarh.
6. Ravi S/o Rajesh Kumar Aged About 26 Years R/o Tulib 452, Parthivi Pacific, Tatibandh, Raipur District Raipur, Chhattisgarh.

---- Petitioners

Versus

1. Union Of India Through The Secretary, Ministry Of Railway, Rail Bhawan, New Delhi.
2. Ministry Of Finance Through The Secretary, Central Secretariat, North Block, Raisina Hill, New Delhi.
3. Department Of Personnel And Training Through The Secretary, Central Secretariat, North Block, New Delhi.
4. Railway Board Through The Chairman Ministry Of Railway, Rail Bhawan, New Delhi.

---Respondents

For Petitioners	:	Mr. Sudeep Johri, Advocate along with Mr. Syed Ishhadil Ali, Advocate
For Respondents	:	Mr. Rajkumar Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/03/2019

1. The present writ petition has been filed claiming for the following reliefs:

“10.1 That, the Hon'ble Court may be kind enough to call the record of the petitioners.

10.2 That, the Hon'ble Court may be kind enough to quash the impugned order Annexure P/1 and may be kind enough to issue a writ of mandamus to command the respondents to grant grade pay as recommended by 7th CPC in para No.11.40.118 to 11.40.124 to the petitioners.

10.3 That, the Hon'ble Court may be kind enough to pass any appropriate writ, order or direction to the respondents to pay the monetary benefits in accordance with the recommendations of the pay commissions.”

2. The substantial challenge in the present writ petition is to the impugned order Annexure P/1, by which the respondents have intimated the petitioners that the up-gradation of the pay-scale of the Chemical & Metallurgical Assistant (in short 'CMA') and Chemical & Metallurgical Superintendent (in short 'CMS') have been rejected by the authorities, vide Annexure P/1.
3. Admittedly, all the petitioners before this Court are employees working under the respondent No.1 i.e. the Railway department on the post of CMA and CMS. All these petitioners are presently posted at the South Eastern Central Railway, Raipur division.
4. Perusal of the petition and the records enclosed would show that primarily the petitioners are aggrieved by the decision of the respondent wherein, they have approved of the particular pay-scale to similarly situated persons, but so far as the petitioners and the category to which the petitioners belong, they have not recommended for the same and are being given a different pay scale.

5. The contention of the petitioners on the objection raised by the Registry that the matter ought to have gone before the Central Administrative Tribunal is that the nature of dispute as such is one which cannot be adjudicated upon by the Tribunal. According to the petitioners, it is not a dispute, which would fall under Section 14 of the Administrative Tribunals Act, 1985, rather it is a case whereby an appropriate direction is to be issued to the Central Government for recommending the appropriate pay-scale to the category to which the petitioners belonged.
6. At this juncture, the counsel for the petitioners submits that the 7th pay commission in fact had made certain recommendations in favour of the petitioners, which has not been accepted by the Inter Ministerial Committee.
7. According to the petitioners, the Central Administrative Tribunal may not have the powers to issue appropriate mandamus to the Government of India in this regard and it is only a service related dispute or a condition, which is envisaged in the service Rules, which could be agitated before the Administrative Tribunal. In support of its contention, the counsel for the petitioners relies upon the judgment of the Hon'ble Supreme Court in the case of ***“Purshottam Lal & Ors. v. Union of India & Anr.” 1973(1) SCC 651.***
8. This Court, taking into consideration the submissions put forth by the counsel for the petitioners and perusal of record, is of the opinion that the contentions put forth by the petitioners may not be

sustainable for the simple reason that the plain reading of Section 14 of the Administrative Tribunals Act clearly reflects that it has conferred the jurisdiction on the Tribunal to deal with any matter pertaining to “recruitment” or “a matter concerning to recruitment”, likewise, it has also been conferred with jurisdiction to hear “all service related matters” concerning an employee, who is working under those establishments, which stand notified under the Administrative Tribunals Act.

9. Undisputedly, the Railway department is one such institution, which is a notified establishment under Section 14, thereby all the matters relating to “recruitment”, “concerning to recruitment” or “all service matters” concerning the employees working under the Railway department would go before the Administrative Tribunals Act.
10. So far as the contention of the petitioner that the Tribunal constituted under Article 323A of the Constitution of India, in particularly the Central Administrative Tribunal may not have the power to issue a mandamus to the Government of India is concerned, the said issue stands already adjudicated upon by the Hon'ble Supreme Court in the land mark decision in the case **“L. Chandra Kumar v. Union of India & others”**, 1997(3) SCC 261, wherein in paragraph No. 93 it has been held as under:

“93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional setup, been specifically entrusted with such an

obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules.”

11. The issue further came up for consideration before the Hon'ble Supreme Court again in the case of [“Kendriya Vidyalaya Sangathan and another v. Subhas Sharma”](#) **2002(4) SCC 145**, wherein again the Hon'ble Supreme Court in paragraph no.18 has held as under:

“18. xxxxxxxxxx. The Court held that an Administrative Tribunal can still perform its supplementary role in relation to the service matters and it can even test the constitutional validity of the statutory provision or rule except the Act or the Rule under which it was created. It was laid down that the Tribunal will continue to act as Court of first instance in respect of matters falling within its jurisdiction and it was not open to the aggrieved person to directly approach the High Court by overlooking the jurisdiction of the Tribunal concerned.”

12. While deciding the said case, the Hon'ble Supreme Court in its operative part in paragraph no.20 has further held that:

“20. xxxxxxxxxx. At the same time, as laid down in Chandra Kumar, the High Court ought not to permit the aggrieved person to bypass the remedy of moving the Administrative Tribunal in the first instance.”

13. Given the aforesaid two decisions of the Hon'ble Supreme Court, this Court is of the opinion that since the dispute raised by the petitioners is in respect of a particular pay-scale that they are seeking and the ground on which the claim is that of parity as compared to similarly placed persons, this Court has no hesitation in reaching to the conclusion that the said dispute also is one which

would fall within the purview of the Central Administrative Tribunals under Section 14.

14. The terms “all service matters” referred to under Section 14 of the Administrative Tribunals Act has to be given a wider interpretation and it would also definitely bring in the dispute in respect of the claim of parity of pay-scale, even if that be one which has arisen on the refusal to be granted inspite of the recommendation of the pay commission constituted by the Government of India.
15. Since there is a recommendation in favour of the petitioners by the Pay Commission and the same was denied by the Inter Ministerial Committee, then it all the more becomes a direct dispute of the petitioners being denied certain recommendations which have been made by the 7th pay commission and which is being denied by the employer i.e. the respondents No.1 to 3 in the present case and the same therefore would come under “all service matters” as envisaged under Section 14 of the Administrative Tribunals Act.
16. The writ petition for the said reason also would not be maintainable before the High Court.
17. The writ petition accordingly stands disposed off reserving the right of the petitioners to avail the appropriate remedy under the provisions of Act of 1985.

Sd/-
(P. Sam Koshy)
Judge

Ved