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

Date of Decision: 03.04.2019

+ W.P.(C) 7611/2017

UNION OF INDIA AND ANR

..... Petitioner

Through Ms.Mrinalini Sen with Ms.Kritika
Gupta, Advs.

versus

ANJANI

..... Respondent

Through Mr.Deepak Verma, Adv

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition under Article 226/227 Constitution of India assails an order dated 07.12.2016 passed by the Central Administrative Tribunal, Principal Bench, Delhi (Tribunal), allowing O.A.No.1439/2015 filed by the respondent. Vide the impugned order, the learned Tribunal has directed the petitioners to fix the respondent's pay in the scale of Rs.5500-9000/- w.e.f. 01.01.2003 and in PB 2 with Grade Pay of Rs.4600/- w.e.f. 01.01.2006.

2. The respondent joined the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) as a Junior Hindi Translator w.e.f. 24.10.2003 when she was placed in the scale of Rs.4500-7000/-, which was subsequently increased to Rs.5000-8000 w.e.f. 23.05.2008. Soon after the respondent had joined her services, the pay scale of the

post of Translators, including Junior Translators in the Central Secretariat for Official Languages Service (CSOLS), was revised vide order dated 02.04.2004 and the pay-scale of a Junior Translator in the CSOLS was enhanced to Rs.5500-9000 on notional basis w.e.f. 01.01.1996 and for actual payment w.e.f. 11.02.2003. In view of this upgradation in the pay scales of Translators in CSOLS, Hindi Translators working in various other Ministries also started claiming parity by approaching various benches of the Tribunal, which claims were allowed. These orders of the Tribunal were upheld by the Supreme Court vide its order dated 25.07.2013 passed in Civil Appeal No.1119/2013 by observing that there was no functional distinction as far as the work of Translators in the Ministries and the CSOLS are concerned.

3. In the light of the aforesaid decision of the Supreme Court the respondent made representations to the petitioners seeking revision of her pay at par with that granted to a Junior Translator in the CSOLS. As no action was taken on her representations, she approached the Tribunal by filing the O.A. Before the Tribunal the respondent/applicant had claimed that once Junior Translators in all other similar organisations were being granted the pay-scale of Rs.5000-8000/- w.e.f. 01.01.1996 vide O.M. dated 20.12.2000 and the pay scale of Rs.5500-9000/- w.e.f. 11.02.2003 vide O.M. dated 02.04.2004, which had been further revised to Rs.6500-10,500/- pursuant to O.M. dated 24.11.2008, there was no reason as to why the same should not be granted to her also. The respondent had also

claimed placement in PB-2 with grade pay of Rs.4600/- w.e.f. 01.01.2006 as a consequence of the recommendation of the 6th CPC.

4. On the other hand, the petitioners had opposed the respondent's claim by contending that the pay revision granted to Translators in the CSOLS could not be made applicable to her as she was working in a different Department, i.e., CESTAT. It was further contended that the claim of the respondent for being placed in PB-2 with grade pay of Rs.4600 was wholly misplaced as only those officers who were in the pre-revised pay scale of Rs.6500-10500/- as on 01.01.2006 were entitled to be granted the grade pay of Rs.4600/- in PB-2, whereas the pay-scale of Junior Translator in CSOLS had been revised to Rs.6500-Rs.10,500/- only w.e.f. 01.01.2006.

5. The Tribunal after considering the decision of the Supreme Court allowed the O.A. by observing as under:-

“6. We have heard both sides and perused the material on record. A mere reading of the orders of Hon'ble Supreme Court in Special Leave Petition (Civil) Nos. 17419/2009, 37255/2012 and CA 1119/2013 (Union of India & Ors Vs. Rajesh Kumar Gond, Union of India & Ors Vs. Dhananjay Singh and Union of India & Ors Vs. Dalev Singh and Ors) would reveal that the Apex Court has held that there was no difference in the nature of duties discharged by Hindi Translators belonging to CSOLS and those working in subordinate offices, as both were doing translation work. Consequently, on the basis of 'equal pay for equal work' the Apex Court has granted parity to translators working in the subordinate offices with the translators belonging to CSOLS. Further, vide OM dated 24.11.2008 (supra) the Department of Expenditure (Ministry of Finance) accepting the recommendation of Sixth Central Pay Commission has granted to Hindi

Translators working in various subordinate offices, the same pay scales as were granted to translators of CSOLS. In their OM, it has been mentioned that Junior Translator will be granted the pay scale of Rs.6500-10500 w.e.f. 1.01.2006 which will correspond to PB-2 with grade pay of Rs.4200 in the revised pay scale. Thereafter, vide OM dated 13.11.2009 (supra) (page 22-23) those employees who were working in the pre revised scale of Rs.6500-10,500 as on 1.01.2006 have been granted upgraded grade pay of Rs.4600 in the PB-2.

7. Thus it follows that Junior Hindi Translators of subordinate offices have been granted parity with Junior Hindi Translators of CSLOS. Consequently, they would be entitled to revise pay scale of Rs.5500-9000 actually w.e.f. 11.02.2003 and notionally w.e.f. 1.01.1996. Subsequently, w.e.f. 1.01.2006, the Junior Hindi Translators of subordinate offices were entitled to pre revised upgraded pay scale of Rs.6500-10500 and consequently revised grade pay of Rs.4600 in PB- 2 w.e.f. 1.01.2006.

8. The contention of the respondents that since the work of the Tribunal was being conducted in English, there was not enough work for the Junior Translators and consequently Junior Hindi Translators of CESTAT cannot be compared with that of CSLOS, is unsustainable. This is because pay parity is granted on the basis of nature of duties rather than the quantum of work.

9. We, therefore, allow this OA and direct the respondents to fix the pay of the applicant in the scale of Rs.5500-9000 w.e.f. 24.10.2003 (the date of her joining in CESTAT). Further w.e.f. 1.1.2006 her pay shall be fixed in PB-2 with Grade Pay of Rs.4600. The applicant shall also be entitled to arrears on account of the aforesaid pay fixation. Considering the facts and circumstances of the case, we are not inclined to allow any interest on the arrears. The applicant be extended these benefits within a

period of eight weeks from the date of receipt of a certified copy of this order. No costs.”

6. The present petition has been filed impugning the aforesaid order. Learned counsel for the petitioners submits that the Tribunal has erred in coming to the conclusion that the Apex Court had granted parity to Translators belonging to CSOLS and states that a similar issue is still pending before the Supreme Court in *SLP(Civil) CC.No.23053/2016 titled Union of India & ors. v. T.M.Thomas*. She further submits that even if the respondent is held entitled to grant of parity at par with those belonging to CSOLS, the direction to grant her grade pay of Rs.4600/- in PB 2 w.e.f 01.01.2006 was wholly unjustified. She submits that the Tribunal has failed to appreciate that vide O.M. dated 13.11.2009, only those employees who were in the pre-revised pay scale of Rs.6500-10500/- as on 01.01.2006 were entitled to be placed in PB 2 with grade pay of Rs.4600/-. She submits that the respondent was not in the pre-revised pay scale of Rs.6500-10500/- as on 01.01.2006 and states that it was vide OM dated 24.11.2008 that only Hindi Translators working in subordinate offices were placed in the scale of Rs.6500-10500/- w.e.f 01.01.2006.

7. On the other hand, learned counsel for the respondent while supporting the impugned order states that once the pay scale of Translators in all subordinate offices had been brought at par with those in the CSOLS in compliance of the decision of the Supreme Court in *T.M.Thomas (supra)*, there was no reason as to why the respondent should not get the benefit of the revised scale and continue to stagnate in the scale of Rs.5000-8000/-.

8. We have considered the rival contentions of the parties and with their assistance perused the records.

9. What emerges from the record is that the claim of the respondent before the Tribunal was two fold, the first being for grant of the pay scale of Rs.5500-9000/- w.e.f. 24.10.2003 and the second being for placement in PB 2 with grade pay of Rs.4600/- w.e.f. 01.01.2006. Both the claims have been allowed by the Tribunal. We are of the view that in so far as the first claim of the respondent is concerned, there is absolutely no reason to interfere with the Tribunal's direction, as we find that the said pay scale of Rs.5500-9000/- has been specifically extended by the petitioners to Junior Translators of CSOLS vide their order dated 02.04.2004 and that too w.e.f. 01.01.1996 on notional basis, and from 11.02.2003 on actual basis. The said revised pay scale has been extended to Translators working in various other subordinate offices and departments and, therefore, there is no reason as to why the said benefit ought not be granted to the respondent.

10. We, however, find merit in the submission of the learned counsel for the petitioners that the Tribunal has erred in allowing the second claim of the respondent by directing the petitioners to place her in PB 2 with grade pay of Rs.4600/- w.e.f. 01.01.2006. To consider as to whether the respondent was entitled to be placed in PB 2 with grade pay of Rs.4600/-, it would be appropriate to refer to para 3 of the O.M. dated 13.11.2009, which reads as under:-

“3. Consequent upon the Notification CCS(RP) Rules 2008, Department of Expenditure has received a large number

of references from administrative ministries/departments proposing upgradation of the post which were in the pre-revised scale of Rs.6500-10500/- as on 01.01.2006 by granting them grade pay of Rs.4600/- in the pay band PB 2. The matter has been considered and it has now been decided that the posts which were in the pre-revised scale of Rs.6500-10500/- as on 01.01.2006 and which were granted the normal replacement pay of Rs.4200/- in the pay band PB 2 will be granted pay of Rs.4600/- in the structure of grade of pay band PB 2 corresponding to the pre-revised scale of Rs.7450-11500/- w.e.f. 01.01.2006. Further in the terms of aforementioned provisions of CCS(RJ) Rules, 2008. In case a post already existed in the pre-revised scale of Rs.7450-11500/-, the posts being upgraded from the scale of Rs.1800-11500, the posts being upgraded from the scale of Rs.6500-10500/- should be merged with the post in the scale of Rs.7450-11500.”

11. A perusal of the aforesaid OM shows that for being granted grade pay of Rs.4600/-, the necessary pre-condition was that the employee must be in the pre-revised pay scale of Rs.6500-10500/- as on 01.01.2006. In the present case, the respondent's post of Junior Translator, admittedly was not in the pre-revised pay scale of Rs.6500-10500/- as on 01.01.2006 and, therefore, it is evident that she did not fulfil the pre-condition prescribed in the OM dated 13.11.2009 for grant of grade pay of Rs.4600/- in PB 2. The direction of the Tribunal to fix the pay of the respondent by placing her in PB 2 with grade pay of Rs.4600/- w.e.f 01.01.2006 is, therefore, not sustainable and is set aside.

12. Resultantly, while upholding the direction to fix the pay of the respondent in the scale of Rs.5500-9000/-, the impugned order is

modified by setting aside the direction to grant grade pay of Rs.4600/- in PB 2 to the respondent. The writ petition is, accordingly, partly allowed in the aforesaid terms.

REKHA PALLI, J

VIPIN SANGHI, J

APRIL 03, 2019/sr

