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

Date of Decision: 12.03.2019

+ **W.P.(C) No.8193/2015**

UNION OF INDIA & ORS

..... Petitioners

Through Mr.Bhagwan Swarup Shukla, Adv.
with Mr.Savan Kumar, Adv. &
Mr.Pankaj Gupta, Under Secretary.

Versus

DR. BADRI SINGH BHANDARI & ANR

..... Respondents

Through Mr.Prateek Tushar Mohanty, Adv. for
R-2

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

1. The petitioner/Union of India assails the order dated 23rd October, 2013 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.761/2012. The Tribunal allowed the said Original Application preferred by the two respondents and directed that the respondents be placed in Pay Band-4 w.e.f. 1st January, 2006, by granting them the benefit of non-functional upgradation w.e.f. 1st January, 2006 in place of 3rd January, 2006.

2. The present writ petition was preferred sometime in July, 2015. We may take note of some material development which took place in

the meantime. After the passing of the impugned order, the petitioner issued an Office Order No.U-I/2014 dated 24th/29th April, 2014 on the subject of grant of non-functional upgradation to Joint Secretary Level (SAG) to the Indian Economic Service Officers of 1983 and earlier batches. This order, in its opening, reads as follows:-

“Consequent upon the Order of the Hon’ble Central Administrative Tribunal (CAT) in OA No.761 of 2012 dated 23.10.2013 in the matter of Shri Badri Singh Bhandari and Anr. Versus Union of India and Others, and subsequent consultation with Department of Personnel and Training and Department of Legal Affairs, the following IES Officers of 1983 and earlier batches are hereby granted the upgradation to Senior Administrative Grade {Pay Band: Rs.37,400-67,000 plus Grade Pay: Rs.10,000} (Joint Secretary Level) on Non-Functional Basis with effect from 1.01.2006 instead of 3.01.2006 as per earlier Order No.U-1/2011 dated 09.05.2011 issued from File No.11016/3/2009-IES:”

3. The officers in respect of whom this order was issued, are sixty five in number which include the two respondents herein at serial nos.47 & 50. This order records at the end as follows:-

“2. The grant of higher scale to the above officers would be governed by the terms and conditions mentioned in Annex-I to the Department of Personnel & Training’s O.M. No.AB.14017/64/2008-Estt.(RR) dated 24.4.2009.

3. This issues with the approval of competent authority.”

4. A perusal of the aforesaid order shows that the same was

circulated to forty one different Ministry/Departments. The impugned order dated 23rd October, 2013, thus, came to be implemented in its entirety by the petitioners. While implementing the same, the petitioners did not reserve to itself the right to recall the implementation, as the said implementation was not made subject to the right of the petitioner to challenge the impugned order. After a lapse of nearly one year and three months of the passing of the order dated 24th/29th April, 2014, the petitioners have preferred the present writ petition.

5. Interestingly, in the writ petition, the petitioners have averred in para 2 of the writ petition as follows:-

“...on receipt of the impugned order dated 23rd October, 2013, the Department of Economic Affairs consulted DOP&T. DOP&T suggested this Department to contest the case by filing appeal in consultation with Department of Legal Affairs. However, the Department of legal Affairs had advised that unless just cause is shown for granting the benefit of non functional up-gradation in PB-4 to the applicants from 03.01.2006 instead of granting the same from 01.01.2006, the chance of success in further appeal appears to be remote. In view of opinion given by the Department of Legal Affairs and with the approval of competent authority the benefit of non-functional up-gradation to the applicants w.e.f. 01.01.2006 in place of 03.01.2006 as per directions of the Hon’ble CAT was allowed. However, when the aforesaid implementation of the impugned judgment dated 23.10.2013 came to the notice of the DoP&T which is the nodal Ministry; the Department of Economic Affairs was advised to challenge the impugned judgment as the impugned

judgment is contrary to the policy of the Govt. of India and has wide spread implications on all other Central Services qua the grant of Non-Financial Upgradation. In this backdrop, the present writ petition is being filed challenging the impugned order dated 23.10.2013 passed by Central Administrative Tribunal, Principal Bench, New Delhi in Dr.Badri Singh Bhandari vs. Union Of India bearing O.A. No.761/2012.”

6. We find that the assertion made by the petitioners that the Department of Personnel & Training (DOP&T) learnt of the implementation of the impugned order dated 23rd October, 2013, and thereafter advised the Department of Economic Affairs to assail the impugned order before this Court, appears to be factually incorrect. A perusal of the order dated 24th/29th April, 2014-relevant portion whereof has been extracted hereinabove, shows that the said order was issued in consultation with the DOP&T and the Department of Legal Affairs. Thus, the DOP&T was undoubtedly consulted even before implementation of the impugned order and it was well aware of its implementation.

7. The aforesaid extract from para 2 of the writ petition is also suggestive of the fact that the Department of Legal Affairs was also not in favour of assailing the impugned order.

8. The learned counsel for the respondent no.2 submits that the petitioners having, on their own, implemented the impugned order not only in respect of the respondents, but in respect of sixty three others-even though they had not obtained any orders from the Tribunal, are now estopped from filing the present petition. The effect of the

present challenge, if it succeeds, would be that only the two respondents would be denied the benefit, which sixty three others have been extended on the basis of the impugned order. This could lead to a very unfair and anomalous situation.

9. Considering the fact that the petitioners have accepted and implemented the impugned order, and that too without any reservation or conditions, in our view, it is not open for the petitioners to now assail the same.

10. We are further informed that out of the sixty five officers who were granted the benefit, only about ten officers are remaining in service and others have since retired. For this reason as well, we do not consider it necessary to examine the impugned order.

11. Learned counsel for the petitioners submits that in respect of other Ministries, similar orders have been passed by the Tribunal premised on the impugned order dated 23rd October, 2013 in OA No.761/2012. He submits that in respect of the employees of the other Ministries, the directions issued by the Tribunal have not been implemented, and the orders passed by the Tribunal have been separately assailed before this Court, including in Writ Petition(C) Nos.3730/2015 & 8329/2016 titled Union of India Vs. Tushar Ranjan Mohanty and Union of India Vs. Rakesh Kumar & Ors. respectively.

12. We make it clear that we have not gone into the merits of the impugned order, and we are not inclined to entertain the present petition on account of the petitioners having implemented the impugned order without any right being reserved to them and in view of the fact that the petitioners have, on its own, granted the benefit in

terms of the impugned order in respect of sixty five officers in different department of the Indian Economic Services. So far as the orders passed in other Original Applications are concerned, which may have been challenged by the petitioner/Union of India, they shall be examined on their own merits.

13. With the aforesaid observations, we dismiss the present writ petition, with no orders as to costs.



(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

MARCH 12, 2019/aa