

18.11.2020
S/L-5
(rrc/AD)

(Via Video Conference)

WPCT 47 of 2020

Union of India & Ors.
Vs.
Tuhin Kar & Ors.

Mr. Alok Kumar Banerjee
Mr. Arijit Majumdar

... for the petitioners.

Mr. Anindya Lahiri
Ms. Pranati Das

... for the respondents.

The Union of India is before us with an application under Articles 226 and 227 of the Constitution of India challenging an order of the Central Administrative Tribunal. The parameters for considering the application are well delineated in the celebrated judgment of the Hon'ble Apex Court in L. Chandra Kumar vs. Union of India, reported at (1997) 3 SCC 261.

Heard learned Counsel appearing for the Union of India.

The tribunal found that the applicants before it who are the respondents before us were entitled to be considered for the Assured Career Progression Scheme (hereinafter referred to as 'ACP Scheme') benefits in terms of the Fifth Central Pay Commission recommendations at par with the beneficiaries of the order of the Principal Bench of the tribunal issued in OA. 2124 of 2011 and the Patna Bench in OA. 440 of 2014. The tribunal accordingly held that the applicants before it were entitled to be granted stepping up at par

with their juniors. However, the tribunal, in our view, quite rightly, dissuaded itself from examining the factual details regarding each of the applicants and, therefore, passed a direction in paragraph 8 of its impugned order dated 11.02.2019 as follows:

“8. Having noticed that the applicants before us are palpably victims of invidious discrimination, we quash the impugned order dated 16.01.2018 and remand back the matter to the authorities for re-examination of their claim for stepping up on par with their juniors on the basis of the order of Patna Bench and Principal Bench cited and extracted supra, and issuance of an appropriate order within a period of 3 months granting the benefits as the applicants would be entitled to in accordance with law and in accordance with the said decisions.”

While learned Counsel for the Union of India has argued that it will be improper to assume that the applicants before the tribunal were admittedly seniors to the beneficiaries of the tribunal's order in OA. 2124 of 2011 and in OA. 440 of 2014, we notice, as rightly pointed out by learned Counsel appearing for the respondents herein, that the department had filed an application before the tribunal for extension of time by four months for giving effect to the impugned order of the tribunal. May be that this was on the teeth of the contempt of court proceedings.

Be that as it may, we have looked into the sum and substance of the order of the tribunal. The benefits following the Fifth Pay Commission recommendations in the form of ACP have been considered by the tribunal

through its Principal Bench decision in OA. 2124 of 2011 and the Patna Bench decision in OA. 440 of 2014. All that has been done by the Calcutta Bench through the impugned order is to say that the departmental order impugned before it deserves to be quashed and the matter remitted to the authorities for re-examination for stepping up the eligibilities of the applicants at par with those which came to their juniors. Obviously, the statement means that the question whether the beneficiaries of the earlier orders were junior to the applicants is a matter which has not been finally decided by the tribunal. This is verily the reason why the tribunal had thought it appropriate to remit the matter to the authorities for re-examination of the claim of the applicants for stepping up at par with their juniors. Therefore, we make it clear that while carrying out the exercise indicated in paragraph 8 of the impugned order of the tribunal, the establishment will be at liberty to consider the issue on case to case basis to determine the eligibility of each of the applicants, on the basis of seniority. We make this observation at this point of time having regard to the submission on behalf of the establishment that many of the applicants before the tribunal were persons who had, by their conduct, deprived themselves of the earlier seniority position having regard to their migration on request transfer or otherwise.

In the aforesaid context and in view of the fact that the establishment had sought for time before the tribunal to comply with the impugned order, we do not see any ground for us to interfere with the decision of the tribunal in exercise of our authority under Articles 226 or 227 of the Constitution of India. We are further inclined to take a lenient view and grant the establishment a period of four months from date for giving effect to the impugned order of the tribunal.

In the result, WPCT 47 of 2020 is dismissed subject to the extension of time for compliance by four months as granted hereby.

(Thottathil B. Radhakrishnan, CJ.)

(Arijit Banerjee, J.)