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

Reserved on: 10<sup>th</sup> February, 2020  
Pronounced on: 19<sup>th</sup> February, 2020

**W.P.(C) 8065/2015**

UNION OF INDIA & ANR. .... Petitioners  
Through: Mr. Kirtiman Singh, CGSC for UOI  
with Mr. Waize Ali Noor, Advocates  
versus

DINESH KUMAR KAUSHIK .... Respondent  
Through: Respondent-in-person.

**CORAM: JUSTICE S. MURALIDHAR  
JUSTICE TALWANT SINGH**

**J U D G M E N T**

**Dr. S. Muralidhar, J.:**

1. The Union of India through the Ministry of Labour has filed this petition challenging a decision dated 31<sup>st</sup> July, 2014 of the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') disposing of the Respondent's O.A. No. 1053/2013 and directing the Petitioners to fix the Respondent's pay in the pay scale of Rs.5500-9000 with all consequential benefits.

2. The admitted facts are that the Respondent joined the Office of the Director General, Employment and Training ('DGE&T') as Junior Draughtsman on 18<sup>th</sup> February, 1983 in the pay scale of Rs.330-560 which was revised to

Rs.425-700 pursuant to an order passed by the CAT dated 1<sup>st</sup> August, 1991 in O.A. No.245/1987 (*D. K. Kaushik v. Union of India*). At the time that the order of the CAT in O.A. No.245/1987 came to be passed, the pay scales of Draughtsmen Grades – I, II and III in the Central Public Works Department ('CPWD'), which previously stood at Rs.425-700, Rs.330-560 and Rs.260 - 430 respectively, had been revised to Rs.550-750, Rs.425-700 and Rs.330 - 560, respectively by way of an Office Memorandum ('OM') dated 13<sup>th</sup> March, 1984.

3. A certain Mr. G. Rajan joined the DGE&T on 28<sup>th</sup> October, 1993 as a Junior Draughtsman in the pay scale of Rs.1200-2040, which was subsequently revised to Rs.1400-2300. Thereafter, he was promoted as Senior Draughtsman on 14<sup>th</sup> October, 1998 in the revised pay scale of Rs.4000 - 6000. Mr. G. Rajan filed an O.A. No. 351/2003 (*G. Rajan v. Union of India*) at the Chennai Bench of the CAT praying that he be given the pre-revision pay scale of Rs.1600-2660 from the date of his promotion with all consequential benefits. The said O.A. No.351/2003 came to be allowed on 21<sup>st</sup> October, 2003. The High Court of Madras upheld the said order dated 21<sup>st</sup> October, 2003 of the CAT, Chennai Bench by its order dated 20<sup>th</sup> March, 2003 in Writ Petition No.5502/2004 (*Union of India v. G. Rajan*). Correspondingly, Mr. G. Rajan's revised pay scale was fixed as Rs.5000 - 9000.

4. The Respondent was promoted as Senior Draughtsman on 9<sup>th</sup> April, 1992

in the pay scale of Rs.1660-2660, which was later revised to Rs.5000-8000 purportedly in pursuance to the recommendations of the 4<sup>th</sup> Central Pay Commission ('CPC'). The case of the Respondent was that since he, like Mr. G. Rajan, was also working as Senior Draughtsman, under the principle of "equal pay for equal work", he should also be granted the pay scale of Rs.5500-9000. It was pointed out by the Petitioner that Junior Draughtsmen in the DGE&T had to fulfil qualifications same as, or higher to, the ones prescribed for Draughtsmen, Grade-II of the CPWD. The Respondent also challenged an order dated 31<sup>st</sup> January, 2012 of the Ministry of Labour and Employment by which his revised pay was fixed at Rs.5000-8000, from the pre-revision Rs.1600-2660.

5. Before the CAT, it was argued on behalf of the Petitioners that in the case of Mr. G. Rajan, the pay scale of Rs.1600-2660 was wrongly construed as being equivalent to the 5<sup>th</sup> CPC scale of Rs.5500-9000, instead of Rs.5000-8000. Secondly, it was argued that the CPWD and the Ministry of Labour were not one and the same, and that therefore it is incorrect to compare one with the other. Thirdly, it was pointed out that a similar prayer for grant of the pay scale of Rs.5500-9000 by another Draughtsman of DGE&T in O.A. No. 4390/2011 (*Mukesh Kumar v. Union of India*) was dismissed by the CAT on 2<sup>nd</sup> April, 2013. The R.A. No.101/2013 against the said order dated 2<sup>nd</sup> April, 2013 came to be dismissed on 31<sup>st</sup> July, 2013.

6. The CAT accepted the claim of the Respondent that it was the decision of

the CAT, Chennai Bench in *G. Rajan v. Union of India* (*supra*), as approved by the High Court of Madras, that would apply, and accordingly allowed the prayer of the Respondent by the impugned order dated 31<sup>st</sup> July, 2014.

7. This Court passed the following order on 2<sup>nd</sup> March, 2016 in the present petition:

“Learned counsel for the petitioner has submitted that the respondent cannot claim parity with Senior Draughtsman working in CPWD. The judgment in the case of G. Rajan was pronounced on 21<sup>st</sup> October, 2003, whereas recommendations of the Fifth Pay Commission were accepted on 11<sup>th</sup> November, 2003, which is after the date of the judgment, though they were applicable with effect from 1<sup>st</sup> January, 1996.

Learned counsel for the petitioner will place on record copy of the Fifth Pay Commission's recommendations clearly demarcating the difference between the recommendations relating to CPWD and recommendations relating to Directorate General of Employment and Training.

Relist on 3<sup>rd</sup> May, 2016.”

8. Pursuant to the order reproduced hereinabove, an additional affidavit dated 16<sup>th</sup> August, 2016 was filed by the Petitioner placing on record the relevant portion of the report of the 5<sup>th</sup> CPC. Specific to the issue at hand, the 5<sup>th</sup> CPC in paragraph 74.12 observed as under:

“74.12 Having regard to its likely adverse implications, we are unable to accept the suggested merger and would endorse the Ministry's views thereon. In conformity, however, with our general recommendations on rationalisation of the pay structure

and after taking into account the qualifications and experience requirements prescribed for the post of Junior Technical Assistant, we recommend that it may be placed in the replacement scale of pay corresponding to Rs.1600-2660. Further, we have been informed that the post of Senior Draughtsman in the Directorate was earlier filled by promotion of Junior Draughtsmen, and that following a tentative decision to abolish the posts in the latter category, the recruitment rules currently in force provide for the posts of Senior Draughtsmen being filled by transfer on deputation to the extent of 50 per cent, the remaining 50 per cent of the posts being filled by direct recruitment of matriculates possessing a National Trade Certificate with two years' experience or a National Apprenticeship Certificate with a year's experience. We have also recommended elsewhere in this report comparatively lower scales of pay for the common category of draughtsmen in various ministries and departments. In the circumstances, we are of the considered view that the replacement scale of pay corresponding to Rs.1320-2040 only would be justified for the post of Senior Draughtsman, which should also be re-designated as Draughtsman in the context of the decision to abolish the lower post of Junior Draughtsman. Such of those Senior Draughtsmen as have already been placed in the higher scale of pay of Rs.1600-2660 in pursuance of the judgement of the Central Administrative Tribunal may, however, be placed in the corresponding replacement scale, which will be personal to them. All fresh recruitment will, however, be made only in the lower scale of pay.”

9. Also placed on record with the said additional affidavit dated 16<sup>th</sup> August, 2016 was a copy of the Government Resolution dated 30<sup>th</sup> September, 1997 accepting the recommendations of the 5<sup>th</sup> CPC. Annexed to the said notification dated 30<sup>th</sup> September, 1997 is a table reflecting the existing scales

of pay and the revised scales of pay pursuant to the recommendations of the 5<sup>th</sup> CPC. In terms of columns 9 & 10, in the S-9 and S-10 grade, the scales of pay of Rs.1400-2660 and Rs.1640-2900 were revised to Rs.5000-8000 and Rs.5000-9000 respectively.

10. Meanwhile, the decision dated 2<sup>nd</sup> April, 2013 of the CAT in O.A. No.4390/2011 (*Mukesh Kumar v. Union of India*) came to be challenged in this Court in W.P. (C) 4097/2014 (*Mukesh Kumar v. Union of India*). This Court disposed of the said W.P. (C) 4097/2014 by order dated 8<sup>th</sup> October 2015, which reads as under:

“On 25.08.2015, parties had agreed that the matter may be remanded to the Tribunal for fresh hearing as two different views have been expressed by the learned Tribunal. Accordingly, the matter is remanded to the Tribunal for fresh hearing. We may notice that the Tribunal has dismissed the OA filed by the petitioner herein, but allowed OA No.1053/2013 on the same facts as pointed out by the counsel for the parties.

Parties to appear before the Tribunal on 05.11.2015. Since the pleadings are already complete, the Tribunal shall endeavour to dispose of the matter expeditiously.

The writ petition stands disposed of.”

11. A Full Bench of the CAT came to be constituted for the disposal of O.A. No.4390/2011. The said Full Bench of the CAT disposed of O.A. No.4390/2011 by an order dated 21<sup>st</sup> December, 2017. In arriving at its decision, the CAT placed extensive reliance on an OM dated 1<sup>st</sup> June, 2001

regarding the revision of pay scales of Draughtsmen. The Full Bench of the CAT also took note of the impugned decision dated 31<sup>st</sup> January, 2014 in Respondent's O.A. No. 1053/2013, and how the said decision had placed reliance on ***G. Rajan v. Union of India*** (*supra*). Then, the Full Bench of the CAT observed at paragraph 9 as under:

“9. As noticed by us, both the judgments in G. Rajan and Dinesh Kumar Kaushik's cases (*supra*) are based upon some earlier judgments, without discussing the basis for grant of pay scale of Rs.5500-9000. The learned counsel for the applicants has, however, laid emphasis and heavily relied upon the office memorandum dated 01.06.2001 reproduced hereinabove. We have carefully perused the said memorandum. The Draughtsmen working in different departments other than CPWD were ordered to be placed in various pay scales on completion of prescribed minimum period of service. A Draughtsman in pre-revised scale of Rs.1200-2040 is entitled to be placed in the pay scale of Rs.4000-6000 on completion of five years of service, and a Draughtsman placed in the pay scale of Rs.4000-6000 is entitled to be placed in the revised scale of Rs.5000-8000 on completion of eight years of service, whereas a Draughtsman in pay scale of Rs.4500-7000 is entitled to be placed in the scale of Rs.5500-9000 on completion of six years of service. The applicant No.1 was appointed in the pay scale of Rs.4500-7000. Thus, he is entitled to be placed in the pay scale of Rs.5500-9000 only on completion of six years of service, as his case falls under para 3(c) of the office memorandum dated 01.06.2001. The applicant was appointed as Draughtsman vide order dated 12.06.2001 in the pay scale of Rs.4500- 7000. Thus, he would be entitled to be placed in the pay scale of Rs.5500-9000 on completion of six years of service, i.e., from 12.06.2007.”

12. As far as the second applicant in O.A. No. 4390/2011 was concerned, the

CAT, in dismissing her claim, held as under:

“10. Insofar as the applicant No.2 is concerned, in para 4.12 it is stated that the applicant was granted the pay scale of Rs.1600-2660 on 08.04.1997, and in the Fifth CPC the scale of the applicant was given as Rs.5000-8000, whereas to another Draughtsman/Sr. Draughtsman Shri G. Rajan, the pay scale of Rs.5500-9000 was given. There is no other averment as to why applicant No.2 is entitled to pay scale of Rs.5500-9000. The applicant made a representation dated 26.12.2008 (Annexure A-11) claiming the pay scale of Rs.5500-9000 w.e.f. 01.01.1996 only on the basis of the judgment in G. Rajan’s case.”

13. Thereafter, when the present writ petition came up for hearing before this Court on 2<sup>nd</sup> April, 2019 the following order was passed:

“Mr. Kirtiman Singh has placed before the Court the order passed by the Full Bench of the Tribunal in O.A. No. 4390/2011 dated 21.11.2017. Mr. Chibber states that his client would be satisfied if he is granted relief in terms of the said decision of the Tribunal. In paragraph 12 of the said decision, the Tribunal held that the applicant in the said case, namely Mukesh Kumar would be entitled to be placed in the pay scale of Rs.5500-9000 only with effect from 12.06.2007 on completion of six years in the scale of Rs.4500-7000.

We direct both the parties to file their respective affidavits within 10 days placing on record the relevant facts for application of the OM dated 01.06.2001 taken note of in the said decision of the Full Bench of the Tribunal at page No.6 of the decision qua the respondent.

List on 30.04.2019.”

14. It must be noticed here that prior to these developments, a counter

affidavit had been filed by the Respondent on 6<sup>th</sup> July, 2017 pointing out that the earlier decision dated 2<sup>nd</sup> April, 2013 the CAT dismissing O.A. No.4390/2011 (*Mukesh Kumar v. Union of India*) was *per incuriam* as it was contrary to the judgments of at least five co-ordinate benches of the CAT and the two decisions of the High Court of Madras and the High Court of Karnataka, which had accepted pleas identical to the one advanced by the Respondent.

15. In the said counter-affidavit dated 6<sup>th</sup> July 2017, the Respondent also submitted that Senior Draughtsmen of DGE&T have enjoyed “historical parity” with Draughtsmen, Grade-I of the CPWD in the matter of pay scales. He also pointed out that the CAT had, in its order dated 1<sup>st</sup> August, 1991 in O.A. No. 245/1987 (*D. K. Kaushik v. Union of India*) accepted the plea that Junior Draughtsman in DGE&T were entitled to the same scale of pay as Draughtsmen, Grade-II in the CPWD.

16. Pursuant to the aforesaid order dated 2<sup>nd</sup> April 2019, additional affidavits were filed by the Petitioners and the Respondents.

17. The Respondent, in his affidavit dated 24<sup>th</sup> April, 2019, reiterated that he had joined the DGE&T as Junior Draughtsman on 18<sup>th</sup> February, 1983 in the pay scale of Rs.330-560, which was revised to Rs.425-700 by the CAT through its order dated 1<sup>st</sup> August, 1991 in O.A. No.245/1987 notionally from 13<sup>th</sup> May, 1982 with actual benefit accruing from 1<sup>st</sup> November, 1983.

18. In paragraph 4 of the said affidavit dated 24<sup>th</sup> April, 2019, the Respondent explained as under:

“That the replacement scale of Rs.425-700, under the 4<sup>th</sup> CPC was Rs.1400-2300 and under the 5<sup>th</sup> CPC was Rs.4500-7000 in the DGET, in contrast to the said scale in the CPWD, the Pay Scale of Rs.425-700 was replaced with Rs.1400-2300 under the 4<sup>th</sup> CPC and under the 5<sup>th</sup> CPC was Rs.5000-8000.”

19. In paragraph 6, the Respondent referred to the OM dated 1<sup>st</sup> June, 2001, which was relied upon by the Full Bench of the CAT in its decision dated 21<sup>st</sup> December, 2017 in **Mukesh Kumar v. Union of India** (*supra*), which, the Respondent submitted, stipulated that:

“Draughtsman who have already been covered by the orders contained in the OM dated 13.3.1984 and October 19, 1994 shall be eligible to be placed only in the applicable revised scales of pay already approved for the common category of Draughtsmen in pursuance of the recommendations of the V CPC, which was not given to the Respondent.”

20. On their part, the Petitioners filed an additional affidavit dated 30<sup>th</sup> August, 2019 and, *inter-alia*, contended in paragraph 11 as under:

“The answering Respondent respectfully submits that in terms of para 6 of O.M. dated 01.06.2001 Draughtsman who have already been covered by the orders contained in the O.M. dated 13.3.1984 and October 19, 1994 shall be eligible to be placed only in the applicable revised scales of pay already approved for the common category of Draughtsmen in pursuance of the recommendations of the Vth CPC. It is respectfully reiterated that in term of the recommendation Vth CPC as well as the

Government resolution bearing G.I.M.F.No.50 (1)/IC/97, dated 30.09.1997, the existing pay of the Respondent herein i.e. Rs 1600-2660 has already been revised to Rs. 5000-8000.”

21. On considering the submissions made by Mr. Kirtiman Singh, learned counsel appearing for the Petitioners, and the Respondent, who appears in person, it is plain that in terms of OM dated 1<sup>st</sup> June, 2001, a Draughtsman in the pre-revised scale of Rs.1200-2040 is entitled to be placed in the pay scale of Rs.4000-6000 on the completion of five years of service; a Draughtsman in the pay scale of Rs.4000-6000 is entitled to be placed in the revised pay scale of Rs.5000-8000 on the completion of eight years of service; and only a Draughtsman in the pay scale of Rs.4500-7000 is entitled to be placed in the pay scale of Rs.5500-9000 on the completion of six years of service.

22. It is admitted by the Respondent that Mukesh Kumar was placed in the pay scale of Rs.4500-7000 with effect from 12<sup>th</sup> June, 2001. His case then indeed does falls under para 3 (c) of the OM dated 1<sup>st</sup> June, 2001. Thus, when he completes six years of service, Mukesh Kumar will be entitled to the pay scale of Rs.5500-9000.

23. As far as the Respondent is concerned, his pay scale of Rs.1600-2660 was re-fixed pursuant to an office order dated 13<sup>th</sup> April, 1994, which sought to implement the judgment of the CAT in the Respondent's favour dated 1<sup>st</sup> August, 1991 in O.A. No.245/1987 by granting him the pay scales applicable to Draughtsmen, Grade-II of the CPWD. This has been accepted by the

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Respondent. Therefore, as a logical corollary, the replacement pay scale of the Respondent will only be Rs.5000-8000.

24. The Court notes the distinction between Mukesh Kumar's case, who was placed in the pay scale of Rs.4500-7000 with effect from 12<sup>th</sup> June, 2001, thereby entitling him to the replacement pay scale of Rs.5500-9000, and the Respondent's, whose pay scale was Rs.1200-2040, which was revised to Rs.4000-6000 in terms of the recommendation of the 5<sup>th</sup> CPC, which entitles him to the pay scale of Rs.5000-8000 on the completion of eight years of service.

25. The Court further notes that Mukesh Kumar was granted the pay scale of Rs.4500-7000 by an office order dated 24<sup>th</sup> March, 2004 personal to him. Therefore, in his case, the decision of the Full Bench of the CAT dated 21<sup>st</sup> December, 2017 was in fact implemented.

26. In that view of the matter, the Court is of the view that on account of subsequent developments, including the decision of the Full Bench of the CAT in ***Mukesh Kumar v. Union of India*** (*supra*), the impugned order of the CAT dated 31<sup>st</sup> July, 2014 in O.A. No.1053 of 2013 cannot be sustained in law and is hereby set aside. It is held that the replacement pay-scale of the Respondent, pursuant to the recommendations of the 5<sup>th</sup> CPC, will be Rs.5000-8000, and not Rs.5500-9000, as claimed by him.

27. The writ petition is allowed in the above terms. No costs.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**FEBRUARY 19, 2020**

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