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

+ W.P.(C) 4861/2021 & CM No.15005/2021 (for interim relief)

B.K. BHATNAGAR & ORS. Petitioners

Through: Mr. Rajesh Kumar, Mr. Anant
Gautam, Mr. Nipun Sharma & Mr.
Madhur Tewatia, Advs.

Versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Tanveer Ahmed Ansari & Mr.
Waize Ali Noor, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **13.05.2021**

[VIA VIDEO CONFERENCING]

CM Nos.15006/2021, 15007/2021 & 15008/2021 (all for exemptions)

1. Allowed, subject to just exceptions and as per extant rules.
2. The applications are disposed of.

W.P.(C) 4861/2021 & CM No.15005/2021 (for interim relief)

3. The three petitioners, working at / retired from the post of Superintendents (Technical) in the Official Language Wing (OLW) of the respondent No. 1 Ministry of Law and Justice, filed OA No.03/2015 before Central Administrative Tribunal (CAT), Principal Bench, New Delhi, impugning the rejection of their representation seeking/and seeking, the relief of pay parity with Superintendents (Translation) in the same department. CAT, vide impugned order dated 21st October, 2020, directed the respondents to review and re-consider their decision of rejection of

representation of the petitioners for pay parity, in accordance with the observations in the impugned order. The petitioners filed this petition, aggrieved from the impugned order dated 21st October, 2020 of CAT, contending that CAT, having found in favour of the petitioners, instead of directing the respondents to review / reconsider their decision, ought to have directed pay parity. However since then, the respondents, on review / reconsideration as directed by CAT, have granted the relief of pay parity claimed by the petitioners, but only with effect from 23rd March, 2021.

4. The counsel for the petitioners contends that now the only question which remains for adjudication is, of the date from which the petitioners are entitled to pay parity.

5. The facts, to the extent relevant, are (i) at the time of filing of the OA No.03/2015 before CAT, the petitioner no.1 B.K. Bhatnagar was still working at and the petitioners no.2 and 3 viz. Ramesh Kumar Gautam and Brijendra Johri had retired from, the post of Superintendent (Technical) in the OLW in Legislative Department of Ministry of Law & Justice; (ii) it was the claim of the petitioners that there had been historical parity in the pay scale of the post of Superintendent (Technical) at which the petitioners were working / had retired from, and the post of Superintendent (Translation) in the same Wing, in the same department of the Ministry; (iii) however pursuant to acceptance of the recommendations of the 6th Central Pay Commission (CPC), the pay scale of the post of Superintendent (Translation), with effect from 1st January, 2006, was made more than that of the post of Superintendent (Technical); and, (iv) the petitioners represented for restoration of parity in pay scale but which representations

were rejected and which rejection was impugned in OA No.03/2015 aforesaid and restoration of parity in pay scale claimed.

6. CAT, as aforesaid, found in favour of the petitioners but instead of directing the respondents to restore the pay parity, directed the respondents to review / reconsider their decision. On such review / reconsideration, the respondents vide order dated 26th March, 2021 have restored the pay parity with effect from 23rd March, 2021 i.e. the date on which the Ministry of Finance, Department of Expenditure approved such up-gradation of pay scale of the post of Superintendent (Technical).

7. The counsel for the petitioners states that since the filing of the OA from which this petition arises, the petitioner no.1 has also superannuated. It is stated that the petitioners may be permitted to agitate the denial, vide order dated 26th March, 2021 aforesaid of pay parity with effect from 1st January, 2006, when the pay scale of the post of Superintendent (Translation) was enhanced, by way of this petition only, instead of relegating the petitioners to CAT to impugn the order dated 26th March, 2021.

8. CAT, in the impugned order dated 21st October, 2020, while directing the respondents to review / reconsider their decision in the light of reasons / observations made by CAT for finding in favour of the petitioners, did not fix any date from which the petitioners were to be granted parity, on such review / reconsideration by the respondents. The respondents, in the order dated 26th March, 2021 have not given any other reason for granting parity from 23rd March, 2021, save of the Ministry of Finance having approved up-gradation of pay scale of the post of Superintendent (Technical) with effect

from the said date.

9. We have considered the aforesaid contention of the counsel for the petitioners. Though ordinarily the order dated 26th March, 2021 would have furnished a fresh cause of action to the petitioners and it would have been appropriate to relegate the petitioners to challenge the order dated 26th March, 2021 before CAT but we find that the petitioners, in the OA from which this petition arises, had expressly claimed pay parity with effect from 1st January, 2006. CAT, in the impugned order dated 21st October, 2020, though for reasons given found the petitioners to be entitled to pay parity, but still did not itself grant the said relief and instead directed the respondents to review / reconsider their decision. However while so directing the respondents, CAT did not fix the date from which the petitioners were to be granted pay parity if on such review / reconsideration were found entitled thereto. In our view, CAT, for the sake of finality, ought to have also rendered a decision on the said aspect and since CAT failed to do so, we are inclined to entertain this petition in this Court instead of relegating the petitioners to another round of litigation, first before CAT.

10. The stand of the petitioners of entitlement to pay parity stands confirmed by CAT and by the respondents themselves. Ordinarily, the petitioners would have been entitled to pay parity from the date denied i.e. from 1st January, 2006. However we find the petitioners to have approached CAT by way of OA No.03/2015, only in the month of January, 2015 i.e. after nearly nine years from the date from which they were claiming pay parity.

11. The counsel for the petitioners states that the petitioners cannot be said to be guilty of laches, acquiescence and waiver inasmuch as pursuant to the acceptance of the recommendations of the 6th CPC, the pay scale of the post of Superintendent (Translation), with which the post of Superintendent (Technical) historically had parity, was enhanced pursuant to sanction dated 13th April, 2011, though with effect from 1st January, 2006. It is contended that the petitioners had represented immediately thereafter, in October, 2012 and which representation was rejected only on 24th March, 2014/ 9th April, 2014 and again on 11th June, 2014 and immediately whereafter the petitioners had approached CAT.

12. However the fact of the matter remains that the petitioners, as per the law laid down in *Union of India Vs. Tarsem Singh* (2008) 8 SCC 648, on being granted the relief of pay parity, would be entitled to arrears only for a period of three years preceding the filing of the petition and cannot be entitled in law to arrears for a longer period.

13. The counsel for the petitioners is agreeable.

14. The petitioners would thus be entitled to arrears of pay on the basis of parity with the post of Superintendent (Translation), only with effect from three years prior to the filing of the OA No.03/2015 before CAT i.e. with effect from 1st February, 2012 and not from 1st January, 2006.

15. The petition is accordingly allowed. The respondents are directed to pay to the petitioners, arrears of pay / pension, with effect from 1st February, 2012, computed on the basis of enhanced pay in terms of parity of the pay scale of the post of Superintendent (Technical) with the post of Superintendent (Translation), on or before 1st September, 2021 and to, with

effect from the month of September, 2021, pay pension to the petitioners computed on the basis of such enhancement.

16. The petition is disposed of.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

MAY 13, 2021
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