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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Date of decision: 23.02.2022**

+ **W.P.(C) 3338/2022 & CM No.9735/2022**

UNION OF INDIA & ANR.

..... Petitioners

Through : Mr J.K. Singh and Mr Amit Kumar,
 Advs.

versus

ABHAY KUMAR

..... Respondent

Through : None.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE TALWANT SINGH

[Court hearing convened *via* video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J. (ORAL):-

1. This is a writ petition directed against the order dated 12.03.2021, passed by the Central Administrative Tribunal [in short “the Tribunal”] in O.A.No.1547/2020.

2. The only issue that arises for consideration in the matter, even according to Mr J.K. Singh, who appears on behalf of the petitioners, is: whether the respondent was entitled to pay protection.

2.1. In order to adjudicate upon this aspect of the matter, the following broad facts need to be noted :

(i) The respondent had joined the National Thermal Power Corporation [in short, “NTPC”] as an Executive Trainee on 04.08.2008. Concededly, his service was confirmed in the post of Engineer (Mechanical) in Rs.24,900–50500/- pay-scale, albeit with effect from 04.08.2010.

(ii) The record shows that in 2009, an advertisement was taken out by the petitioners for the post of Indian Railways Service Mechanical Engineers [in short, “IRSME”]. This advertisement was issued on behalf of the petitioners



by the Union Public Service Commission (UPSC). Concededly, the respondent applied against the said advertisement and was appointed as IRSME on 28.02.2011.

(iia) We are told by Mr Singh that the respondent is in the service of the petitioners.

(iii) Continuing with the narrative, because the respondent was appointed as IRSME, he sought pay protection qua the salary paid to him when he was employed with NTPC.

(iv) The respondent's entreaties met with rejection, and an order in that behalf was passed by the Northern Railway on 08.09.2020. In the said order, the stand that the petitioners took was that since the respondent had not been appointed by taking recourse to an interview, and had been recruited as IRSME *via* an open competitive exam, pay protection could not be extended to him as per the Office Memorandum (OM) dated 10.07.1998, issued by the Department of Personnel & Training (DoPT).

(v) Being aggrieved, the respondent lodged an action with the Tribunal, which was registered as O.A.No.1547/2020.

3. The Tribunal, *via* the impugned order, agreed with the contentions of the respondent that pay protection should have been accorded to him.

3.1. While reaching this conclusion, the Tribunal rejected the petitioners' contention that the DoPT's OM dated 10.07.1998, which drew a distinction between those who were appointed via the interview route, as against the candidates who secured their appointment through open competitive examination, was applicable, and held that the distinction was not tenable in law.

3.2. In arriving at this conclusion, the Tribunal noticed the judgment of the



Division Bench of this court dated 20.04.2007, passed in W.P.(C)No.5518/2004, titled *Sanjog Kapoor v. Union of India and Ors.*

3.3. We may note that the aforementioned judgment delivered by the Division Bench of this court in *Sanjog Kapoor case*, was followed by another Division Bench judgment of this court in *Nagendra Kumar Jha v. Union of India & Anr.* This judgment is dated 06.01.2016 and the matter was registered as W.P.(C.) No.8660/2005.

3.4. Mr Singh, however, relies upon a later circular dated 12.02.2001 to press his submission that the respondent cannot be accorded pay protection as he was selected through an open competitive examination. Mr Singh contends that only, if the respondent had been recruited through an interview—would pay protection be accorded to him having moved from one public sector undertaking to another instrumentality of the state.

3.5. A careful perusal of the circular dated 12.02.2001, issued by the Government of India, Ministry of Railways (Railway Board), would show that it is founded on the aforementioned O.M. i.e., O.M. dated 10.07.1998.

3.6. As noticed above, two Division Benches of this court have rendered a view concerning the DoPT's O.M. dated 10.07.1998. Therefore, the submission advanced by Mr Singh that the pay protection could have been accorded to the respondent only if he had been selected [i.e., had been recruited through an interview] cannot be accepted.

3.7. We may also note that it is Mr Singh's submission that the circular dated 10.07.1998 does not apply to the Central Government.

3.7(a) We are unable to appreciate this submission for the reason that what the petitioners needed to follow was the ratio of the Division Bench judgments adverted to hereinabove. The judgments, unreservedly, hold that



the distinction drawn for according pay protection to employees based on the manner of recruitment was both arbitrary and unfair. Therefore, this submission does not impress us.

4. Before we conclude, we may express our concern that the departments continue to file petitions and drag employees to court, even when there are rulings rendered by Court with regard to the issue at hand.

4.1. In this case, as noticed hereinabove, there were two judgments of two Division Benches concerning the DoPT's O.M. dated 10.07.1998. Therefore, the circular dated 12.02.2001 could not have furthered the cause of the petitioners and yet a petition was filed.

4.2. This is an aspect which the legal advisors of the petitioners should have taken into account before seeking to drag the respondent into the litigation arena.

4.3. We would have imposed heavy costs on the petitioners had the respondent joined the proceedings.

5. Mr Singh would do well to place the judgment passed by us today before the officer who was concerned with sanctioning the institution of the present writ petition.

6. The writ petition is, accordingly, dismissed.

7. Consequently, the pending application shall stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

FEBRUARY 23, 2022/aj

[Click here to check corrigendum, if any](#)