

**RAJESH KUMAR JAISWAL AND OTHERS  
VERSUS  
NATIONAL HYPRO ELECTRIC POWER  
CORPORATION LTD. AND OTHERS**

Present: Mr. Chetan Mittal, Senior Advocate  
with Ms. Shifali Goyal, Advocate  
for the review-applicants/petitioners.

Mr. Sukhandeep Singh, Advocate  
for Mr. Lokesh Sinhal, Advocate  
for the non-applicants/respondents.

**\*\***

1. A batch of as many as four writ petitions including the CWP-17727-2022 was decided vide a detailed judgment dated 10.08.2021.

2. This review application has been filed while asserting that the three issues namely promotion treated as re-designation and the notional increment withdrawn and increment to be given on the pre-revised scale, have not been examined by the Court.

3. With the able assistance of the learned Senior counsel representing the applicant, this Court has once again gone through the entire paperbook.

4. As regards the first argument put forth by the learned Senior counsel, the petitioners have projected that there is an alteration in the increments drawn by the petitioners on account of stagnation and it is made with the retrospective effect. It is being projected that clauses No.2 and 3 of the decision dated 17.04.2020, have not been made retrospective. In this regard, it may be noted that the respondents while filing the written statement have clarified that the stagnation increments have been allowed in the year 1997 pay revision at the rate of increment last drawn, limited to the maximum on three occasions only. On 14.12.2012, the Department of

Public Enterprises vide their office memorandum stipulated as under:-

*“.....if any stagnation increments were given to the executive, either in 1997 or in 2007 pay revision, the same should have been granted only after reaching the maximum of the prescribed scale and once in two years, with a maximum of three such stagnation increments only....”*

5. This was reiterated by the department in office memorandum dated 17.09.2019, however, the petitioners have not disclosed the aforesaid facts. The Committee at the highest level concluded that the stagnation increments given to such officials in the year 2004, 2005 and 2006 on annual basis were wrong and the increments should be given every alternative year. Now, the decision has been taken in accordance therewith. Precisely, the decision taken in the year 2012, which has never been challenged is being implemented with the approval of the competent authority through the impugned order, hence, neither the aforesaid decision has been implemented with retrospective effect nor the decision dated 17.04.2020, can be read in isolation of the previous decisions.

6. The next issue that arises for determination with regard to the promotion being treated as re-designation and notional increment, has been withdrawn. In this regard, it may be noted that the decision of the competent authority is also in accordance with the guidelines issued in the Office Memorandum dated 24.12.2012. These guidelines stipulate that promotions should generally be from one higher grade to next higher grade, with the corresponding scale as per the promotion policy of the Central Public Sector Enterprise (hereinafter referred to as the ‘CPSE’). A CPSE cannot have more than one pay scale in a grade (DGM and GM in EA pay scale) to promote its executives within the same scale. Hence, the implementation of the impugned decision is made in the office memorandum in the year 2012.

Resultantly, there is no retrospective implementation of the decision dated

17.04.2020. In fact, office memorandum dated 14.12.2012, has been annexed by the respondents as Annexure R-4 at page 243 to 248. All the decisions in the impugned order are in compliance with the aforementioned office memorandum. Therefore, the argument lacks substance.

7. The learned Senior counsel representing the petitioner relies upon the judgment of the Supreme Court in **Bharat Sanchar Nigam Ltd. Vs. R. Santhakumari Velusamy and others 2011 (9) SCC 510**. This Court has carefully read the aforementioned judgment in detail.

8. In the aforesaid case, the Supreme Court decided the question ‘Whether the rules of reservation will apply to upgradation of the posts?’. In the context of reservation the entire matter was decided, hence, the aforesaid judgment is distinguishable on the facts and does not apply to the facts of the present case.

9. The third argument put forth by the learned Senior counsel representing the review applicant is with regard to the increments falling due on 01.01.2007. As per the decision made, the petitioners have been granted benefit, firstly in the pre-revised scale (i.e. 1997 pay revision) and only, thereafter, fitment benefit shall be granted, and pay fixed in the revised scale as on 01.01.2007.

10. On a careful reading of the decision dated 17.04.2020 itself, it is clear that the decision refers to Clause 3.1 of Part I of office order dated 02.11.2010. While filing the reply, the respondents have clarified that the decision of the Department of Public Enterprises in office memorandum No.14.12.2020, itself provides as under:-

*“Increment, if any, due on 01.01.2007 should be granted first in the pre-revised scale (1997 pay revision and only thereafter should fitment be granted, any pay fixed in the revised scale as on 01.01.2007.”*

11. Even in the office memorandum dated 26.11.2008, the pay scales effective from 01.01.2007 were implemented in the year 2010, however, on 14.12.2012, the aforesaid clarification was issued. This decision has resulted in increase in the basic pay of the number of executives and in some cases, there was a drop in the basic pay in the claiming recoveries. There is reduction in the pay of 411 employees out of which 26 petitioners filed the writ petition, whereas, as many as 1825 employees have been benefited.

12. Moreover, it is not the case of the applicants that the aforesaid decisions are in violation of the Act or the Rules. The decision as noticed above has been taken at the highest level (in the hierarchy). A high powered pay committee was constituted, which submitted its report on 02.11.1988, then there was a delay in the implementation because of the various writ petitions that were filed, which resulted in the ultimate decision by the Supreme Court on 03.05.1990. Thereafter, the aforesaid decisions are being implemented in consonance with the said judgment.

13. Moreover, the scope of the interference in these kind of matters is finite unless the petitioners prove that there has been violation of the Act or the Rules.

14. With these observations, the review application is dismissed.

**August 28, 2023**

*Ay*

**(ANIL KSHETARPAL)  
JUDGE**