



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

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Date of decision: October 13, 2023

+ W.P.(C) 13557/2023 & CM Appls. 53574-53575/2023

(46) UNION OF INDIA & ANR.

..... Petitioners

Through: Mr. Ravi Prakash, CGSC with
Ms. Astu Khandelwal, Adv.

versus

MUKESH KUMAR JOSHI (DEAD) & ORS.

..... Respondents

Through: Ms. Padma Kr. S. and
Mr. Gurpreet Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 53575/2023

Allowed, subject to just exceptions.

Application disposed of.

W.P.(C) 13557/2023 & CM APPL. 53574/2023

1. This petition has been filed by the petitioners challenging the order dated February 03, 2023 passed by the Central Administrative Tribunal (hereinafter referred to as 'Tribunal') in O.A. 814/2016, whereby the Tribunal has decided the O.A. filed by the respondents herein by stating in paragraphs 14 to 19 as under:-



“14. We find that in OA No 1767/2010, the issues raised in the OA which is under consideration before us have been discussed, considered and adjudicated upon threadbare.

15. Against this background, we have no hesitation in allowing the present OA.

16. While allowing the same, the impugned orders Annexure A-1 colly. are quashed and set aside. Further, the applicants are held to be entitled to grant of Non Functional Scale on the analogy of the same having been extended to the cadre of ARC vide the order dated 04.10.2013 which has been quoted in the preceding paragraphs of this order.

17. The competent authority shall accordingly issue appropriate orders, granting them Non Functional Scale, on notional basis w.e .f. 01.01.1996 and on actual terms w.e.f 03.10.2003, strictly in accordance with the terms and conditions set forth in the order dated 04.10.2013 referred to in the preceding paragraph.

18. These directions shall be complied with as expeditiously as possible and certainly not later than 12 weeks' from the date of receipt of a copy of this order.

19. The OA stands allowed against the background of these directions.”

2. The only submission made by Mr. Ravi Prakash, learned counsel for the petitioners, is that the Tribunal has erred in drawing a comparison between personnel working in ARC under the Cabinet Secretariat with the respondents who are working in SSB under the Ministry of Home Affairs. According to him, though they are all employees of Union of India but the Cadre Controlling Authority being the Cabinet Secretariat in the case ARC



and Ministry of Home Affairs with regard to the respondents herein, the directions of the Tribunal to give the benefit of the non-functional scale of ₹8000-13500 w.e.f. January 1, 1996 is not tenable.

3. We are not in agreement with the submission for the reason that on January 01, 1996, the Cadre Controlling Authority of the respondents was Director General (Security) under the Cabinet Secretariat, of which the ARC was part of. In fact, during the course of his submissions, when it was brought to the notice of Mr. Prakash that this Court in the Writ Petition No.7526/2010 decided on November 18, 2010, clearly held in paragraphs 2 to 5 as under, Mr. Prakash do not dispute the position rather it is represented that the same position continues to exist even today. If that be so, then the respondents cannot be treated differently. Moreso, when the Assistant Directors and Private Secretaries working in ARC have already been granted the benefits:-

“2. It is also not in dispute that permanent absorption under the Ministry of Home Affairs would mean a change of cadre for the officers deputed under the Ministry of Home Affairs in the form of SSB Unit assigned to the Ministry of Home Affairs and till date no option has been sought for from these persons.

3. It is settled law that an employee in a cadre cannot be permanently absorbed in another cadre without his consent. We hasten to add that it is permissible to merge cadres. But, where there is no merger of cadres it would be impermissible to hive of a cadre by sending some persons to a different cadre, without seeking their option.

4. The Tribunal has returned a finding of fact that the SSB Unit, which was an integral part of the Cabinet Secretary has been not merged with the Ministry of Home



Affairs cadre but only administrative control has been given to the Ministry of Home Affairs.

5. Thus, on the first reasoning of the Tribunal that the respondents continued to be in the cadre strength of Cabinet Secretariat and would be entitled to be placed in the applicable pay band requires to be upheld.”

(emphasis supplied)

4. We do not see any merit in this petition, the same is dismissed.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

OCTOBER 13, 2023/ds