

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: May 12, 2023

+ W.P.(C) 8297/2018, CM APPL. 8436/2020

UNION OF INDIA AND ORS.

..... Petitioners

Through: Mr. Rakesh Kumar, CGSC for
UOI

versus

ANJANA DUTTA

..... Respondent

Through: Mr. Amit Anand and
Mr. Tanmay Vashishtha, Advts.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. This writ petition has been filed by the Union of India and its functionaries challenging the order dated April 5, 2017, passed by the Central Administrative Tribunal Principal Bench, New Delhi ('Tribunal', for short) in Original Application No.3379/2012 ('OA', for short) whereby the Tribunal has allowed the OA filed by the respondent herein by stating as under:

"11. In our view, the respondents made a mistake while granting her the scale of Rs.2375-3500 instead of Rs.2375-3750, which was applicable to all Programmers. This was the first mistake. Based on this, again they placed the applicant in the replacement scale of Rs.7450-11500 after the V CPC whereas the Programmers in the EDP cadre were all granted

Rs.7500-12000. The error was, therefore, compounded. There is no ground for denying the applicant the scale of Rs.2375-3750 w.e.f. 01.01.1986 and Rs.7500-12000 w.e.f. 01.01.1996. It is clear that all the IV CPC recommendations were implemented w.e.f. 01.01.1986 and, therefore, the grant of revised pay scale to the applicant from 11.09.1989 is also clearly incorrect.

12. In the above background, we allow the OA and quash and set aside order dated 19.01.2010 with a direction to the respondents to grant to the applicant pay scale of Rs.2375-3750 w.e.f. 01.01.1986 and Rs.7500-12000 w.e.f. 01.01.1996 with all consequential benefits, including arrears of pay and allowances as well as grant the ACP benefits to the applicant from the due dates, i.e., 1st ACP w.e.f. 09.08.1999 in the pay scale of Rs.10500-15200 (as this is the pay scale of Senior Programmer in the hierarchy) and the second upgradation w.e.f. 02.05.2007 (on completion of 24 years of service) in the next promotional pay scale of Rs.12000-16500 in the EDP structure. This order of the Tribunal should be implemented by the respondents within a period of 60 days from the date of receipt of a certified copy of this order. No costs."

2. The facts as noted from the petition are that the respondent was appointed as 'Civilian Assistant Programmer' in Automated Data Processing Cell of Central Ordinance Depot on May 02, 1983 through the Union Public Service Commission in the pay scale of Rs.650-1200. It is a conceded fact that the post of the respondent was an isolated post.

3. When the 4th Central Pay Commission ('CPC', for short) recommendations were implemented, the pay of the respondent was fixed at Rs.2,180 in the pay scale of Rs.2000-3500 by replacing / substituting the pay scale of Rs.650-1200. On implementation of 5th CPC recommendations, the respondent was granted pay scale of

Rs.6500-10500 w.e.f. January 01, 1996, which was replacement scale of Rs.2000-3500.

4. Pursuant to the 4th CPC recommendations, the pay structure and designations for all the Electronic Data Processing ('EDP', for short) posts were re-organized to bring rationalization in all Central Government as well as semi-Government organizations. As a result of such restructuring and based on Seshagiri Committee's Report, vide letter dated July 26, 2006, of the Ministry of Defence, Government of India, the respondent was re-designated as 'Civilian Programmer' w.e.f. September 11, 1989 and she was granted the pay scales of Rs.2375-3500 (pre-revised) w.e.f. September 11, 1989 and Rs.7450-11500 (revised) w.e.f. January 01, 1996. The pay scale of Rs.7450-11500 was the revised / substituted scale of Rs.2375-3500.

5. Suffice to state, the respondent initially in the year 2008, filed the Original Application being O.A. 670/2008 seeking a direction against the petitioners herein to correctly fix her pay in the pay scale of Rs.2375-3750 w.e.f. January 01, 1986 and then fix her pay in the pay scale of Rs.7500-12000 w.e.f. January 01, 1996 with all consequential benefits. She had also sought that after fixing her pay correctly, she be granted the benefits of two Assured Career Progression Scheme ('ACPs', for short) due to her w.e.f. August 09, 1999 and May 02, 2007, in the next promotional pay scale. The said OA was decided on April 21, 2009, whereby the Tribunal had directed the petitioners herein to decide the representation made by the respondent herein in 2007 and also to treat the O.A. 670/2008 as a supplementary representation and pass a reasoned and speaking order.

6. Pursuant thereto, the petitioners passed an order dated January 19, 2010, whereby they rejected the representations made by the respondent justifying the grant of pay to the respondent in the pay scale of Rs.2375-3500. The OA in which the impugned order has been passed, i.e., O.A. No.3379/2012 lay challenge to the order dated January 19, 2010 of the petitioners.

7. The case of the respondent before the Tribunal was that she was granted the revised pay scale of Rs.2000-3500 after recommendations of the 4th CPC. It was also her case that when she was re-designated as 'Civilian Programmer' she was given the scale of Rs.2375-3500, whereas the scale of 'Programmer' was Rs.2375-3750. On the strength of the pay scale of Rs.2375-3750, she had sought the pay scale of Rs.7500-12000 instead of Rs.7400-11500, w.e.f. January 01, 1996.

8. The other issue which was raised by the respondent before the Tribunal was that she should have been granted the relevant pay scale w.e.f. January 01, 1986.

9. Whereas, the case of the petitioners before the Tribunal was that, as the respondent was designated as 'Civilian Programmer', in the scale of Rs.2375-3500, she was granted the revised scale of Rs.7450-11500 w.e.f. January 1, 1996. In other words, she already having been granted the scale of Rs.2375-3500 w.e.f. September 11, 1989, she was granted the scale of Rs.7450-11500 i.e., w.e.f. January 1, 1996 being the normal replacement scale. It was also their case that the respondent was designated as 'Civilian Programmer' and not 'Programmer/System Analyst'. She was rightly granted the scale of Rs.2375-3500 and not

Rs.2375-3750. Accordingly, she was given the replacement scale of Rs.7450-11500 and not Rs.7500-12000 as claimed by her.

10. Mr. Rakesh Kumar, learned CGSC appearing for the petitioners would make similar submissions as were made before the Tribunal. The respondent was granted the scale of Rs.2375-3500 w.e.f. September 11, 1989. She did not challenge the grant of that scale and was accordingly granted normal replacement scale thereof, i.e., Rs.7450-11500. But the fact of the matter is that it was only in the year 2006 that the respondent was designated as 'Civilian Programmer' and granted the scale of Rs.2375-3500. According to him, the said scale was given to the respondent as she was a 'Civilian Programmer' and not a 'Programmer' or a 'System Analyst' who is entitled to the scale of Rs.2375-3750. He submits that accordingly, the replacement scale of Rs.2375-3500 i.e., Rs.7450-11500 was given to the respondent. According to him, the said scale of Rs.2375-3750 was given to the post in EDP cadre with promotional avenues, whereas, the 'Civilian Programmer' continued to be an isolated post and as such she was granted the revised pay scale of Rs.2375-3500. He submits that if the aforesaid pay scale is upheld then the respondent would be entitled to first and second ACP upgradations, in the pay scale of Rs.7500-12000 and Rs.8000-13500 and which have already been granted to her. That apart, she has also been granted the modified ACP benefits in the cadre pay scale of Rs.10500-15200.

11. On the other hand, Mr. Amit Anand, learned counsel for the respondent would contest the petition by justifying the order of the Tribunal. According to him, National Informatics Centre ('NIC', for

short) in its letter dated May 31, 2000 had conveyed the approval of the Director General of NIC for categorisation of the post held by the respondent as EDP. According to him, in view of the approval granted by the Director General of NIC, the petitioner should be designated as 'Programmer' and granted the pay scale accordingly. He also submits, there is no designation of 'Civilian Programmer' with pay scale of Rs.2375-3500 contemplated under the Office Memorandum of September 11, 1989 and as such the said scale and designation could not have been given. He submits that in terms of the judgment of this Court in the case of *Union of India & Ors. v. Mridula Gupta, W.P.(C) 7433/2016*, decided on January 20, 2020, the respondent is any case entitled to the benefits w.e.f., January 01, 1986 and not September 11, 1989 as has been granted to her. He seeks the dismissal of the writ petition.

12. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the respondent is entitled to the designation of 'Programmer' with a scale of Rs.2375-3750. The petitioners have justified the grant of scale of Rs.2375-3500, on the ground that the post which the respondent was holding was an isolated post and the respondent was appointed as a 'Civilian Assistant Programmer' which was in the scale of Rs.650-1200.

13. We find that the Tribunal has proceeded to decide the issue by stating that she was re-designated as a 'Programmer' but was kept in the scale of Rs.2375-3500, which according to us is not a correct finding inasmuch as the designation given to the respondent was 'Civil Programmer' and not as a 'Programmer'. The said designation was

given to her primarily on the ground that she was appointed as a 'Civilian Assistant Programmer'.

14. We also find that the Tribunal has not examined as to what shall be the effect of such a post being an isolated post. That apart, the impugned order passed by the petitioners which was challenged before the Tribunal is dated January 19, 2010, whereas the judgment of this Court in *Mridula Gupta (supra)* is dated April 05, 2017 that is much after the impugned order was passed. That apart, the judgment rendered by this Court in the case of *Mridula Gupta (supra)* though referred to by the Tribunal, the effect on the issue in question need to be considered by the Tribunal.

15. The Tribunal has summed up its conclusion in paragraphs 10 to 12 of the impugned order. Though, we have already reproduced paragraphs 11 and 12 above, the paragraph 10 of the impugned order is reproduced as under:-

"10. It will be clear from the narration of facts that the applicant's job of a Programmer in the Respondents' Office was not part of a unified cadre of EDP staff. In fact, many EDP staff in different offices in Govt. of India were holding such posts and the Government decided to re-structure the whole arrangement and make a unified cadre, as would be evident from OM dated 14.10.1998 in which the scale of Programmer was indicated as Rs.7500-12000. In all orders cited by the applicant, the scale of Programmer was shown as Rs.7500-12000 after the V CPC and Rs.2375- 3750 after the IV CPC."

16. Surely, perusal of the said paragraph does not reveal that the Tribunal has considered the case in the manner stated by the petitioner, which we have already noted in the paragraph 14.

17. In the facts of this case, we deem it appropriate to set aside the impugned order dated April 05, 2017 and remand the matter back to the Tribunal to consider the facts which we have noted above along with the relevant orders issued by the Government of India including the judgment rendered by this Court in *Mridula Gupta (supra)* and decide the issue whether the respondent is entitled to the scale of Rs.2375-3750 that too w.e.f., January 01, 1986 by passing a reasoned and a speaking order.

18. Suffice to state, since the issue is pending since 2008 i.e., when the respondent had initially approached the Tribunal, we direct the Tribunal to dispose of the O.A. within a period of three months i.e., w.e.f., the date when the matter shall be listed before the appropriate Bench of the Tribunal for a preliminary hearing.

19. With the above, the petition is disposed of.

CM APPL. 8436/2020 (for stay)

In view of the order passed in the writ petition, the instant application has become infructuous and is dismissed as such.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

MAY 12, 2023/aky