



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: August 28, 2023

+ W.P.(C) 4502/2017

UNION OF INDIA & ORS.

..... Petitioners

Through: Mr. Vikrant N. Goyal, Ms. Tesu Gupta and Ms. Ayushi Garg, Advs.
Mr. Ripu Daman Bhardwaj,
CGSC with Mr. Kushagra Kumar,
Adv. for UOI.

versus

PRADEEP KUMAR SRIVASTAVA & ANR. Respondents

Through: Mr. Shanker Raju, Mr. Nilansh Gaur,
Ms. Anubha Bhardwaj and
Mr. Rajesh Sachdeva, Advs.

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. The challenge in this petition is to an order dated February 21, 2017 passed by the Central Administrative Tribunal in the Original Application being OA No. 1450/2015 ('OA', for short) whereby the Tribunal has allowed the OA filed by the respondents herein by stating in paragraphs 7 and 8 as under:

"7. It is seen that the "Terms and Conditions for the Staff of Staff Benefit Fund" (vide Annexure A-12) are not part of any statutory rules and they, made in 1964, have not been updated. The inaction can only be



ascribed to the respondents. The applicants, recruited in 1984 and 1995, respectively, had been treated on a par with railway employees and only suddenly in March 2013 they were denied entitlement to the benefits of tuition fee and bonus. This, in my view, appears to be arbitrary and discriminatory. Moreover, the said "Terms and Conditions" also lay down as under:

"In all other matters, rules as prescribed for the Railway employee will be followed."

8. In the light of the above, the instant OA deserves to succeed. The applicants are held entitled to the benefit of tuition fee and bonus on a par with railway employees. The decision in the impugned communication (Annexure A-1) is set aside. Any amount recovered from the applicants shall be refunded within four weeks from the date of receipt of a copy of this Order."

2. The challenge of the respondents before the Tribunal was to a decision taken by the petitioners herein to withdraw the benefits of Tuition fee and Bonus earlier paid to the respondents at par with the Railway employees. The impugned order was in a second round of litigation initiated by the respondents, the earlier one being OA No. 1558/2013 which was decided by the Tribunal on July 15, 2014. The order of the Tribunal in that OA vide paragraphs 4 to 6, is as under:

"4. It is not in dispute that before discontinuing the tuition fee and bonus from the applicants the respondents did not give them any notice to show cause to enable them to put forth their stand. It is settled position of law that any governmental action entailing



civil consequences should follow principle of natural justice, i.e., notice to show cause to the concerned person, likely to be affected by such action, which is in consonance with the principle of audi alteram partem.

5. Though after filing of the reply by the respondents we could have taken decision in the present Original Application on merits, but when the respondents have taken a blanket stand that the tuition fee and bonus are not granted under the Rules to CSBF Committee, they have not specifically commented upon the contents of condition No.7 of the 'terms and conditions' for the CSBF Committee wherein it has been provided that in all matters other than those specifically covered by the said condition, the rules, as prescribed for the railway employees, are applicable to the staff of Staff Benefit Fund.

6. In the circumstances, I dispose of the present Original Application with direction to the respondents to take decision regarding entitlement of the applicants to tuition fee and bonus only after giving them show cause notice. Till then the respondents will continue paying the said benefits to the applicants. No costs."

3. Pursuant thereto, the petitioners herein issued a show-cause notice to the respondents on August 26, 2014 and after considering their replies, the petitioner issued a communication dated November 18, 2014, wherein the following has been stated:

"Your reply dated 08/09/2014 against show cause notice dated 26/08/2014 has been examined and not found tenable on the following grounds mentioned hereunder: -

1. Your claim that you have been appropriate as per



the Indian Railway Establishment Volume-1 is wrong as there is no such provision in IREM. However, there is a chapter on staff benefit fund in IREC-Volume-I in which procedure is laid down for sources and expenditure of the fund for the benefit of non Gazetted Railway Employees. In this chapter, the procedure is laid down for running of the staff benefit fund for various welfare activities through a committee of various levels i.e. Headquarter, Division, Workshop level etc. It is nowhere mentioned in the Establishment code that Dental Mechanics or any other person will be appointed as Railway Servant by this Committee.

It is further mentioned that the recruitment to various posts is made on regular basis as per the provision made in Para 217 of IREC & IREM.

You were engaged by the Committee to run the Staff Benefit Fund which is for the welfare of the Railway Employees. The norms for engagement are made by the Committee of the Staff Benefit Fund and there is no provision for appointment of regular employees under Staff Benefit Fund in IREC or IREM.

2. The various benefits extended to the persons engaged by the Staff Benefit Fund Committee are covered by the terms & conditions envisaged by the staff benefit fund Committee for running of the various welfare activities and not covered under the statutory rules under the IREC or IREM.

3&4. As already mentioned in Para-1 that your engagement as Dental Mechanics under SBF is not the



statutory provision under the IREC or IREM but you were engaged by the SBF Committee under the Rules framed by them for running of the fund for the welfare of the Railway Employees which is not be statutory provision under the recruitment rule for the Railway Employees.

5. Your plea is not correct, as it is clearly mentioned in para-2 of your appointment letter issued by the CSBFC Committee that you will not be treated as Railway Servants and will not be entitled for any privileges admissible to Railway Employees. It is mentioned in Para-3 that the services will be treated purely temporarily & you will be governed by the decision of the Central/Divisional Staff Benefit Fund Committee.

6. As per the terms and conditions laid down by the Staff Benefit Fund Committee for the welfare of staff. Some Pay and allowances have been fixed by the committee from the Staff Benefit Fund, which so not include Bonus, Tuition Fees and Pension etc. The payment of bonus & tuition fees has erroneously been made to you.

7&8. As per Para 7 of the Terms and Conditions the connotation that “they will be under the Chairman, D.S.B.F.C. Secretary DSBFC and appeals will lie against the decisions to the Chairman C.S.B.F.C. are applicable for the Disciplinary and appeal rules only.

9. You have accepted that you are different from Railway Employees and getting benefits under the applicable rules of Central Staff Benefit Fund



Committee.

*In view of the above facts, you are not entitled for the payment of Bonus & Tuition fee as per the terms and conditions of Staff Benefit Fund and the amount already paid to you will be recovered in installments.
(sic)”*

4. Mr. Vikrant N. Goyal, learned counsel for the petitioners stated that the Tribunal has erred in allowing the OA without properly appreciating the Terms and Conditions prescribed for the staff of Staff Benefit Fund under which the respondents were recruited. He also stated that, it was made clear in the advertisement that the vacancies are not for Railway / Government post.

5. That apart, he stated that the terms of appointment of the respondents do not stipulate the grant of Tuition Fee and Bonus and as such the same were not payable to the respondents. In fact, an undertaking was given by the respondents that they shall not claim the benefits as admissible to the regular Railway employees and were bound by the same. He also stated that the Tuition Fee and Bonus, both are paid only to the Railway employees and not to contractual workers.

6. He stated that the Tuition Fee and the Bonus are paid to the Railway employees from Consolidated Fund of India and could not have been paid to contractual employees. In the end, he submitted that the Tribunal could not have interfered with the policy matter and the decision of the petitioners to seek the refund of the Tuition Fee and Bonus, which were paid to the respondents, is justifiable.

7. Mr. Shanker Raju, learned counsel appearing for the



respondents would justify the order passed by the Tribunal and stated, in view of the judgment of the Supreme Court in the case of *State of Punjab v. Rafiq Masih, (2014) 8 SCC 883*, the petitioners could not have recovered the amount as sought to be done by them which was the subject matter of the OA. He also stated that, as per the conditions made applicable, the two benefits are payable and was rightly been granted to the respondents herein.

8. Having heard the learned counsel for the parties, the short issue which arises for consideration is, whether the respondents are entitled to Tuition Fee and Bonus as per the terms of their appointment. The answer to this question has to be found in the Terms and Conditions, framed for the staff of Staff Benefit Fund Committee, at page 122 of the paperbook, which reads as under:

“

1. **Scales of Pay.** – Scales of pay corresponding to the Railway scales commensurate with the duties and responsibilities attached to the posts should be allowed to such staff. The fixation of pay and grant of increments should also be regulated under the Railway Rules. The payment of arrears should be decided by the Central Staff Benefit Fund Committee.
2. **Payment of travelling allowance, dearness, allowance house rent allowance and compensatory allowance** – The payment of theses allowances should also be made according to the Railway rules in force from time to time.
3. **Leave.-** Not more than 12 days casual leave should be granted to them in a year. Average pay leave and half-pay leave and leave salary should be allowed as admissible under the Railway rules.



4. **Relief Arrangements.** – Leave up to 14 days at a stretch should be granted without relieving the work locally. When the period of leave extends 14 days, a suitable substitute may be appointed by the Chairman, D.S.B.F.C.
5. **Passes.** – They will be eligible for privilege passes as employees of S.B.F.C. under the Pass rules on this Railway in force from time to time.
6. **Provident Fund Deductions.** – Provident Fund deductions shall be made from their salaries after one year of their service when they will be treated as confirmed at 1/12th of their salary. To the amount thus deducted bonus will be credited in equal proportion at the close of the financial year. The P.F. A/cs will be maintained by the Secretaries of the Divl. Staff Benefit Fund Committees in a Post Office Saving Bank.
7. **Disciplinary and Appeal.**– For this purpose, they will be under the Chairman D.S.B.F.C. Secretary D.S.B.F.C. and appeals will lie against the decisions to the Chairman C.S.B.F.C. In all other matters, rules as prescribed for the Railway employee will be followed.”

9. It may be stated here that the Railway employees are entitled to get the benefit of Tuition Fee and Bonus. The Terms and Conditions have been framed in the year 1964 and have not been amended thereafter. There is no dispute that the scales of pay / payment of travelling allowance / dearness allowance / house rent allowance / compensatory allowance / leave and relief arrangement / passes / provident fund deductions / are being paid to the staff of the Staff Benefit Fund Committee as were being paid to the Railway employees.

10. It is also a fact, that since the appointment of respondents, they were being paid the benefit of Tuition Fee and Bonus. It is only in the



year 2013, that the petitioners had taken the steps to discontinue the benefits of Tuition Fee and Bonus and sought the refund of the same.

11. Therefore, the issue centers around Clause 7 of the Terms and Conditions, as reproduced above. The plea of Mr. Goyal is, Clause 7, more particularly the words *“In all other matters the rules as prescribed for the Railway employee will be followed”* shall relate to Disciplinary and the Appeal matters inasmuch as the earlier sentence in Clause 7, refers to appeals shall lie to the Chairman. So, the above sentence (as reproduced) being in continuance must necessarily relate to Disciplinary and Appeal matters. Hence the sentence must be read to mean that, in all other matters (relatable to Disciplinary and appeal) it shall be the rules as prescribed for the Railway employees which shall be followed and not for payment of Bonus and Tuition Fees for the employees of the fund.

12. Though the plea of Mr. Goyal appears to be a plausible view, but the Tribunal has taken the view in favour of the respondents by inter alia stating (i) that the applicants, i.e., the respondents herein having been recruited in the years 1984 and 1995 were treated at par with the Railway employees and only in March, 2013, they were denied entitlement to the Tuition Fee and Bonus and (ii) the terms and conditions lays down *“in all matters rules as framed for the Railway employees will be followed”*.

In other words, the Tribunal has primarily allowed the OA on the ground that the benefits of Tuition Fee and Bonus were being given to the respondents w.e.f 1984 and 1995 till 2013, i.e., for 29 years and 18 years respectively and also the benefit of the rules framed for the



Railway employees were also given to the respondents herein.

13. There is some justification for the Tribunal to allow the OA on the ground that the benefits were being given for a long period of time and under Clause 7 of Terms and Conditions, the Tuition Fees and Bonus are payable. According to us, the same is a plausible interpretation. Moreover, we cannot lose sight of the fact that the respondents are being given the other benefits like travelling allowance / dearness allowance / house rent allowance / compensatory allowance / leave and relief arrangement / passes / provident fund deductions etc. which are the benefits payable to Railway employees. So denial of these two benefits is not justified.

14. In view of the facts of this case, we are of the view that the order of the Tribunal needs no interference. We accordingly dismiss the petition. No costs.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

AUGUST 28, 2023/*aky*