

14.08.2024
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WPCT 207 of 2023
Union of India & Others
– Versus –
Koneru Chiranjeevulu

Mr. Sunil Singhanian,
Ms. Ashima Roy Choudhury
... for the Petitioners/UoI.
Mr. Ujjwal Roy,
Mr. Arpa Chakraborty
.... for the Respondent.

The present writ petition has been preferred by the Union of India and its functionaries challenging an order dated 4th July, 2023 passed by the learned Tribunal in the original application (in short OA), being OA 1062/2019. By the said order the learned Tribunal, placing reliance upon a judgment delivered by a co-ordinate Bench of this Court in the case of *Shyamapada Roy & Others Vs. Union of India & Others*, reported in *2011 SCC OnLine Cal 4969*, arrived at a finding that the original applicant's pay needs to be stepped up to the same level as that of Sri S.S. Maharana as on 1st January, 2016.

Mr. Singhanian, learned advocate appearing for the petitioners submits that in spite of arriving at a finding that the original applicant/respondent herein and Sri S.S. Maharana do not belong to the same cadre, the learned Tribunal allowed the respondent's prayer for stepping up of pay in derogation to the provisions of RBE No.236 of 2009.

According to Mr. Singhanian, the sources of promotion to the post of Chief Loco Inspector in respect of the respondent and Sri S.S. Maharana are different and distinct and that as such the concept of stepping up of pay would not

be applicable and as such the learned Tribunal arrived at an erroneous finding that the pay of the respondent needs to be stepped up. Such arguments, as advanced, were glossed over by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court. Reliance has been placed upon the judgments delivered in the cases of *Union of India and Others vs. O. P. Saxena* reported in *AIR 1997 SC 2978* and in the case of *Surender Kumar Vs. Union of India & Others*, reported in *2005 (2) SCC 313*.

Per contra, Mr. Roy, learned advocate appearing for the respondent submits that the respondent was promoted to the post of Chief Loco Inspector from the feeder post of Loco Inspector and Sri S.S. Maharana was promoted to the post of Chief Loco Pilot from the feeder post of Loco Pilot (Mail). The respondent is admittedly senior to Sri S.S. Maharana and in the respective feeder posts, prior to implementation of the 6th Pay Commission, the respondent was in the pay scale of Rs.6,500/- to Rs.10,500/- whereas Sri S.S. Maharana was enjoying the lower pay scale of Rs.5,500/- to Rs.9,000/-.

He further argues that ultimately both of them were promoted to the post of Chief Loco Inspector and the past service in the feeder post became irrelevant once the incumbents joined the promotional post and upon such promotion both of them ought to have been granted the same pay. Such dissimilarity in pay was rightly ironed out by the learned Tribunal by directing the stepping up of pay of the respondent. Reliance has been placed upon the judgment

delivered in the case of *Shyamapada Roy vs. Union of India*, reported in 2011 SCC OnLine CAL 4969.

In reply Mr. Singhanian submits that the judgment delivered in the case of *Shyamapada Roy (surpa)* was challenged by the petitioners herein before the Hon'ble Supreme Court and though the SLP was dismissed, the Court observed that '*the question of law concerning the interpretation of the relevant rules is left open.*'

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the respondent entered into service on 30th September, 1975 whereas Sri S.S. Maharana entered into service on 26th April, 1988. Admittedly, thus the respondent is senior to Sri S.S. Maharana and accordingly, almost at all the stages the respondent was enjoying higher scale of pay than Sri S.S. Maharana. After promotion to the post of Chief Loco Inspector, the past service in the feeder post became irrelevant once both the incumbents joined the promotional post. The proposition of stepping up of pay becomes applicable where the person working in a post gets lesser pay than his junior in the same post.

It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in the decision making process. In the case of *O. P. Saxena (supra)* the Court was considering the effect of grant of benefit to the category of running staff and in the same an option was exercised by the incumbent concerned to remain in the category of running staff whereas

the other chose and opted for being promoted to the supervisory category. The judgment in the case of *Surendra Kumar (supra)* was also delivered taking into consideration the judgment delivered in *O. P. Saxena (supra)*. The said judgments are, thus, distinguishable on facts. The proposition of law laid down in the case of *Shyamapada Roy (supra)* is squarely applicable to the facts of the present case and the SLP preferred against the same was also dismissed. The point of law kept open is for consideration of the Hon'ble Supreme Court.

The learned Tribunal, upon dealing with all the factual issues, arrived at specific findings and we do not find any error of law in the same. The order also does not suffer from any jurisdictional error and the learned Tribunal has disclosed the reasons in support of the discretion as exercised in favour of the respondent.

For the reasons discussed above, no interference is called for in the present writ petition and the same is, accordingly, dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)