



W.P.No.18454 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.18454 of 2019

S.Krishnamohan

... Petitioner

Vs.

1.Union of India represented by,
The Secretary,
Ministry of Earth Sciences (MoES) and
Chairman, GC, NIOT,
New Delhi – 110 003.

2.The Director,
National Institute of
Ocean Technology,
NIOT Campus,
Narayanapuram,
Chennai – 600 100.

3.The Administrative Officer,
National Institute of
Ocean Technology,
Chennai – 600 100.

4.The Central Administrative Tribunal,
Chennai Bench, Chennai – 600 104,
rep. By its Deputy Registrar

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 4th Respondent in O.A.No.442/2014 dated 22.11.2018 and quash the same and direct the Respondents 1 to 3 to do the assessment as per the approved Career Progression Scheme and upgrade the Petitioner to the Grade Pay of Rs.6600/- with effect from 01.12.2011 with all attendant benefits.

For Petitioner : Mr.P.Rajendran
For Respondents : Mr.V.Vijayashankar (for R1-3)
Tribunal (R4)

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The Writ Petitioner instituted Original Application in O.A.No.442 of 2014 before the Central Administrative Tribunal, challenging the office order No.287, dated 23.05.2012 issued by the Administrative Officer, National Institute of Ocean Technology.

2. The petitioner was initially appointed as Stenographer in the year 1994 and thereafter appointed on direct selection basis as Office Superintendent on 21.12.2001 carrying the scale of pay of Rs.6500-10500 (equivalent to Section Officer in Central Secretariat Services cadre). The petitioner was selected for appointment to Class I/Group 'A' Gazetted officer post in the Central



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Government Autonomous body. He submitted his technical resignation and it was subsequently withdrawn. On such withdrawal, the respondents approved for extending the non-functional scale of pay of Rs.8000-275-13500 with retrospective effect from 21.12.2005 based on the order issued by the Government of India, Ministry of Personnel, PG and Pensions, dated 25.01.2006.

3. The fixation made to the petitioner, in pursuance to the Government of India order dated 25.01.2006 was objected by the Audit party and consequently, his pay was re-fixed as per the proceedings of the National Institute of Ocean Technology. Having aggrieved, he approached the Central Administrative Tribunal and after adjudication, the Tribunal dismissed the petition. Thus, the present Writ Petition came to be instituted.

4. Mr.P.Rajendran, learned counsel appearing on behalf of the petitioner would mainly contend that the Government of India orders are applied to the other Government of India undertaking and Autonomous body and therefore, the non functional scale of Rs.8000-275-13500 granted to the Section Officers of Central Secretariat Services with effect from 01.01.1996 was extended to the petitioner by the governing counsel of the National Institute of



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Ocean Technology. The decision was approved by the Finance committee. Based on the audit objection, the decision initially taken by the governing counsel was reversed, which resulted in filing of the Application before the Tribunal. He would further submit that the benefit of non functional scale as accorded to the Section Officers at Central Secretariat Services was extended to some other Departments, which were not objected. That being so, the benefit extended to the petitioner ought not to have been reversed by the National Institute of Ocean Technology.

5. In support, he would rely on the order of the Hon'ble Supreme Court of India in the case of ***Union of India and Others Vs. S.C.Karmakar and Others*** in Civil Appeal No.6888 of 2008 dated 27.11.2013, wherein the Apex Court held that, the said benefit was extended to the Office Superintendent in CBI based on the Central Administrative Tribunal's order. The benefit was extended to the Intelligence Bureau in Home Secretary, Armed Forces Headquarters Secretariat Section in the Defence Ministry, Research and Analysis Wing attached to the Cabinet Secretariat and the Central Administrative Tribunal. However, the said order of the Central Administrative Tribunal was accepted by the Government of India and considering the said fact, the Hon'ble Supreme Court of India dismissed the appeal filed by the



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Union of India. However, the said judgment cannot be applied directly in the present case, in view of the observations made in Paragraph No.5 of the said order, stating that, the issue with respect to the parity of similarly situated office Superintendents in other attached offices with the Section Officers in the Central Secretariat was not before the Court.

6. The learned counsel for the petitioner relied on the judgment of the Delhi High Court in W.P.(C).No.3349 of 2010 dated 17.05.2010, wherein non functional pay scale was extended to the Office Superintendent in Indian Council of Agricultural Research (ICAR).

7. The findings of the Tribunal in the order impugned would show that, the issue relating to fixation of pay was considered by the Tribunal. The claim of the petitioner was based on the introduction of non-functional scale of Rs.8000-275-13500 to the Section Officers of Central Secretariat Service. The Section Officer of Central Secretariat Service and Office Superintendent of National Institute of Ocean Technology belong to different services and they are two distinct set of employees and since the functions, duties and responsibilities are not equal in two cases, the principle of *Equal pay for Equal work* has no applicability here.



8. The Tribunal relied on the judgment of the Hon'ble Supreme Court of India, in the case of ***Union of India Vs. V.V.Hariharan***¹, wherein it was held that, *"the courts or Tribunals ought not to interfere with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. Change of Pay Scale of a category has a cascading effect, when several other categories similarly situated, which will lead to serious problems. Unless, it can be clearly brought out that they were carrying on identical work and there is a clear case of hostile discrimination, there would be no justification for interference with the fixation of pay scales."*

9. The Apex Court on several occasions reiterated that, fixation of pay is a complex issue, which is to be decided by the experts. The Court, not being an expert in the matter of fixation of pay, in the absence of any patent, violation, irregularity or illegality in fixation, the Court may not interfere. More so, extending the benefit of higher fixation of pay is to be granted, by taking note of job responsibilities, duties etc., which would play a pivotal role in fixation of pay by the Government.

10. In the present case, plain reading of the order passed by the

¹ 1997 3 SCC 568



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Government of India, dated 25.01.2006 reveals that Non Functional scale of

Rs.8000-275-13500 to Section Officers of Central Secretariat Services was granted. There is no indication in the order that the said order is to be extended to the Office Superintendent working in other Departments and Autonomous body. In the absence of any specific direction in the matter relating to fixation of pay, the Courts cannot extend the benefits, which would result in financial loss to the Union of India and more so, it will open pandora's box and several such employees from various departments would also approach the Court for seeking extension of the same benefit. When the Government of India passed an order, specifically granting non functional scale to the Section Officers of Central Secretariat Service, the Court are not empowered to extend the same in exercise of the powers of judicial review and therefore, the findings of the Central Administrative Tribunal in the order impugned are candid and convinced.

11. Even while assessing *Equal pay for Equal work*, the Courts are expected to be cautious, since it involves job responsibility, duties, functions etc. In the present case, the functions of the Office Superintendent in the National Institute of Ocean Technology cannot be compared with the duties and responsibilities of the Office Superintendent in the Central Secretariat Services. Thus, the grounds raised in the present petition are insufficient to form an



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opinion that the Tribunal has committed an infirmity.

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12. However, we made it clear that the petitioner would be eligible for pay upgradation, as per the impugned order passed by the respondents in Office Order No.287, dated 23.05.2012, if not already granted to the petitioner.

13. Accordingly, the impugned order passed by the 4th Respondent in O.A.No.442 of 2014 dated 22.11.2018 is confirmed and the present Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

[S.M.S., J.]

[M.J.R., J.]

25.11.2024

Index: Yes/No

Speaking/Non-speaking order

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