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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 05.02.2024***

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W.P.(C) 990/2022**SHRI PITAMBER AND ORS****..... Petitioners****Through: Mr. Padma Kumar S., Advocate.****Versus****UNION OF INDIA AND ORS****..... Respondents****Through: Mr. Niraj Kumar, Sr. Central Govt.
Counsel for UOI with Mr. Sandeep
Singh Dudi, U. S. ICAR.****CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present writ petition under Article 226 and 227 of the Constitution of India seeks to assail the order dated 12.12.2019 passed by the learned Central Administrative Tribunal in O.A No. 2627/2014. Vide the impugned order, the learned Tribunal has rejected the claim of the petitioners for up-gradation of their pay scale at par with similarly placed employees working in the Central Secretariat Services (CSS).

2. Learned counsel for the petitioners submits that the petitioners are working as Deputy Secretaries in the Indian Council for Agriculture Research (ICAR) i.e the respondent no.2. According, to Clause 30(a) of its Bye-Laws, the employees of respondent no. 2 were



to draw the same pay scale as Central Government employees. He submits that by Cabinet Note dated 18.05.1995, which was duly accepted, it was specifically provided that parity had to be maintained between the employees of ICAR and the employees of CSS. He, therefore, contends that once the Bye-Laws of the respondent read with Cabinet Note dated 18.05.1995, provide that pay scales applicable to the employees of the CSS would be *mutatis mutandis* applicable to employees of the ICAR, the petitioners' claim for grant of same pay scale as is being paid to the Deputy Secretaries in the CSS pursuant to DoPT's OM dated 10.03.2010, was required to be accepted.

3. He submits that in case the ICAR wanted to make a departure from the aforesaid position, the procedure under Clause 30 (b) of the Bye-Laws was to followed. The respondents have admittedly not taken any steps to alter the position as laid down in Clause 30 (a) and are, therefore, bound by the Cabinet Note dated 18.05.1995, to extend the same pay scales to its employees as are being paid to the employees of the CSS. Furthermore, this Court has, vide its order dated 17.05.2010, passed in W.P.(C) No. 3349/2010 titled as ***Union of India & Others v. V. K. Sharma & Others***, rejected the challenge to an order passed by the learned Tribunal allowing the claim of Section Officers working in the ICAR for parity with pay scale of Section Officers under the CSS. This decision was unsuccessfully challenged before the Hon'ble Apex Court by way of Special Leave to Appeal (Civil) bearing no. CC 17537 /2010. He contends that the learned Tribunal has failed to appreciate this vital aspect and



therefore, prays that petitioners' claim be allowed by setting aside the impugned order.

4. On the other hand, learned counsel for the respondents supports the impugned order and submits that the learned Tribunal was justified in holding that Courts should not interfere with matters related to fixation of pay. He contends that the fixation of pay depends upon a number of factors and, therefore, ought to be left to the wisdom of employers. After some arguments, he concedes that the judgment dated 17.05.2010 passed in *V. K. Sharma (supra)* has attained finality. He is also not in a position to deny that the cabinet Note dated 18.05.1995, recommending the pay scales of the employees of the ICAR should be at par with the employees of CSS was duly accepted. He, however, submits that the decision in *V. K. Sharma (supra)* pertained to Section Officers, whereas the petitioners are Deputy Secretaries, and, therefore, would not be governed by the said decision. Resultantly, he prays that the petition be dismissed.

5. Having considered the submissions of learned counsel for the parties and perused the record, we may begin by noting the relevant extracts of this Court's decision in *V. K. Sharma (supra)* wherein the Court upheld the learned Tribunal's decision to grant the same pay scale to the Section Officers of the ICAR as was being paid to the employees of the CSS. Para nos. 9 and 10 of the said decision read as under:

“9. Thus, the Tribunal came to the conclusion that the 6th CPC has accepted the historical and established parity between the ICAR HQ, SO/P.S. with the SO of CSS, so the pre-revised non-



functional pay scale as admissible to SO of CSS would mutatis mutandis would be applicable for the SO/PS of ICAR HQ.

10. Thus the argument of the petitioners made before us that there is no parity between the employees of ICAR with the officers of CSS as there are differences in the mode of recruitment, nature of duties and responsibilities, organizational hierarchy etc. is misconceived in the light of Government order dated 30.10.2008 where it has been approved that the pay structure for Assistants and Section Officers in the CSS may be extended to the Assistants/Personal Assistants and Section Officers/Private Secretaries in ICAR HQ. One more argument advanced before us is that granting of pay scales is purely an executive function and hence the Courts should not interfere with the same as it may have a cascading effect creating all kinds of problems for the Government and the authorities. However, this argument cannot be sustained as it is observed by the Tribunal that though fixation of pay and removal of anomalies is a domain of expert bodies like pay commission and the forum to decide it, is of the executive, yet judicial review is not altogether excluded."

6. From a perusal of the aforesaid, it is evident that this Court has already accepted that as per the recommendations of the 6th Central Pay Commission (CPC), there was existing parity between the Section Officers of the ICAR and the employees of the CSS. Even though this decision pertained only to Section Officers, we find that Bye-Law 30 (a) on which the petitioners are relying is equally applicable to Section Officers as also to the Deputy Secretaries like the petitioners.



We are, therefore, of the considered view that once the claim for parity of pay scale by one class of employees of the ICAR with that of the CSS has already been accepted not only by the Court but also by the respondents, there is no reason as to why the other class of employees of the ICAR should not be extended the same benefit of parity of pay with the Deputy Secretaries of the CSS.

7. Learned counsel for the respondents has vehemently urged that the fixation of pay, being an administrative matter, this Court should refrain from interfering with the decision of the respondents in not extending the same pay scales to the petitioners as that being paid to their counterparts in the CSS. Even though, we are inclined to agree with the respondent that the Courts should be slow to interfere with matters of pay fixation, this does not imply that even in a case like the present where the Bye-Laws read with the decision of the Cabinet in itself provide for parity with the employees of the CSS in matters of pay scales, the Court should not interfere. Furthermore, as noted hereinabove, it was decided way back in 1995, by the Cabinet that the employees of ICAR would be entitled to parity of pay with the employees of the CSS, which position was reiterated by this Court in **V. K. Sharma** (supra).

8. In the light of the aforesaid, the writ petition is allowed by setting aside the impugned order and directing that the petitioners, who are working as Deputy Secretaries in the ICAR, will be entitled to the same pay scale as granted to Deputy Secretaries in the CSS pursuant to the DoPT's O.M. dated 10.03.2010. The respondents are, accordingly, directed to extend the benefit of the O.M. dated



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10.03.2010, to the petitioners from the due date. Arrears in terms of this order will be paid within 12 weeks.

9. The writ petition stands disposed of.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

FEBRUARY 5, 2024

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