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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision:- 23.01.2024***

+ W.P.(C) 15760/2023, CM APPL. 63318/2023, CM APPL. 63319/2023 & CM APPL. 63317/2023 -Stay.

UNION OF INDIA & ORS.

..... Petitioner

Through: Mr.Vijay Joshi, Adv.

versus

N.K.MISHRA & ORS.

..... Respondent

Through: Ms.Sunita Hazarika, Adv.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present petition under Article 226 & 227 of the Constitution of India seeks to assail the order dated 21.03.2003 passed by the learned Central Administrative Tribunal (the learned Tribunal) in O.A.2544/2015.
2. Vide the impugned order, the learned Tribunal has allowed the O.A. preferred by the respondents and has consequently directed the petitioners to grant them the benefit of the higher replacement/upgraded scale of pay on actual basis w.e.f. 01.01.1996, as against the date from which the benefit was being extended to them, i.e., 19.02.2003. The learned Tribunal has consequently directed the petitioner to release the arrears to the respondents within twelve weeks.



3. Before dealing with the rival submissions of the parties, the brief factual matrix as is necessary for adjudication of the present petition may be noted.

4. The respondents were working as Junior Accounts Officer/Junior Accountant in the Department of Telecommunications as a part of the Organized Accounts Cadre till 30.09.2000 where after they w.e.f., 01.11.2000 stood absorbed in the Bharat Sanchar Nigam Limited. Based on the recommendations made by the 5th Central Pay Commission (CPC) to enhance the pay scales of the ministerial staff in various government departments w.e.f., 01.01.1996, the senior clerks, who were in the pay scale of Rs. 1200-2400, were given the replacement scale of Rs. 4500-7000 w.e.f., 01.01.1996. This replacement scale was, however, not extended to the ministerial staff working in Accounts Department and consequently, the Junior Accounts Assistant, who were working in the same pay scale of Rs. 1200-2400, were w.e.f., 01.01.1996 given a lower replacement scale of Rs. 4000-6000. Based on the representations made by the ministerial staff of accounts cadre of various departments, the matter was referred to the anomalies committee, who opined that the pay scale of the ministerial staff in the accounts cadre was also required to be enhanced to Rs. 4500-7000.

5. Based on these recommendations, the matter was reconsidered and consequently, the Ministry of Finance and Company Affairs issued an Office Memorandum (OM) on 28.02.2003, as per which, the pay scales of the office staff belonging to the Organized Accounts Department were upgraded on a notional basis w.e.f., 01.01.1996 with actual payments to be made w.e.f., 19.02.2003.

6. Being aggrieved, an O.A. was filed by similarly placed employees



working in the Accounts Department of the Railways before the Ernakulum Bench of the learned Tribunal, which O.A. came to be allowed by the learned Tribunal on 30.06.2006, by holding as under:

“10) The only question, that arises for consideration is whether the decision to grant the revised pay scales to the Railway Accounts Staff has any nexus to the recommendations of the yth CPC. The Respondents maintained that the new pay scales do not emanate from the recommendations of the Vth CPC and a separate exercise has been under taken for improvement of the pay scales in the behalf and that the Railway Board held identified the issue as an and the matter had been referred to the anomaly committee. The PA was therefore the contention of the Respondent that the consideration of revision of pay scales of the Accounts Staff in the Railways had nothing to do with the Vth Pay Commission recommendations are not borne out by the facts prirecord, Further annexure R-1 which is the Railway Board order dated 16.10 1997 Implementing the recommendations of the Vth CPC has itself specified that the pay scales of categories like the Accounts Assistants were under examination at the time of issue of the orders Note-1 on page 8 of the order states. Recommendations of the Vth Pay Commission on pay scales for other specified categories are under examination. Pending decision, the normal replacement scales as in the First Schedule would apply.”

11) The recommendations for the Ministerial Staff in other than Accounts Department are contained at 31. No. 11 dage 6 of this under and that for the Accounts Department at Sl. No. 13 on page 7 of the order. The category of Junior Accounts Assistant is not shown under the heading of Accounts Department. This clear point to the fact that this category came under "other specific categories mentioned in the above mentioned. "Note" for which proposals were examination. It was pending such a decision that normal replacement scales were made applicable to this category. The improved scales now given after examination of the



anomaly are very much an offshoot of the with OPC recommendations Therefore we reject the contention of the Respondents that the Pay Scales now granted by the impugned orders did not emanate from the recommendations of the Vth CPC.

12) Further, as the matter of discrepancies in the Pay Scales of Ministerial Staff in other Departments and Accounts Department was treated as an anomaly and examined for redressal of the same, there is no reason why the same treatment given to other category of staff, like the artisans whose cases were also taken up by the Anomaly Committee and were given the revised scale later w.e.f. 1.1.1996, should be denied to the category of Accounts Assistant infact it is seen from the impugned order that the Railways have decided to grant the revised pay scales on notional basis w.e.f. 1.1.1996. If there was no nexus between the Vth CPC recommendations and the scales now granted there was no need for the Government to come to such a decision to make it effective from 1.1.1996. Since this category has already been placed in the normal replacement scale, revision of pay on notional basis will also imply, as argued by the learned counsel for the Applicants, that the pay fixation has to be effected in terms of Railway Services (Revised Pay) Rules 1997. The Respondent have to inevitable take recourse to the provisions of the Revised Pay Rules. Hence mere contending that the revised Pay Scales has nothing to do with the Vth CPC. Recommendations sounds hollow, it appears that they are merely repeating the same words for arguments sake."

7. The aforesaid decision of the Ernakulum Bench was unsuccessfully assailed before the Kerala High Court as also before the Apex Court and has therefore attained finality. A similar O.A seeking identical reliefs was also preferred before the Patna bench of the Tribunal, by some other employees also working in the Accounts Department of the Railways, which O.A was



dismissed. This decision of the learned Tribunal was assailed before the Patna High Court by way of W.P(C) 11452/2005, which petition came to be allowed by holding that the learned Tribunal had failed to give any reason for granting only notional benefits to the employees of the Accounts Department w.e.f., 01.01.1996 when all the similarly placed employees of the other departments of the Railways had been granted full monetary benefits w.e.f., 01.01.1996. A Special Leave Petition (SLP) before the Apex Court was then filed assailing this order passed by the Patna High Court. The SLP was dismissed on 07.07.2014 by clarifying that the relief granted by the High Court was to be confined only to the parties before the High Court and rights of other claimants would be adjudicated on its own merits as and when any such claim is raised.

8. Once this order passed by the Patna High Court was implemented, the respondents submitted representations to the petitioners seeking grant of the actual benefits of the higher replacement scales w.e.f., 01.01.1996 as against the notional benefits granted from the said date. Upon receiving no response thereto, the respondents approached the learned Tribunal by way of O.A. 2544/2015, which has been allowed vide the impugned order.

9. In support of the petition, learned counsel for the petitioners submits that the impugned order is wholly perverse as the learned Tribunal has failed to appreciate that as per O.M dated 28.02.2003, the decision of the Government was to grant actual benefits of the higher replacement scale only w.e.f., 19.02.2003 and therefore the respondents were not entitled to claim the said benefits from an earlier date, i.e., 01.01.1996, from which date only notional fixation was granted. Furthermore, the Apex Court, while dismissing the SLP against the aforesaid order passed by the Patna High



Court, had clarified that the relief granted by the High Court would be confined to the applicants before the Tribunal and therefore the said benefits could not be extended to the respondents herein.

10. He finally submits that even otherwise, the respondents having themselves approached the learned Tribunal in the year 2015, their claim for actual benefits of the same higher replacement scale w.e.f., 01.01.1996, though granted to similarly placed employees of the Railways, was barred by delay and laches. He, therefore, prays that the writ petition be allowed.

11. On the other hand, learned counsel for the respondent, who appears on advance notice, supports the impugned order and submits that once the recommendations of the 5th CPC to grant higher replacement scale has been accepted by the Government, the petitioners were expected to extend actual benefits of the said replacement on its own to all the employees without compelling them to approach the Court. She contends that the decision of the petitioners to grant notional benefits of the higher replacement scale to the respondents w.e.f., 01.01.1996 in itself shows that the petitioners were well aware that the entitlement of the respondents to receive the said benefits was from 01.01.1996, i.e., the date from which the recommendations of the 5th CPC became effective.

12. Furthermore, the Apex Court while dismissing the SLP against the order passed by the Patna High Court and directing that the said relief would be confined to the parties before the High Court/Tribunal, had specifically clarified that the same was to be without prejudice to the rights of the other claimants and will be adjudicated on its own merits as and when any such claim is raised. She, therefore, submits that the petitioners' plea that the order passed by the Apex Court precluded the learned Tribunal from



examining the respondents' claim is wholly misconceived. The respondents having approached the learned Tribunal soon after the decision of the Patna High Court, cannot be said to be guilty of delay and laches especially when it was incumbent on the petitioners itself to extend the benefits of the recommendations made by the 5th CPC w.e.f., 01.01.1996 itself.

13. Having considered the submissions of the learned counsel for the parties and perused the record, we may begin by noting the relevant extracts of the impugned order as we find that the learned Tribunal has based its decision on its earlier order dated 16.08.2022 passed in O.A. 527/2015, which order has admittedly, attained finality. The learned Tribunal had therefore proceeded to allow the OA preferred by the respondents in the same terms as O.A. 527/2015. We may, therefore, refer to para nos. 8 to 11 of the impugned order, which read as under:

“8. We have given careful consideration to the order passed by the Ernakulam Bench of this Tribunal which has been affirmed up to the level of Hon'ble Apex Court. Nothing to the contrary has been put before us as to whether this order has either been reversed or modified.

9. Our latest order on the subject is the order dated 16.08.2022. It would be worthwhile to quote the said order verbatim:-

Learned counsels for the parties submit that the issue involved in all the aforesaid three O.As are identical, the facts are same and therefore, with the consent of the learned counsels for the parties, the aforesaid three OAS have been heard together and are being decided by the instant common order. However for convenience of writing this order the facts have been taken from O.A. No. 795/2015. The applicant seek the following reliefs:

(a) The Respondents be directed to pay to the



Applicants replacement scales mentioned in Railway Board's order dated 07.03.2003 on actual basis from 01.01.1996 as has been given to other similarly placed employees in view of the order passed by the Respondents dated 28.02.2003 granting notional benefit from 01.01.1996 till the date of decision ie. 18.02.2003 as bad in law and consequently the same having been set aside; and

(b) Pass such other order or orders as this Hon'ble Tribunal deems fit and proper in the interest of Justice."

The applicants in the present O.A. seek the following reliefs-

2. The brief facts of the case are that over-ruling the recommendations of the 5m Pay Commission the Government had decided to grant upgraded pay scale to the officials of the Accounts Cadre of the respondents department w.e.f. 18.02.2003. The applicants are aggrieved that since the recommendations of the Pay Commission were implemented w.e.f. 01.01.199. They too should be granted the actual pay scale w.e.f. such date as it has been granted to others.

3. Learned counsel for the applicant draws attention to various other instances wherein similarly placed officials who approached this Tribunal and other legal forums, on success, were granted upgraded pay scale w.e.f 01.01.1996. She argues that denial of the same to the applicants amounts to discriminatory treatment. She also draws attention to the order passed by the Hon'ble Apex Court in SLP No. 1587-1588/2014 in which the order of this Tribunal granting upgraded pay scale w.e.f. 01.01.1996 was challenged by the Union of India, but the same was dismissed. The Hon'ble Court while affirming the relief given to the party had held that without prejudice to the rights of the others, their cases shall be decided on their own merits.



Learned counsel further finds support in the judgment rendered by this Bench of the Tribunal on 13.02.2022 in O.A. No. 763/2015 in which similarly placed applicants were awarded the upgraded pay scales from 01.01.1996. While rendering the aforesaid judgment the Tribunal had also directed the respondents to calculate the arrears admissible to the applicants w.e.f. 01.01.1996 to 18.02.2003 and pay the same to the applicants within a period of 12 weeks failing which they shall be liable to pay simple interest at the rate of 6% p.a. Learned counsel argues that since the issue has been fully and finally settled, there is no reason to deviate from the same in the Instant case as the facts and circumstances are identical.

4. Further she draws attention to the judgment passed by the Hon'ble High Court of Delhi in WP (C) No. 1523/2016 wherein the All India Railway Accounts Staff Association had challenged the orders of this Tribunal in a few wherein the Tribunal had held that there was no hostile discrimination against the applicants and once a policy decision had been taken by the Government to grant the upgraded pay scale from 18.02.2003, the applicants could not claim the upgraded pay scales from 01.01.1996 as a matter of right, especially when the Pay Commission had not recommended the same. However, while quashing the orders of this Tribunal, the Hon'ble High Court vide the order dated 18.01.2019 in the aforesaid Writ Petition clearly directed that the pay scale is to be granted from 01.01.1996 and further directed that the same be granted along with the arrears within a period of 12 weeks, failing which the petitioners in the WP(C) shall be entitled to a simple interest of 6% p.a. and such arrears. The said judgment of the Hon'ble High Court has been followed in letter and spirit in the order of this



Tribunal dated 03.03.2022 In O.A. No. 763/2015 which has already been quoted above. 5. Although the learned counsel for the respondents argues on the basis of the averments he has made in his counter reply that it was a conscious decision of the Government to grant the enhanced pay scales from the date such decision was taken and only notional benefits of the upgraded pay scales was to be given from 01.01.1996 hence the applicants are not deserving of the present reliefs. He reiterates that the upgraded pay scale has not been recommended by the Pay Commission and was awarded to the applicants only by way of an administrative decision of the Government, therefore, it could not be applied retrospectively.

6. We have heard the learned counsel for the parties and gone through the documents on record.

7. The matter has been agitated up to the level of Hon'ble Apex Court. It is not in dispute that quite a few other similarly placed officials have already been awarded the benefit of upgraded pay scale along with arrears w.e.f. 01.01.1996, the date which the recommendations of the 5th Pay Commission were implemented. Moreover, the grant of this benefit along with arrears has been both on account of a direction of various Courts as also on their own initiative by the Government in certain cases. In O.A. No. 763/2015 which has already been referred to twice in the preceding paragraphs of this judgment, the Tribunal has clearly awarded this benefit in absolutely identical facts and circumstances. The judgment of this O.A further draws strength from the judgment of the Hon'ble High Court of Delhi in WP(C) No. 1563/2015. There being no ambiguity in the said orders we have no cause to hold a different view in the instant matter.

8. Accordingly, the OA is allowed with a direction to the Competent Authority amongst the respondents to



grant the upgraded pay scales to the applicants w.e.f. 01.01.1996 along with arrears within a period of 12 weeks from the date of this order falling which they shall be liable to pay the arrears along with a simple interest of 6% p.a. The Competent Authority amongst the respondents is also directed to take a conscience view to grant the said relief in the form of upgraded pay scales from 01.01.1996 to all such similarly placed employees instead of compelling them to take recourse to litigation.

6. The O.A. stands disposed of in view of the aforesaid directions.

7. Pending also stands disposed of accordingly."

10. No evidence has been brought before us that the order has been either reversed or stayed. Accordingly, we have no ground to take a view which would be at divergence.

11. In light of the facts and arguments detailed above, the present O.A. is allowed. All the applicants are held to be entitled to the benefit of scale of pay on actual basis with effect from 01.01.1996 as against 19.02.2003. Pursuant to this they are also held to be entitled to the payments of arrears which would have accrued in their favour from this date. The competent authority amongst the respondents is directed to issue appropriate orders for grant and release of the upgraded pay scale in favour of the applicants with effect from 01.01.1996 along with the arrears within a period of twelve weeks from the date of receipt of a certified copy of this order."

14. Despite the aforesaid position emerging from the record that the impugned order is based on an earlier order passed by the learned Tribunal in O.A. 527/2015, which order dated 16.08.2022 has attained finality, we



have still examined the matter on merits but find no reason to differ with the learned Tribunal. We are of the view that taking into account the admitted position that it is only pursuant to the recommendations made by the 5th CPC, which were duly accepted by the Government, that the pay scale of the respondents was enhanced on 19.02.2003, the necessary corollary thereof was to grant all the benefits to the respondents on actual basis from the date, the recommendations were accepted. Once the government chose to accept the recommendations of the 5th CPC, it was not permissible for the petitioners to take a view that actual benefits will not be granted w.e.f., 01.01.1996. Furthermore, once the benefits of the higher replacement scale being extended to similarly placed employees was not only covered by the decision of the Ernakulum Bench in 2006, but also by the Patna High Court and by the Principal Bench of the Tribunal in O.A. No. 527/2015, we are of the view that the respondents are also entitled to receive the same benefits. Infact, after the series of these decisions by different Courts, the petitioners were expected to itself extend the benefits to all similarly placed employees including the respondents herein. We, are, therefore of the considered view that in this factual matrix, it cannot be said that the claim of the respondents was barred by delay or latches.

15. We have also considered the orders passed by the Apex Court on 07.07.2014 in *Union of India & Ors. V. Sudama Singh & Ors.[SLP(C)1587-88/2014]* and on 27.08.2007 in *Union of India v. Arun Jyoti Kundu & Ors.[Appeal(Civil)2468-2469/2005]* and find that the Apex Court did not foreclose the right of other similarly placed claimants and therefore clarified that if similar claims are raised, the same would be considered on its own merits. In the present case, when the learned Tribunal



has after examining the factual matrix and relying on its earlier orders, come to a categorical conclusion that it will be unfair to deny the actual benefits of the higher replacement granted by the 5th CPC to the respondents w.e.f., 01.01.1996, we do not find any reason to interfere with the impugned order.

16. The writ petition being meritless is along with all pending applications, dismissed.

**REKHA PALLI
(JUDGE)**

**RAJNISH BHATNAGAR
(JUDGE)**

JANUARY 23, 2024
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