SUPREME COURT OF INDIA

Union of India

Vs.

R. Sarangapani

C.A.No.4247-49 of 1998

(M. Jagannadha Rao and Mrs. Ruma Pal JJ.)

15.03.2000

ORDER

1. Delay condoned.

2. Leave granted in S.L.P. (c) 346/99.

3. In these batch of appeals, the Union of India and the concerned Department are the appellants. The appeals raise common points. For the sake of convenience we shall take up Civil Appeals Nos. 4247-49/1998, which are the appeals against the judgment dated 8th March, 1995. of the Central Administrative Tribunal, Bangalore Bench, in O.A. Nos. 1981/1994 and 1981-82 of 1994. Earlier to this, the said Tribunal rendered a Judgment in O.A. No. 156 of 1992 on 26th March, 1993, taking the same view. The Tribunal had held that Technicians appointed prior to 1-1-1986 would also be entitled to the benefits of the orders passed in terms of the O.M. dated 22-10-1990, as modified in the subsequent orders dated 31-3-1992. In essence, the Tribunal held that for purpose of drawing increments, the Technicians whose period of training was one year should be on par with the non-technical persons, whose training period was only three months, so that both the technicians and

non-technicians would be drawing the same increment at the same intervals, if they were appointed on the same date.

4. As per the Government O.M. dt. 22-10-1990 this benefit was given to the technicians and was prospective in operation. It was to be granted only from 1-1-1990. Later on, by the O.M. dated 31-3-1992, this benefit was extended notionally with effect from 1-1-1986. The result was that those technicians who were appointed prior to 1-1-1986 did not get the benefit of these two O.Ms. issued by the Government. When they approached the Central Administrative Tribunal, Bangalore Bench, the said Tribunal in its two judgments, one of 1993 and the other of 1995 above mentioned, came to the conclusion that those technicians appointed prior to 1-1-1986 would also get the benefit of these two OMs. This was on the ground that fixation of the date of increment, i.e. 1-1-1986 was discriminatory.

5. It appears that the Central Administrative Tribunal, Madras Bench had taken an opposite view and this led to a Reference to a Full Bench of the same Tribunal, at Madras in O.A. Nos. 1295/94 and 79/95. The judgment therein was delivered on 22-1-1996 and in that judgment the view taken by the Bangalore Bench of the Tribunal was overruled and the view taken by the Madras Bench of the Tribunal was upheld. The Union of India, therefore, in its appeals filed in this Court against the judgment of the Bangalore Tribunal, has strongly relied upon the subsequent judgment of the Full Bench of the Madras Tribunal, dated 22-1-1996 above referred to, for contending that the view taken by the Full Bench is the correct one and therefore, for the reasons given in that judgment these appeals must be allowed and the judgment of the Bangalore Tribunal dated 21-2-1995 must be set aside.

6. In the Government O.M. dated 22-10-1990, it was stated that, under FR 26 service in a post on a time scale counts for increment in that time scale and that as per FR 9(6)(a) (i) the services as a probationer or apprentice was treated as duty provided that service as such was followed by confirmation. On that basis, the Government of India observed that training period undergone by the Government servant "cannot" be treated as duty. However, on a demand made by the Staff in the National Council, (JCM) it was decided that where training period was long enough as in these cases such technical personnel were put to perpetual disadvantage vis-a-vis the staff in non-technical jobs who were recruited along with the technical staff in the same scale of pay. Therefore, the Government decided as follows: the National Council (JCM) and it has been decided that in case where a person has been acted for regular appointment and before formally take over charge of the post in which selected person is required to undergo training, training period undergone by the Government servant whether on remuneration of stipend or otherwise may be treated at par for the purpose of drawing emoluments. These orders take effect from the 1st of the month in which this OM is issued."

7. It will be noticed that initially the benefit of the above O.M. therefore, given only from 1-10-1990. Subsequently, further representations appears to have been made by the staff and the

Government came forward with the amendment on 31-3-1992. The Government of India observed that it had earlier decided on 22-10-1990 that the period spent on training was to be treated as duty for the purpose of increments in cases where the person selected for regular appointment - before formally taking over charge of the post for which he was selected - was required to undergo training and these orders were to take effect from 1-10-1990. On further demand of the staff in the National Council (JCM) the question was again examined and the President of India, it was stated was pleased to decide that the benefit of treatment of such training as duty for the purpose of increments would be allowed also in the case of those Government servants who had undergone such training on or after 1-1-1986. However, in such cases the benefit of counting the period for pay would be admissible on notional basis from 1-1-1986 and on actual basis from 1-10-1990.

8. Subsequently it appears that some further anomaly arose in regard to those who completed training immediately before 1-1-1986 and an order was passed by the Government of India on 29-1-1993. But we are not concerned with that order, in the present batch of cases.

9. The Full Bench of the Central Administrative Tribunal, Madras had therefore to decide the question whether the benefit given as per the Government O.M. dated 31-3-1992 should also be extended to those appointees who were appointed to technical posts and who underwent a training before 1-1-1986. The Tribunal, after referring the various judgments of this Court came to the conclusion that the date 1-1-1986 had a nexus with the commencement of the recommendations of the Fourth Pay Commission and that that was a relevant factor to be taken into consideration in finding out whether the cut-off 1-1-1986 was arbitrary or not. The second relevant aspect that was taken into account was the extent of financial burden which was involved if the benefit mentioned above was to be extended even to those who had training prior to 1-1-1986. It was true that the claim of those appointed prior to 1-1-1986 was only that they could be given notional benefit from 1-1-1986 and actually from a later date. But even so, the net result would be that one more increment would become payable to all those persons appointed to technical posts earlier to 1-1-1986. It was, therefore, held that these factors were relevant circumstances to be taken into consideration for not extending the benefit backward beyond 1-1-1986. The Tribunal also considered the question whether the cut-off date 1-1-1986 could be held to be properly selected or whether it could be said that it was picked out of a hat. It was pointed out that the question of commencement of the date was discussed in the National Council (JCM) between the employees and the Government and after taking into account various demands made by the employees, the said date was arrived at. At first the decision was to give notional benefit only from 1-10-1990 and lateron, the decision was to grant it to those who had undergone training after 1-1-1986 but that they would get the benefit notionally from 1-1-1990. The Tribunal relied upon a judgment of this Court in Union of India v. P.N. Menon, (1994) 4 SCC 68 : (1994 AIR SCW 1985 : AIR 1994 SC 2221) for holding that financial burden was one of the relevant considerations. On the basis of the above reasoning, the Full Bench of the Madras Tribunal finally stated that the order of the Government deciding the cut off date as implementing the Government O.M. dated 31-3-1992 and the O.M. dated 22-10-1990 was entirely valid and that that the applicants were not entitled to the reliefs and that the earlier judgment of the Bangalore Tribunal was not correct.

10. We are of the view that the learned counsel for the Government of India was right in relying strongly upon subsequent decision of the Full Bench of the Central Administrative Tribunal Madras Bench dated 22-1-1996 and in our opinion, the reasons given by the said Tribunal in the said judgment, are correct.

11. One more aspect which we want to emphasise is that the applicants who were appointed to the technical posts and the other persons who were appointed to the non-technical posts are not on the same footing. The nature of their jobs was different, the qualifications for appointment was different and the training period was to be longer for the technical staff. It was obviously necessary that those who were to occupy the technical posts should have a longer period of training than those who were to occupy the non-technical posts. The training period for the former was one year while the training period for the latter was only three months. Naturally, the non-technical personnel could therefore be appointed earlier to the technical personnel even if both groups were selected at the same selection. Therefore, in view of the nature of the qualifications and nature of the posts and functions and duties, no equality in the dates of accrual of the increments could ever have been claimed by the technical personnel comparing themselves to the non-technical persons, by invoking Article 14.

12. If, however, the Government thought it fit to bring some sort of equalisation in the matter of commencement of their increments, it was obviously by way of a sheer concession and was not as a matter of right nor was it to avoid any violation or any principles of equality under Article 14. In fact, the very Official Memorandum of the Government dated 22-10-1990 stated that under the FR 26 read with Rule 9(6)(a)(i) it was only in cases of probationers and apprentices where such appointments were followed by a confirmation that the said period of probation or apprenticeship would be counted for the purpose of scale of pay attached to the posts. This principle would "not" as per the Rules be applicable to the training period. However, during the meetings of the National Council (JCM) it was represented that where the training period was long, as in the case of technical personnel, the disparity would become perpetual. Therefore, it is obvious that the concession was not based on Article 14 nor was it on the basis of any rule but was clearly based only upon the fact that the training period of technical personnel was longer and the disparity would continue perpetually if these groups were selected at the same time. Therefore Government considered initially to bring their increment on par with effect from 1-1-1990 and later on it felt that the grievance could be rectified with effect from 1-1-1986 as mentioned above, the date of commencement of the recommendations of the 4th Pay Commission. It is therefore, clear that the Government decided to extend the benefit in the above said manner, even though parties had no right to the same either under Article 14 or under the Rules and the date was mainly based on the financial burden. It was open to the Government to decide, having regard to the budgetary provision, as to what extent it could go and whether it could fix a cut-off date which was co-terminus with the commencement of the recommendation of the IVth pay Commission, namely, 1-1-1986. On the peculiar facts of this case the said date was perfectly valid because the only consideration was the financial burden of the State and not any principle of equality.

13. None of the principles stated in D.S. Nakara v. Union of India, (1983) 2 SCR 165 : (AIR 1983

SC 130 : 1983 Lab IC 1) are applicable to the facts of the case. The difference arose in the present case because the two categories were totally different from the time when they were selected and sent for training. We are, therefore, of the view that the Full Bench decision of the Central Administrative Tribunal, Madras was justified in overruling the said decision.

14. For the aforesaid reasons, these appeals are allowed and the impugned order passed by the Central Administrative Tribunal, Bangalore Bench is set aside.

C.A. No. . . . . ./2000 @ S.L.P. (c) Nos. 15119-21/1998.

15. Delay condoned.

16. Leave granted. These S.L.Ps. arise from judgment dated 15-11-1985 of the Central Administrative Tribunal Jabalpur Bench. Similarly CA 4328/98 and C.A. 4446-47/98. arise from Punjab. These Tribunals followed the judgment of the Bangalore Tribunal and granted benefit of the increment to the technical personnel recruited prior to 1-1-1986. It also appears from what is stated in the judgments, that the counsel for the Government in those cases agreed before the Tribunals that the judgment of the Bangalore Tribunal would apply.

17. Here, we are concerned with a class of persons who are spread over the entire country in the same department but the different cases were disposed of by different Benches of Central Administrative Tribunal leading to conflicting decisions. We are of the view that uniformity has to be maintained in respect of grant of increments to all these technical persons who belong to the same Department, though they are working in different parts of the country. Obviously, the counsel for the Government had agreed before these two Tribunals at Jabalpur and Chandigarh Bench because at that time the Bangalore Bench judgment was holding the field. But after the judgment of the Full Bench of the CAT, Madras it is necessary that there is no discrimination between the technical personnel in different regions of the country in the same department. We are of the view that it is a case where uniformity has to be maintained in the Department in spite of the concessions of counsel at Jabalpur and Chandigarh. Therefore the principles decided by the Full Bench of the Madras Tribunal has to be applied even in respect of employees who went before the Tribunals at Jabalpur and Chandigarh.

18. Learned counsel appearing in these cases arising from the Jabalpur and Chandigarh Bench of the Tribunal, made vehement submissions before us, as to why the judgment of the Full Bench of the Madras Tribunal should not be accepted. Counsel contended that even in respect of those appointed prior to 1-1-1986 in the technical branch, the benefit could be given at least from 1-1-1986 Counsel also pointed out that once the Government felt-apart from Article 14 and the FR-that the benefit could be extended to those appointed between 1-1-1986 and 1-1-1990 such benefit should have been extended even to those appointed earlier to 1-1-1986. Otherwise, there would be anomaly between

the technical personnel appointed prior to 1-1-1986 and those who were appointed after 1-1-1986. They would be drawing increments unevenly.

19. For the reasons which we have already given while disposing of the appeals of the Union of India against the judgment of the Bangalore Tribunal, these contentions are liable to be rejected. We have mentioned earlier that the categories being different from the very start, no principle of Article 14 applied. The parties not being probationers or apprentices, the FRs will notapply. It was only on the basis of the fact that the anomaly would be running perpetually between technical and non-technical personnel selected at the same time by the Government that the Government extended the benefit of one increment up to 1-1-1986. While granting such concession it was open to the Government as already stated to take into account the financial burden of the Government. Further, the date has been made co-terminus with the commencement of the recommendations of the Fourth Pay Commission with effect from 1-1-1986. We do not find any anomaly or anything legally wrong in limiting the benefit to those who had undergone training after 1-1-1986 and giving benefit notionally from 1-2-1990. Further in regard to those appointed prior to 1-1-1986 it would be too late for them to claim the benefit of the training period prior to 1-1-1986.

20. For the aforesaid reasons, the appeals of the Union of India against the Jabalpur and Chandigarh Bench judgment are allowed.

21. It appears in some of the cases, particularly in the case from the Central Administrative Tribunal, Jabalpur and Chandigarh and perhaps some other places, the benefit granted by the Tribunals which we are now setting aside has been granted to the technical persons pending these appeals in this Court.

22. Learned counsel who appeared before us in the Jabalpur matters placed before us a letter dated 20th June, 1996 which clearly stated that the implementation of the judgment of the Tribunal at Jabalpur would be subject to the result of any appeals that might be filed by the Union of India. Even in other cases, the position in our opinion would be the same, whether such a letter was issued or not.

23. We, therefore direct that the extra increment given pursuant to any judgment of the Tribunal which has now been set aside be recovered by the Union of India. It would be open to the Government of India to recover the same or to absorb the same in the future monthly salary spread over, month by month.

24. But there is one exception to this direction for recovery. In case where any of these employees of the technical branch have received the benefit of the increment because of the judgment which

we have now set aside, in case they have retired as of today, no recovery will be made from their retiral benefits on the basis of the judgment which we have pronounced today.

25. The appeals are disposed of in the manner mentioned above. There shall be no order as to costs.

Order accordingly.