

SUPREME COURT OF INDIA

Union of India

Vs.

S. Thakur

C.A.No.5892 of 2002

(R.V.Raveendran and J.M.Panchal)

17.10.2008

JUDGMENT

J.M.Panchal, J.

1. The instant appeal is directed against order dated January 11, 2002, rendered by Division Bench of the High court of Delhi in Civil Writ Petition No. 216/2001 by which the direction given by the Central Administrative Tribunal Principal Bench, New Delhi to the appellants, to grant to the respondent, who retired on January 31, 1997 as Assistant Director, Intelligence Bureau, upgraded scale of Rs. 12000-16500 with effect from January 1, 1996, vide judgment dated January 23, 2001 in O.A. No. 2185 of 1999, is upheld.

2. The Fifth Central Pay Commission was set up by the Government of India vide Resolution dated April 9, 1994. The Commission submitted its Report on January 30, 1997 relating to structure of emoluments, allowances, benefits to be paid to the Central Government employees including Union Territories, Members of All-India services and personnel belonging to the Armed forces. Apart from revising the pay scale of employees at each stage, the Commission recommended that out of 52 posts of Assistant Director in Intelligence Bureau, 40 posts be upgraded and placed in the pay scale of Rs.3700-5000 whereas 12 posts be upgraded as Joint Deputy Director and placed in the pay scale of Rs.4500-5700. Vide Government order dated October 16, 1998, 40 posts of Assistant Directors were placed in the pay scale of Rs.12000-16500 corresponding to pre-revised scale of Rs.3700-5000 and the remaining 12 posts were placed in the scale of Rs.14300-18300 corresponding to pre-existing scale of Rs.4500-5700 and re-designated as Joint Deputy Directors. It was also mentioned in the said order that the implementation of the orders involved restructuring of the Executive cadre and redistribution of posts and therefore higher scales would be applicable only prospectively, i.e., from October 1, 1997. The incumbents, who were similarly situated, were granted benefit of higher pay scale with effect from January 1, 1996. Therefore, the respondent who retired from service as Assistant Director (Executive) on January 31, 1997 gave a representation that the benefit of upgraded scale be extended to him from January 1, 1996. The said representation was rejected on July 13, 1999. Feeling aggrieved the respondent filed original application No. 2185 of 1999 before

the Central Administrative Tribunal Principal Bench New Delhi with a prayer to direct the appellants to grant benefit of upgraded scale to him with effect from January 1, 1996.

3. The Tribunal sought a clarification from the Learned Counsel of the appellants as to whether any restructuring of cadre and redistribution of posts was actually involved insofar as Assistant Directors were concerned. The Tribunal was informed that no such restructuring of cadre and redistribution of posts were involved as far as those 40 posts were concerned and changes were required to be made only in regard to the remaining 12 posts which were earmarked for upgradation. Under the circumstances the Tribunal found that Assistant Directors (Executive) in the group of 40 could have been placed in the higher grade with effect from January 1, 1996 itself and delaying the benefit of revision of pay scale till October 1, 1997 was unreasonable. Therefore, by Judgment dated January 23, 2001, the Tribunal directed the appellants to grant the upgraded scale of Rs.12000- 16500 to the respondent with effect from January 1, 1996.

4. Feeling aggrieved the appellant invoked extra ordinary jurisdiction of the High Court by filing CWP No. 216 of 2001. The High Court by Judgment dated January 11, 2002 has dismissed the petition giving rise to the instant appeal.

5. This Court has heard the Learned Counsel of the parties at length and considered the documents forming part of the appeal.

6. The plea that as restructuring of cadre and redistribution of posts was involved in so far as the Assistant Directors were concerned and therefore the policy decision taken by the State Government to give benefit of upgraded scale to an Assistant Director (Executive) with effect from October 01, 1997 should not have been interfered with by the Tribunal and by the High Court is devoid of merits. There is no dispute nor there can be any, to the principle that fixation of pay and date from which the benefit of revised pay scale would be admissible is the function of the Executive and the scope of judicial review of such an administrative decision is very limited. However, it is equally well-settled that the Courts would interfere with the administrative decisions pertaining to pay fixation and pay parity as well as the date from which the revised pay scales would be made applicable if it is found that such a decision is unreasonable, unjust and prejudicial to a section of employees.

7. As observed earlier, no restructuring of cadre and redistribution of posts in regard to 40 posts of Assistant Directors was involved at all so as to justify the stand of the appellants to extend the benefits of revised pay scales of Assistant Directors with effect from January 1, 1997. No other reason could be advanced by the appellants to justify their stand that the Assistant Directors were entitled to benefit of revised pay scale with effect from January 1, 1997. As the appellants were not required to undertake exercise of restructuring of cadre nor was it necessary to amend the recruitment Rules, the Assistant Directors forming part of the group of 40 to which the respondent belonged could not have been denied the benefit of revision of pay scale with effect from January 1, 1996, which benefit was awarded to other similarly situated employees with effect from January 1, 1996. As the decision to give benefit of revision of pay scale to the Assistant Directors with effect from October 1, 1997

was found to be unreasonable, unjust, arbitrary and prejudicial to the section of the employees, the Tribunal directed the appellants to grant benefit of revision of pay scale to the respondent with effect from January 1, 1996. The said decision was not found to be erroneous or illegal at all and therefore the High Court was justified in not interfering with the same while exercising powers under Article 226 of the Constitution.

8. In view of the above, the appeal fails and is dismissed. There shall be no order as to costs.