**SUPREME COURT OF INDIA**

Union of India

Vs.

Narendra Gupta

C.A.No.8294 of 2009

(Tarun Chatterjee and Surinder Singh Nijjar JJ.)

15.12.2009

**ORDER**

**Surinder Singh Nijjar, J.**

1. Leave granted.

2. This appeal is directed against the Judgment and Order of the Division Bench, High Court of Judicature at Bombay in Writ Petition No.7301/02 dated 3.2.2006 whereby the writ petition filed by the Union of India, appellant herein impugning the order dated 20.12.2001 passed by the Central Administrative Tribunal (hereinafter referred to as the `Tribunal') in Original Application No.669/1997. By that order the respondents have been held entitled to the allowance as envisaged in D.O.P.T. letter dated 31.3.1987. Direction had also been issued to grant the allowance to the respondents @ 30 per cent of the emoluments w.e.f. 1.1.1986 and @ 15 per cent w.e.f. 9.7.1992.

3. Before the Tribunal it was the case of the appellants that O.M. dated 31.3.1987 and consequentially O.M. dated 9.7.1992 were not applicable to Respondents as they were members of the permanent faculty of the Institute of Armament Technology. This plea of the Appellants was rejected by the Tribunal. The Tribunal accepted the claim of the respondents that they worked in the Naval College of Engineering, as civilian employees belonging to the Defence Research and Development Services (hereinafter referred to as `DRDS'). They were aggrieved by the fact that they were not being paid training allowance @ 30 per cent of the emoluments w.e.f. 1.1.1986 and @ 50 per cent of the emoluments w.e.f. 9.7.1992 in as much as they were employees in the I.A.T. as Scientists but are detailed as faculty members for training other government officials. It was claimed that the training allowance was admissible to them as part of an incentive scheme of the Government of India set out in Department of Personnel, O.M. dated 31.3.1987. The Tribunal relied on Part 2(i) of the aforesaid O.M. which is as follows:

> "2(i) When an employee of Government joins a training institution meant for training government officials, as a faculty member other than as a permanent faculty member,

he will be given a "training allowance" at the rate of 30 per cent of his basic pay drawn from time to time in the revised scales of pay."

4. Before the Tribunal, the appellants claimed that the respondents were not entitled to the aforesaid benefit as they were permanent faculty members. The allowance was only admissible to faculty members other than permanent faculty members. It was the claim of the appellants that the respondents held cadre posts included in the DRDS and therefore were not entitled to training allowance. The Tribunal rejected the aforesaid plea. Therefore, the appellants moved the High Court by way of a writ petition under Article 226 of the Constitution of India. The aforesaid writ petition was dismissed by the Division Bench with the following observations:

> "The petitioners have not produced any service rules to show that IAT has a different cadre or that the respondents were recruited by any advertisement for specific posts in IAT. No such material was produced nor could be produced, considering the various admissions made by the petitioners themselves that the respondents were recruited as scientists, in terms of recruitment rules for scientists in D.R.D.O. and have also been promoted under the said rules. Mere continuation in the said posts for a long time cannot result in the posts held by the petitioners becoming permanent posts in I.A.T. What clinches the issue is that the promotion to the respondents were not given under any rules framed by IAT but the promotions were based on rules framed by DRDO, like any other employee in DRDO. In the circumstances, the finding of the fact recorded by the Tribunal that there are no posts in IAT, does not suffer from any error of law apparent on the face of the record nor it can be said that the finding is perverse, based on no material or by ignoring relevant material."

5. Learned counsel appearing for the appellants (Union of India) submits that the aforesaid observations came to be made as the provisions of the *Defence Research Development Service Rules, 1979* (amended and incorporated upto October 2008) were not brought to the notice of the High Court.

> "Learned counsel has brought to our notice that the aforesaid Rules have been made by the President of India in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. These Rules came into force on 13.1.1979, when they were published in the Gazette of India in accordance with the provisions contained in Rule 1, sub-Rule 2. Rule 2, sub-Rule 9 defines service to mean the "Defence Research and Development Service." The aforesaid Rule provides that different categories of scientists shall be members of the service provided they fall within any of the categories enumerated in Rule 5. According to the learned counsel all the respondents would be governed by the provisions of the Rule 5. A perusal of the observations made by the High Court would show that the claim of the appellant has been rejected on the ground that the appellant had failed to produce any service rules governing the service conditions of the respondents."

6. In our opinion, the observations made by the High Court need reconsideration in view of the Rules now produced before this Court. Consequently, we allow this appeal and set aside the Judgment and Order passed by the Division Bench in Writ Petition No.7301/02 dated 3.2.2006. The matter is remanded back to the High Court for deciding the writ petition afresh on merits after taking into consideration the Defence Research Development Service Rules, 1979. Parties are at liberty to approach the High Court for filing further pleadings that may be necessary for the complete adjudication of the issues arising in the writ petition.

7. No costs.