IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/B) No. 98 of 2016

Union of India & others. ..……. Petitioners

Versus

Central Administrative Tribunal & another. ……. Respondents

Mr. Sanjay Bhatt, Standing Counsel for the Union of India / petitioners.
Mr. T.P.S. Takuli, Advocate for respondent No. 2.

JUDGMENT

Coram: Hon'ble K.M. Joseph, C.J.
Hon'ble V.K. Bist, J.

Dated: 30th November, 2017

K.M. JOSEPH, C.J. (Oral)

Petitioners are the respondents in the Original Application filed by the second respondent in this case, who will be referred to as the applicant. By the order, which is impugned, the Tribunal has allowed the Original Application and directed the petitioners to re-consider the claim of the applicant and to grant him the same scale of pay as well as the same benefits of ACPs, which his counterpart working at BEG and Centre was enjoying, if the applicant is otherwise eligible.

2. The applicant was appointed on 14.01.1984 as a Boot Maker on a pay-scale of ₹ 210-290/- in the Bengal Engineering Group (BEG). The applicant was upgraded as skilled w.e.f. 01.01.1987 (according to the petitioners, the applicant was enrolled in the semi-skilled grade and the upgradation took place, as aforesaid, w.e.f. 01.01.1987). The case of the petitioners, *inter alia*, is that, in the letter, it is not mentioned that the applicant was appointed as an industrial Boot Maker or non-industrial Boot Maker. Under the 4th Pay Commission, his pay-scale was upgraded to ₹ 950-1500/-. It is the further case that the applicant was transferred / posted at Station Workshop EME, Roorkee under Surplus / Deficiency Scheme on 30.09.1987. There is a case that the orders issued during that time would indicate that the applicant was a non-industrial employee. On 05.07.1999, Station Workshop EME, Roorkee, issued an order and the

applicant was given permanent posting in Military Hospital, Roorkee under the Surplus Scheme. It is the further case of the petitioners that the post of Boot Maker in Military Hospital, Roorkee, is under the cadre controlling authority of DGMS (Army) under AG's Branch. The post of Boot Maker is stated to be a non-industrial post. The replacement scale for the post under the 4th and the 5th Pay Commission is stated to be ₹ 950-1500/- and ₹ 3050-4590/- respectively. It is the further case of the petitioners that the post of Boot Maker in DGMS (Army) is an isolated post having neither feeder grade nor promotion grade. Accordingly, under OM dated 09.08.1999, it is the case of the petitioners that, in the absence of defined hierarchical grades, financial upgradation is to be given in the immediately next higher Standard / Common Pay Scale, which is ₹ 3200-4900/- and ₹ 4000-6000/- respectively. Thus, in short, the case of the petitioners is that the applicant is entitled to first and second ACP in the pay-scale of ₹ 3200-4900/- and ₹ 4000-6000/- respectively. It appears that the applicant was granted ACP by order dated 19.02.2000, which was approved by the Brig RCD Bhate DDMS HQ UP Area. The applicant on coming to know that the Boot Maker enrolled along with him at BEG and Centre was drawing the pay-scale of skilled Boot Maker, brought it to the notice of the authority. Army approved the proposal and arrears were given; but, according to the petitioners, inadvertently, concurrence of IHQ of Army / DGMS-3(B) was not taken. A court of inquiry was ordered and the applicant's part II order for skilled grade ACP-I was cancelled and he was reduced to semi-skilled grade and arrears of excess payment were recovered. Against order dated 04.02.2009, by which it was found that the financial upgradation under ACP has been given without any order from the Headquarter and the case was directed to be investigated and extra payment was directed to be recovered from the salary, the applicant filed Original Application No. 1257 of 2010. The said Original Application came to be disposed of by noticing that no order has been passed against the applicant depriving him from the entitlement of second ACP. Noting that the applicant has approached the Department and no order has been passed against the applicant, it was found that the applicant cannot be said to be aggrieved

by the order, which is of general nature. The Original Application, accordingly, came to be dismissed as premature and not maintainable.

3. It is making reference to the said Original Application that the impugned order before the Tribunal in this case, namely, Annexure No. 5 dated 18.01.2011 came to be passed. It is this order, which has been directed to be reconsidered by the Tribunal.

4. We have heard Mr. Sanjay Bhatt, learned Standing Counsel on behalf of the petitioners and Mr. T.P.S. Takuli, learned counsel for the applicant.

5. Learned counsel for the petitioners would submit that, though the applicant was originally appointed on 14.01.1984 at BEG, he has been subsequently working in the Military Hospital since 1999 and the post of Boot Maker in Military Hospital, where the applicant is working, is not an industrial cadre post. He would reiterate the terms of the order, which is impugned before the Tribunal, wherein it is stated, *inter alia*, that the post of Boot Maker in the hospital is an isolated post; there was no promotional post, nor feeder category; they have applied the order dated 09.08.1999 and applied the next higher Standard / Common Pay Scale, under which, the first ACP would be ₹ 3200-4900/- and second ACP would be ₹ 4000-6000/- respectively, which the applicant has been given. It is submitted that there are distinguishing features between the Boot Maker at BEG Centre at Roorkee, which comes under a different cadre and also it does not come under the cadre controlling authority of DGMS (Army) and, therefore, no comparison can be made.

6. Per contra, Mr. T.P.S. Takuli, learned counsel for the applicant would seek to support the order. He would also submit that the applicant was not aware of the posting. The applicant was not aware of his being posted to Station Workshop under the Surplus / Deficiency Scheme or subsequently to the Military Hospital and no order was received. He would submit that it would have been different if the applicant had not

been appointed originally in the year 1984 in BEG. After having been appointed in BEG, the applicant cannot be treated differently from the Boot Makers, who are appointed with him and who were working in BEG and who are getting the higher pay-scale of ₹ 5000-150-8000/-.

7. We notice that the Tribunal has proceeded to direct the matter to be re-considered. With respect to the same, we also feel that the matter must be re-considered. We notice that, in paragraph 9 of the order, there is reference to one Boot Maker Kishan Lal, who was appointed along with the applicant at BEG & Centre, being considered as skilled trademan and getting the pay-scale of ₹ 3050-4590, with the second ACP of ₹ 5000-8000/-. There is also reference to the applicant being granted the same pay-scale; but he being reverted to the scale of semi-skilled Boot Maker and also the withdrawal of the ACP, which was granted at par with his counterpart at BEG. Thereafter, it is stated that the controlling authority is different. In respect of the controlling authority being different, it is the finding that both the establishments are working under IHQ of Army and both of them were simultaneously appointed and posted at BEG and Centre on the same pay-scale of ₹ 210-290. The applicant is stated to have been transferred to Military Hospital, Roorkee, from BEG & Centre. There is a finding that the denial of same pay-scale is a clear violation of Articles 14 & 16 of the Constitution and the respondents cannot be allowed to discriminate the applicant from Kishan Lal. It is, thereafter, that a finding is entered that, if the terms and conditions of appointment of the applicant and Kishan Lal are the same, the applicant is also entitled to the same pay-scale and same benefit of ACPs and the applicant cannot be discriminated on the ground that he is working under different controlling authority while both the Controlling Authorities come under IHQ of Army. It is, thereafter, that the direction was given.

8. In this case, it is to be noted that, while it is true that the applicant was originally appointed on 14.01.1984, the definite case of the petitioners appears to be that, in the year 1987, the applicant came to be posted out to Station Workshop EME, Roorkee, under the Surplus /

Deficiency Scheme w.e.f. 30.09.1987. There is also, in the impugned order before the Tribunal, reference to certain orders, which show that the applicant was treated as a non-industrial employee. The orders are not before us. Still further, it would appear that the Station Workshop EME, Roorkee, issued order giving permanent posting to the applicant in Military Hospital, Roorkee, under the Surplus Scheme w.e.f. 05.07.1999. We notice that there is a definite case that the applicant is shown as a non-industrial employee and he joined as such in the Military Hospital, Roorkee. The entire case, thereafter, is built around the order dated 09.08.1999 insofar as the authorities have proceeded on the basis that the post of Boot Maker is an isolated post with neither feeder category nor promotional grade. Therefore, they had relied on order dated 09.08.1999, under which, financial upgradation under ACPs, in such circumstances, was to be given by placing the applicant in the next higher Standard / Common pay scale. The pay-scales are annexed to the OM dated 09.08.1999.

9. Articles 14 and 16 frown upon treating equals unequally, as much as they frown upon treating unequals equally. Inequality cannot be predicated on insubstantial causes. If, substantially, the parties are discharging the same duties and functions, then, ordinarily, they should get the same treatment. In this regard, we may refer to a judgment of the Apex Court dealing with parity in pay-scale in the case of **State of Punjab & others vs. Jagjit Singh & others**, reported in **(2017) 1 SCC 148**.

10. Since we are also not inclined to interfere with the order passed by the Tribunal directing re-consideration of the matter, we only need to make certain observations. The authority must consider whether, as far as the post of Boot Maker in BEG & Centre is concerned, it is also an isolated post and whether it has feeder category or promotional categories. If the post of Boot Maker in BEG & Centre also does not have feeder category and promotional category, then it would also be an isolated post and, yet, the authorities would have to consider as to why the Boot Maker

at BEG & Centre is being treated differently by giving him the higher pay-scale by way of second ACP in comparison to what has been given to the applicant. Next, the authority will also consider the effect of the orders, which have been passed, by which the applicant had been transferred / posted in 1987 in the Station Workshop and, still later, in 1999, in the Military Hospital. The authorities will necessarily consider the effect of the order dated 14.01.1987 by which the applicant was upgraded to skilled. No doubt, the authorities will be free to consider the effect of the subsequent postings of the applicant on the basis of the Surplus / Deficiency Scheme in 1987 and 1999 on the availability of the ACP, though it may be true that the applicant was originally appointed in the year 1984 in BEG. We only make it clear that the fact that the Boot Maker at BEG was appointed along with the applicant need not be the sole basis for giving the benefit of second ACP to the applicant also, if there are substantial differences between them. We also make it clear that the authority will take into consideration the law as contained in **State of Punjab & others vs. Jagjit Singh & others**, reported in **(2017) 1 SCC 148**. The order will be passed within a period of one month from the date of production of a certified copy of this judgment. The order passed by the Tribunal will stand modified as above.

11. It is brought to our notice that, pursuant to an interim order passed by this Court, order dated 19.09.2016 has been passed. The said order was passed pursuant to the interim order, wherein it is made clear that it will be subject to the result of the writ petition. In such circumstances, we still direct that an order be passed re-considering the matter in terms of the observations contained in this judgment.

12. The writ petition is, accordingly, disposed of.

(V.K. Bist, J.)
30.11.2017

(K.M. Joseph, C. J.)
30.11.2017

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