



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: October 31, 2023*

+ W.P.(C) 4336/2023, CM APPL. 16663/2023

(3) UNION OF INDIA & ANR.

..... Petitioners

Through: Mr. Balendu Shekhar, CGSC with
Mr. Krishna Chaitanya, Mr. Raj
Kumar Maurya and Ms. Tanisha,
Advs.

versus

THE DRAUGHTSMENS CARTOGRAPHIC ASSOCIATION
SURVEY OF INDIA & ANR.

..... Respondents

Through: Mr. Sudarshan Rajan, Mr. Hitain
Bajaj and Mr. Rohit Bhardwaj, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner / Union of India through its functionaries challenging the order dated March 31, 2022, passed by the Central Administrative Tribunal Principal Bench, New Delhi ('Tribunal', for short) in Original Application No.4564/2014 ('OA', for short) whereby the Tribunal has allowed the OA filed by the respondents herein by stating in paragraph 13 which we reproduce as under:

"13. It is not in dispute that the case is relating to Draughtsmen Grade-II who are/were working in Surveyor



General of India, which is having various units all over India, and the rules and terms and conditions of service are equally applicable to its employees all over India. Hence, relying on the ratio of the various judgements of the Hon'ble Supreme Court, as quoted above, as also the recommendations of the V CPC, we are of the considered view that the applicants are entitled to the reliefs as sought by them. Accordingly, the OA is allowed with the following directions:

- (i) Impugned order dated 28.02.2014 (Annexure A-1) is quashed and set aside;*
- (ii) The respondents are directed to step up the pay of the applicants at par with their juniors from the date the anomaly crept in;*
- (iii) Pursuant to stepping up of pay, the respondents are further directed to calculate the difference in pay and allowances and pay arrears thereof to the applicants who are still in service;*
- (iv) In case some of the applicants have retired/died, their pension/family pension shall be revised by revising their PPOs on the basis of grant of stepping up of pay and the respondents shall grant arrears of pension/family pension to pensioner/family pensioner with interest of 6% p.a. on such arrears;*
- (v) The above exercise shall be completed within a period of 04 months from the date of receipt of a certified copy of this order. No costs."*

2. The submission of the learned counsel for the petitioners is that the Tribunal has erroneously and overlooking the judgment of the Supreme Court in the case of ***Union of India v. R. Vasudev Murthy, (2010) 9 SCC 30***, quashed the speaking order dated February 28, 2014, passed by the petitioner No.2 and allowed the OA in the manner it has done in the impugned order.



3. According to him, the reliance placed by the Tribunal on the order of the Tribunal, Guwahati Bench, dated May 30, 2003, in OA. 14/2002 is misplaced, in view of the mandate of the Supreme Court in ***R. Vasudev Murthy (supra)***. He submits that the respondents had initially approached the Tribunal in OA.457/2005, and sought direction against the petitioners to the extent the benefit of the judgment of the Guwahati Bench of the Tribunal be given to all Draughtsmen Grade II of the Survey of India with arrears of pay and interest including to those Draughtsmen, who had died or retired with all consequent benefits. The Tribunal in OA.457/2005, did not get into the question as to whether the respondents are similarly placed like the applicants in OA.14/2002 decided by the Guwahati Bench of the Tribunal and secondly whether the respondents are guilty of suppressing material facts in not disclosing the issuance of OM dated June 01, 2001 by the Ministry of Finance, Government of India. According to him, the respondents did not disclose the factum of issuance of memorandum dated June 01, 2001 which superseded earlier memorandum dated October 19, 1994 and the respondents were guilty of suppressing this material fact from the Tribunal. It was further held that the relief claimed in the OA was hit by the principles of *res-judicata*.

4. Aggrieved by the said order dated February 27, 2006, passed by the Tribunal in OA.457/2005, the respondents filed a review application being RA. No.63/2006, which came to be dismissed vide order dated August 18, 2006. Aggrieved by the order dated August 18, 2006, the respondents approached this Court by way of W.P.(C) No.17207/2006. This Court held that, the respondents had got the higher scale of ₹425-



700 (revised pay scale of ₹5000-8000) in terms of orders to the effect passed in OA.2094/2001.

5. He stated in terms of the judgment of the Supreme Court in **R. Vasudev Murthy (supra)**, the Draughtsmen would not be entitled to further upgradations automatically but the same is subject to availability of vacancies in the respective cadres of Draughtsmen Grade III, Draughtsmen Grade II and Draughtsmen Grade I respectively.

6. In the meanwhile, a separate OA.184/2005 was filed before the Calcutta Bench of the Tribunal by some of the similarly placed Draughtsmen Grade II seeking the benefit of the Guwahati Bench of the Tribunal in OA.14/2002 dated May 30, 2003. The same was allowed by the Calcutta Bench of the Tribunal on August 21, 2009 by relying upon the directions of the Guwahati Bench of the Tribunal in OA.14/2002 dated May 30, 2003.

7. Further, the writ petition filed by the petitioners herein against the said judgment was dismissed by the Calcutta High Court on February 25, 2010. The Supreme Court also dismissed the SLP (C) No.11552/2010, filed by the petitioners herein on August 08, 2010.

8. According to him, this Court had in its judgment dated December 12, 2013 observed that the order of the Supreme Court in **R. Vasudev Murthy (supra)**, was not brought to the notice of the Supreme Court when the Supreme Court dismissed the SLP, arising from the order dated February 25, 2010 of the Calcutta High Court.

9. According to him, when this Court has observed that the judgment of the Supreme Court in **R. Vasudev Murthy (supra)**, squarely covers the case and this Court was also of the view that the



grant of higher scale to the juniors in terms of the judgment of the Guwahati Bench of the Tribunal and Calcutta Bench of the Tribunal has resulted in an anomaly inasmuch as, the juniors are getting more pay than the seniors, i.e. the respondents, however, according to him, this plea was not taken either before the Tribunal or before this Court and therefore, the same could not be determined at that time by this Court.

10. According to the counsel, this Court also went into the concept of step up of pay as enshrined in O.M. dated February 04, 1966 under FR 22, wherein the pay of a senior would be stepped up if the conditions laid down in the instructions are fulfilled. It was in the light of the same, this Court directed that the petitioners herein to consider the aspect of anomaly which has crept in due to grant of higher pay scale to persons junior to the respondents in terms of the order of the Guwahati Bench and the Calcutta Bench of the Tribunal and pass appropriate orders.

11. It is in pursuance of the order dated December 12, 2013 in W.P. (C) No.17207/2006 passed by this Court, the aspect of pay anomaly in the pay of respondents with the pay of the applicants in OA. 14/2002 before the Guwahati Bench of the Tribunal, was examined by the petitioner / Department and a reasoned speaking order dated February 28, 2014 was passed by rejecting the plea of the respondents with respect to their stepping up of pay. He justified the rejection, as the respondents herein were in the scale of ₹425-700 (1400- 2300 - as per 4th CPC) (corresponding revised scale of ₹5000-8000 – as per 5th CPC) whereas, the applicants of OA.14/2002 were in the scale of ₹550-750 (revised scale ₹1600-2660 – as per 4th CPC) (corresponding scale



₹5500-9000 - as per 5th CPC). Moreover, the scale of ₹550-750 (revised scale ₹1600-2660 - as per 4th CPC) (corresponding scale ₹5500-9000 - as per 5th CPC) was granted on the directions of the Tribunal of Guwahati Bench vide judgment dated May 30, 2003 and the same was not allowed to the respondents by any Court or by the petitioners and therefore, the scale(s) of respondents and applicants in OA.14/2002 are not identical.

12. He submits that the speaking order also dealt with the fact that in the present case, the provision of FR 22 (I) (a) (1) has no applicability as there is no promotion or appointment of the respondents to a higher post which is a necessary requirement for applicability of the said FR.

13. In the last, he submits that the directions given by the Tribunal for stepping up of pay, the petitioners were further directed to calculate the difference in pay and allowances and pay arrears thereof to the respondents, who are still in service. In case some of the respondents have retired / died, their pension / family pension shall be revised by revising their Pension Payment Orders on the basis of grant of stepping up of pay and the respondents shall be granted arrears of pension / family pension with interest of 6% per annum on such arrears which is clearly untenable.

14. On the other hand, Mr. Sudarshan Rajan, learned counsel appearing for the respondents has challenged the very filing of the writ petition by the petitioners, inasmuch as the petitioners have resorted to pick and choose policy, inasmuch as they have given the benefit to certain employees by issuing the order but denying the said benefit to



the respondents. In this regard, our attention has been drawn to a communication dated 07/08/03/2019 issued by the office of the petitioner No.2 the Surveyor General of India, Dehradun wherein, the following has been stated:-

“Most Immediate/Court Case/E. Mail

No.E2-766 / 1196-B (R.N.Majhi) (Coll.3)

Dated:07-03-2019.
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To,

The Director,
Odisha GDC,
Survey of India,
Bhubaneswar.

Sub: Order dated 19th June, 2017 of Cuttack Bench in O.A No. 1061 of 2012 filed by Shri Raghunath Majhi and Others.

With reference to subject cited above, it is informed that Ministry of Science and Technology, Department of Science and Technology, New Delhi has issued orders vide their Letter No. SM/04/50/2012 dated 01-03-2019 for implementation of the Hon'ble Tribunal, Cuttack Bench, Cuttack order dated 19th June 2017 passed in O.A. No 1061 of 2012 filed by Shri Raghu Nath Majhi and Others V/s Union of India.

2. Hon'ble CAT, Cuttack Bench directed respondent in Para 7 of the above order that "we have discussed in the above paragraphs the improper observations of respondent No-2 in the impugned order. The judgment of the Hon'ble Apex Court deciding that benefits given to persons who approached the Court, should normally be



extended to the other similarly placed persons has also been discussed above. We are of the view that the respondents give a fresh consideration to the matter and take their decision in view of the above position of law to be communicated to the applicants within ninety days of receiving a copy of this order. They are also cautioned not to make such observations with regard to the various decisions of the courts of law.”

3. Accordingly, the benefit of Para 2(c) of O.M dated 19-10-1994 be given notionally with effect from 13-05-1982 and actually with effect from 01-11-1983 to the applicants of O.A No 1061/2012 and allow them to draw pay in the scale of Rs. 550-750/(3rd CPC)/Rs. 1600-2660 (4th CPC)/Rs. 5500-9000 (5th CPC)/Pay Band Rs. 9300-34800+Grade Pay of Rs. 4200(6th CPC)/level-6(35400-1,12,400)(7th CPC) with all consequential benefits with effect from the date as applicable to each applicant respectively on completion of the minimum period of service rendered as stipulated in para-2 (c) of aforesaid O.M. These orders would be applicable to the applicants only.

(Amardeep Singh)

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*Deputy Surveyor General,
Surveyor General's Office.*

Copy to:

- 1. The Secretary to the Govt. of India,
Ministry of Science and Technology.
Department of Science and Technology, New
Delhi for your kind information with
reference to their Letter No. SM/04/50/2012
dated 01-03-19 (Kind attention: Miss Neelam,
Under Secretary)*
- 2. Additional Survey General, Eastern Zone,
Survey of India for information.*



3. Office Superintendent, Legal Cell, SGO with reference to their ION No. LC- 34/1196-C (R.Manjhi)/1147 dated 05-03-2019 for information.”

15. According to him, paragraph 3 thereof is very clear that the benefit has been given to the applicants in OA.260/01061/2012, whereas the same has been denied to the respondents on the plea that the respondents herein are not entitled to the same.

16. Having heard the learned counsel for the parties and perused the aforesaid communication so relied by Mr. Sudarshan Rajan, we see the applicants in OA.260/01061/2012 having granted the benefit of the pay scales as noted in the said communication which position has not been contested by Mr. Balendu Shekhar, the respondents cannot be denied the benefit as granted to them in the impugned order.

17. If that be so, no interference is called for to the impugned order. The writ petition and connected application are dismissed.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

OCTOBER 31, 2023/aky