

Union of India and Others Vs. Kailash Niharika and Another

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Apr-25-2012

Judge : The Honourable Mrs. Meera Chhibber, Member (J) & the Honourable Dr. a.K. Mishra, Member (a)

Appeal No. : RA-340 of 2011 & CP-655 of 2011 in OA-369 of 2010

Appellant : Union of India and Others

Respondent : Kailash Niharika and Another

Advocate for Pet/Ap. : For the Applicants: M.K. Bhardwaj, Advocate. For the Respondents: Yogesh Sharma, Advocate.

Judgement :

Dr. A.K. Mishra, Member (A)

1. The present Review Application has been filed by the respondent department on the ground that the applicants in OA-369/2010 were not entitled to the benefits of Office Memorandum dated 27.03.2011 of the Department of Personnel and Training as they were holding Group-C post in the parent department whereas they were appointed on deputation against Group-B post. Since they were not having the same post prior to their deputation they are not entitled to the benefits of the O.M. dated 27.03.2011.

2. Learned counsel for the respondents (original applicant in the OA) submits that the present review application is not maintainable: firstly, it has been filed after limitation period was over and no justification has been given for condonation of delay; and secondly, the respondent department wants to re-argue the whole matter, which is not permissible as per the settled law on the scope of review.

2.1 He further submits that the applicants were in the same pay scale of Rs.1640-2900/- (Revised to Rs.6500-10500/-) in their parent department and they were brought on deputation on the post which carried the same pay scale. He draws our attention to Govt. of India O.M. No. 13012/1/98-Estt.(D) dated 12.06.1998 by which all the posts which were in the pay scale of Rs.6500-10500/- were declare Group-B from 1996. Both the applicants had been given the pay scale of Rs. 6500-10500/- w.e.f. 01.01.1996. Therefore, both of them were in the Group-B classification.

2.2 He further contends that classification follows pay scale not the vice versa. Employees belonging to a particular minimum pay and above are treated to be in a specific group classification enjoying facilities applicable to such classification. He refers to the Notification dated 13.11.2001 of the Ministry of Home Affairs (Department of Official Language) in which it has been clearly mentioned that Lecturers originally drawing the salary of Rs.1640-2900/- (Revised to Rs. 6500-10500/-) would be treated as Group-B officers w.e.f. 01.01.1996 on the basis of the recommendations of the Fifth Central Pay Commission.

3. Admittedly, the applicants were drawing the pay scale of Rs.1640-2900/- in the parent department and they have been on deputation on a post which carried an identical pay scale. Applicant No.1 joined on the deputation post on 21.11.1995 and Applicant No.2 on 05.10.1996. By the principle accepted by the government about classification of posts on the basis of pay scales applicant No.2 was conferred the status of Group-B officer even prior to his deputation. If applicant No.2 would be granted the benefits of O.M. dated 27.03.2001 when he joined the deputation post later in point of time, it would be illogical to deny the same benefits to applicant No.1.

4. Besides, the respondents never referred the issue of the applicants being in Group-C post in the parent department whereas the undisputed fact is that they were absorbed on deputation basis against Group-B post. Neither this plea was taken in their counter-reply nor raised at the time of arguments. The representation of the applicants for assigning them proper seniority in the cadre of ARO was examined by the department in its note dated 21.05.2009 and the matter was referred to the DoPandT quoting the rule position that the applicants could be given seniority from the dates they were appointed on regular basis to the same or equivalent grade in their parent department. The DoPandT in its note dated 21.08.2009 advised them to follow instructions communicated vide O.M. dated 27.03.2001. Thereafter, the department examined whether the O.M. was applicable from the date of pronouncement of the judgment i.e. to say 14.12.1999 of the Hon'ble Supreme Court in the case of Rooplal and Others Vs. Lt. Governor of Delhi, [JT 1999(9) SC 597] or from 29.05.1986 and the view of this Tribunal in OA-1180/2002 expressed in the order dated 01.01.2003 was extensively quoted. The DoPandT again reiterated its view.

5. We have taken note of all the developments in the case and the view that the government itself was taking, which was reflected in their notes. Since the main principles enunciated in the O.M. dated 27.03.2001 were accepted by the department, the only dispute which was raised in the O.A. was about its applicability: whether from 14.12.1999 or from 29.05.1986 following the ruling given in OA-1180/2002 that the O.M. was applicable from 29.05.1986.

6. To condone the delay, it is stated that the case was referred to competent authority. Thereafter, it was sent to DoPandT who advised to consult the department of Legal Affairs. The file came back in the month of April, 2011 from the department of Legal Affairs to examine the matter after taking all the facts into account. Since according to their own admission, the file came back in April, 2011 the delay from April, 2011 till 15.09.2011 is not explained. Therefore, we do not consider it to be a fit case to condone the delay.

7. We have already adverted to the merit of the grounds taken by the review applicants. For greater appreciation the O.M. dated 27.03.2011 is extracted

below:-

“OFFICE MEMORand UM

Subject: Seniority of persons absorbed after being on deputation

The undersigned is directed to say that according to our O.M. No. 20020/7/80-Estt. (D) dated May 29, 1986 (copy enclosed) in the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for ‘transfer on deputation/transfer’), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from the date he has been holding the post on deputation, or the date from which he has been appointed on a regular basis to same or equivalent grade in his parent department. Whichever is later.

2. The Supreme Court has in its judgment dated December 14, 1999 in the case of Shri S.I. Rooplal and Others Vs. Lt. Governor through Chief Secretary, Delhi, JT 1999 (9) SC 597 has held that the words ‘whichever is later’ occurring in the Office Memorandum dated May 29, 1986 and mentioned above are violative of Articles 14 and 16 of the Constitution of India and, hence, those words have been quashed from that Memorandum. The implications of the above ruling of the Supreme Court have been examined and it has been decided to substitute the term ‘whichever is later’ occurring in the Office Memorandum dated May 29, 1986 by the term ‘whichever is earlier’.

3. It is also clarified that for the purpose of determining the equivalent grade in the parent department mentioned in the Office Memorandum dated May 29, 1986, the criteria contained in this Department Office Memorandum No. 14017/27/75-Estt(D)(pt) dated March 7, 1984 (copy enclosed), which lays down the criteria for determining analogous posts, may be followed.

4. These instructions shall take effect from the December 14, 1999 which is the date of the judgment of the Supreme Court referred to above.

5. Insofar as personnel serving in Indian Audit and Accounts Departments are concerned, these instructions are issued in consultation with the Comptroller and Auditor General of India. However, these orders (in keeping with paragraph 4 of the Office Memorandum dated May 29, 1986 as referred to above) will not be applicable to transfers within the Indian Audit and Accounts Department which are governed by orders issued by the Cand AG from time to time.

6. The above instructions may be brought to the notice of all concerned for information, guidance and necessary action”.

8.1 It only says that employees working in the same grade when on deputation to the identical grade will carry seniority of their parent organization.

8.2 Admittedly, the applicants were having the same pay scale both in the parent department and on their deputation posts. Even if the posts in the parent department originally were classified as Group-C they were reclassified as Group-B post w.e.f. 01.01.1996 in view of the Notification dated 12.06.1998 when the junior employee, i.e. Applicant No.2 becomes entitled to the benefit on the basis of this notification, it would be unfair to deny it to applicant No.1. Therefore, the applicants had a case for counting their seniority from the dates they were regularly appointed in the parent department.

9. The settled law is that the review application cannot be treated as an appeal permitting the matter to be reheard and re-appreciated.

10. For the foregoing reasons, the review application is dismissed as not maintainable both on the grounds of limitation as well as merit.

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