



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 27TH DAY OF JANUARY, 2025
BEFORE
THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV
WRIT PETITION NO. 14734 OF 2021 (EDN-RES)

BETWEEN:

HINDUSTAN AERONAUTICS
OFFICERS GUILD (HAOG)
HAVING ITS OFFICE AT HINDUSTAN
AERONAUTICS LIMITED,
VIMANAPURA POST,
BENGALURU – 560 017.
REPRESENTED BY ITS PRESIDENT.

... PETITIONER

(BY MS.MAITREYI KRISHNAN, ADVOCATE FOR
MS.SHILPA PRASAD, ADVOCATE)

AND:

1. HINDUSTAN AERONAUTICS LIMITED,
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT, 1956
REGISTERED AND CORPORATE OFFICE
AT NO.15/1,
CUBBON ROAD,
BENGALURU – 560 001.
REPRESENTED BY ITS
MANAGING DIRECTOR.
2. EXECUTIVE DIRECTOR – (HR)
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
REGISTERED AND CORPORATE OFFICE
AT NO.15/1,
CUBBON ROAD,
BENGALURU – 560 001.





... RESPONDENTS

(BY SRI SYED KASHIF ALI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT, ORDER OR DIRECTION QUASHING THE CIRCULARS ISSUED BY THE 1ST RESPONDENT BEARING NO.HAL.HR/10(2)/2021 DATED 24.07.2021 (PLACED AS ANNEXURE-C) AND COMMUNICATION BEARING NO.HAL/HR/10(2)/21/PF DATED 26.07.2021 (PLACED AS ANNEXURE-D) ISSUED BY THE 2ND RESPONDENT AS THE SAID CIRCULARS ARE ARBITRARY AND VIOLATIVE OF ARTICLE 14 AND 21 OF THE CONSTITUTION AND THE PRINCIPLES OF NATURAL JUSTICE AND ETC.

THIS WRIT PETITION PERTAINS TO PRINCIPAL BENCH BENGALURU HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.12.2024 AND COMING ON FOR PRONOUNCEMENT OF ORDERS AT KALABURAGI BENCH THROUGH VIDEO CONFERENCING, THIS DAY, THE COURT MADE THE FOLLOWING

CORAM: HON'BLE MR JUSTICE S SUNIL DUTT YADAV



C.A.V. ORDER

(PER: HON'BLE MR JUSTICE S SUNIL DUTT YADAV)

I. BRIEF FACTS:-

The present petition has been filed by the 'Hindustan Aeronautics Officers Guild' [hereinafter referred to as 'HAOG'] seeking for setting aside of the Circular bearing No.HAL/HR/10(2)/2021 at Annexure-'C' dated 24.07.2021, whereby direction was passed by the employer to re-fix the pay of Officers notionally with effect from 01.01.2017.

2. In the impugned order, the following observations are made:-

- i) The revised pay would be effective from 01.09.2021;
- ii) Recovery is to be made consequent to such re-fixation for the period of 01.01.2017 to 31.08.2021;
- iii) In the case of those officers who are going to superannuate the amount would be adjusted from the final settlements;



3. The petitioner has also challenged the communication of respondent employer bearing No.HAL/HR/10(2)/21/PF dated 26.07.2021 to the same effect embodied in Annexure-'D'.

4. The petitioner has further sought for a direction to the respondent to ensure that the existing pay fixed as per the Circular at Annexure-'B' bearing No.715 dated 17.11.2017 shall be implemented and continued to all the Officers in the respondent Establishment as per the existing method of fixation of pay.

5. The petitioner HAOG represents the interest of the Officers working with Hindustan Aeronautics Limited, respondent No.1. It is stated that as on 01.01.2017, the revision of pay scale and allowance of the Public Sector Enterprise was due. The Department of Public Enterprise (DPE) had notified the fitment methodology to arrive at the revised basic pay of officers on 01.01.2017 itself.

6. Following the DPE Guidelines, the respondent-Company had issued 'Circular No.715' dated 17.11.2017



revising the pay scales of Officers with effect from 01.01.2017. Through the Circular, the re-fixing pay was implemented, however, it is stated that in the course of Government audit objections were raised regarding the manner of calculating the Dearness Allowance. It is stated that in light of the advice of Ministry of Defence that pay fixation with effect from 01.01.2017 was not in conformity with the DPE guidelines which required compliance and accordingly, the Board of respondent-Company resolved to re-fix the pay of the officers on 16.07.2021. It is this action that has been called in question.

7. The relevant DPE guidelines as regards fixation of pay contained in the Circular titled as 'Personal Circular No.715' dated 17.11.2017 and the same reads as follows:-

"Sub: Revision of Pay Scales and Allowances of Officers, w.e.f. 1.1.2017

5. FIXATION OF PAY IN THE REVISED SCALES OF PAY

5.1 *The Pay of officers who were on the regular rolls of the Company as on 31st December 2016 and continued to be on rolls as on 1st January 2017 would be brought on to the revised Scales of Pay, in the following manner:*

a) *Basic Pay + Stagnation Increment(s) in the*



*existing Scale of pay (2007) as on
31st December 2016;*

Plus

b) Applicable amount of Industrial Dearness Allowance (DA) @ 119.5% as on 1st January 2017, in the 2007 salary Structure, on the basic Pay actually drawn as on 1.1.2017 (before promotion, if any, effected w.e.f.1.1.17);

Plus

*c) Fitment Benefit of 15% of (a) + (b) above;
The total of (a)+(b)+(c) would be the Aggregate Amount."*

8. The pay was fixed in 2017 itself and in light of the audit objection raised, the pay was re-fixed and the change effected is reflected at Point (8) in the impugned Circular dated 24.07.2021 at Annexure-'C' and the same is extracted hereinbelow:-

"8. In the above backdrop, it is decided to revise the Pay Fixation methodology notified vide Para 5.1 of PC No.715 dated 17.11.17, as under:

Existing	Revised
a) Basic Pay + Stagnation Increment(s) in the existing Scale of Pay (2007) as on 31 st December 2016;	a) Basic Pay + Stagnation Increment(s) in the existing Scale of Pay (2007) as on 31 st December 2016;
Plus	Plus



<p>b)Applicable amount of Industrial Dearness Allowance (DA) @ 119.5% as on 1st January 2017, in the 2007 Salary Structure, on the Basic Pay actually drawn as on 1.1.2017 (before promotion, if any, effected w.e.f.1.1.17);</p> <p>Plus</p> <p>c) Fitment Benefit of 15% of (a) + (b) above</p> <p>The total of (a) + (b) + (c) would be the Aggregate Amount.</p>	<p>b) Applicable amount of Industrial Dearness Allowance (DA) @ 119.5% as on 1st January 2017, in the 2007 Salary Structure, on the Basic Pay as on 31.12.16 as indicated at (a) :</p> <p>Plus</p> <p>c) Fitment Benefit of 15% of (a) + (b) above The total of (a) + (b) + (c) would be the Aggregate Amount.</p>
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III. CONTENTIONS OF PARTIES:

9. Learned counsel for the petitioner has raised several contentions as follows:-

- a) The revised fixation in terms of Annexure-‘B’ dated 17.11.2017 is in accordance with the DPE Guidelines and the Dearness Allowances was rightly calculated on the ‘Basic pay actually drawn on 01.01.2017’.
- b) There would be huge recovery consequent to re-fixation, which would cause undue hardship.
- c) The order is passed in violation of principles of Natural Justice, insofar as there could not have



been any reduction of Pay Scale, which visits civil consequences, without affording an opportunity of hearing to the employees.

10. Reliance has been placed on the judgment of the Apex Court in **Bhagwan Shukla v. Union of India (UOI) and Others¹**.

11. The respondents on the other hand have contended as follows:-

a) That the employees of Government/Public entities acquire a status upon appointment and the service conditions are not determined by consent of parties and by statute and may be unilaterally altered. Reliance has been placed on judgment of the Apex Court in **Roshan Lal Tandon and Another v. Union of India² [Roshan Lal Tandon]**.

b) The Respondent was advised by Government in light of the audit objections to correct the anomaly. In

¹AIR 1994 SC 2480

²AIR 1967 SC 1889



light of such direction there was no discretion to the respondent but to re-fix the pay in terms of the audit objections.

- c) That the pay fixation was in accordance with the Office Memorandum dated 03.08.2017.

III. ANALYSIS:-

12. Heard, the learned counsel for petitioner Ms. Maitreyi Krishnan and Mr. Syed Kashif Ali, learned counsel appearing on behalf of respondents.

13. The challenge is to the order of re-fixation of income on the premise that there was a mistake in revision of Pay Scale and allowances calculated in terms of the Circular at Annexure-'B' bearing No.715 dated 17.11.2017.

14. Though various contentions have been addressed contending that the revision of pay scale at Annexure-'B' was not in accordance with the Office Memorandum dated 03.08.2017, there may be no occasion to adjudicate on



such contention at present while deciding the validity of such Notification on the touchstone of violation of principles of Natural Justice and violation of the right of Legitimate Expectation of the employees in re-fixing the pay by reduction and recovery / adjusting amount paid in excess between 01.01.2017 and 31.08.2021.

15. If the order is to be set aside on the contention noticed above holding that the impugned order is in violation of principles of Natural Justice and rights of Legitimate Expectation, then the matter would be remitted, permitting reconsideration and at which stage other contentions may also be considered. Accordingly, other contentions on merits may be noticed and left to be taken note of, in the event of remand.

16. The respondent Company is a Government Company and is a Public Sector Undertaking owned by Government of India and is under the administrative control of the Ministry of Defence. By its very constitution and the control exercised by the Ministry of Defence, it is



an entity which is State for the purposes of Article 12 of the Constitution of India.

17. It is the contention of the respondent employer that in the case of employees of Government as well as Public Sector employees, the position of employee is one of status though it may have originated by contract and hence, any variance of conditions of service can be effected unilaterally.

18. The context in which the above principle was considered in **Roshan Lal Tandon (supra)** was a challenge made to a Rule relating to procedure to fill 'upgraded vacancies'. However, in the same case, the Notification was struck down as being in violation of Article 14 and 16 of the Constitution of India after affirming the observations made by the Apex Court in **Mervyn v. Collector**³. It was held in **Roshan Lal Tandon (supra)** as regards the legality of Notification in relation to promotion as follows :-

³(1966) 3 SCR 600



"5. ... To put it differently, once the direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher grade C. ..."

19. In the present factual matrix as well the question is whether the re-fixing of the Pay Scale on the premise of an error could be demonstrated to be violative of Article 14 or any other constitutional right. If it were to be so, once it is established that the re-fixation of Pay Scale was violative then even in terms of ***Roshan Lal Tandon (supra)*** it could be set aside.

20. In the present case, the contention of the petitioner regarding violation of the right of legitimate expectation assumes significance. Such right was a matter of elucidation and consideration in the case of ***Sivanandan C.T. and Others v. High Court of Kerala and Others***⁴ [***Sivanandan C.T.***]. The Apex Court speaking through a Constitution Bench of Five Judges has

⁴(2024) 3 SCC 799



observed that for judicial review to be exercised, 'In a nutshell, an individual who claims a benefit or entitlement based on the doctrine of legitimate expectation has to establish; (i) the legitimacy of the expectation; (ii) that the denial of the legitimate expectation led to the violation of Article 14 of the Constitution.' The Apex Court at Para-45 has observed as hereunder:-

" 45. The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the State, the actions and policies of the state give rise to legitimate expectations that the state will adhere to its assurance or past practice by acting in a consistent, transparent, and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14."

21. In the present case, the employees were the beneficiaries of a pay revision on 17.11.2017. Such revision effected by the order at Annexure-'B' observes



that it is in accordance with the Guidelines notified by the respondent DPE vide Office Memorandum dated 03.08.2017, the Circular at Annexure-'B' viz., Personal Circular No.715 which contains further details of the revised scale of pay as regards Officers from Grade-I to X, Director/C.E.O and C.M.D. The details of the Annual Increment and Dearness Allowance are also stipulated.

22. The revised emolument has been paid and was sought to be re-fixed on the ground that the revision was contrary to the applicable Guidelines. Such re-fixation has been made on 24.07.2021. Accordingly, the revised pay was in operation between 01.07.2017 till 24.07.2021.

23. The revision of pay admittedly, has the effect of reduction. The revised Pay Scale came into effect from 17.11.2017 and the enhanced pay scale has been enjoyed by the officers which is sought to be downgraded by re-fixation by order dated 24.07.2021. The enhanced pay scale after revision has been enjoyed for about four years till the impugned order at Annexure-'C' was passed.



24. Insofar as the Officers and employees are concerned, it is clear that they did not have any role in such revision of Pay Scale. It is an expectation that once the employer which is a Government Company and Government of India Undertaking has revised the pay and made payments in accordance with such revision for over four years, that the revision was to stay.

25. The employees of such Establishments have an expectation that the revision was effected after adherence to Official Protocol. In the interregnum the employees have adjusted their income, expenditure and savings on the premise of continuity of pay. Judicial notice can be taken of the pattern of economic planning of a salaried Employee/Officer. Fixed emoluments as regards a worker at the lowest rung to the highest Officer is the budget for the Unit, i.e. family. The investment, savings and expenditure is planned and often on the basis of such certainty of income, long term commitments are made including taking of loans for property investment, etc. The



economic planning is such that normally there would be no free funds available at the disposal of an individual. The nature of employment especially in a Government of India Undertaking instills comfort and confidence as regards conditions of service including emoluments. This economic security by virtue of a pay revision has continued for about four years and is now sought to be disturbed by a downward revision.

26. It is in this context that the right of legitimate expectation of an employee is to be examined. Perused the observations of Constitution Bench of Apex Court in the case of ***Sivanandan C.T. (supra)***. The doctrine of legitimate expectation includes an expectation in terms of duty of Public Authorities to act fairly in their dealings with individuals and duty to afford an opportunity of hearing before any action affecting civil rights is taken.

27. The procedural part of the right of legitimate expectation involves the expectation of citizen that a Public Authority would follow a particular procedure before



taking a decision. The non-honoring of a legitimate expectation may graduate to violation of right against non-arbitrariness as contained in Article 14 of the Constitution of India.

28. In the present case, receipt of revised pay scale is by an order which refers to pay hike as being effected in terms of Guidelines which has continued for four years. It would be reasonable to presume that the Officers have arranged their economic affairs in a particular pattern. If this is sought to be disturbed, needless to state, it would affect the Employees/Officers admittedly visiting the employees with civil consequences.

29. A decision taken downgrading the pay on the premise of an error which has the effect of revising a pay hike and downgrading it has the effect of violating the legitimate expectation of the employees who expect that an upward revision of emoluments pursuant to a revision in pay scale which is deemed to be effected as per the



procedure which is supported by a presumption⁵ of having been effected in accordance with applicable Rules. An order which has the effect of reversing a pay hike on whatever reason or premise has the consequence of upsetting financial planning of employee visiting civil consequences which cannot be resorted to without affording an opportunity of hearing.

30. It would be useful to refer to the decision of Apex Court in ***Bhagwan Shukla (supra)*** rendered in a similar factual matrix. In the factual matrix in which the Apex Court had rendered the judgment, the basic pay of the employee was sought to be reduced with retrospective effect from Rs.190/- per month to Rs.181/- per month and such reduction was objected to while the employer justified such exercise contending that it was wrongly fixed at the first instance due to administrative lapse. The Apex Court has held that where pay revision has the effect of inflicting financial loss it has the effect of inflicting civil

⁵ Section 114 of the Indian Evidence Act, 1872 – Illustration (e)



consequences which cannot be done without giving the affected party a hearing. The relevant observations are as hereunder:-

"3. We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs 190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs 181 p.m. from Rs 190 p.m. in 1991 retrospectively w.e.f. 18-12-1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the (sic employee) concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25-7-1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant.



The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17-9-1993 as well as the order (memorandum) impugned before the Tribunal dated 25-7-1991 reducing the basic pay of the appellant from Rs 190 to Rs 181 w.e.f 18-12-1970.

(emphasis supplied)

31. Similar in the stand taken by the Co-ordinate Bench of this Court in **Mrs.Lakshmidamma and Others Vs. State of Karnataka and Others**⁶.

32. The legal position as regards vitiation of an order made in the absence of adherence to principles of Natural Justice requires reference to the judgment of the Apex Court in **Olga Tellis v. Bombay Municipal Corporation**⁷ [*Olga Tellis*] as well as the judgment in **State of Uttar Pradesh v. Sudhir Kumar Singh and Others**⁸ [*Sudhir Kumar Singh*].

⁶ W.P.No.51205-51252/2015 & c/w matters dated 18.02.2016

⁷(1985) 3 SCC 545

⁸ (2021) 19 SCC 706



33. While in the case of ***Olga Tellis (supra)***, the Apex Court has laid emphasis on the process of hearing as a stand alone right violation of which would vitiate the conclusion. Subsequent judgments including in ***Sudhir Kumar Singh (supra)***, has clarified that decision would stand vitiated only if it was established that there was prejudice and affording such opportunity afresh would alter the conclusion made.

34. In ***Sudhir Kumar Singh (supra)***, it was opined that the Court would not issue futile writs and if even after affording an opportunity of hearing, the conclusion would be the same, the question of affording an opportunity of hearing need not be resorted to.

35. In the present case, admittedly, the decision taken to redo the pay hike which has the result of reversing the hike which has continued at the revised rates between the years 2017 and 2021 would prejudice the financial position of the employees as already explained supra. The reversing of the hike would not only



have the effect of reducing the pay packet, but also have the effect of recovering the difference from the employees including from those who have attained superannuation.

36. The eventual direction made in this case of a report after hearing containing views of employees to be placed before the Ministry for appropriate consideration by itself would render the exercise of hearing an effective methodology of appraising the Government of their views.

37. Accordingly, it cannot be held that the hearing now to be made by the respondent employer would be a futile exercise as they are bound by the directions of the Government.

38. In light of the discussion made above the impugned orders of re-fixation of pay are set aside.

39. If the respondent Authorities are of the opinion that they would seek to re-do the exercise of revisiting the revision of pay scale rather than letting the matter to rest, the Authorities are to afford an opportunity of hearing to



the petitioner and other employees who seek to avail of the opportunity of hearing. Upon hearing the petitioner, the respondents are obliged to place before the Government a report containing the views of petitioner and other employees on audit objections for its appropriate consideration.

40. As the Central Government is not a party to the proceedings, this Court desists from issuing any actionable direction to the Central Government, except for making the observations as above.

41. It is also to be noticed that irrespective of the decision taken either by the employer, i.e. the respondent or the Government, the recovery cannot be contrary to the judgments of the Apex Court in the case of **State of Punjab and Others v. Rafiq Masih (White Washer) and Others**⁹.

42. Accordingly, the petition is **allowed** by setting aside the Circular at Annexure-‘C’ dated 24.07.2021 and

⁹ (2015) 4 SCC 334



the communication at Annexure-'D' dated 26.07.2021. It is clarified that the pay fixation at Annexure-'B' would continue to hold the field, subject to the observations made above.

43. This Court places on record the meticulous and wonderful assistance by the counsel for the parties.

**Sd/-
(S. SUNIL DUTT YADAV)
JUDGE**