

A R. D. KAUSHAL AND ORS.

v.

UNION OF INDIA AND ORS.

(Civil Appeal No. 6573 of 2022)

B SEPTEMBER 14, 2022

**[B. R. GAVAI AND PAMIDIGHANTAM
SRI NARSIMHA, JJ.]**

- Service Law – Pension and Terminal Benefits – Amalgamation*
- C *of two cadres – There were two distinct posts in the Language Cadre of the Research and Analysis Wing (RAW), the Group ‘B’ post of Assistant Foreign Language Examiner (AFLE) and the Group ‘A’ post of the Deputy Foreign Language Examiner (DFLE) – Vide Notification dated 13th March, 2008, the posts of AFLE and DFLE were merged and re-designated as Senior Interpreter – CAT on*
- D *26 May, 2008 issued directions to the Cabinet Secretariat and the DoPT to reconsider the aspect of the merger of AFLEs and DFLEs and the consequences thereof – The Joint Secretary (Personnel) issued an Order dated 2 September, 2008, stating that no amalgamation of the two cadres had taken place by virtue of the operationalization of the recommendations of the 5th Central Pay Commission – CAT vide order dated 7 July, 2010, quashed and set aside the order of Joint Secretary dated 2 September, 2008 and directed to pass order strictly in accordance with the observations made in its order dated 26 May, 2008 – High Court set aside the order dated 7 July, 2010, passed by the CAT – The Supreme Court*
- E *observed that since all the appellants have superannuated, therefore issue involved is restricted only to the terminal benefits and pension payable in respect of the appellants – Held: The order passed by CAT dated 26 May, 2008 was not challenged by the respondent-Union of India and has, therefore, attained finality – It is hereby directed to the respondents to calculate terminal benefits as are payable to the appellants on the basis of the orders passed by the CAT dated 26 May, 2008 and 7 July, 2010 – The pension, as calculated, would be paid to the appellants with effect from 1 January, 2023 – The terminal benefits would be cleared on or prior to 31 December, 2022 – The Research and Analysis Wing*
- F *(Recruitment, Cadre and Service) Rules, 1975.*

Disposing of the appeal, the Court

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HELD: In view of the matter, this Court is inclined to dispose of the present appeal with a direction to the respondents to calculate terminal benefits as are payable to the appellants on the basis of the orders passed by the CAT dated 26 May, 2008 and 7 July, 2010. This Court is inclined to do so specifically in view of the fact that the order of the learned CAT dated 26 May, 2008 was not challenged by the respondent-Union of India and has, therefore, attained finality. The pension as calculated in view of the aforesaid directions would be paid to the appellants with effect from 1 January, 2023. The terminal benefits, which the appellants are entitled to, would be cleared on or prior to 31 December, 2022. In the facts and circumstances of the case, the appellants would not be entitled for arrears of pension from the date of their superannuation till 31 December, 2022. However, they will be entitled to interest at the rate of 6% per annum on the terminal benefits payable to them from the date of their superannuation till the date of actual payment. [Para 12][423-E-H]

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B. Manmad Reddy and Others v. Chandra Prakash Reddy and Others (2010) 3 SCC 314 : [2010] 2 SCR 860 – referred to.

Case Law Reference

[2010] 2 SCR 860

referred to

Para 7

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6573 of 2022.

From the Judgment and Order dated 18.04.2012 of the High Court of Delhi at New Delhi in Writ Petition (Civil) No. 8503 of 2010.

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Rohit Sharma, Kumar Dushyant Singh, Advs. for the Appellants.

Vikramjit Banerjee, ASG, VVV Pattabhiram, Merusagar Samantray, B. V. Balaram Das, Advs. for the Respondents.

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- A The Judgment of the Court was delivered by
B. R. GAVAI, J.
1. Leave granted.
2. This appeal challenges the judgment and order dated 18th April,
- B 2012 passed by the High Court of Judicature at Delhi, in Writ Petition (Civil) No. 8503/2010, thereby setting aside the judgment dated 7th July, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as “the learned CAT”) in Original Application No. 3663/2009.
- C 3. The facts leading to the present appeal are thus:
- 3.1 Prior to the coming of force of the 5th Central Pay Commission, there existed two distinct posts in the Language Cadre of the Research and Analysis Wing, Cabinet Secretariat, Government of India – the Group ‘B’ post of Assistant Foreign Language Examiner (hereinafter, AFLE)
- D and the Group ‘A’ post of the Deputy Foreign Language Examiner (hereinafter, DFLE). Pursuant to the recommendations of the 5th Central Pay Commission, in January 1999, the pay-scale of AFLEs was revised retrospectively from 1st January, 1996 to bring it at par with the DFLEs. Thereafter, in September, 1999, the Cabinet Secretariat ordered for the post of AFLE to be reclassified as a Group ‘A’ post. For both these
- E cadres, the next level of promotion was to the post of Under Secretary (Language).
- 3.2 In 2001, the Research and Analysis Wing (Recruitment, Cadre and Service) Rules, 1975 (hereinafter, the Recruitment Rules) were amended to equalize the required residency period for promotion to the
- F post of Under Secretary (Language) to 5 years for both posts. Additionally, the quota for promotion from the AFLE stream and DFLE stream was amended to make it 60:40 from the earlier quota of 50:50. The Recruitment Rules also provided for the diversion of seats from one quota to the other on account of non-availability of eligible candidates for promotion from that quota.
- G 3.3 The appellants herein joined the service as Interpreters between April, 1985 and September, 1990, and were promoted as AFLEs between March, 1995 and September, 1998. DFLEs, however, were first recruited only in the year 1999. In 2002, on account of vacancies that arose in the Under Secretary (Language) cadre due to the non-eligibility of DFLEs
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who had yet to complete the 5 year residency requirement, the Department of Personnel & Training (hereinafter, the DoPT), on a proposal sent by the Cabinet Secretariat to divert the vacancies to the candidates from the AFLE quota, recommended for both the posts to be merged since they were identical in terms of the nature of their functions and duties, their salaries as well as their promotional avenues. This recommendation remained in cold storage until finally, vide Notification dated 13th March, 2008, the posts of AFLE and DFLE were merged and re-designated as Senior Interpreter. However, a footnote was added therein to the effect that the merger would be effected in a manner that would not have any adverse impact on the career prospects of the direct recruits, i.e., the DFLEs, who would continue to maintain their distinct identity till their promotion to the post of Under Secretary (Language). A

3.4 In the meanwhile, the vacancies that had arisen in the post of Under Secretary (Language) were the subject matter of litigation before the learned CAT. The learned CAT, vide order dated 26th May, 2008, observed that the distinction between the AFLEs and DFLEs had been removed with effect from 1st January, 1996, i.e., the date from which the recommendations of the 5th Central Pay Commission were implemented. Vide the said order, directions were given to the Cabinet Secretariat and the DoPT to reconsider the aspect of the merger of AFLEs and DFLEs and the consequences thereof within a period of three months from the date of the order. Promotions to the post of Under Secretary (Language) were also put on hold until such reconsideration. B

3.5 In pursuance of the aforesaid direction, the Cabinet Secretariat, through the Joint Secretary (Personnel) issued an Order dated 2nd September, 2008, wherein it was held that the distinction between the AFLEs and the DFLEs remained up till the official merger on 13th March, 2008, and thus, no amalgamation of the two cadres had taken place by virtue of the operationalization of the recommendations of the 5th Central Pay Commission. C

3.6 Aggrieved by this order, one Vinod Kumar Jain, an AFLE, filed a contempt petition before the learned CAT, which, vide order dated 19th November, 2008, observed that the direction issued by the learned CAT in the order dated 26th May, 2008 had not been challenged and had therefore attained finality. Another opportunity was granted to the Cabinet Secretariat to pass a fresh order taking into account the observations made in the order dated 26th May, 2008. D

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- A 3.7 Thereafter, the appellant nos. 1 and 2, filed O.A. No. 3663 of 2009 before the learned CAT along with three other AFLEs, challenging both the footnote in the Notification dated 13th March, 2008 as well as the order dated 2nd September, 2008. The learned CAT allowed the original application vide order dated 7th July, 2010, thereby quashing and setting aside the order dated 2nd September, 2008, with a further direction to pass, within two months, a speaking order strictly in accordance with the observations of the learned CAT in its order dated 26th May, 2008.
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3.8 Aggrieved thereby, the Union of India preferred a writ petition before the High Court, in W.P. (C) No. 8503 of 2010, which was allowed by the High Court vide the impugned judgment dated 18th April, 2012, thereby setting aside the learned CAT's order dated 7th July, 2010. Being aggrieved thereby, the appellants have approached this Court.

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- D 4. We have heard Mr. Rohit Sharma, learned counsel appearing on behalf of the appellants and Mr. Vikramjit Banerjee, learned Additional Solicitor General ("ASG" for short) appearing on behalf of the respondents.

5. Mr. Rohit Sharma, learned counsel, submitted that the High Court could not have reopened the learned CAT's judgment and order dated 26th May 2008. He submitted that the issue of merger also stood finally decided by the learned CAT vide the same order, which was never challenged by any party and had thus attained finality.

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- F 6. Mr. Sharma further submitted that the order of the Cabinet Secretariat dated 2nd September, 2008 was totally contrary to the directions issued by the learned CAT dated 26th May 2008, which was not permissible in law. By order dated 7th July 2010 passed by the learned CAT, which was impugned before the High Court, the learned CAT had only directed for the implementation of the order dated 26th May 2008. As such, there was no occasion for the High Court to interfere with the same.

- G 7. On merits, Mr. Sharma submitted that both AFLEs and DFLEs performed the same responsibilities, carried the same pay and were classified as Group A and both also had the same residency period for promotion to the post of Under Secretary (Language). He submits that once the AFLEs and DFLEs were merged into the same cadre, a further classification on the basis of their birthmarks was not permissible in law.
- H He relies on the judgment of this Court in the case of **B. Manmad**

Reddy and others vs. Chandra Prakash Reddy and others¹ in support A
of his submission.

8. Shri Vikramjit Banerjee, learned ASG, submitted that the learned CAT had erred in giving retrospective effect to the Notification dated 13th March 2008. He submits that it has been specifically provided by the footnote in the said Notification that on the merger of AFLEs and DFLEs and their redesignation as Senior Interpreter, the same would not have any adverse impact on the career prospects of the existing direct recruits in the grade of DFLEs. B

9. We find that, in the peculiar facts and circumstances of the present case, it is not necessary to go into the question of law as raised C by the parties, since all the appellants have superannuated.

10. The issue involved now is only restricted to the terminal benefits and pension payable in respect of the appellants herein, who are only three in number.

11. Mr. Sharma, learned counsel, fairly states that the appellants D are willing to give up their claim for arrears and that they would restrict their claim in the present appeal only insofar as the terminal benefits and pension as payable to them are concerned.

12. In that view of the matter, we are inclined to dispose of the E present appeal with a direction to the respondents to calculate terminal benefits as are payable to the appellants on the basis of the orders passed by the learned CAT dated 26th May 2008 and 7th July, 2010. We are inclined to do so specifically in view of the fact that the order of the learned CAT dated 26th May 2008 was not challenged by the respondent-Union of India and has, therefore, attained finality. The pension as calculated in view of the aforesaid directions would be paid to the F appellants with effect from 1st January 2023. The terminal benefits, which the appellants are entitled to, would be cleared on or prior to 31st December, 2022. In the facts and circumstances of the case, the appellants would not be entitled for arrears of pension from the date of their superannuation till 31st December, 2022. However, they will be entitled G to interest at the rate of 6% per annum on the terminal benefits payable to them from the date of their superannuation till the date of actual payment.

¹(2010) 3 SCC 314

A 13. The appeal is disposed of in the above terms. Pending applications, if any, stand disposed of. However, there shall be no order as to costs.

Ankit Gyan
(Assisted by: Rahul Rathi, LCRA)

Appeal disposed of.