CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU

ORIGINAL APPLICATION NO.170/00287/2019

DATED THIS THE 06TH DAY OF JANUARY, 2020

HON'BLE DR.K.B.SURESH …MEMBER(J)
HON'BLE SHRI C.V.SANKAR …MEMBER(A)

Vinayak S. Shetti,
Age: 43 years,
S/o Sadananda H. Shetti,
Working as Asst. Suptd.of Post offices,
Assistant Manager, Centre for Excellence
In Postal Technology,
Nazarbad, Mysore-570 010,
Residing at
No.1, Type3 Quarters,
Postal Training Centre,
Nazarbad, Mysore-570 010. …Applicant

(By Counsel Shri P. Kamalesan)

Vs.

1. Union of India,
Represented by Secretary,
Department of Post,
Dak Bhavan,
New Delhi

2. The General Manager,
CEPT, PTC Campus
Mysore- 570 010

3. Secretary,
Ministry of Finance,
Department of Expenditure,
Government of India,
New Delhi 110 01. ...Respondents

(By Shri M.V. Rao, Standing Counsel for Respondents)

O R D E R (ORAL)

HON'BLE DR.K.B.SURESH …MEMBER(J)

Heard. The question in issue is very simple. When a person had been granted an enhancement in his career, when it should take effect from, is the question.

2. We have taken OA.No.148/2019 as the leading case. The applicant in it was promoted as Postal Inspector with effect from 27.11.2006. While, even though the Pay Commission Report came out in 2008, it was given retrospective effect, for the reason that in the interregnum, it was under consideration by the Government and everybody. Though it should have retrospective effect, it was under consideration in the meanwhile. The matter seems to be covered by the order of the Hon'ble Apex Court in Civil Appeal. No.3052/2019 in SLP (C) No.26336 /2018 dated 14.03.2019. We quote from it.

"O R D E R

Delay condoned.

Leave granted.

The facts lie in a narrow compass. The respondent was appointed as an Assistant Teacher (Primary School Teacher) in East Delhi Municipal Corporation now EDMC, Education department, Shahdara (North) on 10.08.1994. On 04.01.2007, he was promoted as Trained Graduate Teacher (TGT) (Social Science) in Government of NCT of Delhi, Directorate of Education and was posted as such on 17.3.2007. The respondent was granted ACP under the Assured Career Progression Scheme placing him in Trained Graduate Teacher pay scale vide order dated 25.4.2008 w.e.f. 10.8.2006.

Later, on 29.8.2008, 6th Central Pay Commission (in short 'CPC') was enforced and the rules i.e., Central Civil Service (Revised Pay) Rules, 2008 were framed and notified to revise the salary from

01.01.2006. On 18.11.2009 pay of respondent was revised in accordance with the Rules of 2008. A clarification was issued by Signature Not Verified Digitally signed by R NATARAJAN Date: 2019.03.30 the Ministry of Finance, Department of Expenditure, Implementation Cell in respect of the manner of pay fixation in the revised pay structure on 29.01.2009. A clarification was issued on 27.1.2009. Another clarification was issued by Government of India Ministry of Personnel, PG and Pension, Department of Personnel & Training on 22.12.2010, with respect to the manner of fixation of pay. As pay of the respondent was fixed under Rule 7 and not under Rule 11 of the Rules 2008, he filed a representation for fixation of pay in terms of proviso to Rule 5 of the Rules, 2008.

As pay was not correctly fixed, the respondent filed an original application before Central Administrative Tribunal for correct fixation of the pay under Rule 11 of the Rules, 2008. The Tribunal vide order dated 17.05.2012 in O.A. No.2475/2011 directed the concerned authorities to pass a speaking order deciding on respondent's representation. Thereafter the respondent filed a comprehensive representation to the Director, Directorate of Education and also submitted a copy of the same to the Deputy Education Officer, MCD. The same was rejected on 24.7.2012. The Assistant Director also passed an order dated 7.8.2012 declining the prayer made by the respondent. Again, the respondent filed the original application before the Central Administrative Tribunal. The original application and review both were dismissed.

Aggrieved thereby, a Writ Petition was filed by the respondent before the High Court. The Division Bench of the High Court allowed it and opined that it was Rule 11 which was attracted and not the provisions of Rule 7 in view of the fact that the Respondent was granted the upgraded pay scale of ACP w.e.f. 10.8.2006 and he has opted for revision of pay from that date. Thus, fixation was wrongly done under Rule 7. It was required to be done as per provisions contained under Rule 11 of Rules, 2008.

Mr.Vikramjit Banerjee, learned ASG on behalf of Union of India urged that Rule 7 is clearly attracted. Note 2A of Rule 7 clearly provides the mode of fixation of salary in such an exigency. Thus, the fixation has been rightly done. The Tribunal was right in dismissing the original application and the Division Bench of the High Court has erred in law in applying Rule 11 of the Rules 2008. He has placed reliance on the decision rendered by this Court in Union of India & Ors. v. K.V. Rama Raju & Ors.-2018 (2) SCALE 239.

The respondent who has appeared in person has supported the decision of the High Court and has contended that once he has opted for revision of pay under the Rules of 2008 w.e.f. 10.8.2006, the date on which upgraded pay scale was made available under ACP scheme

before Rules of 2008 were notified, the pay fixation was required to be done under Rule 11 of Rules of 2008 and no case for interference is made out with the decision rendered by the Division Bench of the High Court.

Rule 5, Rule 7 and Rule 11 of the Rules 2008 are required to be considered. Rule 5, 7 and 11 are extracted hereunder:

> Rule 5.Drawal of pay in the revised pay structure- Save as otherwise provided in these rules, a Government servant shall draw pay in the revised pay structure applicable to the post to which he is appointed.
>
> Provided that a Government servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.
>
> Provided further that in cases where a government servant has been placed in a higher pay scale between 1.1.2006 and the date of notification of these Rules on account of promotion, upgradation of pay scale etc., the government servant may elect to switch over to the revised pay structure from the date of such promotion, upgradation etc.
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> Explanation 1- The option to retain the existing scale under the provisos to this rule shall be admissible only in respect of one existing scale.
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> Explanation 2- The aforesaid option shall not be admissible to any person appointed to a post on or after the 1st day of January 2006, whether for the first time in government service or by transfer from another post and he shall be allowed pay only in the revised pay structure.
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> Explanation 3 – Where a government servant exercises the option under the provisos to this Rule to retain the existing scale in respect of a post held by him in an officiating capacity on a regular basis for the purpose of regulation of pay in that scale under fundamental Rule 22, or any other rule or order applicable to that post, his substantive pay shall be substantive pay which he would have drawn had he retained the existing scale in respect of the permanent post on which he holds a lien or would have held a lien had his lien not been suspended or the pay of the officiating post which has acquired the character of substantive pay in accordance with any order for the time being in force, whichever is higher.
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> Rule 7. Fixation of initial pay in the revised pay structure:

(1) The initial pay of a government servant who elects, or is deemed to have elected under sub-rule(s) of rule 6 to be governed by the revised pay structure on and from the 1st day of January, 2006, shall, unless in any case the President by special order otherwise directs, be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have held a lien if it had not been suspended, and in respect of his pay in the officiating post held by him, in the following manner, namely:-

(A) in the case of all employees:-

(i) the pay in the pay band/pay scale will be determined by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and rounding off the resultant figure to be next multiple of 10.

(ii) if the minimum of the revised pay band/pay scale is more than the amount arrived at as per (I) above, the pay shall be fixed at the minimum of the revised pay band/pay scale; Provided further that:-

where, in the fixation of pay, the pay of Government servants drawing pay at two or more consecutive stages in an existing scale gets bunched, that is to say, gets fixed in the revised pay structure at the same stage in the pay band, then for every two stages so bunched, benefit of one increment shall be given so as to avoid bunching of more than two stages in the revised running pay bands. For this purpose, the increment will be calculated on the pay in the pay band. Grade pay would not be taken into account for the purpose of granting increments to alleviate bunching.

In the case of pay scales in higher administrative grade (HAG) in the pay band, PB-4 benefits of increments due to bunching shall be given taking into account all the stages in different pay scales in this grade. In the case of HAG + scale benefit of one increment for every two stages in the pre-revised scale will be granted in the revised pay scale. In by stepping up of the pay as above, the pay of a government servant gets fixed at a stage in the revised pay band/pay scale (where applicable) which is higher than the stage in the revised pay band at which the pay of a government servant who was drawing pay at the next higher stage or stages in the same existing scale is fixed, the pay of the latter shall also be stepped up only to the extent by which it falls short of that of the former.

(iii) the pay in the pay band will be determined in the above manner. In addition to the pay in the pay band, grade pay corresponding to the existing scale will be payable.

……

Note 2A- Where a post has been upgraded as a result of the recommendations of the Sixth CPC as indicated in part B or Part C of the First Schedule to these Rules, the fixation of pay in the applicable pay band will be done in the manner prescribed in accordance with Clause (A) (i) and (ii) of Rule 7 by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and rounding the resultant figure to the next multiple of ten. The grade pay corresponding to the upgraded scale as indicated in Column 6 of Part B or C will be payable in addition. Illustration 4A in this regard is in the Explanatory Memorandum to these rules.

> Rule 11. Fixation of pay in the revised pay structure subsequent to the 1st day of January, 2006 - Where a government servant continues to draw his pay in the existing scale and is brought over to the revised pay structure from a date later than the 1st day of January 2006, his pay from the later date in the revised pay structure shall be fixed in the following manner:-
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> (i) Pay in the pay band will be fixed by adding the basic pay applicable on the later date, the dearness pay applicable on that date and the pre-revised dearness allowance based on rates applicable as on 1.1.2006. This figure will be rounded off to the next multiple of 10 and will then become the pay in the applicable pay band. In addition to this, the grade pay corresponding to the pre-revised pay scale will be payable……."(emphasis supplied)

It is apparent from the first proviso to Rule 5 of Rules of 2008, that option was given to the government servant to continue to draw the pay scale until the date on which his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that pay scale.

Second proviso to Rule 5 which is attracted also made it clear that where the government servant has been placed in a higher pay scale between 1.1.2006 and the date of notification of these Rules on account of promotion, upgradation of pay scale etc., the government servant may elect to switch over to the revised pay structure from the date of such promotion, upgradation etc.

It is not in dispute that the ACP was granted to the respondent between 01.01.2006 and 29.8.2008 i.e. the date of notification of Rules 2008. It was granted w.e.f. 10.8.2006 vide order dated 25.4.2008. Thus, the benefit of upgraded pay scale was given to the respondent in between the aforesaid dates.

Once he has elected for revised pay scale w.e.f. 10.8.2006, the date on which he was placed in the upgraded pay scale, obviously, Rule 7 cannot be said to be applicable. It is Rule 11 which is applicable.

Rule 7 deals with the fixation of initial pay in the revised pay structure as per the 6th Central Pay Commission. Note 2A to Rule 7 relied upon by the appellants makes it vivid that where a pay scale has been upgraded on the recommendation of Central Pay Commission as indicated in para B and C of the first Schedule of the Rules of 2008, the fixation has to be made under Rule 7. However, it was not the case of upgradation of the post as a result of the recommendation of the 6th Pay Commission and Schedule of Rules of 2008, but it was under ACP scheme which is a different scheme than the one as provided in the first schedule to the Rules 2008. The respondent has opted for revision of pay scale from the date of upgradation in the ACP scale w.e.f. 10.08.2006. Obviously, his pay has to be fixed under Rule 11 which deals with fixation of the pay in the revised pay scale in case such an option is exercised under the Rules of 2008. The Division Bench of the High Court was absolutely correct in applying Rule 11 as Note 2A of Rule 7 is not applicable in the case.

Coming to the decision rendered by this Court in K.V. Rama Raju & Ors. (supra), it does not appear from the facts that it was a case of exercising option from the date of upgradation under ACP that came for consideration before this Court. It is not clear whether it was a case of upgradation as a result of the recommendation of the 6th Pay Commission or independent thereto. In both the cases consequences are different. In the earlier exigency Rule 7 is attracted and in the later one Rule 11 of Rules of 2008 is attracted for fixation of pay. Thus, the decision cannot be an authority on the aforesaid issue which has not been decided. Apart from that, it was not the case of appellants that upgraded pay scale has been brought about by 6 th Pay Commission as per provisions contained in Schedule of the Rules 2008 as provided in Note 2A of Rule 7. Thus, the decision in K.V. Rama Raju & Ors. (supra) is wholly distinguishable and cannot be applied to such cases where upgradation has been made otherwise than as per Schedule to Rules of 2008 framed as per recommendations of 6th Pay Commission and option is exercised in the aforesaid manner.

Resultantly, we have no hesitation to hold that the appeal is bereft of merit. Pay fixation has to be done under Rule 11 and not Rule 7 as discussed. Let pay revision be worked out and arrears, if any, be paid within a period of 3 months from today.

The appeals deserve to be dismissed and are hereby dismissed. Parties to bear their own costs.”

3. Therefore, we hold that the applicant's pay should be fixed under Rule 11 and not Rule 7. The arrears, if any, need to be paid to the applicant within 2 months next. OA allowed. No costs.

(C.V.SANKAR)
MEMBER(A)

(DR.K.B.SURESH)
MEMBER(J)

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Annexures referred to by the Applicant in OA No.170/00287/2019

Annexure-A1: Copy of the 6thCPC Report para 7-6-14
Annexure-A2: Copy of the letter dated 13.11.2009
Annexure-A3: Copy of the letter dated 21.12.2009
Annexure-A4: Copy of the letter dated 22.12.2010
Annexure-A5: Copy of the order dated 16.10.2015 in OA No. 289/2013
Annexure-A6: Copy of the letter dated 24.10.2017
Annexure-A7: Copy of the order of the Hon'ble High Court of Delhi dated 20.09.2017 in WP.C/8119/2015
Annexure-A8: Copy of letter dated 21.4.2010
Annexure-A9: Copy of the representation of applicant dated 26.12.2017.
Annexure-A10: Copy of Dept. of Post letter dated 07.09.2018

Annexures referred to by the Respondents in the Reply

Annexure-R1: Copy of the OM dated 30.08.2008
Annexure-R2: Copy of the OM dated 13.09.2008
Annexure-R3: Copy of the order in Civil Appeal No. 1350/2018
Annexure-R4: Copy of the order in OA No. 173/2014 dated 07.07.2015

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