

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 19th DAY OF May, 2011)

Hon'ble Dr.K.B.S. Rajan, Member (J)

Hon'ble Mr. S. N. Shukla, Member (A)


**Original Application No.1639 of 2004
(U/s 19, Administrative Tribunal Act, 1985)**

1. Surendra Bhan Nigam (Dead),
Aged about 66 years,
S/o Late Suraj Bhan Nigam,
R/o H. No. 108/36, P. Road.
Kanpur Nagar.
 - (a) Smt Sushil Kumari Nigam
 - (b) Rajeev Nigam
 - (c) Sanjeev Nigam
 - (d) Preeti Nigam
 - (e) Jyoti Nigam

..... Applicant

Present for Applicant :Shri R. K. Shukla, Advocate.

Versus

1. Union of India, through the Secretary,
Ministry of Defence Production & Supplies,
NEW DELHI - 11.
 2. The Secretary,
Ordnance Factory Board,
10-A, S.K. Bose Road,
Kolkata - 1
 3. The Principal Controller of Accounts (Fys),
10-A, S.K. Bose Road,
Kolkata - 1.
- 

4. The General Manager,
Small Arms Factory,
Kalpi Road,
Kanpur.

..... Respondents

Present for Respondents : Shri R. P. Singh, Advocate

ORDER

(Delivered by Hon. Dr. K. B. S. Rajan, Member-J)

The Facts Capsule: The applicant who entered into the service of the respondents as LDC climbed up in the ladder of promotion and reached the grade of Superintendent Gr. II in 1983 and Grade I on 30-11-1995 in the pre-revised scale of Rs 1600 - 2660. His normal annual increment fell due on 01 February. Hence, the applicant opted of postponing his fixation of pay in the aforesaid grade on 01-02-1996. The V Pay Commission recommendations were implemented w.e.f. 01-01-1996 whereby the two scales of pay i.e. of the Superintendent Gr. II and I were merged and fixed at Rs 5,000 - 8,000/- which later on was further revised to Rs 5,500 - 9,000/-. The applicant exercised his option for fixation of revised pay from the date his increment fell due i.e. 01-02-1996. On 03-05-1996 the pay of the applicant was fixed keeping in view the applicant's pay drawn on the date of his promotion in November, 1995, as well as his increment date as on 01-02-1996. The applicant was satisfied with the same. However, vide Annexure A-III DO Part II order dated 13-01-1998, his pay was refixed and the

respondents fixed his pay at Rs 6,375/- w.e.f. 01-01-1996 and 6,550/- w.e.f. 01-02-1996. This has resulted in his depletion of pay. The claim of the applicant is that his pay should have been fixed in accordance with the provisions of Rule 9 of the CCS (Pay) Rules, 1997 which reads as under:-

“Where a Government Servant continues to draw his pay in the existing scale and is brought over to revised scale from a date later than the 1st day of January 1996, his pay from the later date in the revised scale shall be fixed under Fundamental Rules and for this purpose his pay in the existing scale shall have the same meaning as of existing emoluments as calculated in accordance with clause (A), clause (B), clause (C) or clause (D), as the case may be, of sub-rule (1) of Rule 7 Except that the basic pay to be taken into account for calculation of those emoluments will be the basic on the later date aforesaid.”

2. The Fundamental Rules referred to in the above provision provides under Rule 22(I)(a)(i) [the erstwhile FR 22 C] and the same is as under:-

That the Fundamental Rules as referred to above provides under F.R.22(1)(a)(1) that-“where a Govt. servant holding a post, other than a tenure post, in substantive or temporary or officiating capacity is promoted or appointed a substantive, temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibility of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty five only, whichever is more.

Save in cases of appointment on deputation to an ex-cadre post, or to a post on ad hoc basis, the Govt. servant shall have the option to be exercised within one month from the date of promotion or appointment as the case

may be, to have the pay fixed initially at the stage time scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of lower grade or post."

Provision exists for stepping up of pay at par with that of junior also, if the same has arisen on account of such fixation of pay, vide note No. 1 below Rule 8 of the Pay Rules.

3. The applicant found that his pay having been fixed erroneously penned a representation vide Annexure V which interalia reads as under:-

That the pay which has been fixed/revised w.e.f. 1.2.96 as Rs.6550/-, after taking into account my option exercised in terms of Govt. Letter dt. 26.09.81 and re-application of FR-22 etc. which is against and in contravention of Rule-12 of the C.C.S (revised Pay) Rules 1997 given in the following paragraphs 6, in the above said Revised Pay scale against my old/existing pay of Rs.2150/- in the pre-revised pay scale, is incorrect as it ought to be Rs.6725/- because Rs.6550/- has been shown as equivalent against Rs.2120/- in the Ready reckoner Chart No.S-10 at page 101 of NABHI's publication Viz.Fifth Pay Commission Acceptance Orders 1997. Not only this, even in the lower Revised Pay scale (i.e. 5000-150-8000) Rs.6650/- appears to be as equivalent of Rs.2150/- vide chart No.S-9 of the above named publication. Thus my pay cannot be fixed below Rs.6550/-.

That as there are no provisions in the C.C.S (RP) Rules 1997 under which re-application of Fundamental Rules is permissible for the cases of promotions held in 1995 & promotees exercised their options in terms of Govt. letter dated 26.09.81, re-application of FR etc. in my case is beyond understanding. Thus the re-fixation of pay made wrongly, in my case seems to be the result of re-application of the provisions of Fundamental Rule 22 which is quite inapplicable and, therefore, not understood under which circumstances and orders the said provisions applied when there is a clear rule viz.Rule 12 of the C.C.S.(RP) Rules 1997 which reads as "The provisions of the Fundamental Rules, the Central Civil Services (Revision of Pay) Rules 1947 the

Central Civil Services (Revised Pay Rules) 1960, the Central Civil Services (Revised Pay Rules 1973 and the Central Civil Services (Revised Pay) Rules 1986 shall not, save as otherwise provided in these rules apply to cases where pay is regulated under these rules, to the extent they are inconsistent with these rules

That it may further be observed that upgradation of Revised pay scale of Rs.5000-150-8000 into Rs.5500-175-9000 for pre revised pay scale of Rs.1600-2660 should not be non-beneficial in any way as a result of revision or refixation of pay in the revised pay scale from the pre-revised pay scale but it is seen that it becomes not beneficial as is apparent from the Ready Reckoner Chart given for pre-revised pay scale of 1600-2660 equivalent to Revised pay scale of Rs.5500-175-9000, provided later on in offices only as the same is not available in any of the printed publications sold in the open market, is quite unjustified and discriminatory since while fixing pay in the revised pay scale of Rs.5500-9000 as there are two distinct pay fixation tables and is thus giving loss in pay in comparison to same pay which is shown in the Ready Reckoner Chart No.S-9 provided for pre-revised and revised pay scales of Rs.1600-2660 & 5000-150-8000 respectively which is against the true aim of law and natural justice that a person who is in the upper grade will get less pay from the person who is in the lower grade for same rate of pay. Upgradation of old pre-revised pay scale of Rs.1600-2660 should also, therefore, be up-graded into Rs.1640-2990/- before allowing new upgraded Revised pay scale of Rs.5500-175-9000 in place of 5000-150-9000.

The above had not immediately been responded to by the respondents, while the Ministry of Finance had issued another letter dated 31-05-2001 which inter alia reads as under:-

3. On this issue being raised by the Staff side, this has been considered in the National Anomalies Committee. After careful consideration, the President is pleased To decide that the anomaly may be rectified by the grant of an additional increment to the Senior Government Servant who was drawing a higher pay in a higher pre-revised pay scale applicable to such feeder posts as compared to their juniors holding feeder post included in a different stream or cadre and who were earlier drawing pay at an equivalent or lower stage of pay in a lower pre-revised pay scale. This dispensation, shall, however, be applicable only in cases where the posts involved are clearly distinguishable as feeder and

promotion posts though they may not belong to the same cadre or hierarchy. In other words, this dispensation shall not be applicable to cases that are attributable only to the merger of pay scales by the 5th CPC as a measure of rationalization."

4. The applicant has made a reference to the above and again represented vide Annexure AVI.

5. Vide Annexure A-1 and A-2, the same had been rejected stating that the order relating to additional increment specifically states that the same is applicable in respect of a crucial date of 01-01-1996 whereas the applicant's pay fixation fell due on 01-02-1996. Hence, this O.A.

6. In this O.A. the applicant has prayed for the following relief :-

- i. To issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 14.10.2003 (Annexure A-I) and order dated 13.1.1998 (Annexure A-III) fixing the petitioner's pay less to his Juniors.
- ii. To issue a writ order or direction in the nature of Mandamus commanding the respondents to fix the petitioner's pay at Rs. 6725/- P.M. instead of Rs. 6550/- P.M. w.e.f. 1.2.1996 as per existing rules with all consequential benefits including pensionary benefits etc.
- iii. To issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.
- iv. To award cost of the petition.

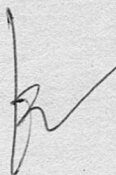
7. Respondents have contested the O.A. They had reiterated the contents as contained in Annexure A-2.

8. The applicant has filed his rejoinder reiterating his contentions and claim as in the O.A. Supplementary counter has also been filed by the respondents, reiterating their point as in the counter.

9. Counsel for the applicant has succinctly explained the entire law on the subject and telescoped the same on the facts of the case and stated that the purpose of option to postpone the fixation of pay would be lost in case the respondents' contention that the grant of additional increment would be available only in respect of those cases where the date of revision of pay was 01-01-1996.

10. As respondents' counsel had not been present, the counter and supplementary counter themselves have been considered as the arguments put forward.

11. Arguments were heard and documents perused. As per the existing rules, provision exists for postponing the fixation of pay scale till the date of next increment, which in this case happened to be as on 01-01-02-1996. The applicant accordingly opted for the same. Again, it is admitted that there are certain individuals junior to the applicant who were drawing less pay than the applicant prior to 01-01-1996 and whose pay was found to be more on the fixation of pay scale under the Revised Rules. This has been sought to be rectified by letter dated 31-05-2001 vide Annexure AVIII. Though the word used is as on 01-01-1996, the same cannot be construed to mean only that particular date for, when option is available for fixing another date for fixation of pay under the revised pay rules, such option would lose its very purpose in case the date 01-01-1996 referred to in order dated 31-05-2001 is strictly or inflexibly



adhered to As majority of the cases had 01-01-1996 as the date of fixation of revised pay, the same was mentioned, whereas, it should be construed to mean the date of fixation of pay in the revised pay in case where the option has been exercised.

12. In view of the above, the O.A. succeeds. The impugned orders at Annexure A-I and II are hereby quashed and set aside. Respondents are directed to refix the pay of the applicant as on 01-02-1996 and afford the applicant the arrears of pay arising out of the same. The respondents shall further fix the pension of the applicant according to the last pay admissible to the applicant. This order shall be complied with, within a period of three months from the date of communication of this order.

No cost.


Member (A)
Member (J)

UV/-