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RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION (T.A.) NO.374 OF 1987

S.L. SHARMA & OTHERS ... ... APPLICANTS.

VERSUS

UNION OF INDIA & OTHERS ... RESPONDENTS.

HON'BLE AJAY JOHRI ... A.M.

HON'BLE G.S. SHARMA .... J.M.

(Delivered by Hon.Ajay Johri)

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1. This writ petition has been received on transfer from the High Court of judicature at Allahabad under section 29 of the Administrative Tribunal Act 1985. The petitioners who were working in the Ordnance Factory Kalpi one as miller and the others as Borers have challenged an order dated 16.7.79 rejecting their claim for revision of their salary and have prayed for a direction to be issued to the respondents to fix their salary either equal to or higher than that drawn by their juniors with effect from the date <sup>31st</sup> ~~1st~~ <sup>the</sup> Revised Pay Rules of 1973 became effective and gave them all consequential benefits.

2. Briefly stated the facts are that the petitioners who were working in gr.'B' of their cadres were promoted to gr.'A' on 6.4.73 and 11.4.73 and their pays were correctly fixed in the higher grade. The Revised Pay Scales 1973 were circulated vide O.M. 1(3)73/D/Civil of 4.1.74 and the employees were asked

to opt for either continuance under the old pay scales or come to the Revised Scales. The option once exercised was to be final. The petitioners opted for the Revised Pay Scale. In July, 1974 employees were given chance to revise the options in terms FO No.Pt.I No. 322 of 6.7.74 which was based on Ministry of Defence O.M. of 29.5.74. The petitioners also gave their revised options but these were not accepted. Certain junior employees were, however, allowed to give their option with the result that when they got promoted to the Gr.'A' they got fixed at a higher stage and though they are junior to the petitioners, they are ~~now~~<sup>now</sup> drawing more salary than them. The petitioners have been representing for stepping up of their pay to that of the juniors but the respondents have not agreed to the request on the ground that the revised option was not applicable to the petitioners who had already got promoted to the higher grade. The petitioners request to consider them as having been promoted from a later date ~~has~~<sup>also</sup> not been accepted.

3. We have heard the learned counsel for both parties. On behalf of the petitioners the learned counsel contended that the option given by the petitioners within the stipulated period to give effect to their promotion from a different date should not be rejected. He relied on Rule 156A of C.S.R. and Rules 4, 7, and 9 of the Revised Pay Rules. While the learned counsel for respondents reiterated what has been explained in para 27 of the counter, according

to him options once exercised became final and granting the request of the petitioners to forego his promotion would mean allowing him to give a revised option. We have perused the petition and the relevant documents.

4. At<sup>4</sup> annexure II is the CM of 29.5.74. On the introduction of Revised Pay Scale employees had to opt to switch over to the revised pay scale with effect from 1.1.73 or a later date. On discovery that certain benefits were lost in the matter of fixation of pays when it was fixed according to Rule 9 from a later date due to non application <sup>w</sup> of provisions of Rule 7, the government in case of employees who opted for the revised scale from a date not later than 31.12.74 allowed fixation of pay under the provisions of Rule 7. The employees were given 3 months time to indicate or revise their options in regard to the date from which they wanted to get fixed in revised scales.

5. The relevant rules of the Civilian in Defence Service (Revised Pay) Rules 73 are :-

Rule 5.

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'Drawl of Pay in the revised Scales' :- Save as otherwise provided in these rules, a Govt. servant shall draw pay in the revised scale applicable to the post to which he is appointed. Provided that a Govt. 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

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scale or until he vacates his post or ~~cases~~ <sup>we</sup> cases to draw pay in that scale.

Explanation 1 :- The option to retain existing scale under the proviso to this rules shall be admissible only in respect of one existing scale.

Explanation 2 :- .....

Rule 7.

'Fixation of Pay' :- The initial pay of a Govt. servant who elects ..... 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 hold a lien ..... and in respect of his pay in the officiating post held by him in the following manner namely :-

In case of a Govt. servant drawing basic pay upto and including Rs.900 in the existing scale--

a. an amount representing 5% of the basic pay, subject to a minimum of Rs.15 and a maximum of Rs.50, shall be added to the existing emoluments.....

Expl. .....

b. after the existing emoluments have been increased and computed as specified in clause (a) the pay shall be fixed in the revised scale at stage equal to the amount so computed or, if there is no such stage in the revised scale, at the stage next above the amount so computed.

Provided .....

Note 1 .....

Note 2 .....

Note 3 .....

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Note 4      ;;

Note 5      ;; (These apply for fixation  
etc. in the same grade  
on opting to come over  
to revised scales).

Rule 9.

Fixation of pay in the revised scale  
subsequent to the 1st day of Jan. 1973 :-

Where a government servant continues to  
draw his pay in the existing scale and is brought  
over to revised scale from a day later than the  
1st day of Jan. 1973, his pay from the later date  
in the revised scale shall be fixed under the  
Fundamental Rules or Civil Service Regulations as  
the case may be, ....

6.      All the above rules talk of an option in  
the same scale and govern the fixation of pay in  
the same scale. The petitioners' case is that they  
got promoted to the next grade on 6.4.73 & 11.4.73.  
These rules would have helped them if they had  
continued in the lower grade upto the time of next  
increment when they could opt to come to the revised  
scale from a later date and taken the benefit of  
their increment.

7.      The petitioners <sup>have alleged</sup> ~~case~~ that their juniors  
who got promoted after getting the next increment  
have got fixed at a higher stage in the promoted grade  
by opting to come over to the revised scales not  
from 1.1.73 but from a date after they had earned

their increment, so they should be given protection by stepping up their pays. The petitioners have sought protection of Note 4 to Rule (1). This note applies to anomaly created by the application of clause (b) under Rule 7(1) in respect of cases under fixations <sup>w.e.f.</sup> ~~done~~ in the existing scale which an employee was drawing immediately before 1.1.73. This note does not help the petitioners who were promoted to higher grade and who came to face the anomaly in the higher grade on promotion of juniors.

8. Ministry of Defence had on 27.9.74 circulated a letter to remove <sup>similar</sup> ~~the~~ anomaly. This CM says that seniors who were promoted to a higher post before 1.1.73 were found to draw less pay in the revised scales than their juniors promoted after the crucial date. To remove anomaly in such cases the pay of the senior was to be stepped up to a figure equal to the pay of the junior w.e.f. the date the junior was promoted. This was to be done provided. -

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- a. Both junior & senior belong to the same cadre and posts to which they are promoted should be identical.
- b. The unrevised and revised pay scales of both posts should be identical.
- c. The anomaly should be directly as a result of application of the provisions of Article 156 A CSR. The example if even in the lower post, the junior officer was drawing

more pay in the unrevised scale  
the provisions contained in the QM  
need not be invoked.

9. These orders became effective from 18.7.74 and cases of seniors drawing less pay than the juniors in respect of promotion occurring on or after 1.1.73 were also to be regulated under these orders. The actual benefit was to be given from 18.7.74.

10. In the petitioners case it was not a case of revising the option that they had given to come over to the Revised Scales. The petitioners had been erroneously asking for another option to be given to them to opt for the revised scales from a later date. This could not be allowed to them and it would have not helped them too. The advantage could <sup>be</sup> ~~accrue~~ to them only if they came to revised scale after their increment in the lower grade.

11. In the case of juniors they did not come to revised scales till the date of their next increment. There fixation in revised scales in the lower grade was done under Fundamental Rules/CSR as the case may be. Their pay on promotion was fixed under CSR 156 A which is analogous to FR 22C. Hence the anomaly has arisen due to two causes - delayed switching over to Revised Scales & application of CSR 156A.

12. In our opinion the conditions laid down in the CM of 18.7.74 are satisfied. At the relevant time in prrevised scales the juniors were drawing less pay. So the petitioners cannot be allowed to continue to draw less pay than these juniors. Their pay should be stepped up in terms of the CM of 18.7.74. The fact remains that the junior was promoted after the fixation of his pay in the Revised Scales after giving him benefit of the increment in the lower scale and the anomaly actually arose out of fixation Under CSR 156A. The 18.7.74 CM is also to regulate cases of seniors drawing less pay in revised scale than the junior in respect of promotions occurring on or after 1.1.73 and the petitioners' case falls in this category.

13. In the above view we allow the petition. The petitioners would be entitled to get their pay stepped <sup>up</sup> in terms of the CM of 18.7.74 vis a vis their juniors. Arrears will be due for a period to them from 3 years prior to 18.10.79 on wards. We make no order as to costs.

*J.M.*  
J.M.

*A.M.*  
A.M.

December 6<sup>th</sup>, 1988.

Hasnain.