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CENTRAL ADMINISTRATIVE TRIBUNAL
Jodhpur Bench; Jodhpur.

Original Application No. 202/2011

Dated the 5th day of November, two thousand twelve.

Hon'ble Mr. G. Shanthappa, Judicial Member.

Hon'ble Mr. B.K. Sinha, Administrative Member.

Madan Mohan Ratnu, s/o Shri Balu Dan Ratan, aged 48 years, R/o plot No. 113, Hanwant 'A' BJS Colony, Jodhpur at present working as Sr. Section Engineer (P Way USFD) Valsad, Gujarat, Posted Jodhpur at the time of impugned order passed by respondent No. 2.

Applicant.

Rep. by Mr. Rajendra Singh Shekhawat

: Counsel for the applicant.

Versus

1. Union of India, through Secretary to the Government of India, Ministry of Home Affairs, Department of Central Bureau of Investigation (CBI), New Delhi.
2. The Director, Central Bureau of Investigation (CBI) CGO Complex, Lodi Road, New Delhi.
3. The Administration Officer, Central Bureau of Investigation (CBI) CGO Complex, Lodi Road, New Delhi..
4. The Superintendent of Police, Central Bureau of Investigation (CBI) Jodhpur, Near Gokul Ji Ki Pyau, Lal Sagar, Magra Punjla, Jodhpur Rajasthan.

: Respondents.

Rep. By. Mr. Vinit Mathur : Counsel for the respondents.

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ORDER

(Pronounced by Hon'ble Mr. G. Shanthappa, Judicial Member.)

The above application is filed under Sec. 19 of the Administrative Tribunals Act, 1985, challenging the legality and propriety of the order no. DPPERS. II 2010/ 160/A 20014/2483/2002 dated 24.01.2011 (Annex. A/1) and prayed that the above order be quashed and set aside. A further relief of direction to the respondents to refix his pay with reference to 6th Pay Commission recommendations from 01.01.2006 to Jan. 2009 which is admissible as per proviso I (iii) to FR 22 and give the arrears of payment along with interest at the rate of 18% per annum.

2. We have heard the learned counsel for the respective parties.

3. The admitted facts from either side are that the applicant joined Railway service as Permanent Way Inspector Gr. III (PWI - Gr.III) Engineering Branch Western Railway on 10.02.1988. He was subsequently promoted as PWI Gr. II in the pay scale of Rs. 1600-2660. Thereafter, he was posted as Vigilance Inspector (Ex-Cadre) in the same scale of pay from 06.01.1995



and he was working at Vigilance Branch Western Railway, Ajmer, on deputation. On 16.08.1995 he was promoted as Chief Vigilance Inspector - Ex cadre of vigilance Branch on adhoc basis. Due to ex-cadre post he was granted the pay scale of Rs. 2000-3200.(4th Pay Commission scale), he was further promoted as Section Engineer (P.Way) in Engineering Branch on regular basis in the pay scale of Rs. 6500-10500 from 31.08.2001.

A. The applicant, while he was working in the scale of pay of Rs. 6500-10500, substantively holding lien as PWI Gr. I in the same scale of pay in Engineering Department of BCT Division, vide memorandum no. SFE 76/3/1Vol. VI dated 03.01.2002, (Annex. A/11), he was selected for appointment as Inspector of Police in CBI on deputation basis for a period not exceeding three years. His appointment as Inspector of Police will not confer upon him any right for seniority, promotion, pay etc in his parent cadre and for that purpose he will continue to hold the same post/rank as in his parent cadre and accordingly he joined the said post on 10.01.2002 in the same scale pay in the ex-cadre post.

B. The applicant was informed that parent department means the Railway department and not Engineering branch because in Railways, Engineering department, is one branch. Thus it is clear that his parent department is Railway department. In



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railway department, he has been posted in Engineering Department or Vigilance Organisation, Western Railways.

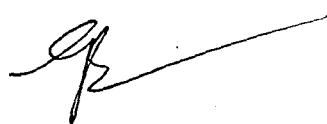
6. The CBI Jodhpur issued an office order no. 47/2009 dated 16.03.2009, wherein it is stated as under:

In pursuance of the Railway services (Revised Pay) rule, the pay of Sh M.M. Ratnu, the then Inspector, CBI ACB Jodhpur (on deputation from Railway) has been fixed by his parent department at Rs. 14330+ 4600 as on 01.01.2006. He is granted Annual Increments as under:-

w.e.f.01.07.2006 Rs.14330+4600=18930 to Rs. 14900+4600=19500
 w.e.f.01.07.2007 Rs.14900+4600=19500 to Rs.15490+4600=20090
 w.e.f.01.07.2007 Rs.15490+4600=20090 to Rs.16100+4600=20700

7. Vide Office Order No. 13/2009, dated 28.01.2009, which was issued in compliance of order No. DPPERS-II 2009/101/A-21021/01/2007 dated 16.01.2009 the applicant was relieved from his duties on 30.01.2009 AN on repatriation to his parent department.

8. Vide Memorandum No. E/E1049/2Vol. XII dated 13.08.2010 issued by the Western Railway, the applicant was granted pay protection from one ex-cadre post to another. The pay details are given below:



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Existing pay			Revised pay		
SSE 9300- 34800 + 4600 GP	20700	16.02.2009	SSE 9300- 34800 + 4600 GP	21530	16.02.2009
Granted 2 nd Financial upgradation of MACP at GP 4800 & fixed at Rs. 21530/- w.e.f. 01.09.2008 & Rs.22180 w.e.f.01.07.2009			Granted 2 nd Financial upgradation of MACP at GP 4800 & fixed at Rs.22380/- w.e.f.01.09.2008 & Rs.23060/- w.e.f.		
SSE 9300- 34800 + 4800 GP	22850	01.07.2010	SSE 9300- 34800 + 4800 GP	23760	01.07.2010

9. The DRM, Mumbai Central, Western Railway issued a letter dated 07.09.2010 to the Superintendent of Police CBI Jodhpur, regarding pay fixation of the applicant as per the recommendations of the 6th Central Pay Commission as on 01.01.2006. It is observed the pay fixation as on 01.01.2006 has not been done by the Railways and hence the papers were sent to CBI Jodhpur for doing necessary pay fixation and the same may returned at the earliest.

10. Subsequently, the applicant had submitted representations dated 26.08.2010 (Annex. A/8), dated 18.09.2010, (Annex. A/9) to the 4th respondent to refix his pay w.r.t. 6th CPC which is admissible under FR22 (I) (iii) and to give him arrears. The applicant also submitted a reminder on 10.01.2011 to the Deputy Director (A) CBI Hqrs. New Delhi in this regard. When no action was taken he has filed the present O.A.



11. It is the case of the applicant that respondents 1 to 3 were submitted by the competent authority to refix the pay of the applicant in accordance with 6th CPC as per FR 22 (I) (iii). Admittedly, before joining the CBI, the applicant was working as Chief Vigilance Inspector, Western Railway, Ajmer, an ex-cadre post, from 06.02.95 to 09.01.2002. On the date of joining in CBI i.e. 10.01.2002 his substantive scale as well as the scale due to ex-cadre post was Rs. 6500-10500. The applicant joined the Vigilance department of the Railways in the pay scale of Rs.1600-2660 (4th Pay Commission scale of pay) and due to ex cadre post of vigilance department, the applicant got the benefit of one grade higher i.e. Rs. 6500-10500 from 16.08.95 on regular basis (substantive scale) from 31.08.2001.

12. As per the definition relating to term 'deputation and foreign service'

" on appointment from one ex-cadre post to another, if employee opts to draw pay scale in the ex-cadre post, pay will be fixed with reference to cadre pay only. If the time scale of pay in such ex-cadre post is identical to that in previous ex-cadre posts(s), benefit of proviso I (iii) to FR 22 admissible".

When the applicant got the benefit of notional increment of Railways while working on deputation in CBI, the respondent No.4 is the competent authority to refix his pay. The applicant's basic pay, as per the recommendations of 5th Pay Commission, was fixed by CBI as per proviso I(iii) to FR 22. The applicant again got the benefit of notional increment in continuation of the

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increment in CBI and Railway vigilance which was admissible as per proviso I (iii) to FR 22. The Railway had fixed the pay as per his last basic pay in CBI on the basis of LPC i.e. Rs.9100/- and the corresponding basic pay to Rs.9100/- as per the 6th Pay Commission was Rs. 21530/-. The respondents have misinterpreted the word "parent department" which was done by AO (P) because the parent department means the Railway department and not engineering department because in railway department Engineering branch is one branch. The impugned action of the respondents is incorrect while re-fixing the pay of the applicant with reference to 6th Pay Commission Recommendations and also not paying the arrears from 01.01.2006 to January 2009. The action of the respondents is illegal and unconstitutional, willful and deliberate and intentionally violating the legal rights of the applicant. The same is arbitrary, discriminatory and violative of Art. 14 and 16 of the Constitution of India.

13. The respondents have filed reply statement denying the allegations and averments made in the O.A except those which are specifically admitted therein based on records. The applicant while working as PWI Gr.III was promoted to the post of PWI Gr. II on 15.02.1993 and further promoted to PWI Gr. I. While working as such, he was posted as Vigilance Inspector, on deputation in the pay scale of Rs. 1600-2660 w.e.f. 06.01.95.



The promotion of the applicant as PWI Gr. II w.e.f. 15.02.1993 was provisional due to ex-cadre post in the Rail Testing scale Rs.1600-2660. He was further promoted as Vigilance Inspector on 16.08.95 due to ex-cadre of vigilance on adhoc basis in the pay scale of Rs. 2000-3200. The applicant was again promoted as Section engineer on regular basis in the scale of pay of Rs2000-32000 w.e.f. 31.08.2001. While working as Chief Vigilance Inspector, he was selected as Inspector CBI Jodhpur on deputation basis w.e.f. 10.01.2002 in which post he was working till 31.01.2009. On his repatriation to the parent department, he submitted his representation dated 28.08.2010, requesting for grant of remaining arrears in pursuance of the 6th Pay Commission. The applicant has also submitted reminders on 18.09.2010 and 10.01.2011.

14. They have rightly considered the representation and rejected that the applicant is not entitled for refixation of pay on the basis of 6th CPC. The respondents have substantiated their stand that the applicant joined as Inspector CBI, Jodhpur on 10.01.2002. The sanctioned tenure of the post was upto 09.07.2008. The applicant was given the pay scale of Rs. 6500-10500 on his deputation to CBI from Western Railway. He was working as Chief Vigilance Inspector, which was also an ex cadre post. On 10.01.2002 his substantive scale of pay was Rs 6500-10500 due to ex-cadre and because of such ex cadre he got the

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benefit of one grade higher i.e. Rs. 6500-10500 on regular basis from 31.08.2001.

15. As per Swamy's Hand book chapter on deputation and Foreign Service " on appointment from one ex-cadre post to another, if employee opts to draw pay scale in the ex-cadre post, pay will be fixed with reference to cadre pay only. If the time scale of pay in such ex-cadre post is identical to that in previous ex-cadre posts(s), benefit of proviso I (iii) to FR 22 admissible. In the communication dated 13.09.2010, by quoting Memorandum dated 03.01.2002, the CBI has reiterated the two conditions mentioned in the said memorandum which read as under:

" 1. First, Shri MM Ratnu, the then inspector CBI has repatriated from one ex-cadre post i.e. Vigilance Organisation, Western Railway Dt. 3/1/2002 to his original cadre i.e. Engineering Department Western Railways.

2. Second Shri M.M. Ratnu the then, Inspector CBI after repatriation from Vigilance organisation, western Railway joined CBI on 10/1/2002 from Engineering Department Western Railway (Original Cadre)

The applicant has already been paid the arrears admissible or accrued to him in pursuance of the 6th Pay commission recommendations by making correct fixation of pay of the applicant. The applicant did not point out any irregularity or illegality or violation of rule while fixing his pay, has not pointed out any mistake of the respondents. There is no requirement to refix the pay of the applicant as he joined the CBI from the Engineering department of the Western Railway and not from



the vigilance organization of the Western Railway as the applicant is also repatriated from one ex-cadre post i.e. Vigilance organization. There is no arbitrariness or illegality in the order. According to the respondents, parent department of the applicant is Railway and not engineering department. Engineering department is one branch in the Railways and that cannot be treated as separate parent department. The respondents have sought for the dismissal of the O.A.

16. We have carefully considered the rival contentions of the respective parties, perused the pleadings available on record and the relevant provision i.e. FR 22 (1) (iii). The applicant joined CBI on 10.01.2002 in the pay scale of Rs. 6500-10500 on deputation from Western Railways. Before joining CBI, the applicant was working as Chief vigilance Inspector in the Western Railway from 06.02.1995 to 09.01.2002. The post of Chief Vigilance Inspector was also an ex-cadre post and on 10.01.2002, his substantive scale and scale due to ex-cadre was the same pay scale i.e. Rs.6500-10500. The applicant got the benefit of one grade higher in the pay scale i.e. Rs.6500-10500 from 16.08.1995 on regular basis (substantive scale) from 31.08.2001. The applicant joined the respondents department in substantive scale and the scale due to ex-cadre was the same i.e. Rs. 6500-10500. The applicant submitted his representation dated 26.08.2010 to the respondents with a request to refix the



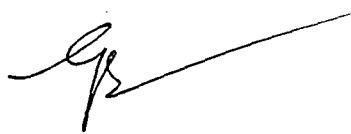
pay with reference to VI CPC which is permissible under FR 22 and pay the arrears. The rule position under FR 22 (1) (iii) clarifies appointment from one ex-cadre post to another post, if employee opts to draw the pay scale in the ex-cadre post, the pay will be fixed with reference to the cadre pay only. If the time scale of pay in such ex-cadre post is identical to that of the previous ex-cadre post, the benefit of the same proviso is admissible.

17. The applicant was repatriated to his parent department on 30.01.2009. The respondents have rejected the request of the applicant on the reason that the applicant was repatriated on 03.01.2002 from Vigilance Organization, Western Railway to the office of General Manager (Vigilance), Western Railway, Mumbai. According to the said Memorandum, the repatriation was from one ex-cadre post i.e. Vigilance on 03.01.2002 to his original cadre i.e. Engineering Department, Western Railway. After repatriation from Vigilance organization, Western Railway, he joined CBI on 10.01.2002 from Engineering Department (Western Railway - Original Cadre). The parent department means the Railways and not Engineering branch because in Railways, Engineering department is one branch. His parent department is Railways and in Railways he is posted in Engineering Department or Vigilance organization, Western



Railway, his parent department is Western Railway. Hence the question of re-fixation of pay in ex-cadre post does not arise.

18. While deciding the representation, the respondents have not applied FR 22 (1) (iii). The applicant was paid the salary in the pay scale of Rs. 6500-10500 while working on deputation post. The respondents have taken into account the service of the applicant when the VI CPC came into force. As on the date of relieving, he was drawing the pay scale of Rs. 6500-10500. According to FR 22 (1) (iii), the respondents have to re-fix the pay of the applicant when he joined CBI from Engineering Department or Railways or from Vigilance Organization. The contention of the respondents is that the parent department of the applicant is Railways and not Engineering Department, as the Engineering Department is only a branch which is a part of the Railways and that cannot be treated as independent department. Whether the applicant belongs to Railways or Engineering Department that is immaterial. The issue in the present OA is as to who should fix the pay, whether the respondents or the Railways. The applicant was working in ex-cadre post, his last pay drawn in the ex-cadre post under the respondents was Rs. 6500-10500. Accordingly the respondents have to refix the pay of the applicant in accordance with VI CPC.



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19. For the foregoing reasons, the applicant has established his case that he is entitled for re-fixation of his pay under FR 22 (1) (iii) by the respondents. The respondents have not justified in their order which is impugned in the O.A and they are shirking from the responsibility of re-fixation of pay and shifting the responsibility to the Railways as mentioned in the impugned order. Accordingly, the applicant is entitled for the relief as prayed for in the O.A. We are inclined to interfere in the impugned order. The impugned order dated 21.01.2012 is quashed and set aside. The respondents are directed to re-fix the pay of the applicant under FR 22 (1) (iii) with reference to VI CPC w.e.f. 01.01.2006 to January 2009 with arrears, and pay interest at the rate of 9% per annum. The above exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

20. The O.A is allowed to the extent as mentioned in the earlier para, but no order as to costs.

[B.K. Sinha]
Administrative Member

[G.Shanthappa]
Judicial Member.

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