CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 28.02.2013

OA No. 143/2012

Ms. Kavita Bhati, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Heard learned counsels appearing for the respective parties.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

J.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

Thursday, this the 28th day of February, 2013

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

O.A. No. 141/2012

S.C.Sharma
s/o Shri M.L.Sharma,
aged about 49 years,
r/o Shyam Nagar, Jhotwara, Jaipur,
presently working as Tech Officer
O/o HQ Chief Engineer, Jaipur Zone (MES),
Bani Park, Jaipur

.. Applicant

(By Advocate : Ms. Kavita Bhati)

Versus

1. Union of India
through Secretary to the Government of India,
Ministry of Defence,
South Block,
New Delhi.

2. The Director General (Pers),
Military Engineering Service,
E-In-C's Branch, Integrated HQ of MOD (ARMY),
Kashmir House,
DHQ PO, New Delhi.

3. The Central Record Officer (Officers),
C/o CE Delhi Zone,
Delhi Cantt.

4. The Chief Engineer,
South West Command,
C/o 56 APO.

5. The Chief Engineer (HQ),
   Jaipur Zone (MES),
   Power House Road,
   Bani Park, Jaipur

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

O.A. No. 142/2012

G.P.Kumawat,
s/o Shri H.L.Kumawat,
aged about 49 years,
r/o 4 C, Ganesh Colony,
Gali No.8, Kalwar Road,
Jhotwara, Jaipur
Presently working as Tech Officer
O/o HQ Chief Engineer, Jaipur Zone (MES),
Bani Park, Jaipur

.. Applicant

(By Advocate : Ms. Kavita Bhati)

Versus

1. Union of India
   through Secretary to the Government of India,
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2. The Director General (Pers),
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3. The Central Record Officer (Officers),
   C/o CE Delhi Zone,
   Delhi Cantt.

4. The Chief Engineer,
   South West Command,
   C/o 56 APO.

5. The Chief Engineer (HQ),
   Jaipur Zone (MES),
   Power House Road,
   Bani Park, Jaipur

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

O.A. No. 143/2012

G.L. Kumawat,
s/o Shri M.L.Kumawat,
r/o Flat No. 6, Block A,
Kendriya Vihar, Sector-6,
Vidhyadhar Nagar, Jaipur
Presently working as Tech Officer
O/o HQ Chief Engineer, Jaipur Zone (MES),
Bani Park, Jaipur

.. Applicant

(By Advocate : Ms. Kavita Bhati)

Versus

1. Union of India
   through Secretary to the Government of India,
   Ministry of Defence,
   South Block,
   New Delhi.

2. The Director General (Pers),
   Military Engineering Service,
   E-In-C's Branch, Integrated HQ of MOD (ARMY),
   Kashmir House,
   DHQ PO, New Delhi.

3. The Central Record Officer (Officers),
   C/o CE Delhi Zone,
   Delhi Cantt.

4. The Chief Engineer,
South West Command,
C/o 56 APO.

5. The Chief Engineer (HQ),
Jaipur Zone (MES),
Power House Road,
Bani Park, Jaipur

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

O.A. No. 144/2012

Surendra Kumar
s/o late Shri Durjan Singh,
aged about 55 years,
r/o Plot No.11, Vishnu Vihar Colony,
(Laxmi Nagar), Niwaru Road,
Jhotwara, Jaipur, presently working
as Tech Officer O/o HQ Chief Engineer,
Jaipur Zone (MES), Bani Park, Jaipur

.. Applicant

(By Advocate : Ms. Kavita Bhati)

Versus

1. Union of India
through Secretary to the Government of India,
Ministry of Defence,
South Block,
New Delhi.

2. The Director General (Pers),
Military Engineering Service,
E-In-C's Branch, Integrated HQ of MOD (ARMY),
Kashmir House,
DHQ PO, New Delhi.

3. The Central Record Officer (Officers),

4. The Chief Engineer,
   South West Command,
   C/o 56 APO.

5. The Chief Engineer (HQ),
   Jaipur Zone (MES),
   Power House Road,
   Bani Park, Jaipur

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

O.A. No. 145/2012

Suresh Kumar
s/o late Shri R.S.Sharma,
aged about 49 years,
r/o A-3, Gali No.3,
Adarsh Basti, Tonk Phatak,
Jaipur, presently working as Tech Officer
O/o HQ Chief Engineer, Jaipur Zone (MES),
Bani Park, Jaipur

.. Applicant

(By Advocate : Ms. Kavita Bhati)

Versus

1. Union of India
   through Secretary to the Government of India,
   Ministry of Defence,
   South Block,
   New Delhi.

2. The Director General (Pers),
   Military Engineering Service,
   E-In-C's Branch, Integrated HQ of MOD (ARMY),
   Kashmir House,
   DHQ PO, New Delhi.

3. The Central Record Officer (Officers),
   C/o CE Delhi Zone,
   Delhi Cantt.

4. The Chief Engineer,
   South West Command,
   C/o 56 APO.

5. The Chief Engineer (HQ),
   Jaipur Zone (MES),
   Power House Road,
   Bani Park, Jaipur

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

O.A. No. 146/2012

S.K.Jain
s/o late Shri L.C.Jain,
aged about 52 years
r/o 91/16, Patel Marg,
Mansarovar, Jaipur,
Presently working as Tech Officer
O/o HQ Commander Works
Engineer, Kalyan Marg,
Bani Park, Jaipur

.. Applicant

(By Advocate : Ms. Kavita Bhati)

Versus

1. Union of India
   through Secretary to the Government of India,
   Ministry of Defence,
   South Block,
   New Delhi.

2. The Director General (Pers),
   Military Engineering Service,
   E-In-C's Branch, Integrated HQ of MOD (ARMY),
   Kashmir House,
   DHQ PO, New Delhi.

3. The Central Record Officer (Officers),
C/o CE Delhi Zone,
Delhi Cantt

4. The Chief Engineer,
South West Command,
C/o 56 APO.

5. The Chief Engineer (HQ),
Jaipur Zone (MES),
Power House Road,
Bani Park, Jaipur

6. The Commander Works Engineer (HQ),
Kalyan Marg, Bani Park,
Jaipur.

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

ORDER (ORAL)

Since similar question of law and facts are involved in these OAs, as such, the same are being disposed of by this common order.

2. Facts of OA No.141/2012, S.C.Sharma vs. Union of India and others, are taken as leading case.

3. The present OAs are directed against the order dated 12.12.2011, vide which representations of the applicants were rejected and also against the action of the respondents

whereby applicants have been wrongly fixed and benefit of bunching was not granted to them.

4. Brief facts of the case are that the applicants are working as Tech Officers in the Military Engineering Services. Earlier, the designation of the applicants was Chief Draughtsman which was later on came to be merged and redesignated as Technical Officer vide order dated 16.1.2006.

5. The short controversy involved in these OAs is that applicants were drawing pay scale of Rs. 6500-10500 prior to the fixation. Thereafter they were fixed as per the Central Civil Services (Revised Pay) Rules, 2008 in the revised pay band of Rs. 9300-34800 with grade pay of Rs. 4600. The pay scale of the Technical Officers was upgraded from Rs. 6500-10500 to Rs. 7450-11500 corresponding to the revised pay band PB-2 of Rs. 9300-34800 with grade pay of Rs. 4600 w.e.f. 1.1.2006 under the provisions of CDS (RP) Rules 2008. Since the applicants failed to get their pay fixation as per OM dated 30.8.3008 regarding implementation of the Sixth Central Pay Commission recommendations and fixation of pay and payment of arrears, they have represented and thereafter served notice for demand of justice. Since no heed was paid to the representation as well

as the notice for demand o justice, therefore, OA was filed praying therein to grant benefit of bunching to the applicant as per illustration 4A of Rule 7(1) of the CCS (RP) Rules, 2008 which is equal to 3% of the Pay Band + Corresponding Grade Pay. The said OA was disposed of directing the respondents to consider representation of the applicant by passing a reasoned and speaking order within two months. Ultimately, the respondents vide order dated 12.12.2011 (Ann.A/1) rejected representation of the applicants.

6. Aggrieved and dis-satisfied with the impugned order dated 12.12.2011, the applicants preferred theses OAs on the ground that in the impugned order it is stated that the applicants cannot be fixed as per illustration 4A for the reason that the applicant was not in receipt of pay scale of Rs. 7450-11500 as on 1.1.2006 is palatantly incorrect for the reason that vide order dated 15.3.2011 the respondents have themselves granted the upgraded pay scale of Rs. 7450-11500 to the Technical Officers and thus the respondents were wrong in revising the pay of the applicants as per fitment table (Annex-I) of the OM dated 30.8.2008, inspite of the fact that sub para (ii) of Para 2 of the aforesaid OM clearly states that the fitment tables are not

applicable in the cases of upgradation of posts and merger of pre-revised pay scales.

7. The learned counsel appearing for the applicants has drawn our attention towards the admitted facts that pay has been fixed as per Note 2A of Rule 7(i) but at the same time the respondents failed to take note of the fact that Note 2A refers to the posts which have been upgraded as indicated in Part B or Part C of the first Schedule. Further Part-B relates to revised pay scale for certain common category of staff and refers the post of Chief Draughtsman in its column VI (I) along with their revised pay scale as that of Rs. 7450-11500 with the grade pay of Rs. 4600. In view of this fact, the pay of the applicants have been upgraded and therefore pay of the applicants deserve to be fixed as per illustration 4A. Thus, the stand taken by the respondents is itself contradictory.

8. Further, the applicants have been wrongly denied the benefit of bunching which was provided to them in para 2 of the OM dated 30.8.2008 which is at the rate of 3% of the pay scale + grade pay of the applicants. The applicants after showing the appendix which has been referred by the respondents submitted that wrong has been committed by the respondents, which

reveals that the respondents have committed serious error in fixing pay of the applicant under the wrong pretext that pay has been fixed as per Note 2A of Rule 7(i) of CCS (Revised Pay) Rules, 2008, which is per se wrong as the respondents have applied the fitment table while making the fixation of the applicants.

9. In support of his submissions, the learned counsel appearing for the applicants referred CCS (Revised Pay) Rules, 2008 and more particularly Para 13 of the Rules, which reads as under:-

> "13. Fixation of pay on promotion on or after 1.1.2006- In the case of promotion from one grade pay to another in the revised pay structure, the fixation will be done as follows:-
>
> (i) One increment equal to 3% of the sum of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple of 10. This will be added to the existing pay in the pay band. The grade pay corresponding to the promotion post will thereafter be granted in addition to this pay in the pay band....."

10. The applicants have also refers to the impugned order dated 12.12.2012 by which representations of the applicants for fixation of pay as per CCS (RP) Rules, 2008 has been rejected wherein itself the applicant alleged that pay fixation was made by the respondents correctly as per Rule 7(i) Note 2-A and the same is approved by the audit. It is further stated that the

illustration 4A as indicated in para 3 of the representation is applicable. Further referred to OM dated 30.8.2008 (Ann.A/7) and particularly para 2(ii) which reads as under:-

> "2. The sequence of action to be taken on receipt of the option will be as follows:-
>
> (i).....
>
> (ii) The table Annex-I will be applicable in cases where normal replacement pay scales have been approved by the Government. In cases of upgradation of posts and merger of pre-revised pay scales, fixation will be done as prescribed in Note 2A and 2B below Rule 7(1) and in the manner indicated in illustration 4A and 4B respectively of the Explanatory Memorandum to the CCS (RP) Rules, 2008."

The learned counsel also referred to Note 2A below para 2(iii) of the aforesaid OM, which is in the following terms:-

> "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) or Rule 7 by multiplying the existing basic pay as on 11.2006 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 in this regard is in the Explanatory Memorandum to these Rules."

11. Bare perusal of Para 2(ii) and Note 2A (supra), it reveals that illustration 4A is applicable to the case of the applicants and the same OM and the illustration 4A, Col. 7 has been referred by

the applicants which deals with pay in the pay band after including benefit of bunching in the pre-revised scale of Rs. 3040-4590, if admissible (Ann.A/7).

12. Per contra, the learned counsel appearing for the respondents also referred the same rule, but gives much emphasis to note -2B of the CCS (RP) Rules, 2008, which reads as under:-

> "In the case of merger of pay scales, pay in the revised pay bands will be fixed 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 merged scale as indicated in column 6 of Part B or C will be payable in addition. Illustration 4B in this regard is in the Explanatory Memorandum to these Rules."

But the same is not applicable to the present case as stated in para 5(3) of the reply wherein it is admitted that pay fixation has been done as prescribed in Note 2(A) and 2(B) below Rule 7 and in the manner indicated in illustration 4A, which is a contradictory stand taken by the respondents.

13. Further, the applicants are able to show before us relying upon Appendix-A which has been placed on record alongwith the reply filed by the respondents and more particularly referred

clause-7 in which pay in the pay band after including benefit of bunching in the pre-revised scale of Rs. 3050-4590, if admissible has been mentioned. Beyond this term, in the appendix the respondents have manipulated to write down 'fixed by referring to fitment table given in Annexure I corresponding to the existing pay scale'. We are fully satisfied that above referred addition in Clause-7 has been introduced by the respondents deliberately to deny the correct fixation of pay and has wrongly fixed pay of the applicants.

14. We have thoroughly considered the relevant rules and the OMs as well as the appendices and illustration given in the rules and upon consideration it appears that the applicants' pay has been fixed in accordance with fitment table provided in OM dated 30.8.2008 which is totally incorrect because this fitment table is applicable to normal replacement and not to the cases of merger or upgradation as in the case of the applicants.

15. In view of the observations made hereinabove, we are fully satisfied with the submissions made on behalf of the applicants and we deem it proper to quash and set-aside the order dated 12.12.2011 (Ann.A/1) and order vide which pay of the applicants have been wrongly fixed without giving benefit of bunching. The

respondents are directed to grant benefit of bunching to the applicants as per illustration 4A of Rule 7(i) of CCS (RP) Rules, 2008 which is equal to 3% of Pay Band + Corresponding grade pay and after granting benefit of bunching as per rules, as indicated above, the respondents are further directed to make payment of arrears to the applicants after the exercise undertaken for correct pay scale w.e.f. 1.1.2006. It is further made clear that the entire exercise is supposed to be undertaken expeditiously, but in case not later than a period of three months from the date of receipt of a copy of this order.

16. With these observations, the OA stands disposed of with no order as to costs.

(ANIL KUMAR)
Admv. Member

(JUSTICE K.S.RATHORE)
Judl. Member

R/