

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.061/00001/2014

**Order Reserved on 07.10.2015
Pronounced on 20.10.2015**

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**

...

1. MES No.311568 Parkash Chand, Administrative Officer-II (Retd.)
2. MES No.211305 Chuni Lal Sharma, Administrative Officer-II (Retd.)
3. MES No.447609 Surinder Kumar Sharma, Administrative Officer-II (Retd.)
4. MES No.311313 Puran Singh, Administrative Officer-II (Retd.)
5. MES No.311315 Vijay Kumar, Administrative Officer-II (Retd.)
6. MES No.311171 S.K. Korla, Administrative Officer-II (Retd.)
7. MES No.311363 G.K. Gupta, Administrative Officer-II (Retd.)
8. MES No.506296 Om Parkash, Technical Officer.
9. MES No.167341 Bhushan Lal Wajuzari, Administrative Officer-II (Retd.)
10. MES No.31181 Rajinder Singh Manhas, Administrative Officer-II (Retd.)
11. MES No.503646 Harjeet Singh, Administrative Officer-II.
12. MES No.311341 Paras Ram, Administrative Officer-II.
13. MES No.310949 Janam Singh, Administrative Officer-II (Retd.)
14. MES No.3410825 Sukhmit Singh, Administrative Officer-II (Retd.)
15. MES No.311268 Ram Singh Khasla, Administrative Officer-II (Retd.)
16. MES No.311599 Joginder Singh, Administrative Officer- (Retd.)
17. MES No.510438 Sunil Chalotra, BSO.
18. MES No.364602 Janak Raj, Technical Officer.
19. MES No.447610 Avinash Chander, Administrative Officer-II (Retd.)
20. MES No.311354 Sewa Singh, Administrative Officer.
21. MES No.311441 Azaib Singh, Administrative Officer.

All C/o Chief Engineer, Northern Command, Udhampur (J&K).

... Applicants

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. The Engineer in Chief, Ministry of Defence, New Delhi.

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3. The Chief Engineer, Northern Command, Udhampur, C/o 56 APO.
4. The Secretary, Deptt. Of Personnel & Training, New Delhi.

... Respondents

Present: Sh. Shailendra Sharma, counsel for the applicants.
Sh. Ram Lal Gupta, counsel for the respondents.

ORDER

BY HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

"8 (i) The impugned order Annexure A-2 be quashed being illegal and have been passed without application of mind.

(ii) The notification Annexure A-1, whereby revised pay rules were framed for Civilian Defence Employees be quashed so far as it places the Group B category of Gazetted Officers prior to 01.01.2006 in Pay Band-II along with Group C non-gazetted employees prior to 01.01.2006.

(iii) Direct the respondents to either merge the Group B gazetted officers n Pay Band 3 in the pay scale of Rs.15600-39100 or in the alternative create a Pay Band i.e. Rs.14500-38000 as per formula i.e. 3% in 6th Pay Commission for Group B Gazetted category of Officers w.e.f. 01.01.2006 and maintain the distinction of Gazette Group B Officers by placing them in independent Pay Band from Non Gazetted employees.

(iv) Direct the respondents that applicants be treated in the pay Scale of Rs.7500-12000 from the date they were promoted as Admn. Officer-II and further placed in appropriate new pay scales as per Para (iii) above."

2. Averment has been made in the O.A. that the applicants were working as Administrative Officer-II/BSO/Administrative Officer-I/Technical Officer in the Department prior to the implementation of the

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recommendations of 6th Pay Commission w.e.f. 01.01.2006. All the applicants except applicant no.8, 11, 12, 17 and 18 have retired from service after the implementation of the recommendations of the 6th Pay Commission w.e.f. 01.01.2006. Applicants no.8, 11, 12, 17 and 18 are still in service. Since the applicants were in the pay scale of Rs.6500-10500 prior to implementation of the recommendations of 6th Pay Commission w.e.f. 01.01.2006 and were categorized as Group B Gazetted Officers and were merged with Group C category (Non Gazetted Employees) for the purpose of granting the revised scale w.e.f. 01.01.2006, the applicants felt demoted after introduction of revised pay scales as they were merged with non gazetted category. Keeping in view this fact, the applicants approached this Tribunal by way of filing OA No.780/JK/2010, No.781/JK/2010 and No.782/JK/2010, which were disposed of by this Tribunal vide order dated 21.11.2012 with direction to the respondents to take a conscious decision by taking into consideration the pleadings raised by the parties.

3. However, the respondents vide order dated 14.08.2013 rejected the representation of the applicants on the ground that the applicants were in Group B Gazetted post and accordingly their pay has been fixed in Pay Band-2 with Grade Pay of Rs.4600/- and their feeder category of employees have been upgraded from Group C to Group B Non Gazetted but have been granted the Grade Pay of Rs.4200/- and their pay

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have been fixed in Pay Band-2 and all the applicants are superior to their subordinates and there is no loss of dignity/office decorum etc. (Annexure A-2). Hence this O.A.

4. In the grounds for relief it has been stated as follows:

- i. The applicants were Group B Gazetted Officers of the department prior to implementation of recommendations of 6th Pay Commission w.e.f. 01.01.2006. The group C category of employees were not only subordinates of the applicants but were also Non-Gazetted employees prior to 01.01.2006. By merging the applicants with non-gazetted employees after implementation of recommendations of 6th Pay Commission w.e.f. 01.01.2006, the respondents have removed the distinction between Gazetted and Non-Gazetted employees. Thus, instead of promoting the applicants on higher side, the respondents have snatched away Gazetted status of the applicants and have forced them to work in the Pay Band of Non-Gazetted Employees.
- ii. The plea taken by the respondents in the impugned order Annexure A-3 that even if the applicants have been clubbed with non-Gazetted employees in one Pay Band-2 but they have remained senior to the non-gazetted employees as higher grade pay of Rs.4600/- has been given to them whereas grade pay of Rs.4200/- has been given to Group C category of employees is also meaningless for the reason that after the introduction of revised pay scale, the respondents introduced grade pay of Rs.4600/- as third MACP on completion of 30 years of service that is given to majority of subordinates and most of them started getting the same grade pay of Rs.4600/- like the applicants. Even otherwise, the grade pay has no relevance with the status which the applicants were enjoying prior to implementation of revised pay scale prior to 01.01.2006.
- iii. Instead of merging the applicants who were Group B category of Gazetted Officers with their subordinates who were non-Gazetted employees, the respondents ought to have either merged the Group B Gazetted Officer with Group A Gazetted Officers or ought to have given the independent pay band to the Group B Gazetted Officers. But this was not done and rather the Group B category of Gazetted Officers have been discriminated and humiliated for the purpose of grant of revised pay scale/pay band.

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iv. The plea of the respondents while passed the impugned order Annexure A-3 that the Group B category of Gazetted Officers will remain senior to their subordinates Group C non gazetted category even if the same pay scale has been given is totally meaningless for the reasons that the seniority is always maintained between one and the same class/group of employees of officers. In the instant case, the Group B category of Gazetted Officers has been forced to work with non Gazetted employees in the same pay scale. The work and responsibilities of two set of employees are different but the same scale has been given which is not justified and needs to be re-addressed.

v. The respondents did not appreciate the distinction between status and seniority. Prior to introduction of revised pay scales, the applicants were Group B Gazetted Officers and Group C category of employees were their subordinates. The question of seniority was not there. But after implementation of revised pay scales w.e.f. 01.01.2006, the respondents have totally removed the status of the applicants and have rather demoted them instead of promoting them and have forced the Group B category of Gazetted Officers to work with their subordinates and have removed the distinction of the applicants as Gazetted Group B Officers which they earned after putting 30-35 years of service as Non-Gazetted Group C employees which is unlawful and unjustified.

vi. Prior to promulgation of the Civilian Defence Services (Revised Pay Rules), 2008, the pay scale of the applicants Admn. Officer Grade-II was Rs.7500-250-12000 (Part B Section II of Annexure), whereas now the applicants have been placed in the lower grade of Rs.6500-200-10500 without any reason or justification.

5. In the written statement filed on behalf of the respondents it has been stated that contention of the applicants that they have been placed in the wrong, improper and unreasonable pay bands i.e. PB-2 (Rs.9300-34800) is not true. The applicants, all of them, in the capacity of Administrative Officer, Technical Officer and Barrack Store Officer were

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placed in Group B (Gazetted) and were getting the pay scale of Rs.6500-10500 before the implementation of 6th CPC. With the implementation of 6th CPC, pay scales of Rs.5000-8000, 5500-9000, 6500-9000, 6500-10500, 7450-11500, 7500-12000 and even 8000-13500 (except Group A entry) were then placed into a new pay band i.e. PB 2 (Rs.9300-34800) with distinct grade pays like 4200, 4600, 4800 and 5400 to maintain seniority within particular pay band with grade pay is being the deciding criteria for determining the seniority within hierarchy as clearly laid down by the 6th CPC. In other words, few posts of Group C were upgraded and merged with Group B and classified as Group B (Non Gazetted). Such upgradation of Group C into Group B (Non Gazetted) has been termed by the applicants as down-gradation of Group B into Group C. This upgradation even has not affected the applicants as they have already been placed in Group B (Gazetted). It is further clarified that while merging different pay scales into one common pay band, different grade pays were allowed. According to the recommendations of 6th CPC, Grade Pay will be the deciding factor as regards to position and seniority of the employees in the hierarchy. As the grade pay of the applicants were fixed at Rs.4600/- and their subordinates at Rs.4200/- the applicants remained senior to their juniors because of their superior grade pay and gazetted rank. All the applicants belong to Group B (Gazetted) post and accordingly they have been placed in Pay Band 2 with grade pay of

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Rs.4600/- Their feeder category employees have been granted grade pay of Rs.4200/- and are in non-Gazetted Group B posts. All the applicants are in Gazetted Group B posts which gave them superior status in the hierarchy as well as grade pay. As such plea of the applicants that they felt demoted is baseless and void of the fact. As per the recommendations of the 6th CPC, few posts of Group C were upgraded to Group B (Non-Gazetted). However, on this ground, the applicants cannot request for their upgradation from Group B (Gazetted) to Group A (Gazetted). Request of the applicants need to be rejected as it is not allowed as per rule and there is no discrimination and humiliation done with any category of employees.

6. It has further been stated that the Scheme of MACP was introduced by the Govt. to ensure career progression of each employee in which employees are given financial upgradation on completion of specified period of service. Benefit allowed against MACPS is purely personal to an employee. Moreover, it is clearly mentioned in the MACPS that "on grant of financial upgradation under the scheme, there shall be no change in designation, classification or higher status" Copy of memo dated 19.05.2009 is appended (Annexure A-3).

7. Arguments advanced by learned counsel for the parties were heard when they reiterated the content of the O.A., rejoinder and written statement respectively. As —

8. We have given our thoughtful consideration to the matter. The matter of determination of pay scales is essentially an executive function. It requires evaluation of duties and responsibilities and should be determined by the expert bodies like Pay Commission. In State of U.P. vs. J.P. Chaurasia, (1989) 1 SCC 121, it had been observed that in case of such determination, the Court should normally not intrude. In the present case, it is seen that 6th Pay Commission while formulating its recommendations had merged a number of pay scales and resultantly, there are only four such Pay Bands and HAG+ and Apex Scale after 01.01.2006. Hierarchy within such pay bands has been determined through the mechanism of the grade pay, which is higher for staff at higher levels. In the present case also, grievance of the applicants has emerged from their pay scale being merged with other categories and being fixed in the Pay Band-2. The applicants have been allowed grade pay of Rs.4600/- while Group C category employees, who are subordinates of the applicants, have been allowed Grade Pay of Rs.4200/-.

9. The situation described by the applicants that they are facing after recommendations of 6th CPC were accepted w.e.f. 01.01.2006, was inevitable in view of the Pay Commission's recommendations to have small number of Pay Bands. This recommendation was accepted by the Govt. of India and Pay Bands for the different categories of the employees were notified accordingly. It is clear from the impugned order dated

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14.08.2013 that the applicants, who belonged to Group B Gazetted post prior to 01.01.2006, are continuing as such thereafter also and although their pay has been fixed in Pay Band-2, their grade pay of Rs.4600/- is higher than their feeder category employees, who were granted lower grade pay of Rs.4200/-, and who are treated as non-gazetted Group B personnel. The grounds taken by the applicants in the O.A. are based more on emotions rather than rational argument. The impugned order dated 14.08.2013 states the position very clearly and logically and there is no ground for judicial interference in the same.

10. The O.A. is hence rejected in view of the discussion and observations in the preceding paragraphs.

(RAJWANT SANDHU)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Place: Chandigarh.
Dated: 20.10.2015

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