

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 443/2013

Reserved on : 26.09.2016
Pronounced on : 4.10.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)

P.C. Fuloria
S/o Shri Murlidhar
R/o H.No. 937, Sector 21-C
Faridabad, Haryana

... Applicant

(Through Shri R.K. Jain, Advocate)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary
Players Building, ITO,
New Delhi
2. The Deputy Director of Education
District South
25, C Block, Defence Colony
New Delhi
3. The Vice Principal
Govt. Boys Senior Secondary School No.2
Railway Colony, Tughlakabad,
New Delhi

... Respondents

(Through Shri Anmol Pandita for Shri Vijay Pandita, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant, who is a TGT (Sanskrit) with the respondents, is seeking stepping up of pay vis-à-vis his junior Shri Jeet Ram, TGT (Hindi). The following table

shows the date of entry and subsequent pay fixation, EB,
new pay scales and promotion:

	SH. PRAKASH CHAND FULORIA, TGT (SANSKRIT)			SH. JEET RAM, TGT (HINDI)		
S. No.	Date	Basic Pay	Pay scale/Events	Date	Basic Pay	Pay Scale/Events
1.	11-01-83	Rs.330/-	Rs.330-560	01-02-83	Rs.330/-	Rs.330-560
2.	01-01-84	Rs.340/-	-do-	01-02-84	Rs.340/-	-do-
3.	01-01-85	Rs.350/-	-do-	01-02-85	Rs.350/-	-do-
4.	01-01-86	Rs.380/-	E.B. Crossed 1.1.86 vide AEO/SZ order No.2167 dt. 1.1.86	0-02-86	Rs.380/-	E.B. Crossed 1.2.86 vide AEO/SZ order No.3291 dt. 31.3.86
5.	01-01-86	Rs.1290/-	Rs.1200-30-1380-EB-1410-30-1560-EB-40-1600-1800-EB-40-2040 (as per 4 th Pay Commission	01-02-86	Rs.1290/-	Rs.1200-30-1380-EB-1410-30-1560-EB-40-1600-1800-EB-40-2040 (as per 4 th Pay Commission
6.	01-01-87	Rs.1320/-	-do-	01-02-87	Rs.1320/-	-do-
7.	01-01-88	Rs.1350/-	-do-	01-02-88	Rs.1350/-	-do-
8.	01-01-89	Rs.1380/-	-do-	01-02-89	Rs.1380/-	-do-
9.	01-01-90	Rs.1410/-	-do-	01-02-90	Rs.1410/-	-do-
10.	01-01-91	Rs.1440/-	-do-	01-02-91	Rs.1440/-	-do-
11.	01-01-92	Rs.1470/-	-do-	01-02-92	Rs.1470/-	-do-
12.	01-01-93	Rs.1500/-	-do-	01-02-93	Rs.1500/-	-do-
13.	01-01-94	Rs.1530/-	-do-	01-02-94	Rs.1530/-	-do-
14.	09-09-94	Rs.1600/-	Rs.1400-40-1600-50-2300-EB-60-2600 Promotion TGT (Skt) vide office order No.F/DDE/DS/Admn/94/13305 dt. 12-09-94			
15.	01-09-95	Rs.1650/-	-do-	01-02-95	Rs.1560/-	Rs.1400-40-1600-50-2300-EB-60-2600 (Sr. Scale)
16.	01-01-96	Rs.5850/-	Rs.5500-175-9000 as per 5 th pay commission	01-01-96	Rs.5675/-	Rs.5500-175-9000 as per 5 th pay commission
17.	01-09-96	Rs.6025/-	-do-	01-02-96	Rs.5850/-	-do-
18.	01-09-97	Rs.6200/-	-do-	01-02-97	Rs.6025/-	-do-
19.				27-02-97	Rs.6375/-	Promotion TGT (Hindi) vide office order No.
21.	01-09-98	Rs.6375/-	-do-	01-02-98	Rs.6550/-	-do-
22.	01-09-99	Rs.6550/-	-do-	01-02-99	Rs.6725/-	-do-
23.	01-09-00	Rs.6725/-	-do-	01-02-00	Rs.6900/-	-do-
24.	01-09-01	Rs.6900/-	-do-	01-02-01	Rs.7075/-	-do-
25.	01-09-02	Rs.7075/-	-do-	01-02-02	Rs.7250/-	-do-
26.	01-09-03	Rs.7250/-	-do-	01-02-03	Rs.7425/-	-do-
27.	01-09-04	Rs.7425/-	-do-	01-02-04	Rs.7600/-	-do-
28.	01-09-05	Rs.7600/-	-do-	14-09-05	Rs.7775/-	-do-
29.	01-09-06	Rs.7775/-	-do-	01-07-06	Rs.7950/-	-do-
30.	01-09-07	Rs.7950/-	-do-	01-07-07	Rs.8125/-	-do-
31.	01-01-06	Rs.18740/-	Rs.9300-34800 Grade Pay Rs.4600/- as per 6 th pay commission (Revised Pay scale)	01-01-06	Rs.19070/-	Rs.9300-34800 Grade Pay Rs.4600/- as per 6 th pay commission (Revised Pay scale)
32.	01-07-06	Rs.19310	-do-	01-07-06	Rs.19650/-	-do-
33.	11.01.07	Rs.20690/-	Granted of 2 nd ACP wef 11.01.2007, Rs.9300-34800 (Grade pay Rs.4800/-) as per 6 th pay commission (Revised Pay scale)	01-07-07	Rs.20240/-	-do-
34.				14-09-07	Rs.21050/-	Granted of 2 nd ACP wef 14-09-2007, Rs.9300-34800 (Grade pay Rs.4800/-) as per 6 th pay commission (Revised Pay scale)
35.	01-07-08	Rs.21310/-	9300-34800 (Grade pay Rs.4800/-)	01-07-08	Rs.21690/-	-do-
36.	01-07-09	Rs.21950/-	-do-	01-07-09	Rs.22340/-	-do-
37.	01-07-10	Rs.22610	-do-	01-07-10	Rs.23010/-	-do-
38.	01-07-11	Rs.23290/-	-do-	01-07-11	Rs.23700/-	-do-

2. The applicant's grievance is that with effect from 27.02.1997, his junior namely Shri Jeet Ram has been drawing higher salary than him. The applicant claims that he was drawing higher pay than his junior Shri Jeet Ram but due to the fact that he got his promotion as TGT in 1994 before the 5th CPC and his junior Shri Jeet Ram got this promotion after three years in 1997, this anomaly has arisen. In fact, it is stated that it is a peculiar situation that, having got his promotion earlier, he is drawing lesser pay than his junior. In this regard, he relies on the followings orders/ judgments:

- (i) Order of this Tribunal in OA 1494/2008, **Jagdish Prasad Vs. Govt. of NCT of Delhi** in which the applicant was allowed benefit of stepping up of pay with respect to his junior;
- (ii) Order dated 29.07.2013 in OA 2162/2011, **Shri Bhim Singh Arora Vs. Govt. of NCT of Delhi and others** in which again stepping up of pay vis-à-vis junior based on decision in Jagdish Prasad (supra) was granted to the applicant;
- (iii) Judgment in **Gurcharan Singh Grewal and another Vs. Punjab State Electricity Board and others**, (2009) 1 SCC (L&S) 578 where the Hon'ble Supreme Court has held that senior cannot be paid less than his junior even

if anomaly in senior's pay is due to difference of incremental benefits.

3. Per contra, the learned counsel for the respondents states that stepping up of pay is permitted in cases where such anomaly arises on account of pay fixation as per FR 22 (I) (a) (1) and erstwhile circular dated 4.11.1993. Both the Rule and the Circular provide for stepping up of pay with effect from the date of promotion or appointment of the junior but subject to the following conditions:

"(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) the scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(c) the anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer."

4. It is stated that in the present case, the anomaly has not arisen as a result of pay fixation under FR 22 (I) (a) (1). Further, the learned counsel for the respondents relied on **Union of India and another Vs. R. Swaminathan and others**, (1997) 7 SCC 690, where the Hon'ble Supreme Court held as follows:

"The difference in the pay of a junior and a senior in the present case is not as a result of

application of FR 22 (I)(a)(1). The higher pay revised by a junior is on account of his earlier officiation in the higher post because of local officiating promotion. He may, because of the proviso to FR 22(I), have earned increments in the higher pay scale of the post to which he is promoted on account of his past service and also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is these two factors which have increased the pay of the juniors. This cannot be considered as an anomaly requiring the stepping up of the pay of the seniors.

Government of India, OM dated 4-1101993 also negatives the respondents' claim. The increased pay drawn by a junior because of ad hoc officiating or regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criterion for stepping up of pay. The employees who have not officiated in the higher post earlier, however, will not get the benefit of the proviso to FR 22(1). The employees in question are therefore not entitled to have their pay stepped up under the said Government order because the difference in the pay drawn by them and the higher pay drawn by their juniors is not as a result of pay anomaly; nor is it a result of the application of FR 22(1)(a)(1)."

It is stated that since anomaly has not arisen as a result of FR 22 (I) (a) (1), no stepping up of pay is permitted.

5. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments/ orders cited.

6. The only issue to be decided here is whether anomaly arose because of pay fixation under FR 22 (I) (a) (1) as the provision of stepping up of pay is only applicable in case of pay fixation under this Rule and the OM dated

4.11.1993. As on 1.01.1996, the applicant was drawing basic pay of Rs.5850/- whereas his junior Shri Jeet Ram was drawing lesser pay of Rs. 5675/-. It is only on his getting promotion as TGT that Shri Jeet Ram's pay became higher at Rs.6375/- with effect from 27.02.1997 whereas the applicant's pay became Rs.6375/- only with effect from 1.09.1998 i.e. after he got his annual increment. On 1.02.1998, the pay of Shri Jeet Ram was fixed at Rs.6550/- after adding one increment. FR FR 22 (I) (a) (1) provides for two increments to be added, which was done in the case of Shri Jeet Ram and his pay was fixed on promotion to TGT as Rs.6025/- + 2X175 (two increments) = Rs.6375/-. Similarly, the pay of the applicant on 9.09.1994 on promotion as TGT was fixed after adding two increments but in the lower scale of Rs.1400-2600. Therefore, it is wrong on the part of the respondents to take the plea that anomaly has not arisen due to fixation of pay as per FR 22 (I) (a) (1). Moreover, the applicant also has in his favour the decision of the Hon'ble Supreme Court in Gurcharan Singh Grewal (supra) and this Tribunal in Jagdish Prasad (supra).

7. The OA is, therefore, allowed and the impugned order dated 12.10.2012 is quashed and set aside. The respondents are directed to step up the pay of the applicant at par with Shri Jeet Ram with effect from the date of promotion of Shri Jeet Ram. Arrears will, however, be payable to the applicant only from the date of filing of

this OA i.e. 4.02.2013. We fix a time frame of 90 days from the receipt of a copy of this order for implementation of our directions. No costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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