

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

**OA No.3567/2012
MA No.2993/2012**

RESERVED ON: 5.01.2016
PRONOUNCED ON: 27.01.2016

**HON'BLE MR. JUSTICE SYED RAFAT ALAM, CHAIRMAN
HON'BLE MR. P.K. BASU, MEMBER (A)**

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...Applicants

(Through Shri Padma Kumar S., Advocate)

VERSUS

1. Union of India,
Through the Secretary,
DoP&T, North Block,
New Delhi-110001.
2. Director
DoP&T (CS-II)
Lok Nayak Bhavan
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...Respondents

(Through Ms. Kiran Ahlawat, Advocate)

ORDER

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

The applicants belong to the Central Secretariat Stenographers Service (CSSS). They are demanding grant of

notional fixation of pay from 1st July of the respective Select List Year in which their names are figuring with all consequential benefits. The precise prayers made in the OA are as follows:

- (a) Quash and set aside the Order No.1/1/2010-CS.II(A) dated 12.09.2012 issued by the respondents.
- (b) Direct the respondents to grant notional fixation of pay from 1st July of the respective Select List Year in which their names are figuring to all the applicants including all promotee Assistants (Stenographer Grade 'C') from Select List 2001 upto the Select List Year 2008 with all consequential benefits thereon by calling of fresh option for pay fixation from all the applicants as well as all so affected personnel and fix their pay based on their revised option.
- (c) Direct the respondents to grant the arrears of pay from the actual date of joining based on the pay arrived at on the basis of notional fixation of pay from 1st July of the respective select list.

2. The applicants had approached this Tribunal in OA No.1883/2012, **Central Secretariat Stenographers Association and others Vs. Union of India and another.** The said OA was disposed of on 29.05.2012 with a direction to the respondents to decide the representation made by the applicants within a period of three months. The respondents passed the impugned order dated 12.09.2012 consequently rejecting the claim of the applicants for grant of notional pay

fixation to officials of CSSS due to delayed holding of DPCs. Primarily the applicants are seeking parity with the decision taken by the government in certain select list of the Central Secretariat Service (CSS) where benefit has been given by the government of notional pay fixation from 1st of July of the year in which the examination was held while denying the same benefit to them, thus alleging violation of Articles 14 and 16 of the Constitution of India.

3. Learned counsel for the applicants states that Rule 2 (c) (iii) of CSS Rules 1962 and CSSS Rules 1969 have identical definition of "approved service". In case of officers recruited through departmental examinations like the applicants, the approved service shall mean period or periods of regular service rendered in the grade from the 1st day of the July of the year in which such examination was held. The learned counsel drew our attention to different orders issued by the Department of Personnel and Training (DoP&T) granting notional pay fixation to officers of CSS cadre. In particular, our attention was drawn to order dated 13.10.2005 pertaining to fixation of pay of the officers of Selection Grade (Dy. Secy.) of CSS, in which the following has been specifically mentioned:

"It has been decided that since the approved service in respect of such officers counts from the 1st July of the respective Select List Year, the pay of such officers may also be fixed w.e.f. 1st July of the respective Select List year in which they have been so included, on notional basis."

4. Similar mention has been made in order dated 13.02.2009 in respect of Grade I Under Secretaries of CSS as well as order dated 17.02.2009 regarding Selection Grade (Deputy Secretary) of CSS and also the order dated 14/16.03.2001 relating to select lists for the years 1984, 1985, 1986, 1987 and 1988 of officers of the CSS for appointment to Grade I (Under Secretary Grade). The contention of the applicants is, therefore, that since Rule 2 (c) (iii) of the CSS Rules 1962 has been invoked for granting this benefit and as the CSSS Rules also have exactly the same provisions, there is no reason to deny same benefit to the applicants.

5. Learned counsel for the applicants further relied on the decision of the Tribunal in OA 1409/2009, **Shri P.G. George Vs. Union of India and another** and specifically to para 10 and 11 of the order, which are reproduced below:

"10. In Rajendra Roy (supra), the Respondent before the Honourable Delhi High Court had retired from service and none of his juniors had been promoted before his retirement. In the instant case, however, it is clear from the reading of the impugned order dated 13.02.2009 itself that the approved service in respect of the officers who have been included in the Select List of Selection Grade (Deputy Secretary of CSS) for the years 2003-04, 2004-05 and 2005-06 would be counted from the first July of the respective Select List year in terms of Rule 2 (c) (iii) of the CSS Rules, 1962. This order has been quoted in a preceding paragraph. It is because of this that notional promotion to all those who have been included in the Select List has been given from the first July of the Select List year, i.e., 1.07.2003, 1.07.2004, 1.07.2005 and 1.07.2006. This is the distinguishing feature between Rajendra Roy (supra) and the OAs under consideration.

11. In so far as the argument regarding discrimination, as urged by the learned counsel for

the Applicant in OA 1409/2009 in view of the fact that some retired employees had been given the benefit of retrospective promotion is concerned, this has been explained by the Respondents by stating in the counter affidavit that the persons junior to those retired employees had been working as Deputy Secretaries on *in situ* promotion. It is stated that because of this reason the retired employees Sh. P.S. Pillai, Sh. R.S. Mathur and Sh. K.R. Sachdeva had to be given the benefit of retrospective promotion. We feel that there is no need for us to go any further in this matter as the OAs succeed on the basis of the discussion above."

The OA was allowed.

6. According to the learned counsel, the Tribunal had allowed the aforementioned OA relying on Rule 2 (c) (iii) of the aforesaid Rules and granted the benefit of notional pay fixation. It is stated that this order was upheld by the Hon'ble High Court as well and, therefore, the ratio of the order of this Tribunal i.e. applicability of Rule 2 (c) (iii) of the CSS Rules 1962 holds the field. The learned counsel also drew our attention to various note sheets of the DoP&T (Annexure A-9 colly) trying to establish that the department had also felt internally that there had been delay in preparation of select list of different grades of CSSS just like in the case of CSS and, therefore, notional fixation benefit should be given to them as well. However, as held by the Hon'ble Supreme Court in **Union of India Vs. Ashok Kumar Aggarwal**, 2013 (14) SCALE 323, since no order has been issued as a consequence of these notings, we cannot take cognizance of such notings on files.

7. Our attention was further drawn to another noting (Annexure A-14) in which a chart has been shown from which

the learned counsel pointed out the fact that while in the case of SOs/Assistants, the notional fixation was allowed, even though the delay was due to administrative reasons, for the applicants' cadre i.e. PS/PA, such benefit was not allowed. Similarly, while for the SOs/Assistants (CSS), notional fixation was allowed due to litigation, it was not allowed for the PSs/PAs (CSSS), though delay was due to the same litigation. It is stated by the applicants that while indeed this is an internal noting, the fact may be noted that there has been clear discrimination by the respondents in granting notional pay fixation between CSS and CSSS cadre.

8. The learned counsel for the applicants stated that the only ground taken by the respondents denying the benefit to the applicants is that while in the case of CSS cadre, there was delay due to administrative reasons and litigation, in the case of CSSS, the delay was only due to administrative reasons and, therefore, the benefit cannot be denied to them.

9. To summarize, the learned counsel supported his claim on the following grounds:

- (i) that this Tribunal in Shri P.G. George (supra) has laid down the ratio of applicability of Rule 2 (c) (iii) of the CSS Rules to grant notional pay fixation;
- (ii) for the same selection years, notional benefit has been given to CSS cadre (SOs/Assistants) and not to the CSSS cadre (PSs/PAs), which is

discriminatory and violative of Articles 14 and 16 of the Constitution of India; and

(iii) the two cannot be discriminated simply on the ground of delay namely litigation versus administrative delay.

10. The learned counsel for the respondents clarified that the department had indeed initially granted the notional pay fixation benefit to some CSS officers but later on, it realized that this was a mistake as Rule 2 (c) (iii) of the CSS Rules nowhere grants the benefit of notional pay fixation. It only deals with "approved service" and it is clarified that in case of the applicants as well, approved service has been counted as per this Rule. It is further explained that when financial repercussions of this erroneous decision were worked out, it was seen that it would lead to heavy financial outgo and, therefore, the department took a decision not to continue this. However, the benefit of notional pay fixation which had been extended to different grades of CSS officers could not be withdrawn as large number of those officers had either been promoted or retired, which could raise lot of complications. It is argued that Rule 2 (c) (iii) of the aforesaid Rules does not bestow any legal right on the applicants to claim notional pay fixation and the respondents cannot be forced to continue with an erroneous decision.

11. We next take up the question of applicability of the order of the Tribunal in Shri P.G. George (supra). This OA was filed by a CSS officer seeking promotion from a back date. The question

in the present OA is parity with CSS regarding notional benefit. The learned counsel for the respondents drew our attention to para 2 of the order of the Tribunal, which summarizes the issue for consideration as follows:

“2. The question before us for consideration is whether the retired employees of the Government would be eligible for notional promotion retrospectively, if the meeting of Departmental Promotion Committee, held after their retirement, considers them fit for promotion and persons junior to them in service are promoted retrospectively from the dates, when such retired employees were in service.”

It is argued that it will be clear from the above that the facts and circumstances of both the cases are different and, therefore, the order in that case will not be applicable here.

12. We have heard the learned counsel for the parties and gone through the pleadings/ written statement of the applicants available on record.

13. It would be clear from the reading of Rule 2 (c) (iii) of the aforesaid Rules that this pertains to definition of “approved service”. It does not mention anything regarding notional pay fixation. Therefore, no legal right arises for the applicants to claim notional fixation of pay. The only ground, therefore, which we need to examine is whether the order of this Tribunal in Shri P.G. George (supra) is applicable in this case and whether there indeed is a ratio laid down in that order that notional pay fixation is a necessary consequence of Rule 2 (c) (iii). Moreover, we have also to examine whether grant of benefit of notional pay

fixation to CSS and not to CSSS amounts to violation of Articles 14 and 16 of the Constitution of India.

14. As regards applicability of the order of this Tribunal in Shri P.G. George (supra), the facts and circumstances of that case are completely different from the case in hand. Moreover, the issue there was whether the retired employees of the government would be eligible for notional promotion retrospectively, if the meeting of Departmental Promotion Committee, held after their retirement, considers them fit for promotion and persons junior to them in service are promoted retrospectively from the dates, when such retired employees were in service. Reading of para 10 and 11 of the order in Shri P.G. George (supra) nowhere suggests that any ratio has been laid down that notional pay fixation has to be granted as a result of Rule 2 (c) (iii) of the CSS Rules 1962. Therefore, neither is this order applicable in the facts and circumstances of the instant case nor has any general principle been laid down that Rule 2 (c) (iii) necessarily results in granting notional pay fixation. So we reject the contention of the learned counsel on both counts.

15. As regards parity with CSS and violation of Articles 14 and 16 of the Constitution, the respondents have made it abundantly clear that due to protracted litigation, they took a decision to grant some CSS officers notional pay fixation. However, this mistake was realized and corrected and decision was taken not to extend this benefit beyond 2009. Also, we cannot overlook the argument of the respondents regarding huge financial

burden as, once this is accepted as a principle, it will apply not only to the CSSS cadre but all cadres across the government. In this regard, we refer to the judgment of the Hon'ble Supreme Court in **State of Punjab and others Vs. Amar Nath Goyal and others**, (2005) 6 SCC 754 in which it has been held as follows:

"It is difficult to accede to the argument that a decision of the Central Government/ State Governments to limit the benefits only to employees, who retire or die on or after 1.04.1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level. In the present case, the cut-off date has been fixed as 1.04.1995 on a very valid ground, namely, that of financial constraints. Consequently, the contention that fixing of the cut-off date was arbitrary, irrational or had no rational basis or that it offends Article 14, is liable to be rejected."

We feel that this is purely a matter for the government to decide on whether a benefit would be bestowed on its employees from a particular date and this decision could be based on several factors including the financial burden to the exchequer. In this case, the respondents have stated clearly that benefit given to certain officers of the CSS itself was erroneous and that needed to be corrected. One of the guiding factors for such a decision was indeed the financial burden to the exchequer.

16. The sum and substance of the case is that the applicants have no legal right for notional pay fixation. Rule 2 (c) (iii) of the CSS Rules does not speak of notional pay fixation at all. The order of the Tribunal in Shri P.G. George (supra) is on different

facts and circumstances. Moreover, it does not lay down any principle that Rule 2 (c) (iii) implies notional pay fixation. Therefore, this order as upheld by the Hon'ble High Court, would not apply in the present case.

17. There is no discrimination as well, as the government, admittedly, has taken a policy decision not to continue this erroneous benefit as bestowed on some CSS officers, which is well within its policy jurisdiction and Tribunal may not interfere in that.

18. The OA, therefore, does not succeed and is dismissed. No costs.

(P.K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

/dkm/