

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 3803/2013

Reserved on: 8.08.2016
Pronounced on: 19.08.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

1. Om Prakash Vethiya
S/o Shri Har Pal Singh
R/o 16-JJ-72, Ordnance Factory Estate
Muradnagar, Distt. Ghaziabad
 2. Saurabh Acharya
S/o Late Shri Shri Kant Acharya
R/o Type – III/ DS/ 19,
Ordnance Factory Estate (North)
Muradnagar, Distt. Ghaziabad
 3. Dinesh Bhoj
S/o Late Shri Gopal Singh Bhoj
R/o Type – III/ 118,
Ordnance Factory Estate
Muradnagar, Distt. Ghaziabad
 4. Vinay Kumar Chopra
S/o Late Shri Om Prakash Chopra
R/o H.No. 416, I-Block, Govind Puram
Near DDP School, Distt. Ghaziabad
 5. Yogendra Sharma
S/o Late Shri Bal Kishan Sharma
R/o H.No. 36/Q/204, Ordnance Factory Estate
Muradnagar, Distt. Ghaziabad
- Applicants

(By Advocate : Shri Yogesh Sharma)

Versus

Union of India : through

1. The Secretary,
Ministry of Defence,
Govt. of India, New Delhi
2. The Secretary
Ministry of Finance, Department of Expenditure

Govt. of India, New Delhi

3. The Secretary
Ordnance Factory Board
Ministry of Defence
10-A, S.K. Bose Road, Calcutta-1
4. The General Manager
Ordnance Factory Muradnagar,
Ministry of Defence, Ghaziabad (UP) Respondents

(By Advocate : Shri S.M. Arif)

ORDER

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

The applicants were promoted/ appointed through Limited Departmental Competitive Examination (LDCE) to the post of Chargeman-II in the pay scale of Rs.5000-8000 vide order dated 24.01.2006. All the applicants opted for fixation of their pay in the higher grade/ promoted post from the date of their promotion, by which the next date of their due increment was 1.01.2007. The applicants were granted due increment with effect from 1.01.2007, 1.01.2008 and 1.01.2009.

2. The applicants state that when the Central Civil Services (Revised Pay) Rules 2008 came into effect, according to para 10 of the same, the following was provided:

"There will be uniform date of annual increment, viz 1st July of every year. Employees completing 6 months and above in the revised pay structure as on 1st of July will be eligible to be granted the increment. The first increment after fixation of pay on 1.01.2006 in the revised pay structure will be granted on 1.07.2006 for those employees for whom the date of next increment was between 1st July, 2006 to 31st December, 2006."

However, later on, clarification no.2 vide OM dated 13.09.2008, provided as follows:

"In case the Government servant opts to get his pay fixed in the higher grade from the date of his promotion, he shall get his first increment in the higher grade on the next 1st July if he was promoted between 2nd July and 1st January. However, if he was promoted between 2nd January and 30th June, of a particular year, he shall get his increment on 1st July of next year."

3. According to the applicants, as per Fundamental Rules, a government employee is entitled for annual increment after completion of 12 months of service whereas the above clarification of 13.09.2008 would allow them their next increment only on 1.07.2007 i.e. after 13 to 17 months, which is illegal and against the fundamental rules. It is further stated that due to rule 10 of the CCS (RP) Rules 2008, an anomaly was created to the effect that those persons who were due for increments between 2.01.2006 to 30.06.2006, were granted their increment with effect from 1.07.2007 i.e. after 13 to 17 months, whereas those who were due for increment between 2.07.2006 to 31.12.2006, were also granted their due increment prematurely with effect from 1.07.2006 i.e. within 6 to 11 months and to resolve this anomaly regarding granting the due increment after 13 to 17 months, the Ministry of Finance, Department of Expenditure, vide Office Memorandum dated 19.03.2012 in relaxation of stipulation under Rule 10 of CCS (RP) Rules 2008, to the effect that those central government employees who were due to get their annual increment between

February to June during 2006 may be granted one increment on 1.01.2006 in the pre-revised pay scale as a onetime measure and thereafter will get the next increment in the revised pay structure on 1.07.2006 as per rule 10 of CCS (RP) Rules, 2008.

4. The applicants state that in the present case also the same situation arose, as the applicants, those who were due for their next increment as on 1.01.2007, have been granted their due increment on 1.07.2007 i.e. after more than 17 months, which is against the fundamental rules and therefore, to avoid such situation, the persons who were promoted between 1.01.2006 to 30.06.2006 and those who submitted their option for fixation of pay from the date of promotion, their next increments should be granted as on 1.07.2006 even without completion of 12 months period by relaxing the rule 10 as a onetime measure as done in identical situation vide OM dated 19.03.2012.

5. It is further stated that the applicants and similarly situated persons made representations but no final decision has been taken. The applicants further state that as per Department of Personnel and Training (DoP&T) OM dated 25.02.2003, there is a provision of submitting revised option for pay fixation under FR 22 (1) (a) (I) and same OM is still applicable in the case of fixation of pay after 6th CPC, which is clear from the clarification No.2, but the applicants have not been given any such opportunity to submit the revised option. The OA, therefore, seeks the following reliefs:

- (i) to quash the impugned clarification No.2(b) of

the Govt. of India OM dated 13.09.2008, based on which the respondents have granted the due annual increment of the applicants on completion of 18 months w.e.f. 1.07.2007, whereas, the applicants were due for the same w.e.f. 1.01.2007

- (ii) to consider relaxation of Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008, as done in the OM dated 19.03.2012 in an identical situation and pass an order directing the respondents to grant due increment to the applicants either w.e.f. 1.07.2006 or w.e.f. 1.01.2007 on completion of 12 months service, with all the consequential benefits.

6. In support of their case, the applicants have also relied on **Union of India and another Vs. Shyama Pada Sidhanta and others**, 1991 (1) SLR 783. This was a case filed by Inspectors of Central Excise, who were granted next increment in the revised pay scale not on their normal date of increment but after completion of 12 months in the revised scale. After examining the fundamental rules, the Hon'ble Supreme Court held that they are entitled to get the first increment in the new scale as on the due date in the old scale. The applicants state that the same principle should apply in their case.

7. The respondents have explained the rationale behind the provision of the order dated 13.09.2008 in para 17 of their reply, which we quote below:

"The rationale of the aforesaid provision of the order dated 13.09.2008 is in conformity with the provision contained in Rule 10 of the CCS (RP) Rules, 2008, which is, in turn, based on the considered recommendations of the 6th Central Pay Commission. This is submitted below:

- i. The reason why it allows increment on the 1st July in case of those who had been promoted between 2nd July and 1st January is because such employees had rendered the minimum of 6 months required for increment on 1st July.
- ii. The reason why it allows increment on the 1st July of the next year to those who were promoted between 2nd January and 30th June, of a particular year, is because they did not complete the minimum of 6 months in that particular year only."

8. We have heard the learned counsel for the parties and gone through the pleadings available on record.

9. From the contention of the parties, it seems that the basic criteria is that in order to become eligible for increment on 1st July, an employee should have worked for a minimum of six months in the revised pay scale and, therefore, those who were promoted between 2nd July and 1st January were allowed increment on 1st July and those promoted between 2nd January and 30th June, since they did not complete minimum six months in that particular period, were allowed increment on 1st July of the next year and not from 1st July of that particular year. However, this has led to a situation where the applicants would be getting their increment in the new grade not after a period of

one year but between 13 to 17 months, as stated by the applicants.

10. From perusal of the OM dated 19.03.2012 of Department of Expenditure, we find that this issue was resolved in the following manner by the government:

“....those central government employees who were due to get their annual increment between February to June during 2006 may be granted one increment on 1.01.2006 in the pre-revised pay scale as a one time measure and thereafter will get the next increment in the revised pay structure on 1.07.2006.....”

Therefore, a similar dispensation would resolve the problem. In any case, not granting increment in case of the applicants after completion of 12 months service and granting this benefit to others is discriminatory.

11. In view of above discussion, we dispose of this OA with a direction to the respondents to grant annual increment to the applicants from 1.01.2007 as a one time measure and close this chapter. We fix a time frame of 90 days for implementation of our direction. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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