

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No. 060/00479/2017

Pronounced on : 25.07.2018

Reserved on : 09.07.2018

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

1. Rajesh Kumar, aged 41 years son of Sh. Sat Narain, JBT Teacher, Government High School, Sector 29-B, Chandigarh.
2. Ravi Shankar, aged 40 years son of Sh. Ram Avtar Yadav, JBT Teacher, Government Model High School, Sector 29-A, Chandigarh.

.....Applicant

BY ADVOCATE: **Sh. Madhav Pokhrel**

VERSUS

1. Union Territory, Chandigarh, Department of Education, Chandigarh Administration through its Secretary, U.T. Secretariat, Sector 9, Chandigarh.
2. Director School Education, Chandigarh Administration, Additional Deluxe Building, First Floor, Sector 9, Chandigarh.
3. Hardeep Singh son of Sh. Mohinder Singh, JBT Teacher, Government High School, Sector 29-B, Chandigarh. (Ex parte vide order dated 27.09.2017)

.....Respondents

BY ADVOCATE: **Sh. Gagandeep Singh Chhina**

ORDER

BY MRS. P. GOPINATH, MEMBER(A):-

1. Both the applicants in the OA have been working in the respondent department since 06.03.2002 as Junior Basic Teachers(JBTs) in the pay scale of Rs. 4550-7200. In 2009, recommendations of the Fifth Pay Commission were notified by the

Government of Punjab. Both the applicants opted for revised pay scales w.e.f. 01.01.2006 the date of implementation of Pay Commission Recommendations with increment in the month of November. The first applicant appears at Sr. No. 314 of Seniority List and the second applicant appears at Sr. No. 378 of the Seniority List.

2. The applicant's argument is that one Hardeep Singh whose name appears at Sr. No. 399 of the Seniority List, is drawing pay higher than the applicants. On the ground that a junior is drawing a higher pay, the applicants in this OA submitted a representation for fixing of pay at par with the juniors. Applicants then filed OA No. 445 of 2016 which was disposed of on 11.01.2017 with a direction to the second respondent to decide the representation dated 06.09.2013 and Legal Notice dated 27.02.2016 by passing a speaking order in accordance with law. Vide speaking order, the claim of the applicants for fixation of pay at par with junior was rejected vide Annexure A-12.

3. The prayer of the applicants is for fixation of their pay at par with the junior employee cited and the order of the respondents rejecting their claim be quashed. Alternatively, the applicants pray that the respondents be directed to grant a second opportunity to the applicants to exercise the option for revision of pay so that the anomaly of juniors drawing more pay can be removed.

4. The respondents argue that the applicants are claiming the relief under para 7 Note 5 relating to fixation of pay in the revised pay structure.

Note 5:- Where in the fixation of pay under this rule, a Government employee, who, in the existing scale was drawing immediately before

the first day of January 2006, more pay than another Government employee junior to him in the same cadre, gets his pay fixed in the revised pay band at a stage lower than that of such junior, his pay shall be stepped up to the same stage in the revised pay band as that of the junior.

The moot point in the above rule is that the applicants should have been drawing more pay than the third respondent. Applicant and the private respondent, argue the official respondents, were drawing the same pay immediately before the 1st day of January, 2006, and not more pay than the junior employee.

5. A perusal of the respondents' reply to the applicant's representation and Legal Notice as ordered by the Bench in OA No. 445/2016, it is noted that the Punjab Civil Service (Revised Pay) Rules, 2009 were adopted by Chandigarh Administration. Rule 6 & 7 (Note 5) of the Notification reads as follows:

Rule 6: Exercise of option - (1) The option under the provisos to rule 5, shall be exercised in writing in the form appended to these rules so as to reach the authority specified in sub-rule (2) within a period of three months from the date of publication of these rules or where an existing scale has been further revised by any order made subsequent to that date, within a period of three months from the date of such order: -

Provided that:

- (i) in the case of a Government employee, who on the date of such publication or as the case may be, on the date of such order, is out of India on leave or on deputation or on foreign service or on active service, the option shall be exercised in writing so as to reach the said authority within a period of three months from the date of his taking the charge of his post under the State Government; and
- (ii) where a Government employee is under suspension on the first day of January, 2006, the option may be exercised within a period of three months from the date of his return to his duty, if that date is later than the date specified in this sub-rule.

- (2) The option shall be intimated by the Government employee to the Head of his Office.
- (3) If the intimation regarding option is not received within the period as specified in sub-rule (1), the Government employee shall be deemed to have elected to be governed by the revised pay structure with effect from the first day of January, 2006.
- (4) The option once exercised shall be final.

Note 1. Persons, whose services were terminated on or after the first day of January, 2006 and who could not exercise their option within the specified period, on account of discharge on the expiry of the sanctioned posts, resignation, dismissal or discharge or disciplinary grounds, are entitled to the benefits admissible of this rule.

Note 2. Persons, who have died on or after the first day of January, 2006 and could not exercise their option within the specified period shall be deemed to have opted for the revised pay structure on and from the first day of January, 2006 or such later date as is most beneficial to their dependents, if the revised pay structure is more favourable and in such cases, necessary action for payment of arrears should be taken by the Head of Office.

Note 3. Persons, who were on earned leave or any other leave on 1.1.2006, which entitled them to leave salary, shall be allowed the benefits admissible under this rule.

Rule 7 : When in the fixation of pay under this rule, a Government employee, who, in the existing scale was drawing immediately before the first day of January 2006, more pay than another Government employee junior to him in the same cadre, gets his pay fixed in the revised pay band at a stage lower than that of such junior, his pay shall be stepped up to the same stage in the revised pay band as that of the junior.

6. When the Fifth Pay Commission was implemented, both applicants as per above provision of Rule 6 opted for revision of pay scale w.e.f. 01.01.2006 and the request of the applicants was implemented by fixing the revised pay w.e.f. 01.01.2006 and the date

of annual increment to fall in the month of November every year. The junior Hardeep Singh to whom the applicants have made a reference, opted for revision of pay scale w.e.f. 01.11.2006 and not 01.01.2006 like the applicants, i.e. ten months later than the applicants and his basic pay was fixed as Rs. 5000 as on 01.01.2006, as Rs. 5160 on 01.03.2006 after fixing increment, and as Rs. 13800 as on 01.11.2006 after implementing Vth Pay Commission revised pay scale. Hence, Sh. Hardeep Singh drew the old pay scale till October, 2006 and only on 01.11.2006, his pay was fixed in the Fifth Pay Commission revised pay scales. The anomaly in the pay drawn by the applicants and Sh. Hardeep Singh was on account of the fact that applicants and the third respondent opted for different dates for fixation of pay in the new pay scale. Had the applicants exercised the same option as Hardeep Singh, the two applicants and Hardeep Singh, would have been drawing the same pay. Having consciously exercised their judgement in selecting the option of a date i.e. 01.01.2006 for pay fixation, the applicants cannot expect a benefit other than what they opted for.

7. The counsel for applicants placed before us several judgements wherein the seniors pay was upgraded on account of junior drawing more pay. The matter in this OA is not linked to junior drawing more pay. On the other hand, this is a matter wherein both applicants and party respondent No. 3 had been given the option of exercising a choice of a date for revised pay fixation and any difference in pay drawn is on account of selection of the option of a date for implementation of revised pay. This is not a matter where an option has been forced on the applicant but one where the applicant consciously chose an option freely and willingly. The applicants, instead of calculating the pros and cons of pay

fixation w.e.f. 01.01.2006, or a pay fixation to be opted for after drawing their increment in the old scale for the year 2006, now face the anomaly of drawing less pay. The applicants by their own option, exercised voluntarily, have landed in this situation. The applicants would not have to resort to requesting for stepping up, had they exercised the optional choice judiciously, after making necessary calculation about the benefits which would have accrued thereon. Not having done so, they cannot expect that the Tribunal would come to their rescue.

8. Regarding the second prayer of the applicants that they be given the chance to revise their option at this stage, we direct the respondents that as a special case, not to be quoted as a precedent, applicants be given one chance to submit a revised option and pay of applicants be fixed notionally on the revised option so submitted, and the arrears accruing as a consequence of exercising revised option be paid to applicants with effect from 05.03.2017, the date of filing this OA.

9. OA is disposed of with the above directions. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
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