

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

...

O.A.No.060/00524/2018**May 31, 2018**

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**CORAM: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

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1. Arvind Sharma S/o Late Sh. Dev Raj Sharma, age 47 years, Income Tax Officer in the office of the Principal Chief Commissioner of Income Tax, North West Region, Aayakar Bhawan, Sector 17-E, Chandigarh, Group 'B'.
2. Rajkumar S/o Shiv Dayal, age 50 years, working as Inspector in the office of the Principal Chief Commissioner of Income Tax, North West Region, Aayakar Bhawan, Sector 17-E, Chandigarh, Group "C" Non-Gazetted.

....APPLICANTS

(Argued by: Shri Jagdeep Jaswal, Advocate)

VERSUS

1. Union of India through its Secretary to Government of India, Ministry of Finance, Department of Revenue, Nehru Place, New Delhi, Delhi-110019.
2. Principal Chief Commissioner of Income Tax, North West Region, Aayakar Bhawan, Sector 17-E, Chandigarh.

....RESPONDENTS

(Argued by: Shri K.K. Thakur, Advocate)**ORDER (oral)****JUSTICE M.S. SULLAR, MEMBER (J)**

1. The challenge in the instant Original Application (OA), instituted by applicants Arvind Sharma (Income Tax Officer), and Raj Kumar (Inspector-Income-Tax), is to the impugned orders dated 15.2.2018 (Annexure A-1), and 14/16.03.2018 (Annexure A-2), only to the extent that claim to fix their pay in the pre-revised pay scale of Rs.5000-8000 & Rs.5500-9000, as on 31.12.2005 and

Rs.6500-10500 w.e.f. 1.1.2006, was wrongly rejected by the competent authority.

2. The matrix of the facts, and the material, which needs a necessary mention, for the limited purpose of deciding the core controversy, involved in the instant OA, and explicated from the record, is that both the applicants were drawing the pay scale of Rs.5000-8000 as on 31.12.2005. After implementation of the recommendations of the 6th Central Pay Commission, the pre-revised pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500, were merged in the single pay scale of Rs.6500-10500 w.e.f. 1.1.2006, which were replaced with the revised Pay Band-2 (Rs.9300-34800 + Grade Pay Rs.4200). The officers, who were getting the pay scale of Rs.6500-10500, were also ordered to be granted the benefit of Grade Pay of Rs.4600 w.e.f. 1.1.2006.

3. The case set up by the applicants, in brief, in so far as relevant, is that the pre-revised pay scales were revised w.e.f. 1.1.2006, vide Section-I, Part-A of the First Schedule of Central Civil Services (Revised Pay) Rules, 2008. The Sixth Central Pay Commission, analyzed parity between Secretariat Staff and field staff under Chapter 3 and vide para 3.1.4 of its report, and pointed out that a parity has long been established between the posts of Lower Division Clerk (LDC) and Upper Division Clerk (UDC) in Secretariat and Field Offices. The position becomes different for posts above UDC level, when the Assistants in Secretariat Offices, being placed in the higher pay scale, vis-à-vis those working in field offices. Earlier, the respective pay scales of Rs.5500-9000 and Rs.5000-8000 existed for Assistants in

Secretariats and in Field Offices. This disparity was aggravated in 2006 when the Government further upgraded the pay scales of Assistants, belonging to Central Secretariat Service, to Rs.6500-10500. Para 3.1.5 of the Sixth Central Pay Commission is also pin-points that this up-gradation, apart from increasing the existing chasm between similarly designated posts, in the Secretariat and Field Offices, has also led to a piquant situation where the feeder posts of Assistant and the promotion post of Section Officer have come to lie in an identical pay scale. According to the applicants, the Sixth Central Pay Commission in para 2.2.19 (vii) has indicated that where pre-revised pay scales have been merged, it has been done by extending the existing minimum, prescribed for the highest pay scale, with which the other scales are being merged.

4. Sequelly, the case of the applicants further proceeds that their pay has been fixed in Table/Scale-9 i.e. taking into account the actually pay drawn, in the pre-revised pay scale of Rs.5000-8000, whereas the pre-revised pay scales i.e. Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 have been merged in the pay scale of Rs.6500-10500. Therefore, pay of the applicants is required to be fixed in table/Scale-12 by taking minimum pay of Rs.6500/- in the merged pay scale of Rs.6500-10500 (i.e. $6500 \times 1.86 = 12090$) w.e.f. 1.1.2006. In other words, the revised Pay Band arrived at with reference to the exiting basic pay should not be less than the minimum of the higher pay scale. Rectification of wrong fixation of pay w.e.f. 1.1.2006, under CCS (Revised Pay) Rules, 2008 is required to be done, by multiplying Rs. 6500x1.86, which comes to Rs.12090/-, minimum of the higher pay scale of Rs.6500-10500

w.e.f. 1.1.2006. However, their claim has only partly been allowed, by placing them in grade pay of Rs.4600/-, while denying pre-revised scale of Rs.6500/- by the impugned orders.

5. Aggrieved thereby, the applicants have preferred the present OA challenging the impugned orders and action of the respondents, inter-alia, on the following grounds:-

- (a) That the issue raised in the instant OA is no longer res integra and stands settled by Ernakulum Bench of this Tribunal in the case of All India Naval Clerks Association Vs. Union of India etc. O.A. No.180/00569/2014 (Annexure A-3).
- (b) That both the applicants were working in the pay scale of Rs.5000-8000 as on 31.12.2005, in the merged pay scale of Rs.6500-11500 w.e.f. 1.1.2006 and accordingly, their pay is required to be fixed @ Rs.12090/- w.e.f. 1.1.2006, in the merged pay scale of Rs.6500-10500.
- (c) That equation of posts and equation of salaries is a principle of natural which has been recommended by an expert body like 6th CPC and upheld by the various High Courts and Tribunals. Therefore, action of the respondent in declining the claim of the applicants to fix their pay in the higher pre-revised pay scale of Rs.6500-10500 in such a proper manner like similar situated persons without any justifiable reason, is harsh, arbitrary, discriminatory and not legally justified.
- (d) That the recommendations of the 6th CPC and CCS (RP) Rules, 2008, pay fixation formula and later clarifications issued by the Government of India on pay-fixation matter are equally applicable on all Central Government employees / departments in the eyes of law. Therefore, similar pay fixation method as adopted on other similar situated persons cannot be denied in the case of the applicants.
- (e) That admittedly the respondents have denied for proper method of fixation of pay in the pre-revised pay scale of Rs.6500-10500/- in PB-2 Rs.9300-34800 w.e.f. 1.1.2006 to the applicants without any fault on their part. Thus, the respondents have gained wrongful and caused wrongful loss to the applicants.

6. Levelling a variety of allegations and narrating the sequence of events in detail in all, the applicants claim that although they are entitled, but the benefit of merger of the fixation of pay in pre-revised pay scale has not been granted to them, by the Competent Authority. On the strength of the aforesaid grounds, the applicants

seek to assail the impugned orders & action of the respondents and claimed correct fixation of pay, in the manner stated hereinabove.

7. On the contrary, the respondents have refuted the claim of the applicants and filed the reply, wherein it was pleaded that as per para 3.1.14 of the Notification, published in the official gazette of India, dated 29.8.2008 (Annexure A-4), 6th CPC recommended the merger of few grades in the case of ministerial posts in Non-secretariat offices, the posts of Head Clerks, Assistants, Office Superintendent and Administrative Officers grade III in the respective pay scales of Rs. 5000-8000, Rs.5500-9000 and Rs.6500-10500, stand merged and have been placed in the higher pay scale of Rs.6500-10500. In pursuance to this, the Directorate of Income Tax, Human Resource Development, Central Board of Direct Tax, New Delhi, clarified the O.M. F. No. 1/1/20080IC dated 16.11.2009, vide its office letter dated 7.11.2017, that Grade pay of Rs.4600/- is applicable only to those posts, that existed in the pre-revised scale of Rs.6500-10500, as on 1.1.2006, and which were granted the normal replacement pay structure of grade pay of Rs.4200 in PB-2. It was further pleaded that para 3.1.5 of 6th CPC refers to the pay disparity between the Assistants and Section Officers of Central Secretariat and field offices. However, there is no such disparity in the case of both the applicants because the grade pay of Rs.4600/- w.e.f. 1.1.2006 has been granted in view of the Directorate of Income Tax, Human Resource Development, Central Board of Direct Tax, New Delhi, clarification of the O.M. F. No. 1/1/2008-IC dated 6.11.2009, vide its office letter dated 7.11.2017. Further, there are no clear guidelines in the Sixth CPC,

and other OMs, issued by the DoPT, with regard to 6th CPC which provides the grant of pay scale of Rs.6500-10500, in the case of merged pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500. Para 2.2.19 (vii) refers to the features as to why pay scales of Rs.5000-8000, 5500-9000 and 6500-10500 were merged. The 6th CPC merged these pay scales, with the intention to remove pay anomaly, between the employees posted in Central Secretariat Services and Field Offices. In the case of the applicants, the issue involved is not regarding removal of pay disparity, as referred in para 2.2.19 (vii). According to the respondents, the pay of the applicants has rightly been fixed, keeping in view the OM dated 16.11.2009, and further clarified by CBDT, vide letter dated 7.11.2017. Instead of reproducing the entire contents of the reply, in toto, and in order to avoid the repetition of facts, suffice it to say, that while virtually acknowledging the factual matrix and reiterating the validity of the impugned orders, the respondents have stoutly denied all other allegations, and grounds contained in the OA and prayed for its dismissal. That is how, we are seized of the matter.

8. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance, and after considering the entire matter, we are of the firm view that the present OA deserves to be accepted, in the manner and for the reasons, mentioned herein below.

9. As indicated herein above, the facts of the case are neither intricate, nor much disputed, and fall within a very narrow compass, to decide the real controversy between the parties. Such

thus being the position on record, now the short and significant question, that arises for our consideration, in this case is, as to whether, the applicants are entitled to re-fixation of their salary in the un-revised pay scale of Rs.6500-10500, in the peculiar facts and special circumstances of the case or not?

10. Having regard to the rival contentions of the learned counsel for the parties, to our mind, the answer must obviously be in the affirmative, in this regard, on the following grounds.

11. What cannot possibly be disputed here is that this matter is no longer res-integra and is now well settled.

12. An identical question came to be decided by the Central Administrative Tribunal, Ernakulum Bench, in O.A.No. 180/00569/2014 titled **All India Naval Clerks Association & Others Vs. Union of India & Others**, (Annexure A-3). Having interpreted the concept of the terms “existing basic pay” and “existing pay scale” it was ruled that the applicants (therein), were entitled to re-fixation of their salary, in the revised pay scale of Rs.6500-10500, by treating Rs.6500/- as the existing basic pay, as on 1.1.2006, with all the consequential benefits. The order, in substance, reads as under :-

“13. The aforequoted definitions of 'existing basic pay' and 'existing scale' are really essential for interpreting Rule 7 and for fixation of initial pay of the officials in the revised pay structure as per CDS (RP) Rules, 2008. A conjoint reading of the aforequoted definitions in CDS (RP) Rules, 2008 will reveal that the existing basic pay as on 1.1.2006 is the pay drawn in the prescribed 'existing scale of pay'. It can be interpreted only as the pay applicable to the post payable to Government servant as on 1-1-2006, because the pay in the old scale has ceased to exist on 1-1-2006 and a new pay scheme systemically different from the old scale of pay has come into existence from that day. If the framers of the rules had used the term 'old pay scale' the interpretation contained in Annexure A2 by respondent No.4 would have been correct.

14. It has to be borne in mind that CDS (RP) Rules, 2008 is a rule

notified under the proviso to Article 309 of the Constitution of India made by the President and hence it has a statutory status in the eye of law. Therefore any interpretation of the provisions in the said rules has to be in terms of the rules itself. Any O.M issued by way of clarification, explanation or prescribing the modalities for fixation of initial pay of the Government employees as per the revised pay structure can be only in terms of what is stated in the rules.

15. As observed above, going by the definitions of the terms 'existing basic pay' and 'existing scale' in the CCS (RP) Rules, 2008, Rule 7 fixation can be only in accordance with the afore-mentioned definitions of 'existing basic pay' and 'existing scale' only and not by way of administrative O.Ms and instructions contained in Annexure A-1 or Annexure A-2 communications. Therefore, we are inclined to quash and set aside Annexure A-1 and Annexure A-2 communications. We do so. We hold that the applicants are entitled to the declaration as prayed for and that the respondents should be directed to fix the initial pay of the applicants including all the members of Applicant No.1 association in the revised pay structure by fixing their salary in the revised pay scale of Rs.6500-10500 treating Rs 6500/- as the existing basic pay as on 1.1.2006 with all consequential benefits. We order accordingly. This order shall be complied within 3 months from the date of receipt of a copy of this order.”

13. As a direct consequences thereof, the learned counsel for the parties, are very fairly at ***ad idem***, that the controversy involved in the instant OA, is squarely covered by the ratio of law laid down by the Ernakulam Bench of this Tribunal in Annexure A-3, which is claimed to have already attained the finality.

14. There is yet another aspect of the matter, which can be viewed entirely from a different angle. The applicants in the instant case are also legally entitled to the similar treatment and parity in pay scale, granted to similarly situated persons, in the similar circumstances, as envisaged under Articles 14 and 16 of the Constitution of India, in view of the ratio of law laid down by Hon'ble Apex Court in case of **Rajendra Yadav Vs. State of M.P. and Others** 2013 (2) AISLJ, 120 wherein, it was ruled that the concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in

the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the Doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. It was also held that the administrative action should be just on the test of 'fair play' and reasonableness.

15. Thus, seen from any angle, we are of the firm view that the applicants are also entitled for re-fixation of their pay, in the above depicted manner, and the impugned orders deserve to be quashed, to the extent, as prayed for, by the applicants, in the obtaining circumstances of the case.

16. In the light of the aforesaid indicated prismatic reasons, the instant OA is accepted. As such, the impugned orders dated 15.2.2018 (Annexure A-1) and 14/16.3.2018 (Annexure A-2), to the above depicted extent are quashed. At the same time, the competent authority is directed to re-fix the pay of the applicants in the same terms and manner, indicated hereinabove, with all the consequential benefits within a period of 3 months from the date of receipt of certified copy of this order. However, the parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Dated: 31.05.2018

HC*