

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

O.A.No.060/00545/2017 & Orders pronounced on: 04.10.2018
M.A.No.060/00757/2017 (Orders reserved on: 12.09.2018)

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

Komal Prakash, age 44 years,
S/o Sh. Prem Singh,
presently working as Accounts Officer (AO),
Employees Provident Fund Organization,
Regional Office,
Bhavishya Nidhi Bhavan,
Sham Nagar,
Ludhiana-141001 (Group B).

Applicant

(By: **MR. N.K. SETIA, ADVOCATE**)

Versus

1. Union of India through its Secretary, Ministry of Labour, Shram Shakti Bhawan, Rafi Marg, New Delhi-110001.
2. Central Provident Fund Commissioner, Bhavishya Nidhi Bhawan, 14, Bhikaji Kama Place, New Delhi-110066.
3. The Additional Central P.F. Commissioner (Pb & HP), Zonal Office, Bhavishya Nidhi Bhavan, SCO, 4-7, Sector 17D, Chandigarh.
4. The Regional P.F. Commissioner, Regional Office, Bhavishya Nidhi Bhavan, Sham Nagar, Ludhiana-141001.

(By : **MR. ASEEM RAI, ADVOCATE**)

Respondents

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

The applicant has filed this O.A. challenging order dated 11.1.2016 (Annexure A-10) vide which claim of the applicant for fixation of pay on promotion, after qualifying departmental examination has been rejected and challenge has also been made to corrigendum dated 7.1.2011 (Annexure A-5) vide which the pay of the applicant as AO has been re-fixed by way of modification.

2. The facts, giving rise to filing of this O.A. are that while working as SSSA, he was granted annual increment w.e.f. 1.7.2010, with basic pay, after increment fixed at Rs.10560/- and total pay after addition of grade pay of Rs.4200 was fixed as Rs.14760/- (Annexure A-2). On qualifying a departmental examination for the post of AO/EO, he was appointed as such in pay band of Rs.9300-34800 with grade pay of Rs.4600 and his pay8 was fixed at Rs.17140/- at minimum pay of scale w.e.f. 12.10.2010. However, a corrigendum was issued on 7.1.2011 (Annexure A-5), re-fixing the pay of the applicant at Rs.15,610/-. In reply to an application, he was informed by DoPT, vide reply dated 7.6.2012, that entry pay of direct recruits and on promotion (including departmental examination) appointed after 1.1.2006 is fixed under First Schedule Section II Part A of CCS (Revised Pay) Rules, 2008. The applicant claims that as per this schedule, he is entitled for entry level pay of Rs.17,140 instead of Rs.15,610/- as granted to him by the respondents. Ultimately, his claim has been rejected vide order dated 11.1.2016 (Annexure A-1), hence this O.A.

3. The respondents have filed a reply opposing the claim. They submit that the entry level pay of Rs.17,140 is for direct recruits, as specified in CCS (RP) Rules, First Schedule Part A, Section II, whereas applicant is a promotee, thus, his pay has rightly been fixed under rule 13 of CCS (RP) Rules, 2008. They submit that only circumstances, where a promotee can claim pay at par with a direct recruit is when such a direct recruit is appointed, after promotee, as settled by Hon'ble Punjab and Haryana High Court in CWP No. 21738 of 2012 (**RAM MILAN VS.**

CAT CHANDIGARH BENCH AND OTHERS) decided on 13.1.2014. In this case, no direct recruit in AO/EO cadre has been appointed during 1.1.2006 to 1.1.2016. Thus, applicant cannot claim any parity.

4. We have heard learned counsel for the parties and examined the material on file.

5. A perusal of the judgement in the case of Ram Milan (supra) indicates that the issue raised in this case, as to whether a promotee, can claim benefit of higher pay, compared to a direct recruits, though his pay is fixed on lower side in view of rule 13 of CCS (Revised Pay) Rules, 2008, has been answered in negative holding that such comparison cannot be drawn as there is intelligible differentia between both category of employees. The findings recorded by the Hon'ble High Court are reproduced, in toto, as under:-

"The petitioners were working as clerks in the pre-revised pay scale of Rs.3050-4590. The revised pay scale to the post of Clerk after the recommendations of 6th Central Pay Commission w.e.f. 1.1.2006 is Rs.5200-20200 with grade pay of Rs.1900/- The pre-revised pay scale of the promotion post of Accountant is Rs.4500-7000 and the corresponding revised pay scale is Rs.5200-20200 with grade pay of Rs.2800/-. The claim of the petitioners is that initially they were granted revised pay scale of the post of Accountant in terms of Fundamental Rule 22 but, subsequently, vide impugned order, their pay has been revised and

revised pay granted to the petitioners on the promoted posts have been withdrawn. Consequently, the recovery has been ordered to be effected.

On the other hand, the stand of the respondents is that the Fundamental Rule 22 stands superseded with Rule 13 of the Central Civil Services (Revised Pay) Rules, 2008 w.e.f. 1.1.2006. The pay of the petitioners was fixed in terms of Rule 13 of the aforesaid rules in the revised pay scale of Rs.5200-20200 with grade pay of Rs.2800/- . But since the initial pay scale of the direct recruits appointed subsequent to the promotion of the petitioners was higher therefore, the pay of the petitioners has been revised equivalent to that of the direct recruits from the date when the direct recruits were appointed.

The claim of the petitioners has not found favour with the Central Administrative Tribunal. A finding has been returned that the petitioners cannot be treated equivalent to direct recruited Accountant from the date of their promotion, as none the direct recruit was appointed on the date of promotion of the petitioners.

We find that the reasoning given by the Central Administrative Tribunal does not suffer from any illegality. The pay of the petitioners was revised in terms of Rule 13 of the Central Civil Services (Revised Pay) Rules, 2008 to the post of Accountant by giving benefit of 3% increase on the total pay, which the petitioners were drawing against the post of the Clerk. Such revised pay scale was in terms of rule of pay fixation in respect of promotion effected after 1.1.2006. However, the anomaly arose on account of appointment of direct recruits after the promotion of petitioners on the promoted post. The pay payable to the direct recruits was higher than the pay scales of promotees. Therefore, the pay of the promoted officials was revised upwards from the date the direct recruits were appointed. Therefore, the petitioners cannot claim pay scale admissible to the direct recruits from the date they were promoted.

The argument that the petitioners are entitled to the benefit of revised pay scale at par with the pay payable to the direct recruits from the date they were promoted as Accountant is not tenable. A perusal of **Annexure R-4** shows that in fact the petitioners were earlier placed at higher pay scale from the date they were promoted in terms of Rule 13 of the 2008 Rules. The petitioners were earlier given pay scale of direct recruits from the date of their promotion. The pay of the petitioners was required to be fixed in terms of Rule 13 of the Central Civil Services (Revised Pay) Rules, 2008 which was initially not fixed. Thus, the claim of the petitioners for revised pay scale at par with direct recruits from the date of their promotion is not tenable. They have been rightly granted pay scale at par with the pay granted to the direct recruits appointed after the petitioners from the date of the appointment of the direct recruits.

Accordingly the present writ petitions stands dismissed."

6. On a comparison of facts involved in this case and involved in aforesaid case, we find that both are similar and as such the view taken by the Hon'ble High Court would apply on all fours to the instant case as well. For the same reason, the reliance placed by applicant on decision dated 3.8.2018 in O.A. No. 1015/2013 -**RADHEY SHYAM SINGH & OTHERS VS. UNION OF INDIA & ANOTHER**, is misconceived. That decision is clearly distinguishable more so when this court has decision of

its own jurisdictional high court on an issue. The reliance placed by the applicant on CWP No. 15961 of 2015 (O&M) titled **THE COMMISSIONER, NAVODAYA VIDYALAYA SAMITI & OTHERS**, decided on 20.2.2018, is also not tenable. In that case two categories were appointed prior to or after 1.1.2006. Those who were appointed prior to 1.1.2006 were given lesser pay scale, whereas those appointed subsequently were granted higher pay scale, which was held to be illegal.

7. In the wake of the above discussion and for the parity of reasons given by the Hon'ble High Court in the indicated case, this O.A. turns out to be devoid of any merit and is dismissed accordingly. However, the parties are left to bear their own respective costs. M.A. for condonation of delay also stands disposed of accordingly.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(P. GOPINATH)
MEMBER (A)**

Place: Chandigarh.
Dated: 04.10.2018

HC*