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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA No.1291/2013

Dated of order: 03.12.2015

PRESENT:

THE HON'BLE MR. JUSTICE G. RAJASURIA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

1. Pannalal Basu, son of Sri Manilal Basu, working as Assistant Accounts Officer under General Manager (Postal Accounts and Finance), West Bengal Circle, Kolkata residing at R.G.Munshi Lane, Ranaghat-741 201, District-Nadia.
2. Rabindra Nath Koner, son of Sri S.Konar, working as Assistant Accounts officer under General Manager (Postal Accounts and Finance), West Bengal Circle, Kolkata, residing at 20/8/10, G.C.Bose Sarani, Konnagar, District Hooghly-712 235.
3. Smt. Swapna Dutt, D/o. Late Jotirmoy Bose, working as Assistant Accounts Officer under General Manager (Postal Accounts and Finance), West Bengal Circle, Yogayog Bhavan, Kolkata residing at D 2/13, Niravra Co opt Housing Society, ECTP, Ph. IV, E.M. By pass, Kolkata-700 107.
4. Smt. Swapna Thakur, D/o. Late R.R.Mukhopadhyay working as Assistant Accounts Officer under General Manager (Postal Accounts & Finance), West Bengal Circle, Yogayog Bhavan, Kolkata residing at 71/67 Bhuban Mohan Roy Road, Kolkata-700 008.
5. Asoke Kumar Dey, son of Late Krishna Ch. Dey, working as Assistant Accounts Officer under General Manager (Postal Accounts and Finance), West Bengal Circle, Yogayog Bhavan, Kolkata residing t L/IV/2/1-P&T Housing Complex, CC Block, Saltlake, Kolkata-64.
6. Parimal Sinha, son of Late Hari Nath Sinha, working as Assistant Accounts Officer under General Manage (Postal Accounts & Finance), West Bengal Circle, Yogayog Bhavan, Kolkata residing at 99 Bidhan Park, Po. Noapara, Kolkata-700 090.

7. Balam Mistry son of Late Ananta Mistry working as Assistant Accounts Officer under General Manager (Postal Accounts & Finance), West Bengal Circle, Yogayog Bhavan, Kolkata residing at 8/6, Forward Colony, PO. Noapara, Kolkata-700 090.

8. Subhas Sarkar son of Late N.L.Sarkar working as Assistant Accounts Officer under General Manager (Postal Accounts & Finance) west Bengal circle, Yogayog Bhavan, Kolkata residing at Nirmal Nilay, 54/1, K.M.D. Road, Kolkata-700 065.

.....Applicants

For the Applicant: Mr.D.K.Mukherjee and Mr. T.K.Biswas, Counsel

-Versus-

1. Union of India service through the Secretary to the Government of India, Ministry of Communication and I.T. Department of Post, Dak Bhavan, Sansad Marg, New Delhi-110 001.
2. The Secretary to the Government of India, Ministry of Finance, Department of Expenditure, North Block, New Delhi-110 001.
3. The Assistant Director General (Postal Accounts Admn.), Ministry of Communication and IT Department of Posts, Postal Accounts Wing, Dak Bhavan, New Delhi-110 001.
4. The General Manager (Postal Accounts and Finance), West Bengal Postal Accounts Office, Yogayog Bhavan, Kolkata-700 012.
5. The Chief Post Master General, West Bengal Circle, Yogayog Bhavan, Kolkata-700 012.

.....Respondents

For the Respondents: Mr.U.P.Bhattacharyya, Counsel.

ORDER

JUSTICE G.RAJASURIA, JM:

Heard both.



2. This OA has been filed seeking the following reliefs:

"(a) An order granting leave to the applicants under Rule 4 (5) (a) of the Central Administrative Tribunals (Procedure) Rules, 1987 to move this application jointly;

(b) For an order directing the respondents to fix the pay of the applicants in scale Rs. 7500-12,000/- with effect from the date when they were promoted to the post of Junior Accounts Officer in scale Rs. 6500-10,500/- on completion of VIth Central Pay Commission duly accepted by the Government of India with effect from 01.01.2006;

(c) For an order directing the respondents to fix the pay of the applicants in the revised scale of pay with effect from 01.01.2006 in terms of clarification issued by the Assistant Comptroller and Auditor General (N) by Memo dated 13th June, 2011 made Annexure A/6 to this application;

(d) For an order directing the respondents to allow applicants to exercise revised option of fixation of pay in JAO/AAO cadre on the basis of the clarification regarding fixation of pay of AAOs in accordance with CAG's clarification dated 13.6.2011 made Annexure-A/6 to this application;

(e) For an order directing the respondents to re designate merged cadre of Junior Accounts Officer and Assistant Accounts Officer as Assistant Accounts Officer with effect from 01.01.2006 and not from an arbitrary date of 25th June, 2009 as per office order dated 13.7.2009 made Annexure-A/5 to this application;

(f) For an order directing the respondents authorities to pay arrears after fixing pay of the applicants in scale Rs. 7500-12000/- with effect from the date when they were promoted to the post of Junior Accounts Officer with interest thereon;

(g) Any other order or further order/orders as to this Hon'ble Tribunal may deem fit and proper."

(extracted as such)



3. The Nitty gritty, the gist and kernel of the germane facts absolutely necessary for adjudication of this OA would run thus:

Indubitably and indisputably, 08 (eight) Applicants were in the cadre of Postal Assistant and getting their pay in the pre revised scale before the advent of 6th CPC.

While so, after 01.01.2006, but before 31.08.2008, the applicants all got their promotion as JAO so to say before implementation of the 6th CPC.

Under the 6th CPC, the posts of JAO and AO were merged and designated as AO allotting a particular scale of pay. The Applicants are entitled to exercise their option to get that higher scale of pay as applicable to AO under the 6th CPC from the date of their getting promotion as JAO in the pre revised scale. However, representation made by them were rejected by the speaking order dated 21st November, 2012.

Challenging and impugning the said action of the respondent authorities, this OA has been filed.

4. The learned Counsel for the Applicants would place reliance on the decisions rendered by the Allahabad Bench and the Jaipur Bench of the CAT and those precedents would be referred to *infra*.

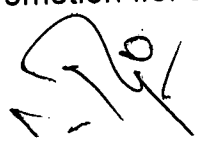
Per contra, the learned counsel for the Respondents placing reliance on the reply filed by them would submit that the approach of the applicants is totally untenable and they are not entitled

to such benefits. The Department assessed and fixed their pay scale taking into account their status as Postal Assistant as on 01.01.2006 and there is nothing wrong on that and accordingly the learned counsel for the respondents would pray for the dismissal of this OA.

5. At the outset itself we would like to refer to the orders passed by the other two Learned Benches of the CAT.

The CAT, Allahabad Bench in its order dated 9th August, 2012 in OA No. 293 of 2011 in the case of Neeraj Kumar Srivastava and Anr. V. Union of India and others held as under:

"9. As per Rule 5 regarding drawal of pay in the revised pay structure, a Government servant shall draw pay in the revised pay structure applicable to the post to which he is appointed provided that in cases where a government servant has been placed in a higher pay scale between 01.01.2006 and the date of notification of these rules on account of promotion, up gradation of pay scale etc, the Government servant may elect to switch over to the revised pay structure from the date of such promotion, up gradation etc. Meaning thereby an option has to be called and it left to the Government servant to opt the date of re fixation of his pay. As per Rule 7 regarding fixation of initial pay in the revised structure, the pay in the pay band/pay scale was to be determined by multiplying the existing basic pay as on 01.01.2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10. As per Rule 11, which stipulated the method of fixation of pay in revised pay structure subsequent to the 1st day of January, 2006, where a government servant continues to draw in the existing scale and is brought over to the revised pay structure from a date later than the 1st January, 2006, his pay from the later date in the revised pay structure shall be fixed by adding the basic pay applicable on the later date. After accepting the recommendation on 5th CPC the posts were up graded in pay scale of Rs. 7450-11500. Subsequently by merging the post of the applicants in pay scale of Rs. 7500-1200 w.e.f. 01.01.2006 the posts were re designated as Assistant Accounts Officer. As per rules of 2008 since the applicants opted to have the revised pay scale w.e.f. the date of their promotion i.e. after 01.01.2006



but before 31.08.2008, therefore, as per rule 11, their pay in the Pay Band will be fixed by adding the basic pay applicable on the last date. Therefore, the action of the respondents in rejecting the representation of the applicants for fixing their pay in pay scale of Rs. 7500-12000 is illegal and against the rules. The action of the respondents also smacks favouritism and discriminatory as the same benefit, which the applicants are asking has already been given to the Assistants/Pas of M/o. Petroleum and Gas, therefore, the impugned orders are also liable to be dismissed being discriminatory.

10. Accordingly, the OA is allowed. The impugned orders are quashed and set aside. The matter is remitted back to the respondents to consider the claim of the applicants regarding fixation of their pay in the revised pay structure from the date of their promotion as SO (A) in the light of observations made above. No costs."

Similarly, the Jaipur Bench of the CAT in the case of Assistant Audit Officers Association and Another v. Union of India and others in OA No. 531 of 2012 dated 10th December, 2013 held as under:

"32. Having heard the rival submissions of the parties, we are of the opinion that in the interests of justice and in view of the fact that the applicants were promoted earlier on the post of AAO and their pay was accordingly fixed but subsequently their promotion orders were nullified by the respondent department and their pay was reduced and recovery was made from them and also looking to the fact that they have agitated the matter before the Tribunal, therefore, looking into the hardship of the applicants the respondents are directed to give the applicants one more chance of exercising the option under Rule 5 of CCS (Revised Pay) Rules, 2008 for drawing pre revised pay scale till the next increment/promotion with all consequential benefits. The respondents are also directed to give three months time to the applicants from the date of this order to give their option as stated above."

6. A mere running the eye over those precedents would show and display that those orders are in support of the contentions of the applicants herein. The Allahabad Bench of the CAT candidly, and

categorically, clearly and pelucidly placed reliance on the Rule 5 of the CCS (Revised Pay) Rules, 2008 which is extracted hereunder for ready reference.

"5. Drawal of pay in the revised pay structure:

Save as otherwise provided in these rules, a Government servant shall draw pay in the revised pay structure applicable to the post to which he is appointed;

Provided that a Government servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale;

Provided further that in case where a Government servant has been placed in a higher pay scale between 1.1.2006 and the date of notification of these Rules on account of promotion, up gradation of pay scale etc, the Government servant may elect to switch over to the revised pay structure from the date of such promotion, up gradation, etc."

and as per the aforesaid rules, the individual govt servant concerned is entitled to exercise his option either to get the scale as prescribed under the 6th CPC w.e.f. 01.01.2006 or from the date of his promotion which he might get got before 31.08.2008. As such, we are having no reason to disagree with the decisions rendered by the Allahabad and the Jaipur Bench of the CAT, cited supra.

7. The learned counsel for the Respondents would submit that the communication dated 13th June, 20011 (A/6) issued by the Assistant Comptroller and Auditor General (N), Office of the Comptroller and Auditor General of India, New Delhi was applicable only to the employees of the Comptroller and Auditor General of India and not to others, for which the learned counsel for the applicants



would submit that such an interpretation is nowhere contemplated, and it is applicable to all the accounts officer who are coming under the category of organized cadre on par with the cadre of accounts officers in CAG of India. We could see considerable force in the submission of the learned counsel for the applicants.

8. The net result would be that the applicants were postal assistant as on 01.01.2006 and continued to be postal assistants but before 31.08.2008 they got their promotion as JAO in the pre revised scale so to say before the advent of 6th CPC.

9. In fact the implementation of the 6th CPC took place with retrospective effect so to say w.e.f. 01.01.2006. As such they are entitled to exercise their option and they in fact, exercised their option by making representation to the authority concerned but they negated it. It is quite obvious and axiomatic that on their promotion they became JAO in the pre revised scale. Indubitably and indisputably the posts of JAO and AO were merged together and designated as AO and in such a case they are entitled to the scale of pay of AO w.e.f. the date of their promotion as JAO. As such, this OA is allowed to that extent. Accordingly, the respondent authorities concerned are directed to extend the benefits.

It is made clear that while implementing the order as directed above, if it is found that the applicants received any excess amount then the applicants are liable to refund the same without any demur.



10. This OA is accordingly disposed of. No costs.

(Jaya Dās Gupta)
Member (Admn.)

(Justice G. Rajasuria)
Member (Judl.)

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