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CALCUTTA BENCH
KOLKATA

OA No.350/01392/2014

Date of hearing: 20.12.2016

Dated of order: 23.12.2016

Present:

THE HON'BLE MR. JUSTICE V.C.GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

MANOJ KUMAR GOSAIN, son of Late Ram Sanchi Gosain, aged about 35 years, working as Highly Skilled Grade-II under General Manager, Rifle Factory, Ishapore, Nawabganj, District 24 Parganas (North) and residing at 92 Old Worker Line (OWL), New Building, Ichapur, Post Office - Ichapur Nawabganj, District - 24 Parganas (North), Pin-743144.

....Applicant

-VERSUS-

1. Union of India service through the Secretary, Ministry of Defence Government of India, South Block, New Delhi-110001.
2. The Director General of Ordnance Factories and Chairman, Ordnance Factory Board, Government of India, Ministry of Defence, 'Ayudh Bhawan', 10A, Shaheed Khudiram Bose Road, Kolkata-700001.
3. The General Manager, Rifle Factory, Ishapore, Post Office Ishapore, Nawabganj, District 24 Parganas (North), Pin-743144.
4. The Controller General of Defence Accounts, Ulan Batar Road, Palam, New Delhi Cantonment, Pin-110010.

....Respondents

For the Applicants :Mr.P.C.Das,
Ms.T.Maity,
Counsel

For the Respondents: Mr.P.Mukherjee,
Counsel.

AC

ORDER

MS.JAYA DAS GUPTA, AM:

The Applicant (Mr. Manoj Kumar Gosain), has filed this Original Application U/s. 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"(a) To quash and/or set aside the impugned show cause notice vide office order dated 9th June, 2014 (Annexure-A/18) ;issued by the General Manager, Rifle Factory, Ishapore against the applicant by violation of the order of the Ministry of Defence dated 14th June, 2010 (Annexure-A/7) and the order of the Ordnance Factory Board dated 13th December, 2010 (Annexure-A/6 and the order of the Controller General of Defence Accounts dated 12.02.2010 (Annexure-A/5) and the Gazette Notification of the Ministry of Defence dated 28th August, 28th August, 2009 (Annexure-A/2) and by not allowing your applicant to take the option for revision of pay of HS-II whereby and where under they are going to reduce the pay of the present applicant by taking one increment by violation of the statutory order of the Government of India, Ministry of Defence under the proviso of Article 309 of the Constitution of India.

(b) To pass an appropriate order directing upon the respondent authority to accept the appeal preferred by the applicant dated 28.05.2012 in respect of exercising option for revision to pay which he has made as per the direction and order of the Ministry of Defence dated 14th June, 2010 (Annexure-A/7) and the order of the Ordnance Factory Board dated 13th December, 2010 (Annexure-A/6) and the order of the Controller General of Defence Accounts dated 12.02.2010 (Annexure-A/5) and the Gazette Notification of the Ministry of Defence dated 28th August, 2009 (Annexure-A/2) and to revise the pay of your applicant in terms of the proviso of Article 309 of the Constitution of India to the post of Highly Skilled Grade II as has been done in the case of the identical person those who are employees as HS II in the Ordnance Factory, Khamaria, Jabalpur and to fix the appropriate pay of the applicant along with all increment in the pay scale of Rs. 28,270/-;

SG

(c) To declare that the impugned action of the respondent department by going to take increment from the salary of the applicant and to reduce the salary of the applicant without accepting the option that has to be exercised by the applicant in terms of the order of the Ministry of Defence dated 14th June, 2010 (Annexure-A/7) and the order of the Ordnance Factory Board dated 13th December, 2010 (Annexure-A/6) and the order of the Controller General of Defence Accounts dated 12.02.2010 (Annexure-A/5) and the Gazette Notification of the Ministry of Defence dated 28th August, 2009 (Annexure-A/2)."

2. Respondents have filed a detailed reply supporting the

action taken by them.

3. Heard both. Consulted the records.

4. It appears from the record/pleadings that the Applicant seeks to take the benefit of the order of restricting of cadre of Artisan Staff in Defence Establishments in modification of recommendations of 6th CPC issued by the Government of India, Ministry of Defence dated 14th June, 2010 (A/3). The said order dated 14th June, 2010 is extracted hereunder for ready reference:

"No. 11 (5)/2009 D (Civ-I)
Government of India,
Ministry of Defence.

New Delhi the 14th June, 2010

To
The Chief of Army Staff
The Chief of Air Staff
The Chief of Naval Staff
The DGOF & all Heads of Inter service Organizations.

Subject: Restructuring of Cadre of Artisans Staff in Defence Establishments in modification of recommendations of 6th CPC.

Sir,

DN

The matter regarding revision of pay scale of Master Craftsman in Defence Establishments has been under consideration of the Government of quite some time. Now in partial modification of the 6th CPC recommendations made in paras 3.8.27 of its report and amendment made in Civilian in Defence Services (Revised Pay) Rules, 2008 vide SRO 11 (E) dated 28.8.2009 ; I am directed to convey the sanction of the President of restructuring of cadre of Artisan Staff in Defence Establishment as under:

2. The grade structure in the industrial as well as in the non industrial trades, wherever already available and the pay scales of the Defence artisan staff shall stand modified w.e.f. 1.1.2006 as under:

- (i) Skilled – Pay Band PB 1, Grade Pay Rs. 1900
- (ii) Highly Skilled Grade II Pay Band PB 1 Grade Pay Rs. 2400
- (iii) Highly skilled Grade I Pay Band PB 1 Grade Pay Rs. 2800
- (iv) Master Craftsman Pay Band PB 2 Grade Pay Rs. 4200.

3. (a) Wherever the grade structure in the Industrial as well as Non Industrial trades is already existing in the ratio of 45:55 the erstwhile skilled and High Skilled and 25% of Highly Skilled in the grade of Master Craftsman, the following will apply.

45% of the posts may be granted the pay scale of Skilled Worker (Grade Pay of Rs. 1900 in the Pay Band PB 1);

25% of the remaining 55% may be granted the pay scale of MCM (Grade Pay of Rs. 4200 in the Pay Band PB 2) and

The remaining posts may be divided in a ratio of 50:50 and re designated as Highly Skilled Worker Grade II (Grade Pay of Rs. 2400 in Pay Band PB I) and Highly Skilled Worker Grade I (Grade Pay of Rs. 2800 in Pay Band PB 1);

(b) The placement of the individuals in the posts resulting from the restructuring shall be made w.e.f. 1.1.2006 in relaxation of the conditions, if any, i.e. trade test etc. as one time measure;

GW

(c) Highly Skilled Grade I shall be enbloc senior to Highly Skilled Grade II;

4(i) The post of Master Craftsman shall be part of the hierarchy and the placement of Highly Craftsman of Highly Skilled Grade I in the grasde of Master Craftsman will be treated as promotion;

(ii) In the cae of Defence Establishments where there is no category of Skilled Workers and direct recruitment's made 100% at tdhe level of Highly Skilled, the posts of Master Craftsman existing as oni 1.1.2006 will be placed in PB 2 + GP 4200 and the remaining pots of Highly Skilled Workers may be bifurcated in HS I in the rastio of 50:50;

(iii) in view of the above restructuring the artisan staff may be allowed to give revised option for pay fixation w.e.f. 1.1.2006 within these months from the date of issue of orders in this regard.

(iv) The existing recruitment rules for the Tradesman may be amended and RRs for the post of MCM may be framed accordingly;

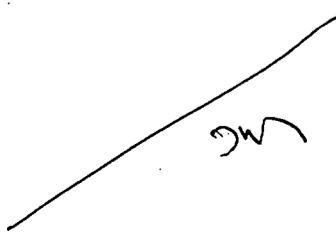
5. The expenditure involved will be debatable to the respective Heads of Defence Service Estimates;

6. To the extent of provisions indicated in the paragraphs above MoD letter No. 11 (1)/2002 (Civ-I) dated 20.5.2003 stands amended;

This issues with the approval of DOP&T JUO No. 5358/10/CR dated 25.2.2010 and Ministry of Finance I.D. No. 2 (16) E.III Desk/2008 dated 10.6.2010 and concurrence of Ministry of Defence (Finance AG/PB) vide their UO No. 164/AG/PB dated 14.6.2010."

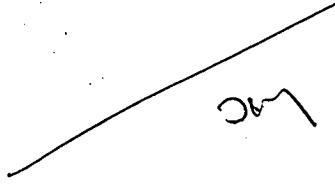
5. From the above it is clear that the placement of the individual in the post resulting restructuring of cadre shall be made w.e.f. 1.1.2006 in relaxation of the conditions, if any, i.e. trade test etc. as one time measure. In view of the above restructuring the artisan staff be allowed to give revised option for pay fixation w.e.f. 1.1.2006 within three months from the date of issue of orders in this regard.

So, it is clear that this order shall apply only for those staff who are in service as on 01.01.2006. However, in this case, the



applicant joined service in the post of Fitter under Semi Skilled Grade as a direct recruit on 13.02.2006 i.e. after 01.01.2006 in the pay scale of Rs. 2650-4000/- (5th CPC) in terms of statutory Rules and Orders (SRO) 185 of 1994. He was promoted to the post of Fitter (Skilled Grade) in the pay scale of Rs. 3050-4590/- (5th CPC) on 13.02.2008. Therefore, it is aptly clear that as he was not in service as on 1.1.2006. ^{the 1/2} Therefore, question of giving him opportunity to make fresh option as per the order of restructuring, *cited supra*, does not arise. In fact as he joined only on 13.02.2006 on direct recruitment and as per relevant provision of fixation in respect of the persons recruited on or after 01.01.2006 his pay will be fixed as laid down in CCS RP Rules, 2008. Therefore he cannot take the help of the orders dated 12.02.2010, 14.6.2010, 20.03.2012, 10.4.2012, 31.7.2012 and 2.7.2013 which he pleaded for at the Bar because he cannot come under the provision of restructuring of artisan cadre. As he was given an extras increment, he was accordingly issued a show cause dated 9th June, 2014. He had also represented to the said show cause on 16.6.2014 but to no avail.

6. It also appears from the reply at para 6.3 that on the date of his direct entry his pay was fixed at Rs. 5200/- with GP Rs. 1800/- in PB 1 w.e.f. 13.2.2006 which is the entry pay in the revised pay structure appointed on or after 1.1.2006. His pay on the date of his promotion to the Skilled Grade was also revised to Rs. 5410/- + Rs.1900/- in PB 1 w.e.f.13.2.2008 initially and refixed finally at Rs.



5860/- GP Rs.1900/- in PB 1 w.e.f. 01.07.2008 i.e. the date of his increment in terms of CCS (RP) Rules, 2008. The Respondents also submitted that the applicant on his promotion to Skilled and Highly Skilled grades as per restructuring of cadre granted on the same date i.e. 13.2.2008 as a consequence of cadre restructuring opted to have his pay fixed from the date of his increment i.e. on 01.07.2008. His pay was fixed initially at Rs. 5410, GP Rs. 2400 on 13.02.2008 and re fixed finally at Rs. 6100 + GP Rs. 2400 on 01.07.2008 by allowing two increments on account of 2 promotions in terms of the above provisions **which was actually wrong because the restructuring provision do not apply to the applicant.**

The Principal Controller of Accounts (Fys) vide letter dated 29.5.2013 directed as under:

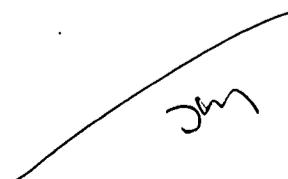
"Office of the Principal Controller of Accounts (Fys)
10-A, S.K.Bose Road, Kolkata-700001.
No.Pay/Tech-II/04 Date:29/05/2013.

To
The Officer in charge,
Accounts Office
Rifle Factory,
Ishapore.

Sub: Pay Fixation of industrial Employees -
regarding of;

Ref: Your letters No.L/1844/Misc./Vol.VIII dated
04.03.2013 & 14.05.2013.

With reference to your letters cited above, it is intimated that pay fixation approved by your office to Rs. 6100 (Band Pay) + Rs. 2400 (Grade Pay) in respect of industrial employees who have been recruited as Semi Skilled labourer after 01.01.2006 and subsequently who have been granted one time bound promotion to skilled grade



on 26.02.2008 or alike and another promotion to HS II on the same date due to cadre restricting seems to be not correct.

It is observed from your letter that the concerned IEs have been allowed two promotional benefits in the form of 3% increment in each promotion and apart from that one annual increment @ 3% have also been allowed on 1.7.2008 based on their exercising option towards pay fixation on 1.7.2008.

In this connection it is requested to refer to C&AG decision No.4 below FR 22 wherein it is stipulated that pay in the case of 2nd promotion which has been granted in quick succession (before the date of next increment of the lower post) is to be fixed with reference to the pay admissible on the date of second promotion without giving the benefit of re fixation of pay for the first promotion from the date of next increment.

In the present case initial pay of semi skilled labourer is to be fixed to Rs. 5200 (Band Pay) + Rs. 1800 (Grade Pay) on the date of appointment in terms of the provision as laid down Rule 8 RPR, 2008, as they have been appointed on or after 1.1.2006. However, in the light of the ibid C & AG order pay fixation on further promotion from skilled to H S II grade w.e.f. 26.02.2008 cannot be done unless his pay is fixed in the skilled grade. Hence, his pay is to be fixed in the post of skilled grade on the date of promotion to skilled grade first straight way and then in the post of HS II grade on the same date straight way by granting 3% increment. Accordingly, the next date of increment cannot be made available on 1.7.2008 due to non completion of 6 months service in the promoted post. As such his date of next increment would be on 1.7.2009.

It is, therefore requested to regulate the case as per above guidelines and confirm the action to this office at earliest."

DW

7. In paragraph 5.15 of the reply, the respondents have

stated as under:

"6.15. As regards SCN for re-fixing of pay and recovery of excess payment, if any, involved it is submitted that the fixation that has been done after implementation of cadre restructuring is incorrect since the method of fixation of pay done in respect of the applicant or alike is in contravention to the provision of C & AG Rule 4 below FR 22 as observed by PC of A(Fys.). It is mentioned that the applicant submitted an undertaking on 12.09.2008 in course of revision/re-fixation of pay as per 6th CPC recommendations which reads as follows:

"I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies notices subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise."

8. He will not get the benefit of one increment granted on 01.07.2008 and hence has to be recovered as over drawal of salary.

The next increment will be due on 01.07.2009.

9. In view of the above, we find no reason to interfere in the matter. This OA is accordingly dismissed. The interim order dated 5.12.2014 which has been continuing till date stands vacated. N o

costs.

(Jaya Das Gupta)
Member (Admn.)

kmm

(Justice V.C.Gupta)
Member (Judl.)