

(Reserved on 17.04.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD
(Circuit Bench at Nainital)**

This the **18th** day of ***April*** , **2018**.

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).
HON'BLE MR. JAYESH V. BAIRAVIA, MEMBER (J).

Original Application Number. 331/00025/2016.

Chandra Mani, S/o Late Shri Bindun Lal, R/o Masjid Wali Gali,
Majra, Saharanpur Road, Dehradun.

.....Applicant.

VE R S U S

1. Union of India through the Secretary, Ministry of Communication & IT, (Department of Posts), New Delhi.
2. The Post Master General, Bareilly Region, Bareilly.
3. Senior Superintendent of Post Offices, Saharanpur Division, Mission Compound, Saharanpur – 247 001.
4. The Director of Accounts (Postal), Uttar Pradesh Circle, Sector - “D”, Aliganj, Lucknow – 226 024.

.....Respondents

Advocate for the applicant : Shri Rakesh Verma

Advocate for the Respondents: Shri L.P. Tiwari

O R D E R

(Delivered by Hon'ble Mr. Gokul Chandra Pati, A.M)

Heard counsel for both sides.

2. The O.A is filed with prayer for the following main reliefs: -

“(i). to issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 25.08.2015 (Annexure A-1 to the Compilation No. I of this petition) by which the claim of the petitioner for

being allowed the Grade Pay of Rs. 4600/- has been rejected illegally by the respondents ...

(ii). to issue a writ, order of direction in the nature of Mandamus directing the Respondents to allow the petitioner the benefit of Grade Pay of Rs. 4600/- per month with effect from 01.01.2006 with arrears thereon and further to revise and re-fix the pensionary benefits and to pay the same with arrears thereof with effect from 01.02.2008 within a period as may be fixed by this Tribunal.”

3. The facts of the case in brief as in the O.A are that the applicant , who retired on attaining the age of superannuation on 31.01.2008, was allowed the benefit of 1st ACP in pay scale of Rs. 5000-8000 with effect from 06.12.2007 vide order dated 15.07.2009 (Annexure A-2 to the O.A). At the time of passing of the order dated 15.07.2009 the 6th Central Pay Commission (in short CPC) was already taken place w.e.f. 01.01.2006 and the CCS (Revised Pay) Rules 2008 was notified by the Government. It is stated that pursuant to the 6th CPC, the pay scale of Rs. 5500-9000 & 6500-10500 including the pay scale of Rs. 5000-8000 were merged in Pay Band -2 of Rs. 9300-34800 vide the Ministry of Finance (Implementation Cell) vide O.M dated 13.11.2009 (Annexure A-3 to the O.A) addressed to all the Ministries/ Departments of Govt. of India and others by which the revised pay structure of Grade Pay of Rs. 4600/- in PB-2 was allowed for the posts which were granted the normal replacement pay structure of Grade Pay of Rs. 4200/-.

4. Thereafter, the applicant filed a representation dated 19.02.2015 (Annexure A-5) to the respondent No. 3 alongwith copy of O.M dated 13.11.2009. The representation was rejected by the respondents vide order dated 25.08.2015 (Annexure A-1 to the O.A) holding that the applicant's pay , pension and other retiral benefits have been given correctly. Aggrieved, the applicant has filed the present O.A on the ground that the action of the respondents is illegal, arbitrary and without any basis as no reasons and the material in support of the impugned order has been assigned. It is further stated that there is no whisper in the impugned order as to how the O.M dated 13.11.2009 is not applicable in the case of the applicant.

5. The respondents have filed Counter Affidavit, stating that the applicant was initially appointed as Pharmacists in P&T Dispensary, Saharanpur on 06.12.1995 in pay scale of Rs. 1350-2200. On implementation of 5th CPC , his pay was fixed Rs. 4500 in pay scale of Rs. 4500-7000. After 6th CPC, the pay of the applicant was fixed at Rs. 10,700/- with GP Rs. 2800/- in pay scale Rs. 5200-20200 on 01.01.2006. The applicant was granted 1st ACP from 06.12.2007 vide order dated 15.07.2009 and his pay was fixed Rs. 11,960 + Rs. 4200 GP w.e.f. 06.12.2007. The applicant after his retirement on 31.01.2008 filed a representation dated 05.03.2012 claiming that his pay should be fixed in Grade Pay Rs. 4200/- w.e.f 01.01.2006 and in Grade Pay Rs. 4600/- w.e.f. 06.12.2007. The matter was referred to the DAP, Lucknow who vide letter dated

22.05.2012 (Annexure CA-1) replied that the O.M dated 13.11.2009 quoted by the applicant in his representation is applicable to the Ordnance Factory Board and not to the Department of Posts. Consequently, the applicant was informed about the position by the respondent No. 3 vide letter dated 30.05.2012 (Annexure CA-1). Thereafter, the applicant made repeated representations to the respondents including representation dated 19.02.2015 in reply to which the respondent No 4 vide letter dated 25.08.2015 (Annexure A-1) intimated the applicant that his case was examined in the light of provisions of OM dated 18.11.2009 (Annexure A-4) and found that the pension and other retiral benefits have been allowed correctly to the applicant as per rules. It is contended that the O.M dated 13.11.2009 is not applicable in the case of the applicant. The cadre of Pharmacist is governed by the Ministry of Finance Letter dated 18.11.2009 (Annexure CA-4), hence the pay of the applicant was correctly fixed as per 5th CPC as on 01.01.1996 in pay scale of Rs. 4500-7000 and as per recommendation of 6th CPC, his pay was fixed in Grade Pay Rs. 2800/-. As per Ministry of Finance O.M dated 13.11.2009, merger of scale of Rs. 5000-8000, 5500-9000 and 6500-10500 was recommended to be merged as on 01.01.2006, but the applicant was not in any of such scale pay scale on 01.01.2006. Hence, the O.M dated 13.11.2009 is not applicable to the applicant.

6. The applicant has filed Rejoinder Affidavit stating that since the O.M dated 13.11.2009 has been circulated to all the Ministries

and Departments of Govt. of India, it is applicable to the employees of the Department of Posts also. Had the Govt. of India intended to implement the provisions of the O.M dated 13.11.2009 only to the Ordnance Factory Board the same should not have been circulated to all the Ministries / Departments . It is further stated that the O.M dated 18.11.2009 (Annexure CA-4) has admittedly been implemented by the Department of Posts in respect of Pharmacists upon which the applicant had been working.

7. We have heard Shri D. Tiwari, proxy for Shri Rakesh Verma, learned counsel for the applicant and Shri L.P. Tiwari, learned counsel for respondents. Learned counsel for the applicant submitted that the claim of the applicant is mainly for determining correct pension and retired benefits. He submitted that the applicant's representation dated 19.02.2015 (Annexure A-5) is submitted on the ground that as per the O.M dated 13.11.2009 of the Ministry of Finance (Annexure A-3), the applicant is eligible for the grade of pay of Rs. 4600/- as the said OM is addressed to all Ministries / Departments, for which the contention that it is applicable to only Ordnance Factory Board Employees is incorrect. The next ground is that as per the letter dated December 2009 of the Assistant Director General, Department of Posts, the OM dated 13.11.2009 is applicable to cases where pre-revised scale of Rs. 6500 to 10500 existed as on 01.01.2006. Learned counsel further submitted that in para 10 of the Counter Affidavit filed by the respondents, it is stated that the applicant's pay has been fixed as

per the Ministry of Finance O.M dated 18.11.2009 (Annexure CA-4), which is applicable for the Pharmacists and that as on 01.01.2006 the applicant's pay was in pay scale of Rs. 4500-7000. Learned counsel pointed out that this contention that his pay is to be fixed as per OM dated 18.11.2009 is not correct. He also pointed to para 16 of the Counter Affidavit contradicting the fact that the O.M dated 13.11.2009 is not applicable to the applicant. It was also submitted that as per para 4.14 of the O.A, the applicant was allowed the benefit of 1st ACP w.e.f. 06.12.2007 in the pay scale of Rs. 5000-8000 from the pay scale of Rs. 4500-7000 and since the pay scale of Rs. 5000-8000 was merged with PB-2 pay scale with grade pay of Rs. 4200 which has been enhanced to GP Rs. 4600/- vide O.M dated 13.11.2009, the same benefit should be allowed to the applicant as well.

8. Shri L.P. Tiwari, learned counsel for the respondents submitted that firstly the OM dated 13.11.2009 is applicable for Ordnance Factory Board's employees, as stated by the respondents letter dated 30.05.2012 (Annexure CA-1) issued by Senior Superintendent of Post Offices, Saharanpur. Secondly, as explained in para 16 of the Counter Affidavit, the pay scale of the applicant has been fixed as per the OM dated 18.11.2009 as applicable for Pharmacists and the O.M dated 13.11.2009 would not be applicable as the applicant was not on one of the merged pay scale as on 01.01.2006. He further submitted that as per the OM dated

18.11.2009 the applicant being a Pharmacist would be entitled to the Grade Pay Rs. 4200/-, which has been allowed to the applicant.

9. In the DOPT OM dated 13.11.2009, which is being relied upon by the applicants in the O.A., it is stated as under:-

“Sixth Pay commission recommended merger of the three pre-revised scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 and replaced them by the revised pay structure of grade pay of Rs.4200 in the pay band PB-2. Vide para 2.2.21 (v) of its report, the Commission recommended that on account of the merger of these 3 scales, some posts which constituted feeder and promotion grades would come to lie in an identical grade. The Commission gave specific recommendations in its Report granting higher grade pay of Rs.4600 to some categories of these posts. As regards the other posts, the Commission recommended that it should first be seen if the posts in theses 3 scales can be merged without any functional disturbance and if possible, the same should be done, Further, the Commission recommended that in case it is not feasible to merge the posts in these pay scales on functional consideration, the posts in the scale of Rs.5000-8000 and Rs.5500-9000 should be merged with the posts in the scale of Rs.6500-10500 being upgraded to the next higher grade in the pay band PB-2 with grade pay of Rs.4600 corresponding to the pre-revised scale of Rs.7450-11500, the posts being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs. 7450-10500.

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4. Accordingly, in terms of Rule 6 of CCS (RP) Rules, 2008, revised pay of Government servants in the pre-revised scale of Rs.6500-10500 who were earlier granted grade pay of Rs.4200 and who have already exercised their option for drawal of pay in the revised pay structure in the format prescribed in the Second Schedule to the Rules, will be fixed again in accordance with illustration 4A annexed to CCS (RP)Rules,008.

5. In case of all such Government servants in the pre-revised scale of Rs.6500-10500 who were earlier granted grade pay of Rs.4200 and who had opted to have their pay fixed under CCS(RP) Rules, 2008, action as prescribed in this Department's O.M. of even number dated 30th August, 2008 will be taken.....”

From above provisions of the OM dated 13.11.2009, it is clear that the said OM, extended the benefit of the Grade Pay of Rs. 4600 to those employees, who were in the pre-revised scale of Rs. 6500-10500, in view of the merger of the pre-revised pay scales of Rs. 5000-8000 and Rs. 5500-9000 to the pre-revised pay scale of Rs. 6500-10500 and taking into account the functional considerations. It is not available for other two pay scales which got merged with the pay scale of Rs. 6500-10500 after implementation of 6th CPC.

10. The applicant at para 4.3 and 4.14 of the O.A has stated that after availing the 1st ACP his pay scale was fixed at Rs. 5000-8000 from the pay scale of Rs. 4500-7000 w.e.f. 06.12.2007. As discussed in para 9 of this order, the O.M dated 13.11.2009, which is being referred by the applicant, is applicable the cases where the

pre-revised pay scale was Rs. 6500-10500 before fixation of pay as per the recommendation of 6th CPC. In this case, admittedly, the applicant's pay scale was Rs. 5000-8000 after availing the benefit of 1st ACP w.e.f. 06.12.2007 and prior to that date his pay scale was Rs. 4500-7000. The applicant's contention in his representation dated 19.02.2015 that he was in pre-revised scale of Rs. 6500-10500 is not correct since it is contrary to the submissions in paragraph 4.3 and 4.14 of the O.A. Since the applicant was not in pre-revised pay scale of Rs. 6500-10500 and the benefit of enhancing the grade pay to 4600 as per the OM dated 13.11.2009 is applicable only to the case where the pre-revised pay scale is Rs. 6500-10500, the applicant will not be eligible for the benefit of GP Rs. 4600 w.e.f. 06.12.2007 on the ground that Rs. 5000-8000 has been merged with the pay scale Rs. 6500-10500.

11. In view of the above, we are of the view that the O.A is devoid of merits. It is accordingly dismissed. No costs.

MEMBER- J.

MEMBER- A.

Anand...

