

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

O.A.No.060/01390/2017

Orders pronounced on: 11.04.2019
(Orders reserved on: 15.03.2019)**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Pawan Kumar Dogra,

Aged 52 years

S/o Sh. Manohar Lal,

Senior Public Prosecutor,

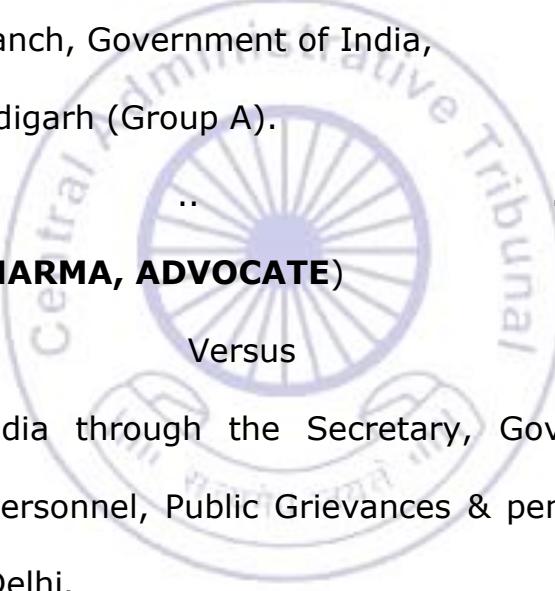
Central Bureau of investigation,

Anti Corruption Branch, Government of India,

Sector 30-A, Chandigarh (Group A).

Applicant**(BY: MR. R.K.SHARMA, ADVOCATE)**

Versus



1. Union of India through the Secretary, Government of India, Ministry of Personnel, Public Grievances & pensions, DoPT, North Block, New Delhi.
2. The Director, Central Bureau of Investigation, Anti Corruption Branch, 5-B, 1st floor, CGO Complex, New Delhi-110003.
3. Superintendent of Police-cum-head of the Branch, Central Bureau of Investigation, Anti Corruption Branch, Government of India, Sector 30-A, Chandigarh.

(BY: MR. ARVIND MOUDGIL, ADVOCATE)

....

Respondents

ORDER
SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application (OA) under section 19 of the Administrative Tribunals Act, 1985, for quashing the order dated 13.8.2013 (Annexure A-1) vide which his claim for removal of anomaly in pay fixation, was rejected on the ground that discrepancy was due to in exercise of option by senior and junior and not on account of parameters laid down in Department of Expenditure O.M dated 19.3.2012 and order dated 8.9.2017 (Annexure A-2), vide which his claim for stepping up of pay at par with juniors has been declined.

2. The facts are not largely in dispute. The applicant initially entered into service as Assistant Public Prosecutor (APP) in CBI on 4.3.1996, at Dehradun. He was promoted as Public prosecutor vide order dated 3.6.2002 along with his juniors Mr. Raj Mohan Chand etc. He joined his duties on promotional post on 22.7.2002. But his juniors working at Delhi were posted on promotion at same station and were relieved to join on 4.6.2002 itself, thus, they joined on same day. The applicant was not relieved due to exigency of service and due to delay he joined Bhopal on 22.7.2002. he was promoted as Senior Public prosecutor on 23.12.2013 and joined in Chandigarh. Juniors were promoted as Sr. P.P. on 24.12.2013 etc.

3. The pay scales of Central Government employees were revised w.e.f. 1.1.2006 and date of next increment was fixed in July of each year irrespective of date of joining. The applicant and juniors were placed in PB-3, pay band of Rs.15600-39100 with grade pay of Rs.5400/- and salary was fixed at the stage of Rs.16420 + Rs.5400/- grade pay. The Govt. of India, Ministry of Finance, issued OM dated 19.3.2012 (Annexure A-5) providing that employees, who were due to get their annual increment between February to June during 2006, were

entitled to one increment on 1.1.2006 in pre-revised pay scale as one time measure and thereafter they will get the next increment in revised pay structure on 1.7.2006. The juniors, who were drawing equal pay with applicant upto 31.12.2005, got one additional increment w.e.f. 1.1.2006, as per order dated 22.5.2012 (Annexure A-6) etc. In this manner, the applicant was fixed at Rs.16420/- + grade pay of Rs.5400/- whereas juniors were fixed at Rs.16930/-+ Grade pay of Rs.5400/-. The applicant submitted representation dated 16.8.2012 for removal of anomaly. His claim was rejected vide order dated 23.8.2013, on the ground that discrepancy has arisen due to exercise of options and not in terms of DoE's OM dated 19.3.2012. Representation dated 9.12.2013 (Annexure A-10) was again submitted by the applicant that it was a case of pay anomaly but to no avail. Further correspondence took place and ultimately vide order dated 8.9.2017 (Annexure A-2) his claim was again declined.

4. The respondents have opposed the O.A. They submit that applicant was promoted vide order dated 3.6.2002 along with others but he submitted a representation on 6.6.2002 (Annexure R-2) requesting for posting him at Chandigarh instead of Bhopal. His request was declined with an observation that it will be considered as and vacancy is available, vide order dated 15.7.2002 (Annexure R-3) and request was made to relieve the applicant forthwith. He was relieved on 8.7.2002 from Dehradun and joined at Bhopal on 22.7.2002. The applicant has filed a rejoinder reiterating the submissions made in O.A. and claiming that despite his request for transfer to Chandigarh and its rejection, even thereafter his relieving was delayed.

5. We have heard the learned counsel present for the parties at length and examined the material on file.

6. A conjunctive perusal of the pleadings would make it clear that the applicant and his juniors, all were getting same pay and there was no anomaly, even due to late joining of the applicant on promoted post. The anomaly has arisen due to issuance of OM dated 19.3.2012 granting increments to junior employees, who were due to get their annual increment between February to June during 2006. The applicant joined promotional post after June, 2006 whereas his juniors had joined it in June, 2006. There was admittedly parity in pay scale upto 31.12.2005. The pay revision took place w.e.f. 1.1.2006. Due to aforesaid OM, the pay of juniors to applicant was fixed, with extra increment at Rs.16930/- whereas applicant was fixed at Rs.16,420/-. The applicant seeks to address this anomaly, which has arisen in his pay fixation, as he is drawing less pay than his juniors due to application of OM dated 19.3.2012.

7. The issue as to whether an anomaly arisen due to application of OM dated 19.3.2012, Annexure A-5, can be removed or not was considered by a coordinate Bench of this Tribunal and stands settled in O.A. No. 1067-JK-2013 titled **DEV RAJ & OTHERS VS. UOI & ANOTHER**, decided on 28.10.2004, the relevant part of which reads as under :-

“. We have given our thoughtful consideration to the matter. It is evident from the material on record that while the applicants and their junior Sh. Jeet Ram were getting equal pay prior to 31.12.2005 due to the operation of the instructions dated 19.03.2012 (Annexure A-2). Sh. Jeet Ram, who is junior to the applicants was getting higher pay since 01.01.2006. It is indeed a settled principle of law that a senior employee in the same cadre cannot be paid less than his junior and hence the impugned order dated 17.01.2013 is set aside. The respondents are directed to step up the pay of the applicants to bring the same at par with their junior Sh. Jeet Ram and the arrears due to the applicants on this account may be released within a period of three months from the date of receipt of a certified copy of this order being served upon the respondents. No costs”

8. We find that the aforesaid decision is applicable on all fours to the facts of this case as in this case as well, the applicant and his juniors were drawing equal pay prior to 31.12.2005 and application of O.M dated 19.3.2012 created anomaly. In the wake of these facts, this O.A. is allowed. Impugned orders, Annexures A-1 and A-2 are quashed and set aside. The respondents are directed to step up the pay of the applicant at par with his juniors, on notional basis, and grant actual benefits from the date of filing of the O.A. (20.11.2017), within a period of 3 months from the date of receipt of a certified copy of this order. The parties are, however, left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

PLACE: CHANDIGARH.
DATED: **11.04.2019**

HC*

(SANJEEV KAUSHIK)
MEMBER (J)

