

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH
CIRCUIT SITTING AT RANCHI
OA/051/00239/16
With
MA/051/00122/2016**

Date of Order: 13.02.2019

C O R A M

**HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Deo Kumar, aged about 52 years, son of Shri Ishwar Chand, resident of Flat No. 101, Swarnrekha Apartment, Burdwan Compound, Circular Road, PO & PS – Lalpur, District- Ranchi.

..... Applicant.

By Advocate: - Mr. S. Shekhar

-Versus-

1. The Union of India through Director General of Mines Safety (Mining), Office of Director General of Mines Safety, Hiraaur, Dhanbad, PO- Hirapur, PS- Bank More, District- Dhanbad.
2. The Secretary, Department of Personnel and Training, North Block, New Delhi.
3. The Director (Pay), Department of Personnel and Training, North Block, New Delhi.

..... Respondents.

By Advocate: - Mr. H.K. Mehta, Sr. SC

**ORDER
[ORAL]**

Per Dinesh Sharma, A.M:- The case of the applicant is that while working as Superintendent of Mines under Bharat Coking Coal Limited,

he applied for appointment to the post of Dy. Director of Mines, Safety (Mining) and on being selected he was issued offer of appointment vide Office Memo dated 09.02.2009. His entry level pay was fixed at Rs. 39,100/- (the maximum of Pay Band 3) along with Grade Pay of Rs. 7,600/- which resulted in his pay getting reduced from what he was getting (Rs. 53,220/- along with DA of Rs.425/-) in his earlier job as Superintendent of Mines under Bharat Coking Coal Limited. Though he has filed representation against this lower pay fixation which amounts to not giving him pay protection as intended by Office Memorandum dated 30.03.2010 (Annexure-4). This has still not been done by the respondent authorities.

2. The respondents in their reply have denied the claim of the applicant. They have quoted OM No. 12/1/88-Estt (Pay-I) dated 07.08.1989 under which it is mandated that the pay fixed under the formula for pay protection will not exceed the maximum of the scale of the post to which a person has been recruited. Since the applicant was recruited in a pay scale of which the maximum was Rs. 39,100/- he could not be paid anything more than that under office memorandum quoted above. Regarding the office memorandum dated 30.03.2010 quoted

above the respondents have argued that this was not applicable to him. They had sought clarification in a similar matter and the DoP&T have clarified that an officer similarly placed as the applicant could be fixed in a pay scale in Pay Band-III upto the maximum of Rs. 39,100/- and shall be placed in the next higher pay band after one year of reaching such a maximum in terms of Rule 10 of CCS(RP) Rules, 2008. This clarification issued by the DoP&T UO No. 68719/2011-Pay-I dated 04.10.2011 is at Annexure R/1 of the Written statement.

3. The applicant in his rejoinder has reiterated his claim and has argued that the OM dated 30.03.2010 modifies the earlier rule of 1989. Since this later OM fixes the ceiling of Rs. 67,000/- this ceiling replaces the earlier stipulation regarding maximum of the pay scale for which an employee might have applied for. He has again requested for treating his case by taking an interpretation favourable to an employee in case two interpretations were possible.

4. The respondents have replied to this rejoinder. While reiterating their earlier argument have again quoted the similar case in which the new rule (of 2010) was not applied in case of an existing employee. The respondents also raised the issue of limitation in this matter.

5. The applicant has also filed an application for condonation of delay since he has been filing representation since the year 2010 and the delay has occurred because of the respondents' not properly responding to his representations.

6. Since if the prayer of the applicant was to be accepted this would amount to a continuing loss, we are inclined to accept his request for condonation of delay.

7. After going through the pleadings and hearing both the parties, we come to the conclusion that a decision on this matter will depend on the interpretation of the following 2 official communications:

(i) OM No. 12/1/88-Estt (Pay-I) dated 07.08.1989.

(ii) OM No. 12/3/2009-Pay-I dated 30.03.2010

The relevant portion of both these communications are quoted verbatim below:-

(i) OM No. 12/1/88-Estt (Pay-I) dated 07.08.1989.

"2. The question as to how pay protection can be given in the case of candidates recruited from Public Sector Undertakings, etc. has been engaging the attention of the Government for some time. The matter has been carefully considered and it has been decided that in respect of candidates working in Public Sector Undertakings, Universities, Semi-Government Institutions or Autonomous Bodies, who are appointed as direct recruits on selection through a properly constituted agency including departmental authorities making recruitment directly, their

initial pay may be fixed at a stage in the scale of pay attached to the post, so that the pay and DA, as admissible in the Government will protect the pay plus DA, already being drawn by them in their parent organisation. In the event of such a stage not being available in the post to which they have been recruited, their pay may be fixed at a stage just below in the scale of the post to which they have been recruited, so as to ensure a minimum loss to the candidates. The pay fixed under this formulation will not exceed the maximum of the scale of the post to which they have been recruited. The pay fixation is to be made by the employing Ministries/Departments after verification of all the relevant documents to be produced by the candidates who were employed in such organisations.

3. These orders take effect from the first of the month in which this Office Memorandum is issued, i.e. 1st August, 1989.”

(ii) OM No. 12/3/2009-Pay-I dated 30.03.2010

“.... In partial modification of this Department’s OM dated 7.8.1989 and 10.07.98 referred to above, the method of pay fixation in respect of those appointed on or after 01.01.2006 will be as under:-

“ In case of candidates working in Public Sector Undertakings, Universities, Semi- Government Institutions or Autonomous Bodies, who are appointed as direct recruits on or after 01.01.2006 on selection through interview by a properly constituted agency including Departmental Authorities making recruitment directly, their initial pay may be fixed by granting them the Grade Pay attached to the post. Further, their pay in the Pay Band may be fixed at a stage so that the pay in the Pay Band+ Grade Pay and DA as admissible in the government protects the pay +DA already being drawn by them in their parent organisations. The pay in the Pay Band fixed under this formulation will not be fixed at a stage lower than Entry Pay in the Revised Pay Structure (Corresponding to the Grade Pay applicable to the post) for direct recruits on or after 01.01.2006 as notified vide Section II, Part A of First Schedule to CCS(RP) Rules, 2008. The pay in the Pay Band fixed under this formulation

will not exceed Rs. 67,000/, the maximum of the Pay Band PB-4.”

3. The conditions for admissibility of pay protection shall be the same as stipulated in this Department’s OM dated 7.8.89 and 10.07.98 referred to above.

4. In so far as persons serving in the India Audit and Accounts Department are concerned, these orders are issued with the concurrence of the Comptroller and Audit General of India.

5. These orders will be applicable w.e.f. 01.01.2006.”

8. A plain reading of the first communication OM of 1989 will make it clear that the pay protection was limited “to the maximum of the scale of the post to which a person was recruited”. The OM of 2010 has no such specific mention about limiting the maximum to the maximum of the pay scale or pay band. However, it prescribes an absolute ceiling of Rs. 67,000/-, the maximum of the pay band PB-4. The applicant’s claim therefore is that there should be no internal ceiling of the pay scale/pay band as envisaged under the earlier OM, and the pay should be fixed protecting their pay, in whichever pay band it may fall into, subject to a ceiling of Rs. 67,000/-. However, going through the second OM of 2010 in greater detail will make it clear that it was only intended to partially modify the earlier OM and this fact was made clear in para-3 of the OM quoted above. Even the operative portion of the new OM makes it clear

that their “**pay in the pay band** may be fixed at a stage” . This itself leads to the conclusion that the pay cannot be fixed outside the pay band. The earlier OM did not guarantee that the pay will be protected at all cost. It provided for even fixing it at a stage just below so as to ensure a minimum loss. Going by that principle, which has not been specifically overridden by the later OM, it will be wrong to assume that pay could be protected under the new OM by fixing it even outside the corresponding pay band for the post for which a person was recruited.

9. As clarified by the respondents, by quoting DoP&T UO No. 68719/2011-Pay-I dated 04.10.2011, the Department appears to have taken the same interpretation of these two communications and have not agreed to give pay protection beyond the maximum of the pay band applicable to the post for which a person is recruited.

10. It is also relevant to note that, at the time when the applicants applied for the job in the government, the later OM of 2010 was not in existence. Therefore, they had, in effect, given their consent for having their pay protected only to the extent permissible under the rules prevalent at that time. Hence, it cannot be a case of the applicant that their expectations were raised and not protected. Though the later

OM provides for it being applicable w.e.f. 01.01.2006 we cannot interpret it to have an artificially enlarged meaning from an earlier date. The advocate for the applicant cited decision of the Hon'ble High Court of Calcutta in Union Bank of India Vs. Nalini Kanta Ghosh and Ors. and the judgment of Hon'ble Apex Court in All India Reporter Karmachari Sangh and Ors. Vs. All India Reporter Limited and Ors. to support his case of taking interpretation beneficial to the employees in case two interpretations were possible. We do not think facts of this case warrant taking such view in this case. Here, an employee has sought a different employment knowing fully well its implications. The claim of the applicant, driven by an ambitious interpretation of OM dated 30.03.2010, cannot be granted as a matter of right. The OA is, therefore, dismissed. As stated in para 6 above, MA/051/00122/2016 is allowed. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member