

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-724/2014

Reserved on : 30.05.2019.

Pronounced on : 31.05.2019.

Hon'ble Mr. R.N. Singh, Member (J)

Hon'ble Mr. Mohd. Jamshed, Member (A)

1. Smt. Shakuntla
W/o L. Sh. Raj Kanwar, aged 63 yrs.
R/o H.No. 1194-D,
Sector-49, Sainik Colony,
Faridabad-121001.

2. Mr. Venet, 35 yrs
S/o Late Sh. Raj Kanwar,
Field Officer, Group-B,
R/o H.No. 1194-D,
Sector-49, Sainik Colony,
Faridabad-121001.

3. Smt. Veneta,
D/o L. Sh. Raj Kanwar,
R/o H.No. 1194-D,
Sector-49, Sainik Colony,
Faridabad-121001.

4. Smt. Amita,
D/o L. Sh. Raj Kanwar,
Flat No. 502, B-24, Tulip Violate
Society, Sector-69,
Gurgaon.

..... Applicants

(through Sh. Shrigopal Aggarwal, Advocate)

Versus

1. Union of India through
Secretary,
M/o Statistics & Programme Implementation,
Sardar Patel Bhawan,
New Delhi.

2. Assistant Director General,
N.S.S.O(FOD),
East Block, R.K. Puram,
New Delhi.

3. Secretary,
M/o Finance, DoP&T,
New Delhi.

..... Respondents

(through Sh. Manish Kumar, Advocate)

O R D E R

Mohd. Jamshed, Member (A)

The applicant joined as Investigator on 25.10.1978 with the respondents. He was promoted to the post of Assistant Superintendent in 1991 and Superintending Officer in 2004. It is stated in the O.A. that applicant's junior one Sh. Mahesh Pal Singh, Superintending Officer is drawing higher pay. It is submitted that on implementation of the recommendations of the 6th CPC, the respondents in terms of Ministry of Finance O.M. No. 10/02/2011-E.III/A dated 19.03.2012 fixed the pay of the applicant at Rs.15810/- + GP Rs. 4600/- w.e.f. 01.01.2006 with next date of increment as 01.07.2006 and the pay of Sh. Mahesh Pal Singh was re-fixed at Rs.16190/- + GP Rs.4600/-. The reason given for this fixation was preponement of date of increment from February, 2006 to January, 2006 in the pre-revised scale of pay of Sh. Mahesh Pal Singh, which is not applicable to the applicant as his annual increment was shifted to October on account of grant of 2nd ACP on 25.10.2002. The

applicant made representation in this regard and the respondents advised the applicant vide O.M. dated 29.01.2014 as under:-

"Sub:- Representation dated 30.08.2013, 02.09.2013 & 01.01.2014 of Shri Raj Kanwar, Assistant Director, NSSO (FOD) Faridabad

....

Reference is invited to his representations regarding (i) requesting for change of month for pay fixation on his getting 2nd ACP & (ii) for removal of pay anomaly with Sh. Mahesh pal Singh. Shri Raj Kanwar, Asstt. Director, is hereby informed that his representation on point (i) & (ii) has been considered upto the level of Competent Authority and is not agreed to. As regards point (iii) regarding fixation of his pay as AD in the manner, the pay is fixed by DGS&D vide their order dated 28.12.2012 of Shri S.K. Jain, who is also promoted as AD alongwith him, Shri Kanwar is informed that this office has issued pay fixation order dated 7th January, 2013 in compliance to MOS&PI's O.M. No.C-18013/11/2002-Admn.III (Vol-2) dated 08.10.2013 and stands."

Prior to this, the respondents vide their letter dated 25.07.2013 had examined the case of the applicant in consultation with Ministry of Finance and advised that there is no anomaly in view of the date of increment and the request of the applicant cannot be acceded to. Aggrieved by the action of the respondents, the applicant has sought the following reliefs:-

- "(i) To direct the respondents to set aside the impugned orders [i.e. Annexure A-1 Colly].
- (ii) To direct the respondents to step up the pay of the applicant at par with his junior [i.e. Sh. Mahesh Pal Singh].
- (iii) To direct the respondents to pay arrears of pay from the date the pay of the applicant is stepped up along with interest on arrears amount @ 18% p.a. till the date of its final payment.
- (iv) To allow any other relief's which this Hon'ble Tribunal deems fit under the facts and circumstances of the case.
- (v) To allow costs."

2. The respondents in their reply have opposed the O.A. indicating that the applicant vide his representation dated 01.08.2012 submitted that Sh. Mahesh Pal Singh, who was junior to him was drawing more pay than him owing to special increment granted to him from 2006, hence, his pay may also be stepped up at par with him. In this connection, it is submitted that consequent upon implementation of 6th Central Pay Commission recommendations, the pay of the Government servants was fixed in the revised pay band + admissible Grade Pay in terms of Central Civil Services (revised) Rules 2008. As per Rule-10 of the CCS (RP) Rules, 2008, a uniform date of annual increment viz 1st July of every year was introduced. As per the said Rule, employees completing 06 months and above in the revised pay structure as on 1st July, 2006 were granted annual increment on 1st July, 2006. In view of the representations from various quarters, the issue of employees, who were due to get their annual increment between February to June, 2006 seeking grant of one increment on 01.01.2006 in the pre-revised scale, the same was considered by the Government. It was decided that employees, who were to get their annual increment between February to June, 2006 may be granted one increment on 01.01.2006 in the pre-revised scale of pay. It is further submitted that the claim of the applicant to step up his pay at par with his immediate junior Sh. Mahesh Pal Singh was considered and not

found to be a case of pay anomaly arising on account of Ministry of Finance O.M. dated 19.03.2012 and hence the same was not acceded to. The applicant was also not granted the increment w.e.f. 01.01.2006 as he was granted financial upgradation in the year 2002 in terms of ACP Scheme in the pre-revised scale of pay of Superintendent and was allowed to exercise option for fixation of pay under the proviso of FR 22(I)(a)(1). The applicant had opted for fixation of his pay from the date of his annual increment in October, 2002 and, therefore, he was not entitled to get the additional increment, which his immediate junior Sh. Mahesh pal Singh got w.e.f. 01.01.2006 in terms of Ministry of Finance O.M. dated 19.03.2012.

3. Heard the arguments of the learned counsels for the parties.

4. It is evident from the perusal of the record that the applicant has not been getting identical grades as his junior Sh. Mahesh Pal Singh and their dates of promotions also varied. However, both were given Investigator Grade-I w.e.f. May, 2004. As the applicant was granted benefit of 2nd ACP w.e.f. 25.10.2002, his annual increment was shifted to October whereas in terms of Ministry of Finance O.M. dated 19.03.2012, all the employees, whose increments were falling between February to June, 2006, were granted one increment on 01.01.2006 in the pre-revised scale of pay

as per the Government decision. This obviously caused anomaly between the pay of the applicant and his junior Sh. Mahesh Pal Singh. This being a matter of pay anomaly, the same was considered by the respondents and vide an internal letter dated 25.07.2013, it was advised that the anomalies between the applicant and his junior Sh. Mahesh Pal Singh have been examined in consultation with Ministry of Finance and as the junior officer was drawing more pay than the applicant on account of shifting of increment w.e.f. 01.01.2006, there is no anomaly, which warrants stepping up of pay of the applicant. Thereafter, in response to the representation made by the applicant, the respondents vide their O.M. dated 29.01.2014 considered his request for change of month for pay fixation on his getting 2nd ACP & for removal of pay anomaly with Sh. Mahesh Pal Singh and he was advised that both these aspects have been considered upto the level of Competent Authority and the same is not agreed to.

5. The applicant has relied upon the judgment of Hon'ble High Court of Delhi in the case of **M.C.D. Vs. Workman (Mates) and another**, 2003(4)SCT 805 and Apex Court judgments in the case of **Randhir Singh Vs. UOI & Ors.**, 1982(1)SCC 618, **Prakash Ratan Sinha Vs. State of Bihar & Ors.**, 2010(1)SCC(L&S) 443, **Canara Bank Vs. Debasis Das**, 2003(4)SCC 557, **Gurcharan Singh Grewal & Anr. Vs. Pb. State Electricity Board & Anr.**, 2009 (2) SLJ 271 (SC), **A. Kraipak Vs.**

UOI, 1969(2) SCC 262 and Management of M/s M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar & Ors., 1990(2) SCC 48. After going through these judgments, we find that these are on different facts from the facts of the present O.A.

5.1 The respondents, on the other hand, have justified their decision on the basis of Ministry of Finance O.M. dated 19.03.2012, which is as under:-

"In accordance with the provisions contained in Rule 10 of the CCS (RP) Rules, 2008, there will be a uniform date of annual increment, viz. 1st July of every year. Employees completing 6 months and above in the revised pay structure as on 1st of July will be eligible to be granted the increment. The first increment after fixation of pay on 1-1-2006 in the revised pay structure will be granted on 1-7-2006 for those employees for whom the date of next increment was between 1st July, 2006 to 1st January, 2007.

2. The Staff Side has represented on this issue and has requested that those employees who were due to get their annual increment between February to June during 2006 may be granted one increment on 1-1-2006 in the pre-revised scale.

3. On further consideration and in exercise of the powers available under CCS(RP) Rules, 2008, the President is pleased to decide that in relaxation of stipulation under Rule 10 of these Rules, those Central Government employees who were due to get their annual increment between February to June during 2006 may be granted one increment on 1-1-2006 in the pre-revised pay scale as a one-time measure and thereafter will get the next increment in the revised pay structure on 1-7-2006 as per Rule 10 of CCS(RP) Rules, 2008. The pay of the eligible employees may be re-fixed accordingly."

As the date of due increment of the applicant was different from Sh. Mahesh Pal Singh, the difference in pay has arisen. The pay fixation of Sh. Mahesh Pal Singh was, however, done in terms of Ministry of Finance O.M. dated 19.03.2012. Therefore, the decision of the

respondents in fixing the pay of Sh. Mahesh Pal Singh was not arbitrary and was in terms of Ministry of Finance O.M. No. 10/02/2011-E.III/A dated 19.02.2012. However, to the representations made by the applicant dated 30.08.2013 and 02.09.2013, the response of the respondents vide their O.M. dated 29.01.2014 does not clarify the position, the same being non-speaking.

6. In view of the above mentioned, we remand back this matter to the respondents for considering the representations made by the applicant and dispose of the same by passing a reasoned and speaking order within a period of two months from the date of receipt of a copy of this order. With these directions,, this O.A. is disposed of. There shall be no order as to costs.

(Mohd. Jamshed)
Member (J)

(R.N. Singh)
Member (A)

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