

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

**OA No. 40/2014
MA No. 1068/2017**

Reserved on 09.05.2019
Pronounced on 24.05.2019

Hon'ble Sh. Pradeep Kumar, Member (A)
Hon'ble Sh. Ashish Kalia, Member (J)

R. Rejitha Kumari
Resident of
H.No: A 34 A,
Third Floor,
Sanwal Nagar,
Near Sadiq Nagar,
New Delhi.

... Applicant

(By Advocate: None)

VERSUS

1. National Investigation Agency
Through Inspector General (Admn)
Ministry of Home Affairs
Union of India
4th Floor, Splendor Forum
Jasola District Centre
New Delhi-110025
2. Department of Personnel & Training (DoPT)
Through the Secretary
Ministry of Personnel, Public Grievances & Pensions,
North Block,
New Delhi
3. Pay and Accounts Office
National Investigation Agency
Through Pay & Accounts Officer
4th Floor, Splendor Forum,
Jasola District Centre
New Delhi-110025
4. Union of India
Through Secretary (Home)

Ministry of Home Affairs
Government of India
North Block
New Delhi

5. Controller of Accounts
Internal Audit Wing,
2/10, Jam Nagar House,
New Delhi.

...Respondents

(By Advocate: Sh. Ashok Kumar)

ORDER

Hon'ble Sh. Ashish Kalia, Member (J):

The applicant has filed this Original Application seeking following reliefs:-

“(i) Quash OM dated 17-6-2013 No. 6/8/2009-Estt. (Pay II) particularly the pay fixation clause in foreign service/reverse foreign service provided in 5.1 (ii) (b) being illegal and discriminatory;

(ii) Set aside Office Order No. 777/2013 dated 14-6-2013 bearing reference no. PF/RRK/UDC-KP/2011/NIA/17116-19 issued by the Respondent No. 1;

(iii) Set aside Office Order No-1319/2012 dated 26-10-2012 bearing reference no. PF/RRK/UDC/2011/NIA/27040-42 issued by the Respondent No. 1;

(iv) Set aside Office Order 278/2013 dated 8-3-2013 bearing reference no. E-100/Pay Fix.Corsp/NIA/2011/5867-71 issued by the Respondent No. 1;

(v) Direct the Respondents to maintain the pay scale/basic pay (pay plus grade pay) of Applicant of that prior to impugned office orders being correct;

(vi) Direct the Respondents to pay arrears;

(vii) Any other or further order which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.”

2. The brief facts of the case are:-

(i) The applicant was in the service of Kerala State Police since 31.01.2005, she joined there, as a Lower Division Typist (LDT).

(ii) On 04.04.2011, she has joined as Upper Division Typist (UDT) on deputation to National Investigation Agencies (NIA). She has been informed that she would be governed by Office Memorandum dated 05.01.1994 issued by DoPT, as amended from time to time if she opted to draw the pay in the scale of pay of deputation. The basic pay of the applicant on the date of relieving was Rs. 6,840/-.The pay of the applicant was revised with retrospective effect on promotion as UDT to Rs. 13,540/-.

(iii) As per the OM dated 05.01.1994, which provides that the deputationist may elect to draw either the Pay in the Scale of Pay of deputation/foreign service post or Basic Pay in the parent cadre plus deputation (duty) allowance thereon plus personal pay, if any.

(iv) The applicant has opted for Central pay (deputation post) after her pay was revised as per the above said Pay Revision Order dated 15.07.2011.

(v) The applicant was receiving the basic pay, notional increment in the scale of her regular parent post and the grade pay.

(vi) The applicant has submitted that all of sudden, the NIA vide impugned Office Order No. 1318/2012 dated 26.10.2012 reduced the pay of the applicant by subtracting the Grade Pay from Basic Pay. As such, the Basic Pay of the applicant was reduced from Rs. 13,900 to Rs. 11,500 (by deducting grade pay of Rs. 2,400/- from the same).

(vii) The applicant made a representation to NIA on 02.11.2012 stating that basic pay of applicant has been reduced and she is receiving the lesser pay than what she was getting in her parent cadre. The respondent have not given any response to her representation.

3. Feeling aggrieved by this, she has approached this Tribunal for redressal of grievance.

4. Notices were issued. The respondents have filed their reply. It is submitted, therein, that the applicant joined NIA under Ministry of Home on deputation basis, w.e.f. 04.04.2011. The pay structure and DA of pattern of Central Government in Kerala State are dissimilar. The provisions of para 5.1(ii)(b) of Government of India, DoPT

dated 17.06.2010 specifically stipulates a methodology for fixation of pay where pay structure and DA pattern is dissimilar to that in the parent organisation.

5. Hence, the fixation will be as under:-

- (a) The Pay of parent cadre will be taken by adding one increment in their cadre post scale and such raised pay will be added by DA plus Adhoc DA plus Interim Relief, etc. if any.
- (b) The pay will be fixed in the scale of cadre **IFA (NIA)** at the stage at which total emoluments admissible in ex-cadre post as above, equal the emoluments drawn in the cadre.
- (c) The term "Basic Pay" consists of pay in the Pay Band plus Grade Pay and there is no comparison of Basic Pay of State and Centre, as pay structure is dissimilar.
- (d) The term "emoluments" is significant, therefore the DoPT equated the emoluments so that the individual is not in disadvantageous position. The benefit of one increment has been allowed. Hence, pay fixation in respect of applicant vide order dated 08.03.2013 passed above by the provision of DOPT OM dated 30.12.2011.
- (e) The above fixation order dated 08.03.2013 has been vetted by Internal Financial Advisor in LIA who is the Competent Authority to grade pay fixation as qualified by DoPT order dated 19.07.2013. There is no illegality in fixation of pay in respect of applicant. As such, there is no incorrect interpretation of Government of India OM dated 17.06.2010.

It is further submitted that she was drawing pay and allowances as per Centre pay scale on exercise of option pay of the deputation post. Hence, prayed for dismissal of the OA. Rejoinder has been filed to the reply.

6. Heard counsel for the parties present and perused the record and appreciated the legal position.

7. The applicant has raised point that whether she has been discriminated while fixing her pay at the deputational post as UDT in terms of OM dated 17.06.2010, amended time to time.

8. The applicant on joining the Central Deputational Post has opted for the Pay Scale applicable to it and her pay was fixed by taking pay of her parent cadre by adding one increment in cadre post scale plus DA plus HRA plus CCA only as admissible in her state Kerala.

9. The analysis of pay of State and on joining of Centre Pay Scale is as under:-

State/ Centre	Pay	DA	HRA	Conve yance Allowa nce	CCA	G/Total
State Pay for the m/o April' 2011 on revision wef 01.04.11	13,540 /- (Basic Pay)	3,250 /- (24%)	840/-	---	300	17,930/- (in State)
Central Pay for the m/o April' 2011 as per option of Centre/ Deputati on post	11,360 /- [8960+ 2400 (GP)]	5,794 /- (51%)	3,408/- (30% of 11,360)	2,416/- (1600+ 816)	0	22,978/- (in Centre)

10. The applicant was getting Rs. 17, 390/- in her state and on deputational post. She was getting of Rs. 22,978/- much higher than her State Pay, there is no financial loss to her.

11. This is not the case of the applicant that she has not opted the Central Pay Scale applicable to the post of UDT. After accepting the same, the terms and conditions applicable to it would apply. Her pay scale would be governed by the Central Government pay scale. She cannot question now after drawing the pay scale benefit by saying that her basic pay was higher at state which has suddenly been reduced. The term "Basic Pay" consists of two things "Pay Band plus Grade Pay". There is no comparison of "Basic Pay State Kerala" and Pay Scale at Centre, which are quite different.

12. Thus, the grievance of the applicant is having no basis whatsoever. After availing the said benefits of the deputational post cannot question the same, this issue was already dealt with in the **OA No. 166/2013 titled Sanat Kumar Paul vs. UOI & ors.** and OM dated 17.06.2010, which amended time to time, has already been dealt with by this Tribunal whereby this tribunal was of the view:-

“The case relied upon by the applicant in K. Gopinathan (supra) is relating to reduction of basic pay on account of absorption. The present case is not relating to absorption but for deputation only. The applicant has not been permanently absorbed in the present case. Therefore, the aforesaid case is not applicable in the present case. The other decision relied upon by the applicant Smt. Prativa Biswas & Ors. Vs. Union of India & Ors. (supra), wherein the Hon’ble Calcutta High Court has held that “by reducing the basic pay of the optees, the respondent authorities have acted in breach of the specific assurance given to the optees before exercising option”. In the said case it was held as under:

“It was made clear by the respondent authorities that after joining the services of the Coal Companies upon exercising option the pay and other allowances of the erstwhile employees of the Coal Mines Labour Welfare Organisation including the Writ Petitioners herein would be protected.”

In the present case there was no such assurance given to the optees before exercising option. More so, in the order of deputation it was made clear that the standard terms and conditions would be applicable as per the O.M. dated 17.06.2010 issued by the DOPT. Moreover, as opted by the applicant, the central pay has been fixed in case of the applicant who is on deputation from State Government to Central Government. Accordingly, the above decision is not applicable in the present case.”

13. In the fact and circumstances of the case, we held that the pay of the applicant is fixed in accordance with Rule, there is no discrimination whatsoever in fixation of pay of the applicant which includes Pay Band plus Grade Pay and applicant pay fixed payable to Central Government employee on deputation from state and applicant was drawing higher emoluments in comparison with State Basic Pay.

14. In view of the above, this Tribunal is of the view that this OA lacks merit and is liable to be dismissed. Hence, OA dismissed. No order as to costs.

15. Accordingly, MA No. 1068/2017 is dismissed.

(Ashish Kalia)
Member (J)

/akshaya/

(Pradeep Kumar)
Member(A)