

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**R.A No. 154 of 2017
in
O.A No. 4576/2015**

Reserved on: 15.04.2019

Pronounced on: 09.05.2019

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Aradhana Johri, Member (A)

Dr. Atul Kumar Gupta, aged 58 years,
S/o. Sh. Y. V. Gupta,
Working as Research Officer (Training),
Homoeopathic Pharmacopoeia Laboratory,
Ghaziabad (UP)
R/o. 233, New Arya Nagar,
Ghaziabad.

....Review Applicant

(By Advocate : Mr. Yogesh Sharma)

Versus

1. Union of India through the Secretary,
Ministry of AYUSH,
AYUSH Bhawan, B Block,
GPO Complex, INA, New Delhi.

2. The Director,
Homoeopathic Pharmacopoeia Laboratory,
Kamla Nehru Nagar,
Ghaziabad (U.P)

...Respondents

(By Advocate : Mr. Rajnish Prasad)

O R D E R

By Hon'ble Ms. Aradhana Johri, Member (A) :

This R.A has been filed by the original applicant in
O.A No. 4576/2015. The matter pertains to grant of 3rd

financial upgradation to the applicant. The position is summarised in table below:-

S. No.	Post with date of appointment/promotions.	Pay Scales	Pay Band with Grade Pay w.e.f. 1.1.2006	Remarks
1.	Scientific Assistant/SA 30.3.1983	425-700 1400-2300 4500-7000	PB-2 + GP 2800/-	1 st promotion
2.	Sr. Scientific Assistant/SSA 04.01.1993	1640-2900 5500-9000	PB-2 + GP 4200/-	1 st promotion
3.	30.03.2007	6500-10500	PB-2 + GP 4200/-	2 nd financial upgradation on completion of 24 years of service.
4.	Research Officer	6500-10500	PB-2 + GP 4600/-	2 nd promotion

2. It is the contention of the review applicant that the respondents denied 3rd financial upgradation on completion of 30 years of service on the sole ground that the applicant had already been granted two financial upgradations and one promotion i.e., to that of Research Officer. However, it is contended by him that the replacement Grade Pay of the pay scale of Rs.6500-10500/- (for which the applicant was considered as Senior Scientific Assistant (SSA) was Rs.4600/- in 6th CPC and therefore, after implementation of 6th CPC while fixing pay of the applicant with effect from 01.01.2006 the pay of the applicant should be fixed in the grade pay of Rs.4600/- with effect from 30.03.2007 and only because of this mistake the applicant had been denied

3rd financial upgradation. During arguments counsel for applicant filed G.I. M. F, O.M. No.1/1/2008-IC, dated 13.11.2009 which reads as follows :-

“Sixth Pay Commission recommended merger of the three pre-revised scales of Rs.5,000-8,000, Rs.5,500-9,000 and Rs.6,500-10,500 and replaced them by the revised pay structure of grade pay of Rs.4,200 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.4,600 to some categories of these posts. As regards the other posts, the Commission recommended that it should first be seen if the posts in these 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. 5,000-8,000 and Rs.5,500-9,000 should be merged with the posts in the scale of Rs.6,500-10,500 being upgraded to the next higher grade in the pay band PB-2 with grade pay of Rs.4,600 corresponding to the pre-revised scale of Rs.7,450-11,500. In case a post already exists in the scale of Rs.7,450-11,500, the post being upgraded from the scale of Rs.6,500-10,500 should be merged with the post in the scale of Rs.7,450-11,500.

2. The above recommendation of the Sixty Pay Commission were notified vide para. (ii), Section I in Parts ‘B’ and ‘C’ of the First Schedule to the CCS (RP) Rules, 2008. While part B of the First Schedule to the CCS (RP) Rules relates to revised pay scales for common categories of staff, Part-C notifies revised pay structure for certain posts in Ministries, Departments and Union Territories. The above provisions of the Rules specifically mentioned that upgradations in terms of Para. (ii) Section I may done in consultation with Department of Expenditure, Ministry of Finance.

3. Consequent upon the Notification of CCS (RP) Rules, 2008, Department of Expenditure has received a large number of references from Administrative Ministries/Departments proposing upgradation of the posts which were in the pre-revised scale of Rs.6,500-10,500 as

on 1-1-2006 by granting them grade pay of Rs.4,600 in the pay band PB-2. **The matter has been considered and it has now been decided that the posts which were in the pre-revised scale of Rs.6,500-10,500 as on 1-1-2006 and which were granted the normal replacement pay structure of grade pay of Rs.4,200 in the pay band PB-2, will be granted grade pay of Rs.4,600 in the pay band PB-2 corresponding to the pre-revised scale of Rs.7,450-11,500 with effect from 1-1-2006.** Further, in terms of the aforementioned provisions of CCS (RP) Rules, 2008, in case a post already existed in the pre-revised scale of Rs.7,450-11,500, the posts being upgraded from the scale of Rs.6,500-10,500 should be merged with the posts in the scale of Rs.7,450-11,500.

4. Accordingly, in terms of Rule 6 of CCS (RP) Rules, 2008, revised pay of Government servant in the pre-revised scale of Rs.6,500-10,500 who were earlier granted grade pay of Rs.4,200 and who have already exercised their option for drawl 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, 2008.

5. In case of all such Government servants in the pre-revised scale of Rs.6,500-10,500 who were earlier granted grade pay of Rs.4,200 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 the 30th August, 2008 will be taken. In case a Government servant desires to revise his earlier option for coming over to the revised pay structure, he may be permitted to do so without making any reference to this Department.

6. On account of pay fixation in the revised pay structure of grade pay of Rs.4,600 in the pay band PB-2, arrears of pay will be recalculated and difference of arrears in respect of **the entire amount will be paid immediately.** The manner of drawl of arrears has already been indicated in this Department's O.M. of even number, dated 30-8-2008.

(Bold added for emphasis)

3. In their counter the respondents have denied the claim of the applicant and stated that promotion to the post of Research Officer (Training) with effect from 20.11.2010

in the pay scale of Rs.4600/- Grade Pay, (PB-II) was a promotion and therefore since he had already got 2 promotions and one financial upgradation, no third financial upgradation is due.

4. Heard Mr. Yogesh Sharma, learned counsel for applicant and Mr. Rajnish Prasad, learned counsel for respondents.

5. The whole issue revolves around whether the appointment of the applicant as Research Officer comprises substantive promotion or not. O.M dated 13.11.2009 reads as follows :- "Sixth Pay Commission recommended merger of the three pre-revised scales of Rs.5,000-8,000, Rs.5,500-9,000 and Rs.6,500-10,500 and replaced them by the revised pay structure of grade pay of Rs.4,200 in the pay band PB-2.....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. 5,000-8,000 and Rs.5,500-9,000 should be merged with the posts in the scale of Rs.6,500-10,500 being upgraded to the next higher grade in the pay band PB-2 with grade pay of Rs.4,600 corresponding to the pre-revised scale of Rs.7,450-11,500. In case a post already exists in the scale of Rs.7,450-11,500, the post being

upgraded from the scale of Rs.6,500-10,500 should be merged with the post in the scale of Rs.7,450-11,500.....**The matter has been considered and it has now been decided that the posts which were in the pre-revised scale of Rs.6,500-10,500 as on 1-1-2006 and which were granted the normal replacement pay structure of grade pay of Rs.4,200 in the pay band PB-2, will be granted grade pay of Rs.4,600 in the pay band PB-2 corresponding to the pre-revised scale of Rs.7,450-11,500 with effect from 1-1-2006.....**

6. In the light of this, since the Grade Pay of Rs.4200/- was increased to Rs.4600/- with effect from 01.01.2006 therefore, the applicant would have already been in the pay scale of Research Officer whose grade pay is Rs.4600/-. Therefore, appointment as Research Officer could not be treated as promotion and eligibility for the 3rd financial upgradation subsists. This O.M. was not made available before this Tribunal in O.A. No. 4576/2015. It could comprise as new and important evidence which has now been placed before this Tribunal in R.A.

7. This Review Application is allowed. This Tribunal's order dated 22.05.2017 in O.A No. 4576/2015 is set aside, and the O.A. is restored to its original number. The

Registry is directed to list the O.A. No. 4576/2015 for
hearing on _____.

(Aradhana Johri)
Member (A)

(V. Ajay Kumar)
Member (J)

/Mbt/