

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

**OA No.1817/2014**

**Reserved on: 28.02.2019**

**Pronounced on: 19.03.2019**

**Hon'ble Mr. V. Ajay Kumar, Member (J)  
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Ms. Pushp Lata Sharma,  
W/o Shri H.V. Sharma,  
Retd. Grade-II (DASS)/Head Clerk,  
MAMC & R/o 1987, Delhi Admn. Flats,  
Gulabi Bagh, Delhi-7

... Applicant

(By Advocate : Shri T.D. Yadav)

**Versus**

1. The Govt. of NCT of Delhi,  
Through its Principle Secretary (Services),  
Services Department, 7th Level,  
Delhi Secretariat, I.P. Estate,  
New Delhi-2.
2. The Dean,  
Maulana Azad Medical College,  
New Delhi-2.

.. Respondents

(By Advocate : Shri H.A. Khan)

**O R D E R**

**Hon'ble Mr. A.K. Bishnoi, Member (A):**

The brief facts of the case are as follows:

The applicant was appointed to the post of LDC/Grade-IV (DASS) by the Delhi Government on 19.11.1979 and retired on attaining the age of superannuation on 31.03.2014 as Head Clerk

on the post of UDC/Grade-II (DASS) at Maulana Azad Medical College. During her service, she was given two promotions, i.e., first after 11 years of service on 30.04.1990 and the second on 31.03.2008. During her tenure two juniors of the applicant namely Shri Tej Pal and Shri S.R.S. Lingwal were also promoted on the same post but their pay scale was fixed higher compared to the applicant without assigning any valid reasons.

2. Aggrieved by this, the applicant made written representations for stepping up of pay at par with her juniors. Finally, through a Communication dated 06.05.2014 (Annexure A-1) the applicant was informed that the stepping up of her pay with the junior Shri S.R.S. Lingwal does not arise. Some other communication on record dated 25.02.2014 (Annexure A-3) mentions that the stepping up of pay of the applicant cannot be considered as the pay fixation of Shri S.R.S Lingwal is not in order.

2.1 Aggrieved, the applicant filed this OA seeking the following reliefs:-

“(a) This Hon’ble Tribunal graciously be pleased to pass an order or direction to quash the impugned order dated 06.05.2014 passed by the Respondent Department.

(b) Pass any other order or direction which the Hon’ble Tribunal may deem fit, just and proper in the circumstances of the case may also be passed in favour of the petitioner and against the respondents.

(c) Direction to the Respondents to pay compound interest on the arrears, compounded every month, as the respondents caused serious prejudice to the Applicants

every month when the Applicant was not granted the financial upgradation by stepping up her pay.

(d) Direction to the respondents to pay cost of litigation to the Applicant as the Applicant has been dragged to the Tribunal by the respondents.”

2.2 The OA was dismissed by the Tribunal on 14.12.2015 with the following orders:-

“9. This is a case where an employee opted for fixation of his pay on the next date of increment and the applicant did not opt for the same, which results in the difference of their pay, as between the applicant and Shri Lingwal. Therefore, there can be no comparison between the case of the applicant and Shri Lingwal to seek stepping up of pay. As regards Shri Tej Pal, the applicant has not supplied any document in his regard and, therefore, it is not at all possible for the respondents or for us to take any view in the matter. It is for the applicant to produce the necessary documents in respect of her claim, in absence of which no decision can be made based on such a bland claim.

10. In view of clear position of rules and facts of the case, we do not find any merit in the Original Application and, therefore, the same is dismissed. No costs.”

2.3 The applicant challenged this order in W.P. (C) No.4322/2016 before the Hon'ble High Court of Delhi, which was disposed of on 17.10.2017 with the following order:-

“The submission of learned counsel for the petitioner is that it was for the respondent to explain in detail as to how Shri S.R.S. Lingwal was drawing a higher pay than the petitioner, when admittedly, the petitioner was senior to Shri S.R.S. Lingwal. The averment made by the respondents in Para 4 of the short reply filed before the Tribunal does not clearly explain the manner in which the pay revision has impacted the petitioner on the one hand and Shri S.R.S. Lingwal, on the other hand. Since the petitioner had not exercised her option in terms of Rule 6 of the CCS(Revised Pay) Rules, 1986, by virtue of sub Rule 3 thereof, the petitioner claims that he had elected to be governed by the revised pay scale w.e.f. 01.01.1986.

In our view, the exercise undertaken by the Tribunal is, therefore, incomplete. Accordingly, we set aside the impugned order and remand the Original Application to the Tribunal for reconsideration. The respondent is directed to file a better and detailed affidavit to explain as to how Shri S.R.S. Lingwal who, admittedly, was junior to the petitioner was drawing her higher pay. Since the mere statement that Shri S.R.S. Lingwal has exercised revised option for fixation of pay on the date of his increment is not a sufficient explanation for the anomaly. The additional affidavit be filed by the respondents within four weeks and the petitioner may file his response within four weeks thereafter before the Tribunal.”

3. In compliance of the order of the Hon'ble High Court of Delhi, the respondents have filed a detailed affidavit on 24.01.2018 giving details of the career progression of the applicant *vis-a-vis* Shri S.R.S Lingwal in which the various stages of pay fixation have been mentioned along with the dates and events which took place.
4. The applicant has filed a rejoinder to this in which it has been contended that the comparative chart submitted by the respondents does not fully explain as to why the applicant's pay was fixed at Rs.1090/- as on 01.12.1986 whereas the pay of Shri S.R.S Lingwal was fixed at Rs.1110/- on the same date. Thus, the respondents have taken the same plea as they have taken earlier through a mere statement that Shri S.R.S. Lingwal had exercised revised option of fixation of pay which is not a sufficient explanation for the anomaly. The applicant has also raised the issue that another employee Shri Tejpal who had never given any option relating to revision of pay but was still granted the benefit of stepping up of pay under

Fundamental Rule-22 (1)(a)(1), as he was senior to Shri S.R.S. Lingwal.

4.1 The applicant cited the following decisions:-

- “i) **All India Postal Accounts Employees vs. Union of India** [OA No.2124/2011 decided on 01.02.2013];
- ii) **State of Haryana vs. Narendra Kumar & Ors.** [1985 (1) SLR 64 (P&H)];
- iii) **Kishori Mohan Lal Bakshi vs. Union of India** [AIR 1962 SC 1139];
- iv) **Union of India vs. Kundan Lal Anand** [(1977) IIILJ 344 ALL]”.

5. Heard Shri T.D. Yadav, learned counsel for the applicant and Shri H.A. Khan, learned counsel for the respondents.

6. Shri T.D. Yadav, learned counsel appearing on behalf of applicant advanced his arguments basically on the same grounds as has been given in the pleadings and also argued at length that since Shri Tejpal, who was similarly placed as the applicant on the issue of exercising the option, and was even junior to her, was given the benefit of stepping up of pay because of the reference to the case of Shri S.R.S. Lingwal. Hence the applicant should also be given a similar stepping up of pay.

7. Shri H.A. Khan, arguing on behalf of the respondents relied on the contention that the difference in the pay of the applicant with

respect to Shri S.R.S. Lingwal arose because Shri S.R.S. Lingwal had given his option for fixation of pay w.e.f. 01.12.1986, his next date of increment, instead of 01.01.1986 whereas the applicant did not give any such option.

8. In support of their contention, the learned counsel for the applicant referred to the following cases:-

- “i) **Gurucharan Singh Grewal vs. Punjab State Electricity Board and Others** (2009) 3 SCC 94;
- ii) **Union of India & Others vs. P. Jagdish and Others** (1997) 3 SCC 176”.

9. We have carefully gone through the records, as also the arguments advanced by the learned counsel for two sides.

10. As regards the judgements cited by the applicant we find that the facts and circumstances of the present case as also the issues involved are totally different in the present case. Hence no support can be derived by the applicant in the present case on their basis.

11. At the outset, it can be said that though the applicant has mentioned the name of Shri Tejpal in the pleadings made before the initial disposal of the OA on 14.12.2015, no details have been given nor any contention made in this regard for stepping up of the pay of the applicant. Even the relief which has been sought for quashing of the order dated 06.05.2014 (Annexure A-1), is only in respect of

Shri S.R.S. Lingwal and has no reference to the case of Shri Tejpal. That being so and in view of the directions of the Hon'ble High Court of Delhi dated 17.10.2017 by which the OA has been remanded to the Tribunal for re-consideration, we cannot at this stage to go into the aspects of the matter related to Shri Tejpal.

Thus we shall confine ourselves to the issue of Shri S.R.S. Lingwal exercising the option for fixation of pay and its impact on the case of the applicant.

12. As far as the fixation of pay of Shri S.R.S. Lingwal is concerned, respondents in their additional affidavit while giving the progression of pay fixation at different points of time have asserted that Shri S.R.S. Lingwal had given his option for fixation of pay w.e.f. 01.12.1986 instead of 01.01.1986. It has been further stated that Shri S.R.S. Lingwal was getting Rs.296/- on 01.01.1986 in the pre-revised scale of Rs.296-400 and his annual increment was due on 01.12.1986 raising his pay to Rs.302/-. Thus, on his option, the revised pay on 01.12.1986 was fixed at Rs.1110/- instead of Rs.1070/-.

It would be beyond the scope of the present OA to go into any elaborate examination to verify the correctness of the above mentioned details. The averment in the present case is emphatic enough. Hence it would be in the fitness of things to accept this in

view of the fact that the averment made by the respondents is not a stand alone statement but forms part of a composite narration of dates and events regarding fixation of pay.

13. Rule-5 of CCS (Revised Pay) Rules, 1986 gives the following option:-

**“5. Drawal of pay in the revised scales.— Save as otherwise provided in these rules, a Government servant shall draw pay in the revised scale applicable to the post to which he is appointed:**

**Provided that a Government servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.**

**Explanation 1.- The option to retain the existing scale under the provisos to this rule shall be admissible only in respect of one existing scale.**

**Explanation 2.- The aforesaid option shall not be admissible to any person appointed to a post on or after the 1st day of January, 1986, whether for the first time in Government service, or by transfer or promotion from another post and he shall be allowed pay only in the revised scale.**

**Explanation 3.- Where a Government servant exercises the option under the provisos to this rule to retain the existing scale of a post held by him in an officiating capacity on a regular basis for the purpose of regulation of pay in that scale under Fundamental Rule 22, Fundamental Rule 31, or under any other rule or order applicable to that post, his substantive pay shall be the substantive pay which he would have drawn had he retained the existing scale in respect of the permanent post on which he holds a lien or would have held a lien had his lien not been suspended or the pay of the officiating post which has acquired the character of substantive pay in accordance with any order for the time being in force, whichever is higher.”**

14. The applicant has sought to take the benefit of Note-4 below Rule-7, which applies to the fixation of pay under Rule-7 (1) which in turn is applicable to a Government servant who elects or is deemed to have elected under sub rule (3) of Rule 6 to be governed by the revised scale on and from the 1st day of January 1986.

15. In the present case the case of Shri S.R.S. Lingwal is not covered by sub rule (3) of Rule 6 as he had exercised option under Rule-5, hence the provision in Note-4 below Rule-7 shall have no application.

16. The applicant has in the pleadings referred to certain other parts of Fundamental Rules viz. FR 22 (I) (a) (1), FR 27 and FR 30. Having gone through them carefully we find that none of them have any applicability in the present case.

17. The sole issue to be decided upon is whether the applicant is entitled to any stepping up of pay at par with her junior Shri S.R.S. Lingwal. The purpose of giving options is based on the logical assumption that each employee, taking into account his particular set of circumstances, would make a rational choice which is most beneficial to him. In the present case also, it has to be presumed that the applicant made a rational decision electing for an option which is most suited for her. Having done so, she cannot claim parity with another employee who presumably took a rational

decision to choose an alternative which was best suited to him. Thus, we find that the contention of the applicant seeking stepping up of pay with reference to the case of Shri S.R.S. Lingwal, as also Shri Tejpal, is without merit.

18. Here it is also needs to be added, for the sake of argument, that even if in the cases of fixation of pay of Shri Tejpal or Shri S.R.S. Lingwal, there was any error or wrong doing, no benefit can accrue to the applicant on this account. It is a settled principle that no person can claim any benefit on the basis of any advantage wrongly given to another person.

19. The Hon'ble Hon'ble High Court of Delhi in **Union of India & Ors. vs. Mahendra Pal Singh and Anr.** in W.P. (C) No. 2445/2012 decided on 26.07.2013 has held as follows:-

“4. Some of the relevant facts are, the respondent No.1 was appointed as a ‘Welder’ skilled grade with effect from April 26, 1983 in the scale of Rs. 207-400. Thereafter he was appointed as Mechanic with effect from November 04, 1983 which post was also in the same scale.

5. Pursuant to the recommendations of the 4th Central Pay Commission the respondent No.1 was given the revised pay scale of Rs. 950-1500 and his pay was fixed at Rs.1010/-.

6. With effect from January 30, 1996, respondent No.1 was promoted as Mechanist (highly skilled) in the pre-revised scale of Rs.1200-1800 and his pay was fixed at Rs.1230/-. It may be relevant to note here that on his option, the pay of the respondent No.1, pursuant to the recommendation of the 5th Central Pay Commission in the pay scale of Rs.4000-6000 was postponed from January 01, 1996 to April 26, 1996 in the integrated merged pay scale of Rs.4000-6000.

7. On October 01, 2003 respondent No.1 was elevated as MCM with effect from October 01, 2003 in the pay scale of Rs.4500-

7000 and his pay was fixed at Rs.5000/- with effect from April 01, 2004.

8. That in so far as his junior Mr. Subhash Chand is concerned he was promoted as Mechanist in the scale of Rs.4000-6000 with effect from January 30, 1996 and he has opted for the same scale of pay from the same date and accordingly his pay was fixed at Rs.4000/- from that date.

9. Because of the fact that the pay of Mr. Subhash Chand was fixed with effect from January 30, 1996 at Rs.4000, he continued to draw more pay than the respondent No.1. The representations of respondent No.1 seeking the fixation of pay at Rs.4000 with effect from January 01, 1996 went unheeded. The petitioners had fixed the pay of the respondent No.1 as on January 30, 1996 at Rs.3800 and that of his junior Mr. Subhash Chand's at Rs.4000 from the same date.

10. The case of the petitioners is in so far as fixation of pay of the respondent No.1 is that once an individual has exercised an option the same will be treated as final. According to them the pay fixation would not depend upon the seniority alone and the difference which has arisen is because of the option. In their reply before the Tribunal the petitioners have given a comparative statement showing the fixation of pay and increments granted to the respondent No.1 and his junior. The same is reproduced as under:

Shri M.P.Singh Shri Subhash Chand

30 Jan. 1996 Rs.3800/- Mach HS 01 Jan. 1996 Rs.4000/-  
Mach HS

26 Apr. 1996 Rs.4000/- Mach HS 30 Jan. 1996 Rs.4000/-  
Mach HS 01 Apr. 1997 Rs.4100/- 01 Jan 1997 Rs.4100/-

01 Apr. 1998 Rs.4200/- 01 Jan 1998 Rs.4200/-

01 Apr. 1999 Rs.4300/- 01 Jan 1999 Rs.4300/-

01 Apr. 2000 Rs.4400/- 01 Jan 2000 Rs.4400/-

01 Apr. 2001 Rs.4500/- 01 Jan 2001 Rs.4500/-

01 Apr. 2002 Rs.4600/- 01 Jan 2002 Rs.4600/-

01 Apr. 2003 Rs.4700/- 01 Jan 2003 Rs.4700/-

Elevated MCM w.e.f. 01 Oct. 03 Elevated MCM w.e.f. 01 Oct. 03

01 Apr. 2004 Rs.4800/- 01 Jan 2004 Rs.4800/- 01 Apr. 2004  
Rs.5000/- 01 Jan 2004 Rs.5000/-

01 Apr. 2005 Rs.5125/- 01 Jan 2004 Rs.5125/-

Rs.9540+4200 RPR-2008

01 Jan. 2006 Rs.13740/- 01 Jan 2006 Rs.13970/- on grant of A/I

Pay raised to Rs.5250/- w.e.f. 01 Jan. 2006

01 Jul. 2006 Rs.14160/- 01 Jul. 2007 Rs.14590/- 01 Jul. 2008 Rs.15030/- 01 Jul. 2009 Rs.15490/- 01 Jul. 2010 Rs.15960/-

11. It is noted that, the respondent No.1, in his original application has inter-alia prayed for stepping up of his pay by re-fixing at par with his junior Mr. Subhash Chand. In other words he is claiming step up of pay with effect from January 01, 1996.

**12. It is an accepted position that the difference in pay between respondent No.1 and his junior has primarily arisen because of his option to get his pay fixed pursuant to the recommendations of the 5th Central Pay Commission (in revised scale) with effect from April 26, 1996 i.e. the date of increment.** In other words his pay was not fixed in the revised pay scale of Rs.4000-6000 as on January 01, 1996. He got promotion as Mechanist (highly skilled) with effect from January 30, 1996 when his pay was fixed at Rs.1230/- which was later revised to Rs.3800/-, whereas the junior Mr. Subhash Chand's pay was fixed at Rs.4000 on January 01, 1996 itself. A perusal of the comparative chart would reveal that the difference has arisen on January 01, 1996.

13. The Tribunal agreed with the stand of the petitioners in so far as, the difference of pay, of both as on January 01, 1996. There is no challenge to the said conclusion of the Tribunal by the respondent No.1. Regrettably it erred by holding that the option given by the respondent No.1 has lost its relevance with introduction of revised pay scale with effect from January 01, 2006. The Tribunal has overlooked a very important aspect that any difference which has arisen because of fixation under the 5<sup>th</sup> Central Pay Commission would get transposed under the 6<sup>th</sup> Central Pay Commission, as well. In fact the pay as fixed of the respondent No.1 and the junior Mr. Subhash Chand would show that respondent No.1's pay on January 01, 2006 is fixed at Rs.13740 whereas that of the respondent at Rs.13970/-. To that extent the order of the Tribunal is liable to be set aside. We do so. We allow the writ petition and hold that the pay fixation of the respondent No.1 has been done correctly with effect from January 01, 1996. He is not entitled to stepping up of pay with effect from January 01, 2006.

14. Consequently we dismiss the Original Application No.4203/2010 filed by respondent No.1." (emphasis supplied)

20. We find that the present case is squarely covered by the ratio laid down in the judgement of the Hon'ble High Court of Delhi quoted above.

21. In the result, for the foregoing reasons, the OA is found bereft of merit and is accordingly dismissed. No costs.

**(A.K. BISHNOI)**  
**MEMBER (A)**

**(V. AJAY KUMAR)**  
**MEMBER (J)**

cc.