

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

OA/050/00028/2016

Date of CAV : 24th July, 2019

Date of orders : 1st Aug., 2019

CORAM

HON'BLE MR. JAYESH V. BHAIRAVIA, MEMBER [J]
HON'BLE MR. DINESH SHARMA, MEMBER [A]

1. Mani Kumar Rinkesh, son of Sri Mahendra Prasad Singh.
2. Kali Charan, son of Sri Suresh Prasad.
3. Ravi Shankar, son of Sri Dilip Kumar Gupta, all are lower Division Clerk, Office of the Controller of Communication Accounts, Bihar Circle, 2nd Floor, CTO Annexe Building, Patna – 800001 [Bihar].

.....applicant

By Advocate : Mr. M.P.Dixit .

Versus

1. The Union of India through Secretary, Department of Telecom, Ministry of Communication and Information Technology, Sanchar Bhawan, 20, Ashoka Road, New Delhi – 110001.
2. The Assistant Director General [SEA], Department of Telecom, Ministry of Communication and Information Technology, Sanchar Bhawan, 20, Ashoka Road, New Delhi – 110001.
3. The Controller of Communication Accounts, Bihar Circle, 2nd Floor, CTO Annexe Building, Patna – 800001 [Bihar].
4. The Controller Accounts Officer [Admn.] Office of the Controller of Communication Accounts, Bihar Circle, 2nd Floor, CTO Annexe Building, Patna – 800001 [Bihar].

..... Respondents.

By Advocates: Mr. H.P.Singh.

ORDER

Per Jayesh V. Bharavia [J]:- The applicants' prayer for contesting the case jointly is allowed since the relief sought for by them is common in nature.

2. The instant OA has been filed by the applicants for the following reliefs :-

“8[1] That your Lordships may graciously be pleased to quash and set aside the Clarification No.2 of the order dated 03.12.2015

issued by the Respondent No.2 as contained in Annexure-A/10 whereby and whereunder the Grade Pay of the applicants being the holder of the post of Lower Division Clerk has been ordered to be reduced/refixed in the lower Grade Pay of Rs. 1,900/- instead of Rs. 2,800/-.

8[2] That your lordships may further be pleased to direct/command the Respondents to allow the continuance of their Grade Pay of Rs. 2,800/- without any dispute.

8[3] That this Hon'ble Court further be pleased to direct the respondent to grant all consequential benefits along with arrears.

8[4] Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicants.”

3. The applicants case in brief is that, they were initially appointed as Lower Division Clerk in Tees Hazari Court, New Delhi on 02.09.2004, 08.01.2004 and 26.07.2004 respectively in the pay scale of Rs. 3050-4590 which was revised as 5200-20200 with grade pay of Rs. 1900/-.

4. Vide Annexure-A/1, dated 05.02.2010, the Department of Telecommunication invited applications for appointment on permanent absorption basis of Group – ‘C’ Non-Gazetted in the Department of Telecommunication [DoT] as a one Time Measure. According to the applicants, they submitted their applications within time. However, before completion of the selection process of permanent absorption under the respondents, the Hon'ble Supreme Court vide its judgment dated 19.02.2011 upgraded the pay scale of Lower Division Clerk from Rs. 3050-4590 = Rs. 5200-20200 with grade pay of Rs. 1900/- to Rs. 4500-7000 = Rs. 5200-20200 with Grade Pay of Rs. 2800/- w.e.f. 01.01.1996 along with all benefits.

5. In the meantime, the Respondent No.3 has communicated the applicants' parent department about their selection under Department of Telecommunication, vide letter dated 20.05.2011 and also issued

appointment letter on 20.05.2011 [Annexure-A/2 and A/3 respectively] in favour of the applicants wherein no grade pay has been mentioned. Accordingly, the applicants submitted their technical resignation to their parent department which was accepted, vide order dated 06.06.2011 [Annexure-A/4], wherein it is stipulated that the officials [applicants] shall be entitled for past service benefits in terms of Rule 37A of CCS Pension Rules, 1972 and under the New Pension Scheme, 2004, but no lien shall be retained in this office. The applicants draw our attention towards the last pay slip for the month of May, 2011 [Annexure-A/5] in which grade pay of Shri Mani Kumar Rinkesh has been mentioned as Rs. 2800/-.

6. The applicants submitted their representation regarding their pay protection with grade pay of Rs. 2800/-, but when they did not receive any reply from the department [DoT], they submitted their representation to their parent Department about maintain of lien and requested for repatriation but the parent department has declined their request of repatriation, vide letter dated 09.04.2012 [Annexure-A/6] on the ground that no lien of a Govt. servant shall be retained where a Govt. servant has proceeded on immediate absorption basis to a post or service outside his service/cadre/post in other Government Department. Thereafter, being aggrieved with the action of the respondents, the applicants filed OA No. 394/2013 which was disposed of as the learned counsel for the applicants himself has submitted that grievance of the petitioners has been suitably redressed ruing the pendency of the OA. Further, that the respondents, vide letter dated 10.04.2014 [copy taken on record], have allowed the applicants to draw the Grade pay of Rs. 2800/- as per their LPC in the same post till clarification by the DOT

HQ.

7. Vide Annexure-A/10, dated 03.12.2015, the Ministry of Communication & IT, Department of Telecommunication, has clarified fixation of pay of SA/JA/LDC taken on permanent absorption during onetime absorption, which reads as under : -

Sl. No.	Clarification sought	Clarification
1.	xxx	xxx
2.	LDC absorbed during one time absorption process and drawing Grade pay of Rs. 2800 in parent cadre.	[i] Since the official has been absorbed in this department on their own request the pay may be fixed under FR 15-A and DOP&T OM No.13/9/2009-Estt/Pay-II dated 21.10.2009 retreated vide DOP&T OM No.16/4/2012-Pay-I dated 05.11.2012, which envisages that “Transfer from a higher post to lower post at one’s own request – “The band pay in the lower post i.e. 1900/- will be fixed at the <u>stage equal to the band pay in the higher post</u> drawn before his transfer to the lower post and he will be granted the <u>grade pay of the lower post</u> . He will draw his increments based on band pay and grade pay of the lower post i.e. 1900/-”.

8. On 29.02.2016, the applicants have filed one MA No.116/2016 praying therein to stay the operation of order dated 11.02.2016 [Annexure-P/1 series], whereby pay of the applicants no.1 and 2 has been fixed pursuant to clarification vide DOT HQ letter dated 31.12.2015, till final decision of the present OA.

9. The applicants have relied upon the decisions passed by CAT Circuit Bench, Ranchi in OA/051/00206/2014, Abhishek Kumar vs. Union of India & Ors. dated 22.03.2017, CAT, Ernakulam Bench in OA No. 396/2010 and OA 418/2010, M.D. Nair & Ors. vs. UOI & Ors. dated 24.02.2012 which was upheld by Hon’ble High Court of Kerala in O.P. [CAT] No. 1642 and 1733 of 2012 dated 05.07.2012 whereby the pay/pay scale of the applicants were directed to be protected under Rule

FR 15[a].

10. The respondents have filed their written statement and contested the case. According to them, the applicants willingly applied for the post of LDC in the grade pay of Rs. 1900/- vide their application dated 01.02.2010, 03.02.2010 and 04.02.2010 [Annexure-R/1 series] and after completion of absorption process they were selected and called for joining as LDC for which grade pay was already notified i.e. Rs. 1900/- in the notification dated 05.02.2010. The respondents submitted that the applicants neither intimated to this office regarding their up-gradation of pay of Rs. 2800/- nor it was mentioned in their relieving letter dated 06.06.2011. The applicants joined in the office of CCA, Deptt of Telecom, Patna on 13.06.2011 as LDC accepting the grade pay of Rs. 1900/-. Therefore, it is evident that they willingly applied and got absorbed in the post of LDC in the office of CCA, Deptt. Of Telecom, Patna. It is further submitted that at the time of submission of application, the applicants had undertaken to the effect that they had read carefully the terms and conditions laid down in Annexure-II and they were agreed to abide by the same.

11. The respondents pleaded that this office received an order dated 19.11.2015 [Annexure-R/2] from the parent department of the applicants allowing advance increment in terms of recommendation of Shetty Commission and Supreme Court direction in the judgement dated 16.03.2009 and the grant of advance increment which has been allowed in this office also. The respondents further submitted that earlier this office allowed conditionally the grade pay of Rs. 2800/- vide letter dated 10.04.2014 [Annexure-A/7] subject to clarification by DOT. Accordingly, the Central Administrative Tribunal disposed of the OA

No.394/2013 subject to clarification by the DOT HQ. Now the Deptt. of Telecom has clarified the matter, vide order dated 31.12.2015 that grade pay of the absorbed officials to be fixed under FR 15[a]. The respondents further submitted that the matter was clarified vide OM No. 13/99/2009-Estt. [Pay-I], dated 21st October, 2009 that consequent upon implementation of the revised pay structure comprising grade pay and running pay bands, with effect from 01.01.2006 in cases of appointment of Govt. servants to post carrying lower grade pay under FR 15[a] on their own request, the pay in the pay band of the Govt. servant will be fixed at a stage equal to the pay in the pay band drawn by him prior to his appointment against the lower post. However, he will be granted grade pay of lower post. Further, in all cases, he will continue to draw his increments based on his pay in the pay band plus grade pay [lower].

12. Heard the learned counsel for the parties and perused the materials on record.

13. The Tribunal noticed that the rule is very clear on the point of pay fixation. Fixation of pay in case of employees who seek transfer to a lower post is to be done under Rule 15[a], which reads as under : -

"15[a] -It is directed to refer to instructions issued vide this Department's OM No. 16/6/2001 Estt. [Pay-I] dated 14.02.2006, on the above subject. It was clarified therein that on transfer to the lower post/scale under FR 15[a], the pay of a Government servant holding a post on regular basis will be fixed at a stage equal to the pay drawn by him in the higher grade . If no such stage is available, the pay will be fixed at the stage next below the pay drawn by him in the higher post and the difference may be granted as personal pay to be absorbed in future increments. If the maximum of the pay scale of the lower post is less than the pay drawn by him in the higher post, his pay may be restricted to the maximum under FR 22[a][a][3] [Should be FR 22[I][a][3]].

[2] Consequent upon implementation of the revised pay structure comprising grade pays and running Pay Bands, with effect from 01.01.2006 in cases of appointment of Government

servants to posts carrying lower Grade Pay under FR 15[a] on their own request, the pay in the pay band of the Government servant will be fixed at a stage equal to the pay in the pay band drawn by him prior to his appointment against the lower post. However, he will be granted grade pay of lower post. Further, in all cases, he will continue to draw his increments based on his pay in the pay band plus grade pay [lower]. ”

14. The Tribunal further noticed that pursuant to clarification vide DOT HQ letter No.33-22/2013-SEA-III [Pt.] dated 31.12.2015, the respondents have protected the pay of the applicants and allowed the grade of Rs. 1900/- in terms of Rule 15[a] as noted hereinabove. We do not find any infirmity in the said clarification, which is impugned herein, and consequently fixation of pay of the applicants along with grade pay of Rs. 1900/- instead of Rs. 2800/-, vide order dated 25.01.2016, has been done by the respondents, which is in consonance with Rule FR 15[a] and the same cannot be faulted. The judgment/order relied upon by the applicants is not applicable in the facts and circumstances of the present case for the reason that in the present case, the respondents have already protected the pay of the applicants whereas in the relied upon judgement, the respondents were directed to protect the pay of the applicants of those applications under Rule FR -15[a], since their pay was not protected as such.

15. In view of the aforesaid discussions, the OA is devoid of merit and the same is dismissed accordingly. No costs.

Sd/-
[Dinesh Sharma]
Member [Admn.]

Sd/-
[Jayesh V. Bhairavia]
Member [Judicial]

mps/-