(2014) 11 DEL CK 0109

In the Delhi High Court

Case No : Writ Petition (Civil) 8270, 8282/2014, CM Appl. 19204-19205 and 19228-19229/2014

Ashok Kumar APPELLANT

Vs

Govt. of NCT of Delhi RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2014) 11 DEL CK 0109

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Amit Kumar, Advocate for the Appellant; Shobhana Takiar, Udayan Khandelwal, Latika Choudhary, Avnish Ahlawat and Purnima Maheshwari, Advocate for the Respondent

Judgement

Vipin Sanghi, J.—The petitioners in these petitions under Article 226 of the Constitution of India assail the common order passed by the Central Administrative Tribunal (CAT/ Tribunal) in their respective Original Applications being O.A. Nos. 775/2012 and 773/2012, whereby the Tribunal dismissed their said applications. The petitioners had approached the Tribunal to seek a direction to the respondents to refix their pay scales in accordance with the Central Civil Services (Revised Pay) Rules, 2008. (for short, ''Revised Pay Rules'') - on the ground that it had been wrongly revised downwardly vide order dated 18.10.2011.

2. The facts of the two cases are more or less identical. On 31.12.1998, the petitioners were appointed was Retainer Crew Conductor on temporary basis with effect from 10.12.1998. On 26.05.2004, they were brought on monthly rates of pay with effect from 01.06.2004 in the pay scale of 3200-85-4900, when basic pay of the petitioners was fixed at Rs. 4800 in the pay scale of 3200-85-4900 as per the Central and State Government guidelines. It was thereafter fixed at Rs. 4927.50 in July, 2005, which stood enhanced to Rs. 5055 in July 2006;

Rs.5182.50 in June 2007 and; Rs. 5310 in June 2008.

3. On 29.08.2008, the Revised Pay Rules were notified which were deemed to come into effect from 01.01.2006. The revised pay rules were adopted by the GNCTD and also extended to the Delhi Transport Corporation. The case of the petitioners was that in September 2008, their pay was fixed at Rs. 8880 - effective from July 2008, and that in December 2008, a statement of sixth pay commission arrears was, accordingly, prepared. The basic pay of the petitioners was re-fixed at Rs. 8890 in June 2009. However, the same was reduced without even giving a show cause notice, with retrospective effect, on 18.10.2011. The petitioners claim that the pay so re-fixed was at a much lower rate than the entry level basic pay of the petitioners post as prescribed under the revised pay rules.

4. The petitioners alleged discrimination by contending one Sh. Om Prakash - working at the same post in Dwarka Depot II of the respondent corporation got a salary of Rs. 10,130, while in January 2012 the respondent reduced the basic pay of the petitioners to the level of Rs. 9710. The petitioners claimed that Rule 7, Note 7 of the revised pay rules had been breached by the respondent, which reads as follows:

"Note 7- where in the fixation of pay under sub-rule (1) , the pay of a Government, who, in the existing scale was drawing immediately before the Ist day of January, 2006 more pay than another Government servant junior to him in the same cadre, gets fixed in the revised pay band at a stage lower than that of such junior, his pay shall be stepped upto the same stage in the revised pay band as that of the junior".

5. The petitioners also claimed that as on 01.01.2006, they were getting a basic pay of Rs. 4927.50. According to the revised pay rules, their pay fixation in the revised pay scale as on 01.01.2006 ought to have been at Rs. 9280 with grade pay of Rs. 2000 and that they were entitled to annual increments on 01.07.2006, 2007, 2008, 2009, 2010 and 2011.

6. The applications were contested by the respondent. The respondent disclosed that the basic pay of the petitioners was fixed at Rs.3540 as on 01.06.2008. On account of the revised pay rules coming into force, the same Remove water mark from below image

7. The petitioners, however, sought fixation of their basic pay at Rs. 8460 as on 01.01.2006, on the ground that the pay admissible to a new entrant driver from that date would be Rs. 8460. This was initially agreed to by the Depot Manager and the petitioners pay as on 01.01.2006 was fixed at Rs. 8460. It was, accordingly, revised on 1st July of each year in the following manner:

under:-

8. Later, the accounts department pointed out that the salary of the existing staff, i.e. those who were already in service as on 01.01.2006 could not be re-

fixed with reference to the basic pay admissible to new entrants as 01.01.2006 since, as a matter of fact, no direct recruitment had been made in the respondent corporation between 01.01.2006 and 01.07.2007. Therefore, there was no question of the pay of the petitioners being "stepped up". It was in these circumstances that vide order dated 18.10.2011, the pay was revised downwardly as on 01.07.2007, and the year-wise effect was as follows:-

9. The aforesaid wrongful revision of the pay led to excess payment of Rs. 34,030 which had to be recovered from the petitioners. Consequently, the recovery was started from January 2012 onwards in instalments. The respondents also cited that there was no discrimination practiced and the example of Sh. Om Prakash stated by the petitioners was also not correct inasmuch, as, recovery was being made from him as well.

10. The Tribunal did not accept the petitioners contention. The Tribunal held that the benefit of stepping up of pay at par with the entry level pay structure in the pay of Rs. 6460 plus grade pay of Rs. 2000, i.e. total of Rs. 8460 in pay band I of Rs. 5200-20200, can be made applicable to the petitioners only under the applicability of the next below rule, from the date when the freshly appointed juniors joined such service. The Tribunal took note of the clarification issued by the Govt. of India on 20.03.2009, which reads as follows:

"(3) Stepping up of pay of direct recruit seniors appointed before 1.1.2006 with reference to direct recruit juniors appointed on or after 1.1.2006: Stepping up of pay of the directly recruited seniors is permissible with reference to such of their directly recruited juniors who were recruited on or after 1.1.2006 and whose Entry Pay was actually more than pay of the seniors provided no advance increments have been granted to the juniors at the time of recruitment. This would further be subject to the condition that there should be some element of direct recruitment in that particular cadre. As such no claim of stepping up can be entertained merely with reference to ''Entry pay'' for direct recruits as per Section II of Part A of the First Schedule if thee is no junior in the cadre drawing basic pay higher than the seniors.

[Clarification vide No. F.3-43/2008/UT.2 dated 20th March, 2009 given by the Government of India, Ministry of H.R.D. Department of School Education & Literacy (U.T.-2 Section) addressed to the Commissioner, Kendriya Vidyalaya Sangathan]".

11. The Tribunal held that if any juniors of the petitioners had joined service freshly as on 01.01.2006 or on any date soon thereafter, but before 01.06.2007 - when the petitioners crossed that threshold entry level pay, they would have been beneficiaries of stepping up of their pay under the next below rule, since the fresh appointee would have got the benefit of Rule 8 of the revised pay rules. Consequently, the Tribunal held that the re- fixation of the petitioners pay, undertaken in 2011, was according to the rules. On the question of whether the excess amounts could be recovered, the Tribunal held that since the petitioners

were being granted higher pay upon their representation by the Depot Manager on a mistaken interpretation of the pay fixation rules, the recovery of excess amount could be made when the error was subsequently discovered. Reliance was placed on the decision in Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, .

12. Before us, learned counsel for the petitioner has once again sought to make the same submissions as advanced before the Tribunal. Learned counsel for the petitioner, firstly, submits that the petitioners " who were in service prior to 01.01.2006, could not be fitted (upon adoption of the revised pay rules) , on a basic pay less than that admissible to new entrants who would be junior to the petitioners. Secondly, it is argued that no recovery could have been made without notice to the petitioners and the recovery being affected was adversely impacting them.

13. We have carefully considered the rival submissions and perused the impugned order. It is not in dispute that de-hors the fact that the entry level pay for new entrants - after the coming into force of the revised pay rules was higher, i.e. Rs. 8460 with effect from 01.01.2006, the fixation of the petitioners pay upon implementation of the revised pay rules was strictly in terms of the revised pay rules. The petitioners had pegged their claim for higher basic pay of Rs. 8460 with effect from 01.01.2006 only the basis that a new entrant on the same post after 01.01.2006 would have a starting basic pay of Rs. 8460. That, by itself, could not be a ground for the petitioners to seek re-fixation of their pay upon implementation of the revised pay rules. All that the petitioners were entitled to was their pay vis-?-vis their juniors, who may have joined after have joined after 01.01.2006. When, as a matter of fact, there were no new entrants in the post in question after 01.01.2006 and till 01.07.2007 - when the petitioners basic pay stood revised to Rs. 8620 (and the starting pay admissible to new entrants was Rs. 8460, i.e. lower than the basic pay being drawn as on 01.07.2007 by the petitioners) , there was no question of protecting the pay of the petitioners or stepping up the same as a matter of pay protection of seniors.

14. Consequently, we are in complete agreement with the reasoning adopted by the learned Tribunal. In view of the fact that the petitioners were not entitled to re-fixation of their pay as on 01.01.2006 to Rs. 8460, it is clear that the Depot Manager erred in granting the said basic pay to the petitioners upon their representation. When the error came to light, the respondents were entitled to recover the excess payment. We are informed that recovery has been effected in reasonable installments, which form a small fraction of pay package and, in fact, the excess amount of Rs. 34,030 already stands recovered.

15. In view of the aforesaid, we find no merit in these petitions and dismiss the same.