
(2022) 10 CAT CK 0031

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00253 Of 2022

B. Santhosh Kumar

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 21-10-2022

Acts Referred:

Central Civil Services (Revised Pay) Rules, 2008 — Rule 6

Citation : (2022) 10 CAT CK 0031

Hon'ble Judges : K. Haripal, Member (J); K.V. Eapen, Member (A)

Bench : Division Bench

Advocate : Shafik M Abdul Khadir, Rajesh Sukumaran

Final Decision : Allowed

Judgement

K. Haripal, J

1. The applicant had commenced his career as Junior Hindi Translator on 25.08.1995 under the 2nd respondent. Now he is working under the 3rd respondent. Even though he had put in more than 26 years of service, is continuing in the same post without any promotion. The 5th Pay Commission recommended the revised scale of Translators at Rs.5000-8000. It should have been Rs.5500-9000. Later, on the representations of the employees, the scales of Rs.5500-9000, Rs.6500-10500 and Rs.7500-12000 were merged in the case of Central Secretarial Official Language Services (CSOLS). Even though the Pay Commission and the Ministry of Finance, Department of Expenditure wanted to extend the benefits of the pay revision to all Ministries and departments of similar scales of that of CSOLS, that was not implemented. Thus on the recommendations of the Pay Commission in Annexure-A3 fixation chart, the scale of pay of the applicant was fixed with effect from 01.01.2006 with a grade pay of Rs.4200/-.

2. According to the applicant, persons similarly placed had approached various Benches of this Tribunal and obtained favourable orders fixing grade pay at the

rate of Rs.4600/- with effect from 01.01.2006. Such orders have become final. On that line, the applicant also approached the respondents and sought to re-fix his grade pay and scale of pay with effect from 01.01.2006, which was not considered favourably and that made him to approach this Tribunal seeking a direction to the respondents to re-fix the pay of the applicant in the scale of Rs.5500-9000 with effect from 01.01.1996 and to grant grade pay of Rs.4600/- with effect from 01.01.2006 with all consequential benefits. He has also sought for granting arrears of pay and revised ACP & MACP upgradations with 18% penal interest.

3. On behalf of the respondents, the 3rd respondent filed a reply denying the contentions. According to the 3rd respondent, as per Annexure-R(a), the higher scales of Rs.5500-9000, 6500-10500 and Rs.7500-12000 were fixed only for the posts in CSOLS. Referring to Annexure-R(b) he said that the benefits given to the specific category of posts in CSOLS cannot be extended to similarly designated posts elsewhere. Therefore, the respondents have sought for dismissing the application. According to them, even though some of the employees in other departments had obtained favourable orders from the Administrative Tribunal, that cannot be treated as judgments in rem and therefore the applicant is not entitled to get any relief.

4. The applicant filed a rejoinder, reiterating the contentions in the Original Application.

5. We heard the learned counsel for the applicant as well as the learned Standing Counsel for the respondents. Respective contentions were reiterated. Besides the documents annexed to the application, at the time of hearing, learned counsel for the applicant submitted a copy of the order of this Tribunal dated 10.01.2022 in O.A.668/2016 also for perusal. According to the learned counsel, in the light of these developments the applicant is also entitled to get the very same relief.

6. It is not disputed that by virtue of the Office Memorandum dated 24.11.2008, which stands modified in certain extent in Office Memorandum dated 27.11.2008 of the Department of Expenditure of the Ministry of Finance, the pay of Translators, Assistant Directors, Deputy Directors, Joint Directors and Director in the Official Language cadre belonging to CSOLS stand revised. In Annexure-A1, it is stated that all Ministries/Departments are required to grant the revised pay scales approved for the various posts in the CSOLS to similarly designated Official Language posts existing in their subordinate offices. But the case of the applicant indicates that this piece of direction has not been considered at all by other subordinate offices or departments. That may be the reason why the scale of the applicant was fixed with grade pay of Rs.4200/- when pay revision was granted.

7. In this connection, it is appropriate to extract the following paragraphs from the Official Memorandum dated 13.11.2009, Annexure-A2.

"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.6500-10500 as on 1.1.2006 by granting them grade pay of Rs.4600 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.6500-10500 as on 1.1.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 in the pay band PB. 2, will be granted grade pay of Rs.4600 in the pay band PB-2 corresponding to the pre-revised scale of Rs.7450-11500 w.e f. 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.7450-11500, the posts being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500.

4. Accordingly, in terms of Rule 6 of CCS (RP) Rules, 2008, revised pay of Government servants in the pre-revised scale of Rs.6500-10500 who were earlier granted grade pay of Rs.4200 and who have already exercised their option for drawal 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.6500-10500 who were earlier granted grade pay of Rs.4200 and who had opted to have their pay fixed under CCS (RP) Rules, 2008, action as prescribed in this Department's OM. of even number dated 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.4600 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 drawal of arrears has already been indicated in this Department's O.M. of even number dated 30.8.2008."

It is quite evident that when pay revision is granted by virtue of the merging of three scales, applicant and similarly placed persons were entitled to get scale with grade pay of Rs.4,600/-. As noticed, that was not granted and that gave rise to a volley of litigations. As rightly pointed out by the learned counsel for the applicant, all those litigations have ended in favour of the respective applicants and now the applicant wants to take advantage of such earlier litigations and precedents.

8. The applicant has cited atleast five instances in which employees similarly placed had approached this Tribunal and obtained favourable orders. Annexure-A4 is the first such instance in which one T.P.Leena, who is a Junior Hindi Translator in Cochin Base of Fishery Survey of India approached this Tribunal and obtained favourable orders directing to fix the salary with grade pay of

Rs.4,600/- and consequential fixation of pay. Secondly, Annexure-A5, which is a Full Bench decision of this Tribunal where O.A.Nos.656/2012 and 953/2012 were taken together. There, the specific point for reference was 'whether Junior Hindi Translators in the subordinate offices of the Central Government are entitled to get grade pay of Rs.4,600/- from 01.01.2006 on the basis of O.M. dated 13.11.2009 or not'. Referring to the order of this Tribunal in Annexure-A4 the Full Bench held that, it has to be accepted that the question as to whether JHTs are entitled for the grade pay of Rs.4,600/- on the basis of O.M. dated 13.11.2009 or not was answered positively in O.A.No.107/2011 and was confirmed by the High Court in O.P.(CAT) 467/2012.

9. The Full Bench answered the reference thus:

"22. In the circumstances, reference as to whether JHTs in the subordinate offices of the Central Government are entitled to grade pay of Rs.4,600/- from 01.01.2006 on the basis of O.M. dated 13.11.2009 or not has to be held in favour of the applicant and in the circumstances of the case, there is no necessity of again referring the matter to the Division Bench for deciding the matter. We hold that both the O.A.s are liable to be allowed and the same are accordingly allowed."

10. The averments in the Original Application indicate that the verdict of this Tribunal in Annexure A-4 was challenged before the High Court in OP(CAT) 467/2012, which was dismissed by the High Court. The matter was again challenged before the Hon'ble Supreme Court, which also dismissed the SLP.

11. Similarly, Annexure-A15 order of the Allahabad Bench indicates that Junior Hindi Translators in the defence service were granted similar relief. It is worthwhile to quote paragraph 8 of the order as follows:

" 8. The controversy in the present OA hinges upon the two office memorandums dated 24.11.2008 and 13.11.2009, which have already been referred to earlier, issued by the Ministry of Finance, Department of Expenditure. We have absolutely no doubt in our mind that in terms of office memorandum dated 24.11.2008 it was decided that junior translators posted in the Ministries and departments as also in their subordinate offices will be awarded the pay scale of Rs. 6500-10500/- in pay Band-II carrying the Grade pay of Rs.4200/- in accordance with the recommendations of the Pay Commission. It is not in dispute that the applicants on that particular date were holding the post of Junior translator and hence this office memorandum is applicable in their case. Further, this decision was amended vide the subsequent memorandum dated 13.11.2009 which approved the proposal for up-gradation of posts which were in the pre revised pay scale of 6500-10500/- as on 01.01.2006. It is pertinent to emphasise here that vide the earlier OM dated 24.11.2008 the post of the applicants, w.e.f. 01.01.2006, had been up-graded to the pay scale of Rs.6500-10500/-. Therefore, the subsequent memorandum would also be applicable in their case, this memorandum states that the Grade pay 4200/- in

the scale of 6500-10500/- is now upgraded to a Grade pay of Rs. 4600/ w.e.f. 01.01.2006. Therefore, we have no doubt in our mind that the case of the applicant is squarely covered by the provisions of this office memorandum as also the earlier office memorandum.....”

12. Annexure-A11 document produced by the applicant also suggests that on similar grounds O.A.No.198 and 199 of 2015 were filed before the Bangalore Bench of this Tribunal by some of the similarly placed officers of the Navy and were granted reliefs in their favour which also has become final. Again, the copy of the order of this Tribunal in O.A. 668/2016 also suggests that claim of similar nature stands upheld by the Tribunal.

13. In other words, a volley of orders obtained by persons similarly placed, whether they are in the Fishery Survey of India or National Institute of Fisheries and Post Harvest Technology and Training or Office of Development Commissioner of Cochin Special Economic Zone, Kakkanad or in the Naval Ships etc, all have been granted reliefs upholding their claim to fix the revised scale with grade pay of Rs.4,600/-.

14. As already indicated, the policy of the Ministry of Finance appears that the special treatment granted to the officials in the Official Language cadre in the CSOLS should be extended to all the similarly placed official language posts existing in the subordinate offices. But that has not been translated into reality by the respondents and that prompted the applicant to approach this Tribunal. There are also reasons to suggest that it is the policy of the Department of Expenditure of Ministry of Finance that designation and pay scale of official language posts in subordinate offices of Government of India shall be the same as those of the CSOLS. But that has not been implemented which led to the initiation of numerous litigations in different Benches of this Tribunal. This being the position, there is absolutely no justification in the contention of the respondents that the special treatment granted to the specific posts in CSOLS should be confined to them alone and should not be extended to similarly designated posts elsewhere. The Full Bench of this Tribunal has declared the law. That has been confirmed by the High Court and Supreme Court and therefore, the respondents should not have hesitated to extend the benefit to the persons like the applicant who are similarly placed.

15. It is also the settled proposition that once a relief is granted to a particular category of employees, persons similarly situated are also entitled to get the benefit of the same despite the fact that they did not approach the Court or Tribunal seeking the very same relief. But that has been conveniently ignored by the respondents. Resultantly, a lot of litigations have followed. It has only given rise to multiplicity of proceedings. The Ministry should have issued positive directions to extend the benefit to the persons similarly situated with effect from 01.01.2006 onwards. But the indications are clear. It may be true that the subsequent pay commission has addressed this issue, but that will not give any solace to persons like the applicant who are entitled to get the benefit from

01.01.2006 onwards. If the reliefs are not allowed, that will have cascading effect in their service. Therefore, the respondents are not justified in denying the benefits to the applicant.

16. Resultantly, the application is allowed. We hold that the applicant is entitled to get grade pay of Rs.4,600/- with effect from 01.01.2006 with all consequential benefits. The respondents are directed to work out the benefits allowed in favour of the applicant and disburse the same within a period of three months from the date of receipt of a copy of this order. We do not find any justification in awarding any amount as interest, as claimed.

The application is allowed as above. No costs.

Dated this the 21st October, 2022