

(2022) 08 SHI CK 0058

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No.5846 Of 2019

Bipan Chand

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 30-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 14

Central Civil Services (Revised Pay) Rules, 2008 — Rule 5, 7, 22

Citation : (2022) 08 SHI CK 0058

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Sanjeev Bhushan, Rakesh Chauhan, Raju Ram Rahi,

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. Petitioner has approached this Court for quashing communication dated 5th March, 2013 (Annexure A2) whereby his representation, to step up his pay equal to the pay fixed for Junior Officer namely Engineer Arun Prashar, has been rejected. Further prayer in petition is to direct the respondents to grant benefit of stepping up of pay enhancing his pay as on 1.1.2006 from 49490 to 49740 with subsequent consequential pay fixation till his superannuation and other benefits including pensionary benefits, if any, on account thereof and to pay arrears of benefits w.e.f. 1.1.2006 by fixing pay of applicant at par with his junior along with interest at the rate of 9% per annum.

2. In the pleadings of parties, there were some discrepancies in the dates of appointment, promotion, etc. with respect to petitioner as well as Arun Prashar and, therefore, department was directed to impart instructions. In response thereto, learned Deputy Advocate General has placed instructions dated 10.5.2022 on record.

3. Perusal of pleadings as well as instructions imparted during the course of

hearing indicates that petitioner's case is that he was appointed as Junior Engineer on regular basis with respondent-department on 18.7.1978 and was promoted as Assistant Engineer on regular basis on 25.6.1985 and was further promoted to the post of Executive Engineer on 28.1.1999 and was promoted as Superintending Engineer on 6.6.2011 and on promotion as Superintending Engineer his pay on 6.6.2011 was fixed on Rs.61010 in pay scale of 37400-67000+8700 GP and superannuated as Superintending Engineer on 30.4.2015, whereas one Arun Prashar was appointed as Junior Engineer in the year 1980 about two years later than petitioner and who was promoted as Assistant Engineer on 22.5.1986 about one year later than petitioner and was promoted as Executive Engineer on 9.4.2007 about and later than petitioner and superannuated on 31.7.2014 as Executive Engineer and as such Arun Prashar remained junior to the petitioner since initial appointment.

4. In revision of pay scale w.e.f. 1.1.1986, pay of petitioner as Assistant Engineer was fixed as Rs.2200/-w.e.f. 1.1.1986 in pay scale of Rs.2200-4000 with next date of increment on 01.01.1987 whereas pay of junior (Arun Prashar) was fixed Rs.2200 but w.e.f. 22.05.1986 (the date of promotion as Assistant Engineer) in the pay scale of Rs.2200-4000 with next date of increment 01.5.1987.

5. In revision of pay scale w.e.f. 1.1.1996, pay of the petitioner as Assistant Engineer was fixed as Rs.12000 w.e.f. 1.1.1996 in pay scale of Rs.12000-15500 with date of next increment on 1.1.1997. Pay of his junior (Arun Prashar) was also fixed 12000 w.e.f. 1.1.1996, in the pay scale of 12000-15500 with next date of increment on 1.1.1997.

6. On 01.06.2003 pay of petitioner was Rs.15,900 whereas pay of junior Arun Prashar, as on 1.1.2004, was Rs.15500/- and since 1.6.2005 till 1.06.2006 pay of petitioner remained Rs.16800/- whereas pay of Arun Prashar till 1.1.2006 remained Rs.15900/-. Pay of the petitioner and Arun Prashar as on 31.12.2005 was 16800/- and 15900/- respectively. Therefore, till revision of pay scale w.e.f. 1.1.2006 petitioner was senior to Arun Prashar as Assistant Engineer and Executive Engineer and pay of petitioner was also higher.

7. On revision of pay scale w.e.f. 1.1.2006 pay of the petitioner was fixed as Rs.49490/- whereas pay of his junior Arun Prashar was fixed as Rs.49740/-.

8. Petitioner came to know about fixation of higher pay of his junior in the year 2010 and, therefore, he made representation for applying principle of stepping up for fixing his pay at par with his junior Arun Prashar.

9. The representation of petitioner was rejected by Engineer-in-Chief IPH Shimla vide dated 5th March, 2013 (Annexure A-2) on the ground that such anomaly had arisen due to option exercised by the Junior Officer to fix his pay in the revised pay scale before granting annual increment in the revised Pay Band and Grade Pay effective from 1.1.2006, whereas there was no such opportunity available to the petitioner being his date of increment as 01.06.2006 and further that junior was promoted to the higher post of Executive Engineer on 9.4.2007

after getting higher pay scale of Rs.14,300-18500 under 4-tier Pay scale on completion of 14 years as Assistant Engineer whereas petitioner got his higher pay scale of Rs.14300-18150 after his promotion and thus pay of junior was already higher as Assistant Engineer and anomaly had arisen due to exercise of option by Junior in revised pay scale w.e.f. 1.1.2006 and not by application of RF-22(1)(a)(i).

10. In response to petition, one more additional ground has been taken that though petitioner was appointed as Junior Engineer in the year 1978 and Arun Prashar was appointed in the year 1980 but thereafter petitioner was appointed as Assistant Engineer afresh on his selection through Himachal Pradesh Public Service Commission during the year 1985 whereas Arun Prashar continued working as Junior Engineer in the Department and was promoted later on during 1986 as Assistant Engineer and, therefore, method of recruitment of both Officers was different and thus stepping up, as prayed, was not admissible.

11. Petitioner was senior as Junior Engineer to Arun Prashar. Even if it is considered that after appointment through Himachal Pradesh Public Service Commission, he is to be considered a fresh appointee as Assistant Engineer and, thus, not having any claim as a promotee then also he was appointed as Assistant Engineer on 26.6.1985 whereas petitioner was promoted to the same cadre i.e. as Assistant Engineer on 28.5.1986 i.e. about one year after the petitioner and, therefore, Arun Prashar remained junior to petitioner in the cadre of Assistant Engineer also and, thereafter, petitioner was promoted as Executive Engineer on 28.1.1999 whereas Arun Prashar was promoted as Executive Engineer on 9.4.2007. Till then Arun Prashar was getting less pay than the petitioner. Therefore, even if seniority of petitioner with respect to Arun Prashar, on the basis of posting as Junior Engineer is ignored, then also petitioner remained senior in the cadre of Assistant Engineer to Arun Prashar and till 31.12.2005 petitioner was getting higher pay with basic pay 16800/- whereas Arun Prashar was drawing at the rate of Rs.15900/- per month. Thereafter, as explained by respondents, on account of exercising of option in the revised pay scale Arun Prashar was granted higher pay at the rate of Rs.49740/- per month in comparison to pay of petitioner of Rs.49490/- per month w.e.f. 1.1.2006.

12. Government of India's orders published in Swamy's Compilation of FRSR 20th Edition 2010 contained in Note-18 regarding removal of anomaly by stepping up of pay of senior on promotion drawing less pay than his junior are relevant for the purpose of adjudication of present petition, which reads as under:-

"(18) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior.---- (a) As a result of application of FR 22-C. [Now FR 22 (1) (a) (1)]. In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should

be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(c) The anomaly should be directly as a result of the application of FR 22- C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.

[GI, M.F, OM. No. F. 2 (78)-E, III (A)/66, dated the 4th February, 1966]

(b) As a result of FR 22 (1) (a) (1) application in the revised scales of CCS (RP) Rules, 2008.----In cases, where a Government servant promoted to a higher post before the 1st day of January, 2006, draws less pay in the revised pay structure than his junior who is promoted to the higher post on or after the 1st day of January, 2006, the pay in the pay band of the senior Government servant should be stepped up to an amount equal to the pay in the pay band as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to the fulfilment of the following conditions, namely:-

(a) both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.

(b) the pre-revised scale of pay and the revised grade pay of the lower and higher posts in which they are entitled to draw pay, should be identical.

(c) the senior Government servants at the time of promotion have been drawing equal or more pay than the junior.

(d) the anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22 or any other rule or order regulating pay fixation on such promotion in the revised pay structure. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer.

Subject to the provisions of Rule 5, if the pay as fixed in the officiating post under sub-rule (1) is lower than the pay fixed in the substantive post, the former shall be fixed at the same stage as the substantive pay.

[Note 10 below Rule 7 of CCS (RP) Rules, 2008]”

13. In present case, petitioner was promoted to higher post prior to 1.1.2006 whereas Arun Prashar was promoted after 1.1.2006 and both Arun Prashar as well as petitioner belonged to same cadre i.e. Assistant Engineer and they have been promoted to identical posts in the same cadre i.e. Executive Engineer. The pre-revised scales of pay and revised pay grade, of lower and higher posts in which they were entitled to draw pay, were identical and petitioner, at the time of promotion i.e. on 28.1.1999, was drawing basic pay fixed at the rate of Rs.13500/- in comparison to basic pay of Arun Prashar at the rate of Rs.13125 i.e. petitioner was drawing more pay than his junior and anomaly in the pay of petitioner and junior is directly as a result of provisions of orders regulating pay fixation in the revised pay structure and petitioner was not granted any advance increment for fixation of more pay of Junior Officers in the pre-revised scale and, therefore, instructions contained in Clause (b) of above referred Note are completely applicable in the present case which directs that in such situation, stepping up should be done w.e.f. date of promotion of Government servant.

14. In the aforesaid facts and circumstances, I do not find any rationality or reasonableness in the decision of respondents rejecting the claim of petitioner for fixing his pay at par to his junior rather the rejection smacks arbitrariness which is anti-thesis of Article 14 of the Constitution of India.

15. Learned counsel for the petitioner has also referred pronouncement of the Apex Court in Gurcharan Singh Grewal and another vs. Punjab State Electricity Board and others reported in (2009)3 SCC 94, wherein it has been observed that it is well settled principle of law that senior cannot be paid lesser salary than his junior and in such circumstances, even if there was difference in incremental benefits in the scale given to Government servants such anomaly should not have been allowed to continue and ought to have been rectified to fix the pay in parity with the junior officers.

16. Plea of respondents that petitioner and Arun Prashar were belonging to different cadres before promotion is not sustainable because even if it is considered that petitioner joined as Assistant Engineer as direct appointee then also Arun Prashar on his promotion joined the same cadre as junior to him and anomaly in the pay arose when petitioner and Arun Prashar had already been promoted to the same next cadre of Executive Engineer, as revision of pay scale took place after promotion of both but w.e.f. 1.1.2006.

17. In view of Government instructions, referred supra, and considering the facts of present case, narrated hereinabove, and discussion hereinbefore, I am of considered opinion that petitioner is entitled for fixing his pay at par with his junior from the date of promotion of his junior w.e.f. 9.4.2007 with all

consequential benefits including pensionary benefits and, therefore, respondent department is directed to take all necessary steps accordingly and to extend benefits to petitioner as expeditiously as possible latest by 30th October, 2022, failing which respondent department shall also be liable to pay interest at the rate of 5% per annum and interest component shall be recovered by Government from the Officer Incharge responsible for delay in complying the aforesaid direction.