

(2018) 07 CAT CK 0136

In the Central Administrative Tribunal

Case No : Original Application No. 1980 Of 2017

J.P. Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 02-07-2018

Acts Referred:

Central Civil Services (Revised Pay) Rules, 2008 — Rule 6(4)

Citation : (2018) 07 CAT CK 0136

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : R.K. Kapoor, R.K. Jain

Final Decision : Allowed

Judgement

1. Briefly stated, the facts of the current O.A. are that the applicants are/were working as Scientist-B to Scientist-G respectively. Vide Notification dated 28.04.2008, the applicants were promoted from Scientist-D to Scientist-F by respondent No.1.

2. The applicants opted for the Revised Pay Band w.e.f. 01.01.2006 under CCS (Revised Pay) Rules, 2008 notified by M/o Finance (Department of Expenditure) Notification G.S.R. 622(E) dated 29.08.2008 and O.M. No. 1/1/2008-IC dated 30.08.2008. The pay of the applicants was fixed in the revised pay band vide MNRE Office Order No. 24/26/2008-Admin-I (Sc-F) dated 18.09.2008 w.e.f. 28.04.2008. Thereafter, Ministry of Finance, Department of Expenditure issued another O.M. No.7/14/2010-E-III(A) dated 05.07.2010 wherein it was mentioned that the employees may be permitted to revise their initial option upto 31.12.2010, if the option is more beneficial to them for fixation of pay.

3. The applicants submit that they should have been provided the entry level pay of Rs.40,200/- fixed by 6th Central Pay Commission for direct recruits at the level of Scientist-F. There are three grade pay in Pay Band-4, as per 6th Central Pay Commission (Rs.37,400-67,000/-), i.e. Rs. 8700, Rs. 8900 and Rs.10,000/-.

The applicants were promoted under Flexible Complementing Scheme(FCS) from Scientist-D (Pay Band-3 with Grade Pay of Rs.7600/-) to Scientist-F (Pay Band-4 with Grade Pay of Rs.8900/-) as per the provisions of FCS. Therefore, their pay should have been fixed at Rs.40,200/- at the entry level for direct recruits as Scientist-F in accordance with 6th Central Pay Commission. The applicants were granted promotions in the grade of Scientist-F and were given the basic pay of Rs.39,690/- with Grade Pay of Rs.8900/- in the Pay Band of Rs.37400-67000).

4. The applicants further aver that suddenly on 07.11.2014 and 03.02.2015, the respondents issued orders for recovery of the alleged excess amount, which had been paid to the applicants because of the re-fixation of their pay under CCS (RP) Rules, 2008. Aggrieved, the applicants made several representations to respondent No.1, one of which is dated 05.03.2015 and reminder is dated 09.03.2016. Latest representation of the applicants is dated 16.05.2017 against the impugned order dated 05.05.2017.

5. For the applicants No. 1 & 10 pay was re-fixed on lower side on 07.11.2014 i.e. just 04 days before their retirement on 11.11.2014 (applicant No.1) and 26 days before retirement of applicant No.10.

6. The applicants contend that the respondents cannot ask them to refund the amount by reducing their pay at Rs. 39690/- after seven years, that they are entitled to be granted all corresponding benefits as per the 6th Central Pay Commission. Also, a senior cannot be paid less than his/her junior in accordance with the law declared by the Hon"ble Supreme Court, Hon"ble High Court of Delhi and followed by this Tribunal. This, they submit is unjustified and arbitrary, since this would result in a promotee, in the category of Scientist-F, getting less pay than a direct recruit.

7. Challenging the recovery orders of the respondents, the applicants have placed reliance on the decision of Hon"ble Supreme Court in the case of State of Punjab & Ors. Vs. Rafiq Masih & Ors., 2014(8)SCALE 613 wherein the following has been held:-

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group "C" and Group "D" service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

8. Aggrieved, they have filed the current O.A. seeking the following reliefs:-

"(a) Allow the Original Application and set aside the impugned recovery orders dated 17.11.2014, 03.02.2015, 19.07.2016 and Office Memorandum dated 05.05.2017 passed to recover the excess amount from the applicants which was paid to them suo-moto by the respondents in accordance with law.

(b) Direct the respondent(s) to pay back the money already recovered by the respondent(s) illegally, alongwith interest in case of Applicant Nos. 1,4,10 and 11 vide Order dated 15.12.2014, 26.12.2016, 05.12.2014 and 16.12.2016 respectively.

(c) Restrain the respondent(s) from re-fixing the pay of the applicants on the lower side from Rs.39,690/- to 37,400-67,000/-, w.e.f. 28.04.2008 by passing an order on 07.11.2014 for Applicant No. 1 and 10 also by Order dated 03.02.2015 and for remaining applicants vide order dated 19.07.2016.

(d) Direct the respondent(s) to fix the pay of the Applicants at Rs.40,200/- w.e.f. 28.04.2008 as applicable to the direct recruits of the category of Scientist "F" and further directing them to pay the interest on the differential amount which was being illegally denied to the applicants all these years.

(e) Grant any other relief/order which this Hon"ble Tribunal deems fit and proper in the facts and circumstance of the case may also be passed in favour of the applicants and against the respondents.

(f) Award costs of the proceedings."

9. Per contra, the respondents state that on the recommendations of the 6th Central Pay Commission, the applicants opted for pay fixation w.e.f. 01.01.2006 and their pay was fixed under CCS Revised Pay Rule, 2008 as notified vide M/o Finance, Department of Expenditure Notification G.S.R. 622(E) dated 29.08.2008 and instructions contained in OM number 1/1/2008-IC dated 30.08.2008, on the basis of applicable fitment table. The arrears of pay were disbursed to them accordingly. Subsequently, the applicants were promoted to the grade of Scientist-F (GP-8900) from Scientists-F (GP Rs.7600) w.e.f. 28.04.2008 and they opted to get their pay fixed in the higher grade from the date of their promotion. Their pay was fixed notionally to the post of Scientist-D (GP Rs.8700) and thereafter to the post of Scientist-F w.e.f. 28.04.2008. As per fitment table, their pay in the Grade Pay of Rs.8700/-(PB-4) was fixed at Rs.39690/- + Grade Pay of

Rs.8900/- in PB-4 in the pay scale of Rs.37400-67000. However, the Internal Audit Wing of the Ministry conducted audit for the year 01.03.2013 to 31.03.2014 and raised an objection that in the case of promotion from one grade to another in the revised pay structure the fixation is to be done by granting one increment equal to 3% of the sum of the Pay Band of existing grade pay rounded off to next multiple of 10, which will be added to the existing pay in the pay band. The grade pay corresponding to the promotion post will thereafter be granted in addition to this pay. However, if the pay in the pay band, after adding the increment, is less than the minimum of higher pay band to which promoted, pay in the pay band will be stepped to such minimum. It was observed by the audit party that as per fitment table (S-26), the applicants' pay was fixed at Rs.39690/- in the Grade Pay of Rs.8900/-, which is wrong. Since the benefit of fixation of 6th Central Pay Commission had already been availed by the applicants w.e.f. 01.01.2006, hence they could not be given the double benefit of pay fixation as per the fitment table.

10. In compliance of the audit objection, the revised pay fixation order was issued on 07.11.2014 in respect of two Scientists, who were due to retire in November and December, 2014 respectively and on 03.02.2015 in respect of remaining 14 Scientists in supersession of earlier order dated 18.09.2008 in which their pay was fixed at Rs.37400/- w.e.f. 28.04.2008.

11. Ministry of Finance, Department of Expenditure vide their O.M. No. 7/14/2010-E III(A) dated 05.07.2010 allowed relaxation of stipulation under Rule 6(4) of CCS (Revised Pay) Rules, 2008 and permitted Government Servants to revise their option upto 31.12.2010 for fixation of pay in the revised pay structure from the date of next increment/promotion, if the option is more beneficial to them. However, none of these Scientists revised their initial option to switch over to the revised pay structure other than the earlier option dated i.e. 01.01.2006 from which the revised pay structure came into force, hence this clause was incorporated in the revised pay fixation order dated 03.02.2015, which was not objected to by anyone of them at that point of time.

12. Respondents also submit that before issuance of the revised pay fixation order, the matter (to relax the provision of seeking fresh option from these Scientists) was taken up with Pay & Account Office of the Ministry, Integrated Finance Department of the Ministry and subsequently with Department of Expenditure, Government of India on 19.07.2012, all of whom did not agree to give any relaxation for revision of initial option and rejected the proposal. This issue was repeatedly rejected on 24.01.2013, 19.07.2013 and 10.02.2014 by Department of Expenditure. The matter was also taken up with DoP&T a number of times but the same was not agreed to by them. Therefore, the amount of excess payment, due to wrong pay fixation, was recovered lump sum from the terminal benefits of the applicants at the time of their retirement. Subsequently too, the matter was again referred to DoP&T and to Department of Expenditure seeking relaxation of provisions by the respondents, but their proposal was not

acceded to. Accordingly, in supersession of all the earlier orders a fresh fixation order was issued on 19.07.2016 in respect of 11 Scientists who were in service, by fixing their pay at Rs.37400/- as on 28.04.2008. They were also promoted to the grade of Scientists-G w.e.f. 18.02.2016 by fixing their revised pay upto 01.07.2016. In case of remaining 02 Scientists who could not be promoted at that point of time, another order was issued by fixing their pay at Rs.37400/- as on 28.04.2008 and allowing subsequent increment upto 01.07.2016. Some Scientists have retired and excess payment made to them has also been recovered from their terminal benefits. The matter was put up to Chief Controller of Account for waiver of recovery but the same was not agreed to.

13. I have carefully considered the issues raised in the current O.A. by both sides. The issue to be adjudicated is two-fold. Firstly, whether the re-fixing of pay of the applicants on the lower side from Rs.39,690/- to Rs. 37,400-67,000/- w.e.f. 28.04.2008 by the respondents vide their orders dated 17.11.2014, 03.02.2015 and 19.07.2016 is justified, and secondly, whether the O.M. dated 05.05.2017 to recover the excess amount from the applicants vide which recovery has been affected, is tenable under law.

14. The respondents in their counter, have painstakingly explained the reasons, which led to re-fixation and consequent lowering of pay of the applicants. Simplistically put, the case of the respondents is that since the applicants had already availed the benefit of fixation of 6th CPC w.e.f. 01.01.2006, they could not have (again) availed the benefit of pay fixation as per the fitment table, thus making the earlier order dated 18.09.2008 of their pay fixation wrong. Before issuance of the revised pay fixation order, the issue was taken up by the respondents with the concerned departments in Ministry of Finance i.e. Pay and Accounts Office, Integrated Finance Department as well as Department of Expenditure for seeking relaxation regarding seeking fresh option from the applicants but the same was consistently rejected by all the Departments including Deptt. of Expenditure & DoP&T.

15. In the references sent by the respondents, it has been explained that at the time of promotion in April, 2008 some Scientists opted for fixation of their pay from the date of their promotion/next increment but it was related to old scale of pay only. At the time of promotion from Scientists-D to Scientists-F, revised options were required to be obtained in terms of Ministry of Finance O.M. No.7/14/2010-E III(A) dated 05.07.2010. None of these Scientists revised their option to switch over their earlier option w.e.f. 01.01.2006 from which date, the revised pay structure came into force. Ministry of Finance vide their O.M. dated 05.07.2010 permitted Government servants to revise their option upto 31.12.2010 for fixation of pay in the revised pay structure from the date of next increment/promotion, if the option was more beneficial to them. This option was not revised/exercised by the applicants in the O.A. It is seen from the record that before issuing the revised pay fixation order, the respondents took up the matter with Pay and Accounts Office of the Ministry as well as Integrated Finance

Department and sought relaxation of the provision seeking fresh option for the applicants, which was not agreed to by Department of Expenditure on 19.07.2012 and the proposal was rejected on 04.09.2012. The issue was taken up time and again with Department of Expenditure as well as Department of Personnel and Training but met with the same result.

16. Further, the representation of the retired Scientists dated 02.03.2016 for waiver of recovery was also referred to Department of Expenditure on 05.05.2016. The issue was examined in consultation with Financial Adviser of the Ministry and a detailed note was sent to Integrated Finance Division, who rejected the proposal of waiver of recovery and referred the matter to Chief Controller of Accounts. It was opined that these applicants are not eligible to any kind of relaxation of waiver and it was suggested to correct the pay fixation and recover the excess amount. This led to issuing the order of recovery on 05.05.2017 and the revised pay fixation order was issued on 19.07.2016.

17. On going through the facts of the case, it is clear that the respondents have merely followed the rules governing pay fixation. The applicants were not entitled to the benefit for fixation of pay, which benefit had already been granted to them w.e.f. 01.01.2006. They had opted to get their pay fixation under the Flexible Complementing Scheme after which the Ministry had issued the pay fixation order on 18.09.2008. Since the benefit of 6th CPC has already been availed by them w.e.f. 01.01.2006, hence they are not eligible to have the benefit of pay fixation as per the fitment table, twice. In view of the aforementioned discussions, I am convinced that the action of the respondents in refixing the pay of the applicants on the lower side i.e. from Rs.39690/- to Rs.37400-67000 w.e.f. 28.04.2008 is correct and does not warrant any intervention of the Tribunal.

18. This re-fixation/revision of pay, however, led to the recovery of the excess amount paid to the applicants, due to wrong pay fixation, on promotion. While recovering the amount of excess payment made to the applicants, the respondents have not disputed that this amount was paid to the applicants by the respondents suo moto, and there was no fraud or misrepresentation on part of the applicants when the alleged excess payment was made to them by the respondents. The law laid down by the Hon"ble Supreme Court, governing such situations is very clear and has been expressly laid down in the case of Rafiq Masih (supra). All such recoveries are held to be impermissible under law if such recoveries are made from retired employees or employees who are due to retire within one year of the order of recovery. Thus, the order of recovery in respect of the applicants, who had retired when the impugned orders were issued or were due to retire within one year of the same is impermissible as per the law laid down by the Hon"ble Supreme Court. Some of the applicants qualify for the relief, as laid down in the aforementioned judgment.

19. Thus, the recovery made from the applicants, who fall in the aforementioned category may be refunded to them within a span of three months from the date

of receipt of a certified copy of this order. The O.A. is accordingly allowed. No costs.