
(2019) 12 CAT CK 0014

In the Central Administrative Tribunal

Case No : Original Application No. 4520 Of 2018

Narender Kumar Yadav

APPELLANT

Vs

NCT Of Delhi And Ors

RESPONDENT

Date of Decision : 10-12-2019

Acts Referred:

Central Civil Services (Revised Pay) Rules, 2008 — Rule 13, 13(i)

Citation : (2019) 12 CAT CK 0014

Hon'ble Judges : Aradhana Johri, Member (A)

Bench : Single Bench

Advocate : V. V. Manoharan, Anuj Kumar Sharma

Final Decision : Dismissed

Judgement

Aradhana Johri, Member (A)

1. The applicant Mr Narender Kumar Yadav was appointed as PGT with the respondents in the scale of Rs. 9300-34800 with GP of Rs. 4800 on 14.02.2000.

He was granted first MACP on 15.02.2010 in Grade Pay of Rs. 5400/- (PB-II) after 10 years of service in scale of PGT (GP of Rs. 4800) with the benefit of 3% notional increment. On 31.12.2012, he was promoted to the post of Vice Principal which carried a GP of Rs. 5400 (PB-III). On 24.03.2017, he applied for notional increment on promotion to the post of Vice Principal citing Rule 13(i) of CCS (RP) Rules, 2008 and as enumerated in OM No. 10/02/2011-E.III/A dated 07.01.2013. He was sanctioned three percent increment and his pay was fixed accordingly on 15.05.2018. He retired from service on 30.05.2018 and was re-employed. Subsequently, the pay fixation order dated 15.05.2018 was withdrawn vide order dated 14.09.2018.

2. It is the contention of the applicant that the second 3% notional increment granted to him was in accordance with OM No. 10/02/2011-E.III/A dated 07.01.2013. Further, he should get the benefit of Rule 13(i) of CCS (RP) Rules, 2008.

3. The respondents have denied the claim of the applicant. They have stated that when the applicant was given first MACP on 15.02.2010 in GP of Rs. 5400 (PB-II) after 10 years of service in scale of PGT (GP Rs. 4800), he was already given the benefit of 3% notional increment. Therefore, when he was promoted from the post of PGT (GP Rs. 4800) to the post of Vice Principal with GP Rs. 5400/- (PB-III), the second 3% increment for fixation under Rule 13(i) of CCS (RP) Rules, 2008 was wrongly given. As soon as, the respondents realized their mistake, within a span of three months, vide order dated 14.09.2018 they withdrew the notional increment of 3%, which was wrongly granted at the time of pay fixation pursuant to promotion dated 31.12.2012. They have further stated that vide Annexure 1 Para 4 of MACP scheme the applicant is not entitled to 3% percent notional increment at the time of actual promotion. They have also stated that OM No. 10/02/2011-E.III/A dated 07.01.2013 and Rule 13(i) of CCS (RP) Rules, 2008 do not apply in this case.

4. Heard Mr V V Manoharan, learned counsel for the applicant and Mr Anuj Kumar Sharma, learned counsel for the respondents.

5. The first issue to be considered is whether second increment can be given at the time of promotion when an increment has already been given at the time of MACP. Annexure 1 Para 4 of MACP Scheme 2009 reads as under:-

"Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the Scheme. Therefore, the pay shall be raised by 3% of the total pay in the pay band and the grade pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPs.

However, at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available under MACPs, no pay fixation would be available and only difference of grade pay would be made available. To illustrate, in case a Government servant joins as a direct recruit in the grade pay of Rs. 1900 in PB-I and he gets no promotion till completion of 10 years of service, he will be granted financial upgradation under MACPs in the next higher grade pay of Rs. 2000 and his pay will be fixed by granting him one increment plus the difference of grade pay (i.e. Rs. 100). After availing financial upgradation under MACPs if the Government servant gets his regular promotion, he will only be granted the difference of grade pay between Rs. 2000 and Rs. 2400. No additional increment will be granted at this stage."

6. From the above, it is clear that under the MACP Scheme 2009, the applicant is not entitled to second 3% increment for purposes of pay fixation at the time of promotion since he has already got it at the time of upgradation under 1st MACP.

7. In order to understand what benefits accrue under OM dated 07.01.2013 and Rule 13(i) of the CCS (RP) Rules, 2008, it is necessary to understand relevant OMs. The situation that existed prior to 6th Pay Commission i.e. 01.01.2006 was

laid down by OM No. 169/2/2000-IC dated 24.11.2000 which reads as follows:-

"Subject: Recommendations of Fifth Central Pay Commission -Upward revision of pay scales as a result of feeder and promotion posts being placed in an identical revised pay scale The Fifth Central Pay Commission had, as a measure of rationalization, merged some of the pre-revised pay scales and had recommended single replacement pay scale(s) in such cases. These recommendations had been accepted by the Government and have been duly notified. This has necessitated the placement of feeder and promotion posts in certain ministries and departments in an identical revised pay scale notwithstanding the fact that such posts were in separate and distinct pay scales earlier.

2. This Department has been receiving a number of proposals from various ministries and departments requesting appropriate upward revision of the pay scales or the promotion posts concerned so as to restore the earlier relativities. It is clarified in this context that the mere fact that the feeder and promotion posts in certain ministries and departments have been placed in an identical revised pay scale cannot by itself be adequate justification for placing the promotion posts in the hierarchy in a higher pay scale. Upward revision of the pay scale of posts on this consideration alone is not being accepted as a general policy unless there are other extenuating circumstances that might justify the adoption of such a course of action. What is envisaged in such a situation is that the affected cadres themselves should be appropriately restructured and the relevant recruitment rules amended so as to reduce the number of levels in the hierarchy. This is also the spirit underlying the 5th CPC recommendations relating to the merger of different pay scales.

3. Therefore, ministries/departments should, in the first instance, examine in depth the feasibility of appropriately restructuring the cadres in question. Only in cases where this is not found to be feasible on functional, operational and administrative considerations, only extension of the benefit of fixation of pay under FR 22(I)(a)(1) could be considered on the merits of each case and provided that all the conditions precedent for the grant of this benefit are fully satisfied and promotion to the posts in question actually involves the assumption of higher responsibilities. All cases for extension of the pay fixation benefit in such cases should be referred to the Department of Expenditure for prior approval.

4. Ministries and departments of the Government of India are accordingly requested to review all such cases on a priority basis in consultation with their Financial Advisers and make available specific proposals for the consideration of this Department, in case this has not already been done. The proposals should contain detailed justification indicating the reasons for the inability of the ministries and departments to re-structure the cadres, the nature of functions and responsibilities and establish conclusively that the assumption of higher responsibilities is actually involved.

5. Hindi version will follow."

8. It is clear from the perusal of the above quoted OM that it pertains only to those matters where the feeder and promotional posts were placed in an identical revised pay scale. In the case of the applicant, the feeder Post of PGT and the promotional post of Vice Principal were not in the same pay scale, therefore this OM is not applicable in this case.

9. The position changed with the 6th Pay Commission implementation as on 01.01.2006. Rule 13(i) of the CCS (RP) Rules, 2008 provided the following:-

"One increment equal to 3% of the sum of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple of 10. This 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 in the pay band. In cases where promotion involves change in the pay band also, the same methodology will be followed. However, if the pay in the pay band after adding the increment is less than the minimum of the higher pay band to which promotion is taking place, pay in the pay band will be stepped to such minimum."

10. Under this rule one increment equal to 3% of the sum of the pay in the pay band and the existing grade pay would be computed and added to the existing pay in the pay band. The grade pay corresponding to the promotional post would thereafter be granted in addition to this pay in the pay band. This rule further stated that in cases where promotion involved change in the pay band also, the same methodology will be followed.

11. This position was clarified vide OM No. 10/02/2011-E.III/A dated 07.01.2013. The said OM reads as follows:-

"Subject-Fixation of pay on promotion to a post carrying higher duties and responsibilities but carrying the same grade pay.

The undersigned is directed to invite an attention to the provisions contained in Rule 13 of the CCS(RP) Rules, 2008, which provides for the method of fixation of pay on promotion on or after 01.01.2006 in case, inter-alia, of promotion from one grade pay to another. The Rules provides for fixation of pay by way of addition of one increment equal to 3% of the sum of the pay in the pay band and the existing grade pay (rounded off to the next multiple of 10) to the existing pay in the pay band and then fixing the pay in the promotional post as per the procedure prescribed therein.

2. In terms of this Ministry's OM No. 169/2/2000-IC dated 24.11.2000, dealing with the situation whereby both the feeder and the promotional grades were placed in the identical revised pay scales based on the recommendations of the 5th Central Pay Commission, it was provided, inter-alia, that only in cases where it was not found feasible to appropriately restructure cadres in question on functional, operational and administrative considerations, extension of the benefit

of fixation of pay under FR 22(I)(a)(1) could be considered on the merits of each case, provided all the conditions precedent for the grant of this benefit were fully satisfied and promotion to the post in question actually involved assumption of higher responsibilities.

3. In view of the provisions which existed prior to 01.01.2006 the matter has been considered and the President is pleased to decide that in cases of promotion from one post to another where the promotional post carries the same Grade Pay as the feeder post, the fixation of pay in such cases will be done in the matter as prescribed in Rule 13(i) of the CCS (RP) Rules, 2008, provided fixation of pay in such cases was done prior to 01.01.2006 in terms of this Ministry's aforesaid OM No. 169/2/2000-IC dated 24.11.2000.

4. In so far as the persons serving the Indian Audit and Account Department are concerned, these orders are issued in consultation with the Comptroller & Auditor General of India.

5. The Hindi version of this OM will follow."

12. From the very title of the aforementioned OM it is clear that it deals with fixation of pay on promotion to a post carrying higher duties and responsibilities but carrying the same grade pay. It further restricts the benefits of Rule 13(i) of CCS (RP) Rules, 2008 to only those cases where fixation of pay was done prior to 01.01.2006 in terms of OM No. 169/2/2000-IC dated 24.11.2000. The promotion of the applicant was done after 01.01.2006, therefore, his fixation in the promotional post could not have been done prior to 01.01.2006. Therefore, the benefit of OM No. 10/02/2011-E.III/A dated 07.01.2013 will not accrue to him.

13. In light of the above the OA has no merit and is dismissed accordingly. No order as to costs.