

(2007) 10 DEL CK 0035

In the Delhi High Court

Case No : Writ Petition (C) No's. 5947-6126 of 2004

Perdeep Kumar Kapil and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-10-2007

Acts Referred:

Central Civil Services (Revised Pay) Rules, 1997 — Rule 10, 22, 7
Constitution of India, 1950 — Article 14, 226

Citation : (2007) 10 DEL CK 0035

Hon'ble Judges : Vipin Sanghi, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Shyamala Pappu and R. Krishnamoorthi, for the Appellant; Sanjay Katyal, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—Though the 5th Central Pay Commission was constituted more than 10 years ago and its recommendations accepted in the year 1997, with effect from 1.1.1996, and the Government has already constituted 6th Central Pay Commission, which is likely to submit its report in near future, the ghost of the 5th Pay Commission still lingers on, insofar as disputes arising there from are concerned. It is a matter of common knowledge that every pay revision, based on these Pay Commissions, paves way for enormous litigation. Such disputes may be for variety of reasons and under variety of circumstances. Present case, which relates to the petitioners who are all serving on Electronic Data Processing (EDP) post in the Data Processing Division of National Sample Survey Organization (NSSO) under the Ministry of Statistics, Government of India, also relates to the same category. These petitioners who are/were holding the post of Data Processing Assistant Grade-III as on 1.1.1996 and were enjoying the pay-scale of Rs. 1600-2660 were granted revising scale of Rs. 5000-150-8000 as per the recommendations contained in para 55.71 of the 5th Pay Commission. However, the Government decided to upgrade the scale of the petitioners from Rs. 5000-150-8000 to Rs. 5500-175-9000 and orders dated 18.9.2001 were

passed to this effect upgrading the pay-scale of Rs. 5500-175-9000 with effect from 1.1.1996. However, peculiar circumstances followed. As a result of pay fixation in an upgraded pay-scale, the actual pay which the petitioners were drawing got reduced. The respondent No.3, namely, the Deputy Director General, Data Processing Division, NSSO, accordingly instructed all the concerned Data Processing Centres under its administrative control vide letter dated 31.12.2001 to recover the excess pay drawn, if any, due to fixation of pay in the normal pay-scales through arrears bills/future salary. The petitioners objected to this action by submitting representation dated 18.1.2002, which was rejected on 4.3.2002. This rejection led the petitioners to file OA No. 982/2002 on 11.3.2002. This OA was disposed of by the Tribunal on 11.4.2002 directing the respondents to pass an additional and more detailed order giving its reasons as to why the pay was not to be fixed under FR 22 of the FRCS Rules and if that rule was not applicable then to indicate the rule under which pay fixation was done. Pending compliance of this direction, the respondents were restrained from making any further recovery of the alleged excess payment.

2. The respondents, in compliance with the aforesaid directions of the Tribunal, passed orders dated 15.7.2002 (conveyed vide orders dated 18.7.2002) rejecting the claims of the petitioners. The petitioner approached the Tribunal once again by filing OA No. 2139/2002 on 31.7.2002. This has, however, been rejected by the Tribunal vide its judgment dated 29.7.2003, which is impugned in the present proceedings filed under Article 226 of the Constitution of India. The reasons which led to the reduction of pay on pay fixation of the petitioners, though the petitioners were given the higher replacement scale, are found in the orders dated 15.7.2002. Matter regarding rationalization of EDP post in DPD and SDRD was pending consideration when the recommendations of 5th Pay Commission were implemented. Since the petitioners were in the pay-scale of Rs. 1600-2660, they were granted normal replacement scale of Rs. 5000-150-8000 with effect from 1.1.1996 as a temporary measure in the CCS (Revised Pay) Rules, 1997 (hereinafter referred to as the "Revised Pay Rules") pending examination of the recommendations of the 5th Pay Commission for higher replacement scales. The matter, as mentioned above, was pending consideration for rationalization of EDP post before an Expert Committee known as Santhanam Committee and after the submission of the report of the Committee, the Ministry of Statistics and Programme Implementation passed orders dated 16.3.1998 vide which the EDP posts were rationalized. Further, an amendment was issued vide orders dated 4.8.2000. As a result of these orders, the petitioners became entitled to replacement of revised scale of pay of Rs. 5500-175-9000 instead of normal revised scale of Rs. 5000-150-8000 for the pre-revised pay-scale of Rs. 1600-2660 with effect from 1.1.1996. The problem arose while doing the exercise of fixation of their pay. The petitioners wanted that their pay be fixed under FR 22, which request was turned down on the ground that they were holding the post of DPA-III with pre-revised scale of pay of Rs. 1600-2660 prior to 1.1.1996 and they were granted pay-scale of Rs.

5000-150-8000 only as an interim measure, which was replaced with higher pay-scale of Rs. 5500-175-9000 and it could not be treated as appointment to a new post with/without involving assumption of powers and responsibilities of greater importance or re-appointment after 1.1.1996 to a post held prior to that date in order to derive the benefit of pay fixation as per FR 22 or Rule 10 of the Revised Pay Rules. The Government in its order dated 15.7.2002 maintained that grant of higher pay-scale of Rs. 5500-175-9000 with retrospective effect from 1.1.1996 in place of normal replacement scale of Rs. 5000-150-8000 as interim measure could not be construed as an appointment to a new post or re-appointment for deriving pay fixation under the aforesaid rules. In the order it was also stipulated that since the replacement scale of Rs. 5500-175-9000 was higher, both at minimum and maximum level, than compared to the pay-scale of Rs. 5000-150-8000, it could not be said that there was a loss of pay.

3. The aforesaid reason given by the Department in rejecting the petitioners' request cannot be faulted with as provisions of FR 22, in a case like this, would be ex facie inapplicable.

4. It is not in dispute that all the petitioners were holding the post of DPA-III and the revision of pay-scale was not on appointment to a new post or re-appointment for deriving pay fixation. For our benefit, we may reproduce FR 22(1)(a)(2) of FRCS Rules as well as Rule 10 of the Revised Pay Rules, which are as under:

FR 22(1)(a)(2) The initial pay of a Government servant who is appointed to a post on a time scale of pay is regulated as follows:

When the appointment to the new post does not involve such assumption of duties and responsibilities of a greater importance, he shall draw as initial pay, the stage of the time scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis.

Rule 10 of the Revised Pay Rules Fixation of pay on re-appointment after the 1st day of January, 1996 to post held prior to that day - A Government servant who had officiated in a post prior to the 1st day of January 1996 but was not holding that post on that date and who on subsequent appointment to that post draws pay in the revised scale of pay shall be allowed the benefit of the proviso to Fundamental Rule 22, to the extent it would have been admissible had he been holding that post on the 1st day of January, 1996, and had elected the revised scale of pay on and from that date.

5. We are of the opinion that on the examination of the aforesaid rules, the Tribunal rightly held that Rule 10 of the Revised Pay Rules relate to re-appointment (or even appointment), but in the present case only on the placement of post in the revised scale that attendant consequences flowing to the petitioners has happened. It is not a case of re-appointment and once Rule 10 of the Revised Pay Rules is not applicable, FR 22 would also not apply. The

Tribunal also held that re-fixation in the higher placement had not led to reduction in the basic pay by giving the following instances:

...In the instance referred to above itself it is seen that as against Rs. 5613/- the employee is fixed at Rs. 5675/- as against Rs. 6538/- at Rs. 6375/- and as against Rs. 6954/- at Rs. 7075/-. Merely because it was wrongly fixed earlier at Rs. 5750/- 6500/- and 7100/- respectively the applicants do not have a right to continue with. Their plea that they should have been given Rs. 5850/- Rs. 6550/- and Rs. 7250/- respectively had no basis and cannot be accepted (refer chart at ground 5.1 on page of the OA). Applicants have not suffered any loss of pay, but have only been fixed at the correct stage in the revised scale of pay and directed to repay the amount received in excess."` 6.The Department has filed affidavit dated 17.9.2007 wherein, while giving the justification for re-fixing the pay on grant of higher scale of Rs. 5500-175- 9000, the formula adopted for fixation of pay is given as under:

(a) Existing Basic Pay

(b) Dearness Allowance on Basic Pay as on 1.1.1996 which was 148%

(c) Amount of 1st Interim Relief which was equal to Rs. 100

(d) Amount of 2nd Interim Relief which was 10% of the Basic, minimum amount being Rs. 100

(e) 40% of the Basic Pay, i.e. item (a) above

Total emoluments= a+b+c+d+e

7. Demonstration of this formula is given in the statement fixing the pay of one Shri P.K. Kapil. As per the said statement, Shri Kapil was drawing the basic pay of Rs. 2100 on 1.1.1996 in the pre-revised scale of Rs. 1600-2660. His pay in the pay-scale of Rs. 5000-150-8000 was fixed at Rs. 6358/- in the following manner:

5. (a) Existing basic pay (including ad-hoc increment : 2,100 on account of stagnation at the maximum of the existing scale) (b) Dearness Allowance on basic pay as on 1.1.96 : 3,108 (at the index level 1510) (c) (i) Amount of first installment of Interim Relief : 100

(ii) Amount of second installment of IR 10% of the : 210 basic pay subject to minimum of Rs. 100

(d) Total existing emoluments = (a) to (c) : 5,518

(e) 40% of basic pay {item (a) above} : 840

6. Total of (d) and (e) of Item No.5 : 6,358

7. Stage next above in the proposed scale including : 6,500 benefit of bunching, if admissible

8. If 1 increment is ensured in the proposed scale : 5,450 for every 3

increments in the existing scale the stage of pay in the proposed scale

9. Pay to be fixed in the proposed scale (stage : 6,500 of pay at S.No. 7 or 8 whichever is higher)

10. Special pay in the revised scale, if any - {Refer Rule 7(1)(c)}

11. Date of next increment under Rule 8 1.6.1996 After giving the benefit of higher pay-scale of Rs. 5500-175-9000 as on 1.1.1996, his pay is re-fixed as under:

5.(a) Existing basic pay (including ad-hoc : 2,100 increment on account of stagnation at the maximum of the existing scale) (b) Dearness Allowance on basic pay as on 1.1.96 : 3,108 (at the index level 1510) (c) (i) Amount of first installment of Interim Relief : 100

(ii) Amount of second installment of IR 10% of the : 210 basic pay subject to minimum of Rs. 100

(d) Total existing emoluments = (a) to (c) : 5,518

(e) 40% of basic pay {item (a) above} : 840

6. Total of (d) and (e) of Item No.5 : 6,358

7. Stage next above in the proposed scale including benefit of bunching, if admissible : 6,375

8. If 1 increment is ensured in the proposed scale for every 3 increments in the existing scale the stage of pay in the proposed scale : 6,025

9. Pay to be fixed in the proposed scale (stage : 6,375 of pay at S.No. 7 or 8 whichever is higher)

10. Special pay in the revised scale, if any - {Refer Rule 7(1)(c)}

11. Date of next increment under Rule 8 1.6.1996

8. This is as per the pay fixation tables enclosed with Revised Pay Rules, which were produced before us. The comparison of the aforesaid two statements would reveal that the pay fixation in the higher pay-scale has not resulted in any loss. However, it is the benefit of bunching, as mentioned in Column No.7, which has made the difference. This principle of bunching is governed by Rule 7 of the Revised Pay Rules after prescribing the formula, on the basis of which the pays are re-fixed, as demonstrated above. Second and third proviso to Sub-rule (1) deal with bunching in the following manner:

7. Fixation of initial pay in the revised scale

xx xx xx

Provided further that-

Where in the fixation of pay, the pay of Government servants drawing pay at more than four consecutive stages in an existing scale gets bunched, that is to say, gets fixed in the revised scale at the same stage, the pay in the revised scale of such of these Government servants who are drawing pay beyond the first four consecutive stages in the existing scale shall be stepped up to the stage where such bunching occurs, as under, by the grant of increment(s) in the revised scale in the following manner, namely:

(a) for Government servants drawing pay from the 5th up to the 8th stage in the existing scale - by one increment;

(b) for Government servants drawing pay from the 9th up to the 12th stage in the existing scale, if there is bunching beyond the 8th stage - by two increments;

(c) for Government servants drawing pay from the 13th up to the 16th stage in the existing scale, if there is bunching beyond the 12th stage - by three increments;

If by stepping up of the pay as above, the pay of a Government servant gets fixed at a stage in the revised scale which is higher than the stage in the revised scale at which the pay of a Government servant who was drawing pay at the next higher stage or stages in the same existing scale is fixed, the pay of the latter shall also be stepped up only to the extent by which it falls short of that of the former.

Provided also that -

The fixation thus made shall ensure that every employee will get at least one increment in the revised scale of pay for every three increments (inclusive of stagnation increment(s), if any) in the existing scale of pay.

9. When the pay was fixed in the pay-scale of Rs. 5000-150-8000, the petitioners became entitled to increments as compared to their pay-fixation in the revised pay-scale as per which they were not entitled to any increment as the benefit of bunching was not available.

10. The immediate consequence, Therefore, was that, even when the petitioners were granted higher pay-scale, the total emoluments given to them were lesser than what they received when their pay was fixed in the pay-scale of Rs. 5000-150-8000, though it would be a temporary phenomena, since the petitioners are given a higher pay-scale which is higher both at minimum and maximum level in the long run for most of the period, they would enjoy better emoluments than what they would have earned in the pay-scale of Rs. 5000-150-8000.

11. Learned Counsel for the petitioners had also advanced the argument predicated on Article 14 of the Constitution of India alleging that in the Registrar General's Office, higher pay was given to their counterparts. The learned Tribunal has rightly observed that merely because higher pay-scale was given by the Registrar General's Office, which was a result of wrong fixation, Article 14

could not be pressed into service as one wrong committed at one place would not create a right at another place for another person and referred to the judgments of State of Bihar v. Kameshwar Prasad and Ors. SLJ 2000 (1) SC 478, Gursharan Singh and Ors v. NDMC and Ors. (1998) 2 SCC 459 , Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, . The Tribunal gave partial relief by directing that if the excess amount was paid by mistake, that should not be recovered from the petitioners.

12. For the reasons mentioned above, we are not in a position to grant any relief to the petitioners herein and find that the Tribunal was right in dismissing the application of the petitioners as it was without any merits.

13. These petitions are accordingly dismissed.