

(2014) 03 P&H CK 0122

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 5720-CAT of 2006 (O&M)

Rajeev Harit

APPELLANT

Vs

Central Administrative Tribunal

RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Citation : (2014) 3 SCT 265

Hon'ble Judges : Sanjay Kishan Kaul, C.J.; Arun Palli, J

Bench : Division Bench

Advocate : Manish Dadwal, Advocate for the Appellant; Gurpreet Singh, Standing Counsel, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Sanjay Kishan Kaul, C.J.—The petitioner sought direction for protection of his pay arising from his recruitment in IRS Service. His request was declined by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short "the Tribunal"), vide impugned order dated 25.01.2006. Learned counsel for the petitioner has drawn our attention to Annexure A-7 dated 01.07.1994, which is the order of protection of pay where the sole ground stated is that before such pay protection is made available, confirmation in the previous appointment is mandatory in view of FR 22B(1).

2. Learned counsel for the petitioner, during his arguments has not been able to substantiate the aforesaid plea of rejection but submits that it is FR 22(3) which would apply to the case of the petitioner and it is the subsequent Office Memorandum dated 14.02.2006, would play a role in determining the entitlement of the petitioner. The said Office Memorandum reads as under:

Office Memorandum

Subject: Fixation of pay in case of employees who seek transfer to a lower post under FR 15(a)-clarification regarding.

The undersigned is directed to state that according to the existing provisions of FR 22I(a)(3), a Government servant appointed/transferred to a lower post at his own request under FR 15(a), the maximum of the time scale of which is less than the pay drawn by him in the higher post held regularly, shall draw that maximum as his initial pay. It has been brought to the notice of this Department that this provision is being interpreted differently by different Ministries/Departments. The Staff Side has also demanded that a clarification is issued in this regard to bring about a uniform interpretation of this Rule.

2. The demand of the Staff Side has been examined in consultation with the Ministry of Finance and it is clarified that on transfer to the lower post/scale under FR 15(a), the pay of a Government servant holding a post on regular basis will be fixed at a stage equal to the pay drawn by him in the higher grade. If no such stage is available, the pay will be fixed at the stage next below the pay drawn by him in the higher post and the difference may be granted as personal pay to be absorbed in future increments. If the maximum of the pay scale of the lower post is less than the pay drawn by him in the higher post, his pay may be restricted to the maximum under FR 22(1)(a)(3).

3. Where transfer to a lower post is made subject to certain terms and conditions then the pay may be fixed according to such terms and conditions.

4. In so far as persons serving in the Indian Audit & Accounts Department are concerned, these order issue after consultation with the Comptroller & Auditor General of India.

5. These orders take effect from the date this O.M. Is issued. Past cases already decided need be reopened.

(Rita Mathur)

Deputy Secretary to the Government of India

3. The matter has been pending for some time and naturally there was no interim order. The Office Memorandum referred to as aforesaid has not been examined as the impugned order just precedes the office order. The petitioner has since been promoted and now occupies his promotional post. In view of the aforesaid facts and circumstances and taking into consideration the submissions of the learned counsel for the parties, it is considered appropriate that the petitioner may make a fresh representation taking into consideration the aforesaid material including the office memorandum dated 14.02.2006 and the respondents will bestow consideration under the same. We may note that the order of rejection does not deal with the aspect of the parity sought by the petitioner qua the case of one Dr. Navaljit Kapoor and the impugned order has brushed aside this aspect on account of failure to produce the factual matrix qua that case. This material would be within the domain of the respondents and, thus, this is also an aspect which ought to be taken into consideration by the respondents while passing a reasoned decision. The needful be done within a

period of two months of the representation being made. The impugned order would not thus come in the way of consideration of the fresh representation in terms of the aforesaid.

The petition accordingly stands disposed of.