(2017) 10 DEL CK 0422

In the Delhi High Court

Case No : Civil Writ Petition No. 9359, 9360, 9361, 9362 Of 2016

SI/GD Shambhoo APPELLANT

Vs

Union Of India And Ors RESPONDENT

Date of Decision : 11-10-2017

Acts Referred:

Central Civil Services (Revised Pay) Rules, 2008 — Rule 5, 6, 6(3), 7, 7(1)(A), 7(1)(A)(i), 7(1)(A)(ii)

Citation : (2017) 10 DEL CK 0422

Hon'ble Judges : Sanjiv Khanna, J;Navin Chawla, J

Bench : Division Bench

Advocate : Ankur Chhibber, Bhanu Gupta, Prasanta Varma

Final Decision : Allowed

Judgement

Sanjiv Khanna, J

1. In view the similarity of the legal issue involved, the aforestated writ petitions are being disposed of by the common judgment.

2. The petitioners were initially appointed as Constable (General Duty) in Central Reserve Police Force (CRPF).

3. Pursuant to decisions of Delhi High Court in W.P. (C) No. 4258/2013, Gaj Raj v. UOI & Ors. and W.P. (C) No. 6550/2013, Suraj Bhan v. UOI &

Ors, the petitioners were granted benefit of second financial upgradation under the Assured Career Progression Scheme (ACP scheme for short)

upon completion of 24 years of service, vide different orders passed in the year 2015. Financial upgradations as noticed below were granted from

different dates post 1st January, 2006 and before 29th August, 2008.

4. On 29th August, 2008, Central Civil Services (Revised Pay) Rules 2008 (2008 Rules for short) were enacted and became applicable with

retrospective effect from 1st January, 2006.

5. Rules 5, 6 and 7 of the 2008 Rules relate to the exercise of option by the Government Employment to whom 2008 Rules were applicable and read

as under:-

â??5. Drawal of pay in the revised pay structure â?

Save as otherwise provided in these rules, a Government servant shall draw pay in the revised pay structure applicable to the post to which he is

appointed;

Provided that a Government servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any

subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.

Provided further that in cases where a Government servant has been placed in a higher pay scale between 1.1.2006 and the date of notification of

these Rules on account of promotion, upgradation of pay scale etc., the Government servant may elect to switch over to the revised pay structure

from the date of such promotion, upgradation, etc.

EXPLANATION 1.- The option to retain the existing scale under the provisos to this rule shall be admissible only in respect of one existing scale.

EXPLANATION 2.- The aforesaid option shall not be admissible to any person appointed to a post on or after the 1st day of January, 2006, whether

for the first time in Government service or by transfer from another post and he shall be allowed pay only in the revised pay structure.

EXPLANATION 3. Where a Government servant exercises the option under the provisos to this rule to retain the existing scale in respect of a post

held by him in an officiating capacity on a regular basis for the purpose of regulation of pay in that scale under Fundamental Rule 22, or any other rule

or order applicable to that post, his substantive pay shall be substantive pay which he would have drawn had he retained the existing scale in respect

of the permanent post on which he holds a lien or would have held a lien had his lien not been suspended or the pay of the officiating post which has

acquired the character of substantive pay in accordance with any order for the time being in force, whichever is higher.

6. Exercise of option

(1) The option under the provisos to Rule 5 shall be exercised in writing in the form appended to the Second Schedule so as to reach the authority

mentioned in sub rule (2) within three months of the date of publication of these rules or where an existing scale has been revised by any order made

subsequent to that date, within three months of the date of such order.

Provided that â?

(i) in the case of a Government servant who is, on the date of such publication or, as the case may be, date of such order, out of India on leave or

deputation or foreign service or active service, the said option shall be exercised in writing so as to reach the said authority within three months of the

date of his taking charge of his post in India; and

(ii) where a Government servant is under suspension on the 1st day of January, 2006 , the option may be exercised within three months of the date of

his return to his duty if that date is later than the date prescribed in this sub-rule.

(2) The option shall be intimated by the Government servant to the Head of his Office.

(3) If the intimation regarding option is not received within the time mentioned in sub-rule (1) , the Government servant shall be deemed to have

elected to be governed by the revised pay structure with effect on and from the 1st day of January, 2006.

(4) The option once exercised shall be final. NOTE 1.- Persons whose services were terminated on or after the 1st January, 2006 and who could not

exercise the option within the prescribed time-limit, on account of discharge on the expiry of the sanctioned posts, resignation, dismissal or discharge or

disciplinary grounds, are entitled to the benefits of this rule.

NOTE 2.- Persons who have died on or after the 1st day of January, 2006 and could not exercise the option within the prescribed time limit are

deemed to have opted for the revised pay structure on and from the 1st day of January, 2006 or such later date as is most beneficial to their

dependents, if the revised pay structure is more favourable and in such cases, necessary action for payment of arrears should be taken by the Head of

Office.

NOTE 3. Persons who were on earned leave or any other leave on 1.1.2006 which entitled them to leave salary will be allowed the benefits of this rule.

7. Fixation of initial pay in the revised pay structure:

(1) The initial pay of a Government servant who elects, or is deemed to have elected under sub-rule (3) of rule 6 to be governed by the revised pay

structure on and from the 1st day of January, 2006, shall, unless in any case the President by special order otherwise directs, be fixed separately in

respect of his substantive pay in the permanent post on which he holds a lien or would have held a lien if it had not been suspended, and in respect of

his pay in the officiating post held by him, in the following manner, namely:-

(A) in the case of all employees:-

(i) the pay in the pay band/pay scale will be determined by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and rounding off the

resultant figure to the next multiple of 10.

(ii) if the minimum of the revised pay band/ pay scale is more than the amount arrived at as per (i) above, the pay shall be fixed at the minimum of the

revised pay band/ pay scale; Provided further that:-

Where, in the fixation of pay, the pay of Government servants drawing pay at two or more consecutive stages in an existing scale gets bunched, that is

to say, gets fixed in the revised pay structure at the same stage in the pay band, then, for every two stages so bunched, benefit of one increment shall

be given so as to avoid bunching of more than two stages in the revised running pay bands. For this purpose, the increment will be calculated on the

pay in the pay band. Grade pay would not be taken into account for the purpose of granting increments to alleviate bunching.

In the case of pay scales in Higher Administrative Grade (HAG) in the pay band PB-4, benefit of increments due to bunching shall be given taking

into account all the stages in different pay scales in this grade. In the case of HAG+ scale, benefit of one increment for every two stages in the pre-

revised scale will be granted in the revised pay scale.

If by stepping up of the pay as above, the pay of a Government servant gets fixed at a stage in the revised pay band/ pay scale (where applicable)

which is higher than the stage in the revised pay band 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.

(iii) The pay in the pay band will be determined in the above manner. In addition to the pay in the pay band, grade pay corresponding to the existing

scale will be payable.

Note - Illustration 1 on the above is provided in the Explanatory Memorandum to these Rules.

(B) In the case of employees who are in receipt of special pay/allowance in addition to pay in the existing scale which has been recommended for

replacement by a pay band and grade pay without any special pay/allowance, pay shall be fixed in the revised pay structure in accordance with the

provisions of clause (A) above.

(C) In the case of employees who are in receipt of special pay component with any other nomenclature in addition to pay in the existing scales, such

as personal pay for promoting small family norms, special pay to Parliament Assistants, Central (Deputation on Tenure) Allowance, etc., and in whose

case the same has been replaced in the revised pay structure with corresponding allowance/pay at the same rate or at a different rate, the pay in the

revised pay structure shall be fixed in accordance with the provisions of clause (A) above. In such cases, the allowance at the new rate as

recommended shall be drawn in addition to pay in the revised pay structure from the date specified in the individual notifications related to these

allowances.

(D) In the case of medical officers who are in receipt of non-practicing allowance, the pay in the revised pay structure shall be fixed in accordance

with the provisions of clause (A) above except that, in such cases, the pre-revised dearness allowance appropriate to the non-practicing allowance

admissible at index average 536 (1982 = 100) shall be added while fixing the pay in the revised pay band, and in such cases, non-practicing allowance

at the new rates shall be drawn with effect from 1.1.2006 or the date of option for revised pay structure, in addition to the pay so fixed in the revised

pay structure. Illustration 2 in this regard is at in the Explanatory Memorandum to these Rules.â??

6. The first proviso to Rule 5 of the 2008 Rules stipulates that a Government servant may elect to continue to draw pay in the existing pay-scale until

the date on which the next or subsequent increment in the existing scale is earned or till he vacates his post or ceases to draw pay in that scale. The

second proviso stipulates that a Government servant placed in the higher pay-scale on account of promotion, upgradation of pay etc. between 1st

January, 2006 and the date of notification of the 2008 Rules on 29th August, 2008, he would be given an option to elect to switch over to the revised

pay structure from the date of promotion, upgradation etc.

7. Rule 6 relates to exercise of option under the proviso to Rule 5, which is to be exercised in writing in the form appended to the Second Schedule so

as to reach the authority within three months of the publication of the 2008 Rules or where the existing scale has been revised by an order

subsequently, within three months from the date of such order. The option has to be made by the Government servant to the Head Office. The first

proviso relates to cases where a Government servant was on leave or deputation or on Foreign Service. In these cases, the option has to reach the

authorities within three months from the date of return to duty. The second proviso relates to Government servants, who are under suspension on the

1st day of January, 2006.

8. Sub Rule (3) to Rule 6 states that where intimation with regard to option is not received within three months from the date of publication of the 2008

Rules, the Government servant shall be deemed to have elected to be governed by the revised pay structure with effect and from the 1st day of

January, 2006. Sub Rule (4) states that the option once exercised would be final. This right to exercise option was later extended up to 31st

December, 2010 and then to 31st March, 2013 by issue of notifications.

9. Rule 7 relates to fixation of initial pay in the revised pay structure and states that the initial pay of a Government servant, who elects or is deemed to

have elected option under sub-rule (3) to Rule 6 would be governed by the revised pay structure under the 2008 Rules with effect 1st January, 2006,

unless the President by a special order or otherwise directs that his pay will be fixed separately. Clause (i) to Sub-Rule 7(1)(A) states that the pay

band/pay-scale would be determined by applying the multiplier/factor of 1.86 to the existing basic pay as on 31st December, 2005 and rounding off the

resultant figure to the next multiple of 10. Clause (ii) states that where the minimum of the revised pay band/pay-scale is more than the amount arrived

at by applying the aforesaid multiplier, the pay would be fixed at the minimum of the revised pay band/pay-scale. We need not refer to the other

portions of Rule 7.

10. Respondents submit that the petitioners had failed to exercise option under Rule 6 of the 2008 Rules up to 31st March, 2013. The aforesaid

submission obviously has to be rejected, for the petitioners were granted benefit of second financial upgradation with retrospective effect from 2007 in

the year 2015. Therefore, the petitioners would not have exercised the option on or before 31st March, 2013. Possibly, the petitioners should have

been asked and were required to exercise the option within three months of the order passed in the year 2015, granting them second financial

upgradations with retrospective effect. However, the said stand and stance has not been taken by the respondents. The respondents do not interpret

and read the 2008 Rules in this manner.

11. It is the case of the petitioners that the respondents upon grant of second financial upgradation had applied clause (i) to Rule 7(1)(A) i.e. they had

fixed the pay of the petitioners in Pay Band/Basic Pay upon second financial upgradation in 2007 by applying the multiplier/factor of 1.86 and rounding

off the resultant figure to the next multiple of 10. This was done as the amount arrived at by applying the multiplier/factor was higher than the

minimum of the pay-scale in the revised pay band plus grade pay.

12. The respondents had accordingly in the cases of Shambhoo Lal, who was granted second financial upgradation with effect from 10th June, 2007,

fixed the revised pay under the 2008 Rules at Rs.10,230/-plus Grade Pay Rs.4200/-. The figure of Rs.10,230/- was calculated by applying the existing

basic pay as on 31st December, 2005 by multiplier of 1.86 and rounding of the resultant figure to the next multiple of 10. The aforesaid figure was

higher than the figure under clause (ii) to Rule 7(1)(A) i.e. Rs.9300/- plus Rs.4200/-.

13. Case of Mundrika Shah is almost identical as he was granted second financial upgradation under the ACP Scheme with effect from July, 2007

vide order dated 5th January, 2015. In the case of Gaffar Khan, he was granted second financial upgradation with effect from 27th January, 2006 vide

order dated 28th February, 2015. In the case of Rajinder Singh, second financial upgradation was granted with effect from 31st July, 2007 vide order

dated 21st January, 2015.

14. The respondents after having granted the said benefit, vide impugned orders have recalled the said benefit and have re-computed the

petitionersâ?? pay on grant of second financial upgradation under clause (ii) to Rule 7(1)(A) i.e. at the scale of minimum of the pay band plus grade

pay i.e. Rs.9300 plus Rs.4200/-. In other words, the petitioners have been denied benefit of fixation of pay under clause (i) to Rule 7(1)(A) of the 2008

Rules.

15. We have already interpreted the two clauses of Rule 7(1)(A) of the 2008 Rules and do not find that the stand of the respondents is correct.

Noticeably, the petitioners have been granted benefit of second financial upgradation under the ACP Scheme on the specified dates in 2007 with

retrospective effect vide orders passed in 2015. The petitioners herein could not have exercised the option under the first proviso to Rule 5 to be

governed by the existing pay-scales and not to be governed by the revised pay-scales under the 2008 Rules on or before 31st March, 2013. But for the

said position, the respondents accepts that the petitioners were entitled to benefit of fixation of revised pay under clause (i) to Rule 7(1)(A) of the 2008

Rules. Of course, this would mean that the petitioners would have to refund the pay-scales received by them under the 2008 Rules from 1st January,

2006 till the grant of second financial upgradation. This would be necessary as the petitioners themselves are stating that they would be covered under

the existing pay-scales i.e. pay-scales before the implementation of the 2008 Rules till grant of second financial upgradation. It is open to the

respondents to carry out the said exercise and make adjustment if they deem appropriate and proper.

16. The respondents, it is appears that have rectified and granted benefit of clause (i) to Rule 7(1)(A) of the 2008 Rules in some cases. For example,

in the case of Harkesh Tyagi, W.P. (C) No.341/2017, the respondents have granted benefit of exercise of option, though he was granted second

financial upgradation with retrospective effect from 21st March, 2007 vide order dated 21st March, 2015.

17. Recording the aforesaid, the writ petitions are allowed and the impugned orders dated 12th February, 2016 and 30th October, 2015 in the case of

Shambhoo, order dated 5th January, 2015 in the case of Mundrika Shah, orders dated 30th April, 2016 and 28th February, 2015 in the case of Gaffar

Khan and order dated 1st June, 2016 in the case of Rajinder Singh are set aside. The petitioners, it is held, would be given benefit of clause (i) to Rule

7 (1) (A) of the 2008 Rules, wherever it is more beneficial. Liberty recorded in paragraph 15 is also granted.

18. Directions given above would be complied within four months from the date a copy of this order is received. In case there is delay beyond the said

period, the respondents would pay interest @ 8% per annum from the date of this order till payment is made. No costs.

Dasti.

