

(2023) 01 KL CK 0045

In the High Court Of Kerala

Case No : Original Petition (CAT) NO. 38 Of 2021

Union Of India

APPELLANT

Vs

All India Naval Clerks Assosication

RESPONDENT

Date of Decision : 05-01-2023

Acts Referred:

Civilians in Defence Services (Revised Pay) Rules, 2008 — Section 5, 7, 7(1)(a)(i), 9, 13

Citation : (2023) 01 KL CK 0045

Hon'ble Judges : A.K. Jayasankaran Nambiar, J; Mohammed Nias C.P., J

Bench : Division Bench

Advocate : P.Vijayakumar, S.Radhakrishnan, S.Rajmohan, R.Anjali, Aditya Thejus Krishnan

Final Decision : Dismissed

Judgement

Mohammed Nias.C.P., J.

1. The Union of India and its officials have filed this original petition aggrieved by the order passed by the Central Administrative Tribunal (CAT), Ernakulam Bench in OA No.180/00663/2015 dated 14.11.2019 in the original application filed by the respondents inter alia for a declaration that they are entitled to get their higher grade fixed as per Rule 13 of the Civilians in Defence Services (Revised Pay) Rules, 2008 (hereinafter referred to as 'the Rules 2008') by reckoning the minimum of the revised pay scale implemented with effect from 01.01.2006 as their upgradation was long after 10.01.2006 and also to re-fix the pay of the applicants and for consequential benefits.

2. The applicants contended that they are entitled to get their pay fixed, on financial upgradation of the ACP benefits, under Rule 13 of the CDS (RP) Rules, 2008 by reckoning Rs.6500-10500 as their revised pay scale as their financial upgradation under the ACP scheme was on different dates between 01.01.2006 and 29.08.2008 to the grade of Assistants in the pre-revised scale of pay of Rs.5000-8000. The issue of reckoning the revised pay scale of the respondents is

covered by our judgment in OP(CAT)Nos.179 of 2018 & 52 of 2019 dated 04.01.2023. The issue as to how the pay of the applicant who were granted ACP benefits after 01.01.2006 and before 29.8.2008 ought to be fixed is answered by the Rules itself namely, Rule 13. The relevant Rules applicable are extracted hereunder:-

"5. Drawal of pay in the revised pay structure – 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.

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13. Fixation of pay on promotion on or after 1.1.2006.- In the case of promotion from one grade pay to another in the revised pay structure, the fixation will be done as follows:-

(i) 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.

(ii) In the case of promotion from PB-4 to HAG+, after adding one increment in the manner prescribed in Rule 9, the pay in the pay band and existing grade pay will be added and the resultant figure will become the basic pay in HAG+. This shall not exceed Rs.80,000, the maximum of the scale. For Government servants in receipt of NPA, pay plus NPA will not exceed Rs.85,000."

Rule 13 applies on promotion from one grade to another and also on financial upgradation under ACP as is clarified by the Government of India, Ministry of Finance OM dated 13.9.2008 Since we have already held that for the purposes of Rule 7(1)(a)(i) the pay in the pay band has to be determined by multiplying the existing scale as on 01.01.2006 by 1.86 and the existing scale should be reckoned by considering the merger of pay scales made effective from 1.1.2006,

Rule 13 has also to be interpreted accordingly. Thus, the petitioners are to be placed in PB - 2 of Rs.9300-34800 with grade pay of Rs.4200/- with effect from 01.01.2006 and then to calculate the 3% increment under Rule 9 and to add the same to be paid in the pay band as per Rule 13.

3. The petitioners however contend that Rule 13 will apply only on promotion. The said argument is straight away to be rejected on the basis of Rules 5 and 13 quoted above as well as the Office Memorandum dated 13.9.2008, which is produced as Annexure A5(a) before the Tribunal. We find that the Tribunal has correctly construed the same after interpreting Rules 5,7 and 13 of the CDS (RP) Rules, 2008, and held that the applicants are entitled to get their pay fixed as per Rule 13. The issue of fixation of revised pay scale has already been dealt with by us in our judgment in OP(CAT)Nos.179 of 2018 and 52 of 2019. Accordingly, we hold that no interference is warranted with the order of the Tribunal dated 14.11.2019 in OA No.180/00663/2015.

The Original Petition(CAT) fails and is accordingly dismissed.