

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on : April 01, 2013*
Judgment Pronounced on : April 10, 2013

+ **WP(C) 5425/2011**

GOVT. OF NCT OF DELHI & ORS. Petitioners
Represented by: Ms.Avnish Ahlawat, Ms.Latika
Chaudhary and Mr.Vaibhav
Mishra, Advocates.

versus

JASBIR SAINI Respondent
Represented by: Ms.Reeta Kaul, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. A case of imperfect pleadings has resulted in an inchoate order being passed without even highlighting what was the issue which required adjudication. Both, the petitioners as also the respondent are responsible for the same.

2. As per respondent's claim pleaded in OA No.458/2010, she was a direct recruited librarian in the Directorate of Education and was drawing salary in the pay scale ₹1400 - 2600 which was the scale recommended by the 4th Central Pay Commission. Increment was due to her on the first day of February each year and thus her basic pay which was ₹1,900/- per month as of February 01, 1995 was enhanced to ₹1,950/- per month as on February 01, 1996. Her case was that she became

entitled to be placed in the senior scale of ₹1640 - 2900 (the date has not been plead with effect wherefrom respondent was to be placed in the senior scale). She claims that in February 01, 1997 she was given the next increment after she was placed in the senior scale and her basic salary was fixed at ₹2,060/-.

3. Respondent claims that the 5th Central Pay Commission Recommendations were implemented somewhere in the year 1998 but with retrospective effect from January 01, 1996 and the replacement pay scale of ₹1400 - 2600 was ₹5500 - 9000 and that of the pay scale of ₹1640 - 2900 was ₹6500 - 10500. Her grievance was that whereas Shri S.S.Malik, Ms.Suman Gupta and Mr.A.K.Gupta, her colleagues, were given basic pay of ₹6,900/- her basic pay was fixed at ₹6,500/- when the recommendations of the 6th Pay Commission were implemented. She pleaded that whereas she was entitled to two increments with effect from February 09, 1996 in the pay scale ₹6500 - 200 - 10500, she was given none. She claims that her colleagues were given two increments.

4. The lacuna in the pleading is that the respondent has not pleaded as to why she was entitled to two increments. But it appears that basis of her claim for two increments was one step up of pay on being placed in the senior scale and the other being the annual increment due to her. The response in the counter affidavit filed to the original application is one worse. In a short and a cryptic two page reply it is pleaded that the claim was time barred. Without justifying as to on what basis respondent's basic pay was fixed at ₹6,500/-, dealing with the plea of discrimination vis-a-vis Shri S.S.Malik, Ms.Suman Gupta and Mr.A.K.Gupta it is pleaded that the same required rectification qua salary of said three persons and not that the salary of the respondent be fixed accordingly.

5. Regretfully, the Central Administrative Tribunal did not call upon the parties to clarify their respective stands by seeking additional information. The result is an unintelligible decision granting relief to the respondent.

6. Let us begin by understanding the jural basis for the dispute. We shall have to go back to the year 1996 when FR-22(I)(a)(1) was in the statute book. The mandate of said provision of law was that upon promotion the pay of a Government servant shall be fixed in the initial pay scale in the time scale of the higher post at a stage next above the notional pay arrived at by increasing the pay in respect of the lower post held. Thus, an issue would have arisen: Whether placement of respondent in the senior scale amounted to a promotion for the reason, since the respondent is claiming benefit of two increments by February 01, 1996: one on account of her alleged promotion and the other on account of the increment due with effect from February each year, it was the duty of the Tribunal to have gone into said issue. FR-22(I)(a)(1) reads as under:-

“F.R. 22. (I) The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows:-

(a) (1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower

post held by him regularly by an increment at the stage at which such pay has accrued or whichever is more.

Save in cases of appointment on deputation to an ex cadre post, or to a post on ad hoc basis or on directed recruitment basis the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment:

Provided that where a Government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time-scale of the lower post or whichever is more.”

7. Secondly, the Government of India instructions dated February 08, 1983 vide OM No.F.13/26/82/Estt. (P-1) clearly envisage that upon promotion, the promotion order would indicate to the Government servant to have the pay fixed either under FR-22 from the date of such promotion or have the pay fixed initially at the stage on a time scale of the new post above the pay in the lower grade from which the Government servant is promoted and that the promotion order should

so indicate to the Government servant to enable the option to be exercised within one month.

8. The pleadings in the original application and the reply filed does not indicate whether the respondent had exercised any such option or whether she was called upon to exercise such option.

9. The inchoate pleadings compel us to set aside the impugned order dated November 24, 2010. We restore OA No.458/2010 with a direction to the Tribunal to require both parties to submit their calculations pertaining to the respective claim asserted by both sides qua respondent's salary being fixed with effect from January 01, 1996 after the recommendations of the 5th Central Pay Commission were implemented. The Tribunal would call for the records of the petitioner to see whether the respondent was ever given an option as envisaged by law, and to which option we have made a reference hereinabove. If required, parties shall be permitted to file supplementary pleadings. The matter would be re-adjudicated thereafter.

10. Parties shall appear before the Registrar of the Tribunal on May 06, 2013 who shall list OA No.458/2010 before an appropriate Bench as per roster.

11. No costs.

12. DASTI.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

APRIL 10, 2013
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