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

+ W.P.(C) 8058/2015 & CM 16635/2015 (stay)

UNION OF INDIA & ORS.

..... Petitioner
Through Mr Jagjit Singh, Sr. Counsel with Mr Ashok Singh, Advs.

versus

MALBIKA DEB GUPTA

..... Respondent
Through Mr A.K. Trivedi, Mr Vaibhav Trivedi and Mr Abhishek Trivedi, Advs.

+ W.P.(C) 8060/2015 & CM 16640/2015 (stay)

UNION OF INDIA & ORS.

..... Petitioner
Through Mr Jagjit Singh, Sr. Counsel with Mr Ashok Singh, Advs.

versus

GEETA RANI

..... Respondent
Through Mr A.K. Trivedi, Mr Vaibhav Trivedi and Mr Abhishek Trivedi, Advs.

+ W.P.(C) 8333/2015 & CM 17635/2015 (stay)

UNION OF INDIA & ORS

..... Petitioner
Through Mr Jagjit Singh, Sr. Counsel with Mr Ashok Singh, Advs.

versus

MEENU VERMA

..... Respondent
Through Mr A.K. Trivedi, Mr Vaibhav Trivedi and Mr Abhishek Trivedi, Advs.

+ W.P.(C) 1096/2015

THE DIRECTOR GENERAL ESIC & ORS.

..... Petitioner
Through Ms Sonam Anand, Adv.

versus

SHEEJA SANTOSH & ORS.

..... Respondent
Through Mr Padma Kumar, Sr. Adv. with Mr Krishna Kumar Mishra and Salik Ghai, Advs.

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W.P.(C) 8058/2015 & Connected matters

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CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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04.11.2016

The aforesaid four writ petitions impugning different orders of the Central Administrative Tribunal raise a common legal issue and are, therefore being disposed of by this common order.

2. The names of the respondents who were original applicants before the Tribunal along with the details of the respective OAs filed by them and the date of the impugned orders of the Tribunal therein, have been reproduced in the table below:-

S.No.	Name of the original applicants	OA No.	Date of impugned order
1.	Mrs Malbika Deb Gupta	98/2014	27.03.2015
2.	Smt Geeta Rani	107/2014	27.03.2015
3.	Mrs. Meenu Verma	111/2014	27.03.2015
4.	Sheeja Santosh	3679/2012	07.05.2014
5.	Ramyamol Anil	3679/2012	07.05.2014
6.	Surna Sunil	3679/2012	07.05.2014
7.	Navlen Guria	3679/2012	07.05.2014
8.	Tresa John	3679/2012	07.05.2014
9.	Bina Varghese	3679/2012	07.05.2014
10.	Shanti Mathew	3679/2012	07.05.2014
11.	Reni James	3679/2012	07.05.2014
12.	Carolyn Kaviraj	3679/2012	07.05.2014
13.	Juliet Gibi	3679/2012	07.05.2014
14.	Jayamol Jacob	3679/2012	07.05.2014
15.	Sarala Rani	3679/2012	07.05.2014
16.	Vijibiju	3679/2012	07.05.2014

17.	Rajni	3679/2012	07.05.2014
18.	Ginu Paul	3679/2012	07.05.2014
19.	Elsamma Shaji	3679/2012	07.05.2014
20.	Joemol Renji	3679/2012	07.05.2014
21.	Seema Chaudhary	3679/2012	07.05.2014
22.	Bindhu Shibu	3679/2012	07.05.2014
23.	Pooja Maitre	3679/2012	07.05.2014
24.	Leela Adhikari	3679/2012	07.05.2014
25.	Nirmala Peter	3679/2012	07.05.2014
26.	Sajitha Shaji	3679/2012	07.05.2014
27.	Sathi Santosh	3679/2012	07.05.2014
28.	Gincy Sebi	3679/2012	07.05.2014
29.	Selin Alex	3679/2012	07.05.2014
30.	Sherly John	3679/2012	07.05.2014
31.	Suma Pandit	3679/2012	07.05.2014
32.	Silvia Babu	3679/2012	07.05.2014
33.	Neelam Singh	3679/2012	07.05.2014
34.	Bincy Philip	3679/2012	07.05.2014
35.	Ancy Reji	3679/2012	07.05.2014
36.	Binny Suraj	3679/2012	07.05.2014
37.	Nirmala Sagi	3679/2012	07.05.2014
38.	Asha Joshi	3679/2012	07.05.2014
39.	Jessy George	3679/2012	07.05.2014
40.	Omana Venu	3679/2012	07.05.2014
41.	Sadhna Sudhakar Meshram	3679/2012	07.05.2014
42.	Pushpa Vinod	3679/2012	07.05.2014
43.	Sheejamol Santosh	3679/2012	07.05.2014
44.	Sandhya Jayesh	3679/2012	07.05.2014
45.	Reena Benny	3679/2012	07.05.2014

46.	Shimmy Thomas	3679/2012	07.05.2014
47.	Rajani Shaji	3679/2012	07.05.2014
48.	Manju Shaji	3679/2012	07.05.2014
49.	Amita Kindo	3679/2012	07.05.2014
50.	Kuldeep Kaur	3679/2012	07.05.2014
51.	Rachna	3679/2012	07.05.2014
52.	Anupama Toppo	3679/2012	07.05.2014
53.	Jyoti Puri	3679/2012	07.05.2014
54.	Sunita Rani	3679/2012	07.05.2014
55.	Elizabeth Muriel	3679/2012	07.05.2014
56.	Dolly Johnson	3679/2012	07.05.2014
57.	Resmi Minu	3679/2012	07.05.2014
58.	Rose Mary Bijoy	3679/2012	07.05.2014
59.	Jeena George	3679/2012	07.05.2014
60.	Jini Siju	3679/2012	07.05.2014
61.	Ambili Vinu	3679/2012	07.05.2014
62.	Bindu Harikumar	3679/2012	07.05.2014
63.	Mini Benny	3679/2012	07.05.2014
64.	Bini Benny Thomas	3679/2012	07.05.2014
65.	Annamma Daniel	3679/2012	07.05.2014
66.	Mary Reena Mathew	3679/2012	07.05.2014
67.	Aneyamma James	3679/2012	07.05.2014
68.	Annamma L.	3679/2012	07.05.2014
69.	Sheeja Boban	3679/2012	07.05.2014
70.	Jayamol Shiju	3679/2012	07.05.2014
71.	Sheena Suresh	3679/2012	07.05.2014

3. The respondents before us were appointed as direct recruits to the post of Staff Nurses and subsequently promoted as Nursing Sisters. Prior to

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1.1.2006, the pay scale for Staff Nurses was Rs. 5000-8000 and Rs. 5500-9000 for Nursing Sisters. As per the CCS (Revised Pay) Rules, 2008 the pay scale was upgraded to Rs. 7450-11,500. Consequently, the petitioners were placed in the grade post S-13 with the Pay band, Rs. 9300-34,800 and grade pay of Rs. 4600/-.

4. The issue raised in these writ petitions filed by the Union of India pertains to interpretation of Rule 7A of the CCS (Revised Pay) Rules, 2008 ('the 2008 Rules' for short) and the Note-2A. For the sake of convenience, we would reproduce Rule 7A and Note-2A as under:

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

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 following 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 01.01.2006 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:*

xxx

Note 2A: Where a post has been upgraded as a result of the recommendations of the Sixth CPC as indicated in Part B of Part C of the First Schedule to these Rules, the fixation of pay in the applicable pay band will be done in the manner prescribed in accordance with Clause (A) (i) and (ii) of Rule 7 by multiplying the existing basic pay as on 01.01.2006 by a factor of 1.86 and rounding the resultant figure in the next multiple of ten. The grade pay corresponding to the upgraded scale as indicated in Column 6 of Part B or C will be payable in addition. Illustration 4A in this regard is in the explanatory Memorandum in these Rules."

5. In the case of the petitioners – Northern Railways, the applicable Rules are known as Railway Service Revised Rules, 2008. It is, however,

accepted by the parties that the Rule 7 and Note 2A of the said rules are identical.

6. Rule 7A clause (i) postulates for computation of the revised pay by multiplication of the existing basic pay as on 01.01.2006 by a factor of 1.86 and rounding the resultant figure to the next multiple of ten. Thus the existing pay scales are to be multiplied by a factor of 1.86 and would be rounded off as indicated. However, clause (ii) thereof stipulates that where minimum revised pay scale is more than the amount arrived at as per clause (i), the pay will be fixed at the minimum of the revised basic pay / pay scale. The clause (ii) refers to the pay scale and grade pay as applicable on enforcement of the Revised Pay Rules, 2008. In case the minimum revised pay scale under the Revised Pay Rules, 2008 is more than the figure arrived at under clause (i) of Rule 7A, clause (ii) would be applicable.

7. The contention of the petitioners is that Rule 7A (ii) will not apply when Note 2A is applicable. We do not agree with the said argument. Note 2A does not contradict the said Rule 7A or carve out an exception overriding the mandate of Rule 7A. The note stipulates that for posts upgraded as indicated in Part B and C of the First Schedule of the Rules, the fixation of pay will be done in the manner provided in clauses (i) and (ii) of Rule 7A by multiplication of the pay scale as existing on 01.01.2006 by a factor of 1.86 and rounding of.. Note 2A, in effect, makes reference to clause (i) of Rule 7 Clause A and is identically worded as clause (i) to Rule 7A. This does not mean that clause (ii) to Rule 7A would not be applicable. If this was the intent and purpose of Note 2A, the Note would have been differently worded. In simple and plain words, it would have been stated that clause (ii) would not be applicable till first direct recruits were appointed or first

promotions post 1st January, 2006 were made. Reference to clause (ii) of Rule 7A would not have been made in this manner. Rule 7A and Note 2A are to be construed and interpreted harmoniously so as to make them consistent to avoid any conflict.

8. The argument of the petitioner ignores and contradicts the second and third sentence of Note 2A. The second and the third sentence in Note 2A state that the grade pay in the upgraded scale as indicated in Column 6 of Part B or C will be payable in addition and illustration 4A is the applicable illustration. Section II of Part B of the 1st Schedule in Column 6 refers to the corresponding grade pay applicable in the pay band. The earlier columns of the table in section II refer to the present scale, i.e., the pay scale as was applicable prior to 1.1.2006, and the pay scale granted consequent to the merger of the posts, and then states the corresponding or equivalent Pay band and grade pay applicable with reference to the revised pay scale.

9. Illustration 4A is as under:-

"Illustration 4A: Pay fixation in cases where posts have been upgraded e.g. posts in prerevised pay scale of Rs.3050-75-3950-80-4590 to Rs.3200-85-4900 scale

1. Existing Scale of Pay Rs.3050-4590 (Corresponding Grade Pay Rs.1900)

2. Pay Band applicable PB-1 Rs.5200-20200

3. Upgraded to the Scale of Pay Rs.3200-4900 (Corresponding Grade Pay Rs.2000)

4. Existing basic pay as on 1.1.2006 Rs.3125

5. Pay after multiplication by a factor of 1.86 Rs.5813 (Rounded off to Rs.5820)

6. Pay in the Pay Band PB-2 Rs.5820

7. Pay in the pay band after including benefit of bunching in the pre-revised scale of Rs.3050-4590, if admissible Rs.6060

8. Grade Pay attached to the scale of Rs.2000 Rs.3200-4900

9. Revised basic pay - total of pay in the pay band and grade pay Rs.8060"

The illustration refers to the computation of pay under both Rule 7A clause(i) and clause (ii).

10. Even otherwise, the interpretation propounded by the Union of India is incoherent and leads to absurdity. A new direct recruit, when appointed, is to be paid in the pay scale as per the 2008 Rules. He would be entitled the minimum of the pay band plus applicable grade pay. His pay would be computed as per Rule 7A Clause (ii) of the Rules. However, employees on the same post prior to 1.1.2006 would not get the benefit of clause (ii) to Rule 7A and would have to wait till a junior is appointed to the same post after 1.1.2006. Thus, when the appointments are delayed, or not made, the benefit of the new pay scales under Part B and C would be delayed or even denied. Consequently, the contention of the petitioners that the respondents would be entitled to benefit of Rule 7A Sub Clause (ii) only from the date when the junior is appointed to the said post by way of direct recruitment or by way of promotion is fallacious and has to be rejected. The aforesaid argument is to cover up the anomaly which is being created as a result of their misinterpretation of Rule 7A (ii) and Note 2A.

11. One cannot accept that the same post can have two different pay scales, one for existing employees performing the same tasks and doing the same work on the ground that they were appointed or have been functioning on the said post prior to 1.1.2006, whereas a person appointed later in point of time would get the higher pay scale. Logically and as sequitor, the argument of the Union of India that where new appointments or promotions

were made, the employees working on the posts would immediately get the benefit of pay under Rule 7A Clause (ii) is wrong and fallacious. The principle of upgradation of pay of the senior on the junior getting a higher pay scale is applicable in certain situations. Note 2A does not prescribe and record any such precept.

12. Fixation of pay pursuant to the 2008 Rules is a right. This right cannot be defeated and postponed. It is not subject to the principle of stepping up of pay of the senior when the junior gets a higher pay. The decision of the High Court of Delhi in ***Dharmendra Yadav v Union of India & Ors.***, 2016 (5) SLR 644 (Delhi) is well reasoned and detailed. Similarly, the judgment dated 18.07.2016 passed in W.P.(C) No.10071/2015, ***Ram Niwas v. Union of India.*** referring to the decision in ***Dharmendra Yadav*** (supra) takes an identical view.

13. During the course of arguments, learned counsel for the petitioners has submitted that the respondents had made a prayer that the multiplier of 1.86 should be applied to the upgraded grade pay or pay scale. Counsel for the respondents on instructions have uniformly stated that they are not pressing or raising the said contention. We take the said statement on record to avoid and clear any doubt.

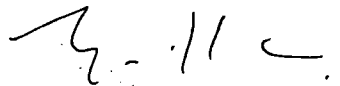
14. Resultantly, the writ petitions are dismissed with the observation that the petitioners will pay to the respondents the minimum computation under clause (i) to clause (A) to Rule 7 and then compute the minimum pay applicable with reference to the pay band plus grade pay applicable to the revised pay scales as mentioned in section II of Part B of the First Schedule to the 2008 Rules. If the net resultant figure as per clause (ii) to Rule 7A is higher, then the respondents would be entitled to benefit of sub-clause (ii) to

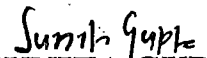
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Rule 7 Clause (A) of the 2008 Rules.

15. This order will be implemented within 2 months from the date on which a copy of the order is received by the petitioners.

16. Pending CMs are also disposed of. No orders as to costs.


SANJIV KHANNA, J


SUNITA GUPTA, J

NOVEMBER 04, 2016

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