

GAHC030003892023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/89/2023

Rochhara Chhangte, Inspector(AB), 2nd IR Battalion
Khawzawl, Mizoram

VERSUS

The State of Mizoram and 4 Ors.
R/b the Chief Secretary to the Govt. of Mizoram, Aizawl 2:The Secretary to the
Govt. of Mizoram
Home Dept.
Govt. of Mizoram

3:The Secretary to the Govt. of Mizoram
Finance Dept.
Govt. of Mizoram

4:The Director General of Police
Govt. of Mizoram

5:The Chief Controller of Accounts
Accounts and Treasuries Dept.
Govt. of Mizora

Advocate for the Petitioner : Mr A.R. Malhotra

Advocate for the Respondent : Addl. AG/GA, Mizoram for R1 - 5

:: B E F O R E ::

THE HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : 23.09.2024

Date of Judgment : 17.10.2024

J U D G M E N T & O R D E R (CAV)

Heard Mr. A.R. Malhotra, learned counsel for the petitioner and Mr. Samuel Vanlalhriata Chhangte, learned Addl. Advocate General for the respondents.

[2.] By filing the instant writ petition, the petitioner has made the following prayer:-

“In the premises it is most humbly prayed that your Lordships may graciously be pleased to admit this petition, call for the records and issue rule calling upon the Respondents to show cause as to why the impugned Pay Slip dt.19/8/2022 (Annexure - 4) reducing the basic pay of the Petitioner from Rs.57,400/- p.m to Rs.55,200/- p.m alongwith the impugned Letter No.G.12014/14/2016FIN(PRU) dt.17/2/2022 (Annexure - 6), impugned Letter No. G.12014/14/2016-FIN(PRU) dt.9/3/2022 (Annexure-8) and the impugned Letter No.G.12014/14/2016-FIN(PRU) dt.13/4/2022 (Annexure - 10) shall not be set aside and quashed and after hearing the parties be further pleased to make the rule absolute by protecting the basic pay of Rs.57,400/- p.m of the Petitioner in accordance

with his Last Pay Certificate (Annexure-3) and directing the Respondents to re-fix the basic pay of the Petitioner on his promotion to the rank of Inspector on 9/5/2022 and to pass any other order(s) as your Lordships' may deem fit and proper."

[3.] The basic grievance of the petitioner, who is currently working as Inspector of Police under the Government of Mizoram is that he on being promoted to the said post, his Basic Pay has been reduced to Rs. 55,200/- while he was getting a Basic Pay of Rs. 57,400/- in the post of Sub-Inspector of Police before his promotion. According to the State respondents, there was a mistake committed in the fixation of his pay in the lower post while applying the Mizoram (Revision of Pay) Rules, 2010 (Revision of Pay Rules, 2010). Therefore, on his promotion to the post of Inspector of Police, the same was rectified and the petitioner cannot have any grievance since the Revision of Pay Rules, 2010 is equally applicable to all Government Servants.

[4.] Mr. A.R. Malhotra, learned counsel submits that the State respondents have applied Table-2 of Rule 15 of the Revision of Pay Rules, 2010 in respect of direct recruits while Rule 13 of the same Rules is applied for promotees. He submits that Table-2 of Rule 15 provides for readymade calculation of Grade Pay and pay in the Pay Band while Rule 13 requires some calculation as provided in the said Rule. He submits that at the time of promotion of the petitioner to the rank of Sub-Inspector

of Police on 26.09.2008, his pay as per Rule 13 of the Revision of Pay Rules, 2010 compared to the pay of directly recruited Sub-Inspectors as per Table-2 of Rule 15 was much lower. Due to this, the then DDA in the Police Headquarters in consultation with the respondent No. 5 had fixed the Pay Band of the petitioner in PB-2 (9,300 - 34,800) by fixing his pay as $GP\ 4400 + 10520 = 14920$ in accordance with Table-2 of Rule 15 of the Revision of Pay Rules, 2010. That the petitioner has been enjoying the said Pay Band of Scale of Pay since then till it was revised by giving him a lower Basic Pay on his promotion to the post of Inspector of Police. He submits that the same was also done without issuance of any prior notice to the petitioner and thereby violating the principles of natural justice.

[5.] Mr. A.R. Malhotra, learned counsel submits that a similar case arose for consideration by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A No. 3217/2014 (*Somvir Rana & 12 Ors. Vs. Govt. of NCT of Delhi & 3 Ors.*). The substantive question before the Tribunal was whether the direct recruits who have been appointed prior to 01.01.2006 can be placed at a lower Pay Scale than those direct recruits who were appointed after 01.01.2006. The Tribunal concluded that the respondents should ensure that the pay of no incumbent in the post of PST, TGT and PGT appointed prior to 01.01.2006 is fixed lower than the pay could be drawn by the fresh appointee of the post as on 01.01.2006. The decision of the Tribunal was challenged before the High Court of Delhi by filing WP(C) No.

2634/2017 by the Govt. of NCT of Delhi & Anr. The Delhi High Court vide its Order dated 23.03.2017 held that the same post with identical duties and responsibilities, ex-facie cannot have two different pay scales, one for the promotees and the other for direct recruits as it violates the principle of "equal pay for equal work". The writ petition was accordingly dismissed by the High Court.

[6.] On further appeal by the Govt. of NCT of Delhi before the Apex Court, the same was also dismissed vide Order dated 01.09.2017 with an observation that once the question, in principle, has been settled, it is only appropriate on the part of the Govt. of India to issue a Circular so that it will save the time of the Court and the Administrative Departments apart from avoiding unnecessary and unavoidable expenditure. Accordingly, the Govt. of India was directed to immediately look into the matter and issue appropriate orders for granting of pay scale. As was directed, the Govt. of India, Ministry of Finance, Department of Expenditure came up with an Office Memorandum dated 28.09.2018 providing as follows:-

"Accordingly, the President is pleased to decide that in respect of those posts where entry pay for direct recruits appointed on or after 1.1.2006, as per Section II of Part A of the First Schedule of CCS(RP) Rules, 2008, becomes applicable by virtue of the provision of the element of direct recruitment in the relevant recruitment rules, the pay of Central government employees who were appointed to such posts prior to 1.1.2006 and whose pay, as fixed in the revised pay structure under Rule 7 thereof as on 1.1.2006 turns out to be lower than the

prescribed entry pay for direct recruits of that post, shall not be less than such entry pay w.e.f. 1.1.2006. Likewise, the pay of Central Government employees who were appointed to such posts by way of promotion on or after 1.1.2006 and whose pay, as fixed under Rule 13 of CCS(RP) Rules, 2008, happens to be lower than the said entry pay, shall also not be less than such entry pay from the date of their promotion taking place on or after 1.1.2006."

[7.] Against the reliance placed by the petitioner, the Office Memorandum issued by the Govt. of India as abstracted above, it is the stand of the State respondents that the same is not applicable to the employees of the Government of Mizoram since the Office Memorandum has not been adopted by the State Government. It may be noticed that the case of the petitioner is not an isolated case and that there are a number of other officers who claim fixation of their pay in terms of the Office Memorandum dated 28.09.2018 issued by the Govt. of India, Ministry of Finance, Department of Expenditure. The said Ministry vide Notification dated 29.08.2008 in exercise of the powers conferred by the proviso to Article 309 and Clause (5) of Article 148 of the Constitution and in consultation of the Comptroller and Auditor General in relation to persons serving in the Indian Audit and Accounts Department made the Central Civil Services (Revised Pay), Rules of 2008 (Revised Pay Rules of 2008) which came into force with effect from 01.01.2006.

[8.] The Revised Pay Rules of 2008 was admittedly adopted by the Government of Mizoram but in a revised form by framing the Revision of Pay Rules, 2010. The

same was deemed to come into force on 01.01.2006 but the pay under the said Rules was notionally fixed from the said date and the actual monetary benefit came to be paid with effect from 01.01.2009 only. Rule 13 of the Revision of Pay Rules, 2010 may be abstracted as below:-

“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.”*

[9.] From the above abstract, it may be seen that fixation of pay on promotion on or after 01.01.2006 has to be calculated and fixed in the manner as provided. In respect of the Entry Pay for direct recruits appointed on or after 01.01.2006, the same has been tabulated in Table-2 of Rule 15 of the Revision of Pay Rules, 2010. Therefore, the manner of fixation of pay for promotees and direct recruits are not similar. The petitioner has not challenge Rule 13 of the Revision of Pay Rules, 2010

and instead it is contended on behalf of the petitioner that the Office Memorandum dated 28.09.2018 issued by the Government of India, Ministry of Finance is pursuant to the direction of the Apex Court and therefore, the same would apply to his case as well. The said contention in the considered view of this Court may not be the correct position since the Revision of Pay Rules, 2008 has not been adopted by the Government of Mizoram in its entirety but only in a modified form. Such being the case and in the absence of a challenge to the relevant provisions of the Revision of Pay Rules, 2010, the relief claimed for cannot be granted. However, at the same time, it may be seen that Rule 13 (i) of the Revision of Pay Rules, 2010 also provides that in cases where promotion involves change in the Pay Band as well, the computation as provided will be followed but if the pay in the Pay Band after adding the increment is less than the minimum of the higher Pay Band to which the promotion has taken place, pay in the Pay Band should be stepped up to such minimum. This provision apparently provides for pay protection or parity in the pay in respect of the promotees. The same in the considered view of this Court should be taken note of while fixing the pay of the promotees by the State respondents.

[10.] That matters relating to pay anomalies and fixation of pay are matters which are best dealt with by the experts in this field and also, having regard to the fact that the Revision of Pay Rules, 2008 has only been adopted by the State

Government in a modified form, the petitioner cannot be said to have a legitimate grievance. But for the observation made in the preceding paragraph, the writ petition is therefore dismissed by leaving the parties to bear their own cost.

JUDGE

Comparing Assistant