

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.19295 of 2014
Date of Decision-01.03.2016**

Union of India and another ... Petitioners

Versus

Manjit Kaur and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE M. JEYAPPAUL

HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. G.S. Bal, Sr. Advocate with
Mr. K.K. Kahlon, Advocate
for the petitioners.

Mr. Hemender Goswami, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed order dated 09.04.2014 passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh vide which the Original Application filed by respondent No.1 was disposed of with a direction to the petitioners to re-fix the pay of respondent No.1 at all stages so that pay protection of respondent No.1 is ensured and her salary be not less than respondent No.2 at any stage of her service career. Petitioners were directed to complete the entire exercise within two months and entire arrears due to respondent No.1 be released to her within a period of one month thereafter.

[2]. Respondent No.1 herein alleged in her OA that she was appointed as Junior Clerk on 12.08.1987 in the pay scale of Rs.950-1500/- in Sports Quota and her basic pay was fixed at Rs.1350/-. She was posted in Railway Coach Factory, Kapurthala. One Mrs. Santosh Basran was appointed in the Petitioners/Department as Junior Clerk on 02.11.1988 and was junior to respondent No.1 for all intents and purposes.

[3]. After qualifying the departmental test, respondent No.1 was promoted to the post of Senior Clerk in the pay scale of Rs.1200-2040/- w.e.f 12.10.1990 and her basic pay was fixed at Rs.1530/-.

[4]. Respondent No.1 was further promoted to the post of Head Clerk on regular basis in the pay scale of Rs.1400-2300 w.e.f 13.11.1992. The basic pay of respondent No.1 was fixed at Rs.1680/-.

[5]. In the year 1996, respondent No.1 sought her transfer from Kapurthala to Ferozepur Division, which was accepted by the authorities. Respondent No.1 was placed on the lower post of Senior Clerk as post of Head Clerk was only a promotional post and was not available.

[6]. After some time when respondent No.1 found that she was not in a position to carry out her sports activities at Ferozepur, she requested for her transfer to Jalandhar. Her request was accepted and on 14.07.1997, she was transferred to

Statistical Branch, TA, Northern Railway, Jalandhar. Senior post of Senior Clerk was not available, therefore, she was posted at the post of Junior Clerk in the pay scale of Rs.950-1500/- (Rs.3050-4590/- on revision in view of 5th CPC). The basic pay of respondent No.1 was brought down to Rs.4590/- w.e.f 29.07.1997.

[7]. Respondent No.1 filed the Original Application seeking fixation of pay as her last pay drawn was not correctly protected. Original Application No.854/PB/2010 filed by respondent No.1 was disposed of by the learned Tribunal with a direction to the petitioners to re-consider the case of respondent No.1 on filing of detailed representation to the present petitioners. Thereafter, respondent No.1 filed a detailed representation in April 2012 in the context of her pay protection, even, if, the transfer was made on request. The claim of respondent No.1 was rejected by the petitioners vide order dated 11.06.2012.

[8]. Respondent No.1 challenged the said order before the Central Administrative Tribunal in **OA No.1104/PB/2012** titled as **Manjit Kaur Vs. Union of India** and others by relying upon number of instances followed by the petitioners/Department. The instances quoted by the respondent No.1 ultimately found favour by learned Tribunal and were made part of Para No.5 of the order passed by the learned Tribunal, which on reproduction gives following recital:-

“In the OA, the applicant has also cited the precedent followed by the Department in the case of Mrs. Durgesh Nandini, Senior Clerk who was also transferred on her own request from Ambala Division, Ambala to Statistical Branch, TA, Northern Railway, Jalandhar in the same pay scale in the year 1994. Other allegedly similar cases that have been cited relate to (i) Smt. Bimla Devi, who was working in Amritsar was transferred to Statistical Branch, Jalandhar, on her own request, but against the same post in same pay scale; (ii) Smt. Surinder Bhatia, who was working in Delhi, was transferred to RCF, Kapurthala and then Statistical Branch, Jalandhar, on her own request, but she was also transferred in the same pay scale that she was earlier drawing; (iii) Sh. Ragbir Singh, who was working as Senior Clerk, was transferred from Baroda House to Statistical Branch, Jalandhar, on his own request, against the same post of Senior Clerk in the same pay scale; (iv) Sh. Pawan Kumar, was transferred on his own request, against the same post in the same pay scale; and (v) Sh. Kapil Kumar, who was working as Senior Clerk, was transferred from DCW Patiala to Statistical Branch, Jalandhar, on his own request, against the same post of Senior Clerk in same pay scale.”

[9]. Petitioners questioned the claim of respondent No.1 by alleging that respondent No.1 had sought inter-departmental transfer on choice by accepting her placement at the tail of seniority list. At that time, respondent No.1 was serving as Head Clerk in the pay scale of Rs.5000-8000/- in Railway Coach Factory, Kapurthala. Her pay was protected on the post of Senior

Clerk because basic pay of Head Clerk fell within the pay scale of lower post of Senior Clerk. Therefore, on the post of Senior Clerk at Ferojpur, pay protection was done as post was available.

[10]. Petitioners further contended that inter-departmental transfer in Railways is permissible in the categories where direct recruitment quota existed and it was placed at bottom seniority in order to ensure that seniority position of the employees working in that grade and their promotion avenues were not affected. Respondent No.1 could not be transferred to the post of Senior Clerk in the pay scale of Rs.4500-7000 which was having direct recruitment quota.

[11]. Knowing fully well, respondent No.1 chose to accept inter-railway transfer to the lower grade of Senior Clerk in the pay scale of Rs.4500-7000/- by accepting bottom seniority without any reservation. She was given pay protection and no salary was deducted on her posting to the lower grade. In fact the additional amount, which respondent No.1 was drawing in the higher grade of Head Clerk in the pay scale of Rs.5500-9000/- than the slab of the lower grade of Rs.4500-7000/- was given to her as pay protection.

[12]. Respondent No.1 once again applied for inter-divisional transfer on her own request to Jalandhar. No post of Senior Clerk was available at Jalandhar, therefore, she gave her willingness to lower post of Clerk in the pay scale of Rs.3050-

4590/- by accepting bottom seniority. The pay of respondent No.1 was fixed by fixing her pay at Rs.4590/- i.e maximum of the pay scale of Rs.3050-4590/- in terms of Railway Board's letter dated 02.12.1996.

[13]. Petitioners asserted that the claim of respondent No.1 for transfer to the post of Head Clerk on inter-railway transfer to Ferojpur was not tenable under the rules and regulations. Similarly, she was not entitled to be transferred to the post of Senior Clerk at Jalandhar because no post of Senior Clerk was available at Jalandhar. The pay of respondent No.1 was fixed at the maximum of pay scale of Clerk i.e. Rs.4590/-.

[14]. Petitioners further alleged that respondent No.1 had no legal right for stepping up of her pay at par with respondent No.2 because respondent No.2 got benefits of MACP's and her pay was fixed accordingly, whereas no such benefit of MACP's was granted to respondent No.1.

[15]. We have heard the learned counsel for the parties and perused the record.

[16]. Learned Tribunal took notice of the benefits granted to the persons namely Smt. Bimla Devi, Smt. Surinder Bhatia, Sh. Raghubir Singh, Sh. Pawan Kumar and Sh. Kapil Kumar who were specifically referred in the Original Application and there was no rebuttal to that extent in the written statement. Learned Tribunal proceeded to record admission of the petitioners that respondent

No.1 was entitled to pay protection as Head Clerk even when she was moved out from Ferojpur as Senior Clerk. Subsequently, she was transferred to Jalandhar as Junior Clerk.

[17]. Evidently, respondent No.1 was getting less salary than respondent No.2. By applying principle of stepping up of pay to the level of junior if the junior was getting higher salary, the Tribunal granted the relief by directing respondents to re-fix the pay of respondent No.1 at all stages so that pay protection is ensured to her and she may not get less salary than respondent No.2 at any stage of her service career.

[18]. Learned counsel for the petitioners vehemently argued that respondent No.1 is not entitled to pay protection because basic pay of higher post did not fall within the pay scale of lower post of Head Clerk at Jalandhar. In Ferojpur, basic pay of Head Clerk fell within the pay scale of Senior Clerk and therefore, distinction was sought to be created on that premise.

[19]. Learned counsel for respondent No.1 relied upon the judgment of Hon'ble Madras High Court in **P.S. Balakrishnan Vs. Secretary to the Government of India, New Delhi and others, 2010 (3) SLR 411** in support of her contention. Para 17 of the judgment reads as under:-

“In the earlier Paragraph of this order, we have extracted the order of transfer dated 29.1.1998. A perusal of the said order reveals that the applicant, who was the Reader in the 3rd

respondent press was transferred to the 4th respondent press as Copy Holder at his own request and was relieved of his duties from the office of the 3rd respondent with effect from 31.1.1998 (A.N.) subject to three conditions. A perusal of the three conditions do not state that the applicant's pay would not be protected. In fact, the condition is only to the effect that he cannot claim any seniority of service rendered by him in the office of the 3rd respondent and he will be ranked as junior most Copy Holder in the Government of India Press, Coimbatore, and his seniority will count from the date of joining at Coimbatore. The other two conditions being that he will not claim any TA/DA and joining time and will not seek for re-transfer in future."

Whether pay of respondent No.1 was to be protected or not, was never informed by the Department. Learned counsel emphasized that the pay has to be protected as the condition of transfer did not put an embargo in the aforesaid cited precedent.

[20]. The Madras High Court relied upon Union of India Vs. **The Registrar, Central Administrative Tribunal, Madras, (2002) 1 MLJ 439**. Para 22 of the judgment reads as under:-

"Division Bench of this Court in a decision in (2002) 1 MLJ 439 (Union of India Vs. The Registrar, Central Administrative Tribunal, Madras), was considering a case where an Assistant Station Master, promoted to the post of Station Master Grade in South Central Railway, requested for transfer to Southern Railway. The Railway Administration while considering

his request, by relying on Railway Establishment Code Rule 226 stated that he should be demoted to the post of Assistant Station Master. In such circumstances, the Division Bench of this Court had held that it is a trite principle that where concerned person has to be put at the bottom of seniority for doing so, he cannot be reverted to the post in which he was working earlier, especially when in the facts of the said case the incumbent had earned two promotions and merely because it was a request transfer, there cannot be a reversion and if that be so it would mean an absurd interpretation of the rule. This order of the Division Bench was followed by another Division Bench of this Court in W.P. No.16172 of 1998 etc., batch dated 8.7.2005, wherein the Division Bench considered the issue as to whether the incumbent coming on a request transfer is entitled to have his pay in the scale drawn by him prior to his transfer. The Division Bench, after an elaborate reasoning, held that the Central Administrative Tribunal was right in accepting the case of the applicant that even the request transferees are entitled to have their pay protected in the scale, which they were drawing prior to transfer. We are also informed that the SLP filed against the said order of the Division Bench has been dismissed. In our opinion, the Division Bench judgment referred above would squarely applied to the facts of the present case. As noted, the order of transfer did not state in explicit terms that his pay cannot be protected, whereas in terms of law laid down by the Division Bench of this Court, we are of the view that the respondents are not justified in fixing the applicant's pay in a lower scale especially after he earned his promotion to the post of

Reader and was holding that post in a substantive capacity.”

[21]. On the strength of aforesaid precedents, learned counsel for respondent No.1 contended that the stand of the petitioners/department in terms of letter dated 27.01.1996 was wholly untenable. By way of affidavit, petitioners have sought to explain the relief granted to number of persons. The cases of Smt. Bimla Devi, Smt. Surinder Bhatia, Sh. Raghbir Singh, Sh. Pawan Kumar and Sh. Kapil Kumar were sought to be explained by asserting that their transfers were made on their own request on the same post on availability of vacancies which they were holding in the transferee unit. In those circumstances, there was no need to re-fix the pay as their transfers were ordered by their acceptance on bottom seniority in their respective cadres.

[22]. The case of respondent No.2 Mrs. Santosh Basran was sought to be explained by saying that she joined Jalandhar Division on 05.08.1997 and was granted ACP Scale of Rs.4500-7000/- and MACP in Grade Pay of Rs.4200/- and therefore, she had higher pay scale.

[23]. The case of respondent No.1 was sought to be diluted from those cited cases on the ground that she sought transfer from Railway Coach Factory, Kapurthala to Ferojpur Division and there was no post available in Ferojpur Division which the respondent No.1 was holding in Railway Coach Factory (RCF), Kapurthala. She was adjusted against a lower post. Further

when she sought transfer from Ferojpur to Jalandhar Division, again the post of Senior Clerk was not available at Jalandhar Division and she was transferred to lower post with lower pay scale. Since she had joined willingly and her pay was fixed under policy of pay protection, therefore, according to the petitioners there was no illegality in such fixation.

[24]. Having given thoughtful consideration to the controversy, we are of the view that conditions of transfer did not state that the pay of respondent No.1 would not be protected. Only issue was that she cannot claim any seniority on the basis of service rendered by her at previous station. Apparently, respondent No.1 was promoted to the post of Head Clerk at different stages from feder cadre of Junior Clerk.

[25]. In view of aforesaid, we are also of the view that order of transfer did not state explicitly that the pay of respondent No.1 would not be protected. Petitioners were not justified in fixing the pay of respondent No.1 in a lower scale especially in view of the fact that she got her promotion to the post of Head Clerk by promotions. It was not a case of demotion on account of any misconduct. It would be a trite principle to place respondent No.1 in such a nomenclature of the post without pay protection.

[26]. For the reasons mentioned above, we are of the view that the Tribunal has adopted a realistic approach in considering the case of respondent No.1 in right perspective. There is no

substance in this writ petition and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

(M. JEYAPPAUL)
JUDGE

01.03.2016

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