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

\+ **W.P.(C) 7302/2015**

Date of Decision : 23rd March, 2016

RAMESH LAL DOGRA ..... Petitioner

Through: Mr. Sohan Singh, Ms. Bindra Rana & Ms. Manshi Pathak, Advocates

versus

DELHI METRO RAIL CORPORATION LTD. & ORS ..... Respondents

Through: Mr. V.S.R. Krishna, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

Ramesh Lal Dogra, the writ petitioner, impugns the order dated 12.5.2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal, for short) in OA No.2291/2013, whereby prayer for stepping-up of pay in parity with his junior, Mr. Ashu Sharma, has been rejected.

2. We have heard learned counsel for the parties, and with their consent, have taken up the writ petition for final hearing and disposal.

3. Mr.Ramesh Lal Dogra, an erstwhile employee in the Ministry of Railways, on 10.4.2000, had joined Delhi Metro Rail Corporation ('DMRC') on deputation as a Senior Accounts Officer in the pay scale of Rs.10,000-15,200/-. On 1.10.2004, while still on deputation, he was promoted as the Deputy General Manager ('DGM') in the pay scale of Rs.12, 000-16,500/-. On 6.10.2006, he was absorbed in the DMRC at the

post of DGM. On 2.7.2009, Mr.Ramesh Lal Dogra he was promoted as the Joint General Manager('JGM') in the pay scale of Rs.17,100-21,850/-.

4. Before absorption, the petitioner was being paid Central Dearness Allowance ('CDA') pay scale and sometime after absorption, the petitioner became entitled to and was paid Industrial Dearness Allowance ('IDA') pay scale. This was in accordance with Rule 7.1 of the General Conditions of Service Rules ('GCSR') of DMRC, dated 14.6.2005. The said Rule reads as under:

> *"7.1. There shall be two pay scales (IDA and CDA) in operation in the Corporation. Those personnel, who join DMRC on deputation from an organization where they are in CDA scales, they may continue to be in CDA scales in DMRC or may opt for IDA scales. The DMRC recruits are to be in IDA pay scales. However those recruits who are in CDA pay scales may have the option to continue in CDA scales till they are promoted to the next higher grade which shall be in IDA scale".*

Thus, on promotion to the next higher grade, the personnel who join DMRC are uniformly entitled to IDA pay – scales.

5. Mr.Ashu Sharma, who was junior to the petitioner in the parent department, i.e., the Ministry of Railways, had similarly joined DMRC on deputation on 13.4.2004 as DGM in the scale of Rs.12,000-16,500/-. On 21.7.2009, Mr.Anshu Sharma was allowed to officiate as JGM. On 16.9.2009, Mr.Ashu Sharma exercised his option to be governed by the IDA pay scale. On 24.12.2011, Mr.Anshu Sharma was absorbed in DMRC as a DGM, officiating as JGM. On 15.7.2012, Mr.Ashu Sharma was confirmed at the post of JGM.

6. Rule 11.3 of the GCSR deals with *inter se* – seniority. On absorption of a deputationist, his seniority is counted from the date of

absorption. The petitioner, Mr.Ramesh Lal Dogra, as noted above, was absorbed as DGM on 6.10.2006, whereas Mr. Ashu Sharma was absorbed as DGM on 24.12.2011, when he was officiating as JGM. By 24.12.2011, the petitioner had already been promoted and was working as the JGM with effect from 2.7.2009. It is obvious that Mr. Ramesh Lal Dogra was senior to Mr. Ashu Sharma.

7. Strangely, the respondent DMRC disputes and denies that the petitioner is senior to Mr.Ashu Sharma. The stance is fallacious and rather questionable. The assertion should be rejected for the reason that the Office Note dated 5.11.2012, circulated by the DMRC records and notes the date of entry of executives in the DRMC in the initial grade and the subsequent developments upto 1.11.2012 in 12 departments. Based upon the position in the enclosed list, the office Note states that the seniority list would be issued and regularisation of *ad hoc* promotions would be undertaken thereafter. Officers who had been regularised in the executive cadre were included in the seniority list. This list at the DGM level enlists Mr. Ramesh Lal at Sl. No.2 and Mr. Ashu Sharma at Sl. No.4. Both of them have been shown in the pay scale/grade of Rs.29,100-54,500/-. The date of joining the executive service of the DMRC in the case of Mr. Ramesh Lal Dogra is mentioned as 6.10.2006 and in the case of Mr. Ashu Sharma as 24.12.2011. Accordingly the seniority in the grade has been counted from 6.10.2006 in the case of Mr. Ramesh Lal Dogra and in the case of Mr. Ashu Sharma as 24.12.2011.

8. The petitioner and Mr. Ashu Sharma were/are in the same pay scale of Rs.36, 600-62,000/- applicable to JGM. The actual salary being paid to the petitioner was/is lower than the salary being paid to Mr. Ashu Sharma. This congruity was on account of the fact that Mr. Ashu Sharma, till 16.9.2009, was being paid CDA pay scale, whereas the petitioner, Mr.

Ramesh Lal Dogra, was being paid IDA pay scale with effect from 2.7.2009. However, after 16.9.2009, Mr.Ashu Sharma is being IDA pay scale. The salary paid to Mr. Ramesh Lal Dogra and Mr. Ashu Sharma, on or after 16.9.2009, i.e., in the IDA pay scale is as under:

Date	Emp. No. 860 (P-52) Mr. Ashu Sharma	Emp. No.320 (P-54) Mr. R.L. Dogra	Difference Basic Pay
16.09.2009	Rs. 49,410 (IDA)	Rs. 38,070 (IDA)	Rs.11,340
01.07.2010	Rs.50,900 (IDA)	Rs.39,220 (IDA)	Rs.11,680
01.07.2011	Rs.52,430 (IDA)	Rs.40,400 (IDA)	Rs.12,030
01.07.2012	Rs.54,010 (IDA)	Rs.41,620 (IDA)	Rs.12,390

9. The claim of the petitioner for upgradation or stepping-up of pay to same level as Mr. Ashu Sharma is based upon Rule 8.5 of GCSR, which read as under:

> *"8.5 When an employee promoted to a post draws a lower rate of pay in that post than another employee junior to him in the lower grade and promoted subsequently to the same or identical higher post, the pay of the senior employee in the higher post will be stepped up to a stage equal to the pay of the junior employee in that higher post. This will be done with effect from the date of promotion of the junior employee and be subject to the following conditions:*
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> *(a) Both the junior and senior employee should belong to the same seniority group and the posts to which they have been promoted should be in the same channel of promotion and the two scales of pay should be identical.*
>
> *(b) If the junior employee's pay happens to be fixed at a higher stage by virtue of advance increment granted in the lower post or due to ad-hoc promotion, then this rule will not be invoked to step up the pay of the senior employee."*

A reading of the said rule would shows that, if a senior draws a

lower rate of pay than his junior who is promoted subsequently to the same or identical higher post, the senior is entitled to stepping-up to the pay upto a stage of his junior in that higher post, subject to satisfaction of the following conditions:

> *(a) The junior and senior employee should belong to the same seniority group; and*
> *(b) the posts to which they have been promoted should be in the same channel of promotion and*
> *(c) the two scales of pay should be identical.*

An exception is carved out in sub-clause (b), which stipulates that if a junior employee happens to get higher pay by virtue of advance increment in the lower post or due to *ad hoc* promotion, then this rule will not be invoked to step-up the pay of the senior employee.

10. We would now reproduce the averments made by DMRC in their counter affidavit filed in this Court, which read as under:

> *"It is submitted that when Mr. Ashu Sharma was promoted from Deputy General Manager (F) to the post of Joint General Manager (JGM) from pay scale of Rs. 15,600-39,100/-+GP Rs.7,600/- in CDA pay scale of Rs. 37,400-67,000/-+GP Rs.8,700 vide office No.PT/717/2009(w.e.f 21.07.2009)"*

It was accordingly submitted that Mr. Ashu Sharma on promotion as JGM on officiating basis with effect from 21.07.2009 was being paid CDA pay scale, whereas Mr. Ramesh Lal Dogra was entitled to IDA pay scale, which are different. This contention of DMRC must fail and has to be rejected for several reasons. We have quoted Rule 7.1 of the GCSR and observed that DMRC recruits on promotion are entitled to only IDA pay scale. Therefore if the officiation of Mr. Ashu Sharma as a JGM was

a promotion then IDA pay scales were applicable and payable to Mr. Ashu Sharma. Secondly, the factual position has been noticed above. Mr. Ashu Sharma was promoted and confirmed as JGM on 15.7.2012. On the said date, he ceased to be an *ad hoc* or officiating JGM. From 21.07.2007 till 14.7.2012, Mr. Ashu Sharma was allowed to officiate as a JGM, though he held the substantive post of DGM. The effective and substantive date of promotion as JGM for the purpose of Rule 8.5 of GCSR would be 15.7.2012 when Mr. Ashu Sharma was confirmed at the post of JGM. Sub-clause b in Rule 8.5 of GCSR draws a distinction between an ad-hoc promotion and a regular promotion. We would treat and regard 15.7.2012 as the date on which Mr. Ashu Sharma was promoted as the JGM. Thus, with effect from 15.7.2012, the exception carved out by the sub-clause b to Rule 8.5 of GCSR will not be applicable.

11. The position emerging from the facts narrated above is that the petitioner, Mr. Ramesh Lal Dogra, was working at the promotional post of JGM with effect from 2.7.2009, whereas his junior, Mr. Ashu Sharma, was promoted on 15.7.2012. However, Mr.Ashu Sharma, was getting a higher pay scale, as is apparent from the chart above. The pay of Mr.Ramesh Lal Dogra as on 01.07.2012 was Rs.41, 620/-, whereas the pay of Mr. Ashu Sharma was Rs.54,010/-; the difference being Rs.12,390/- per month in the basic pay.

12. Learned counsel for the respondent submits that the petitioner is not entitled to stepping-up under Rule 8.5 of GCSR because the two scales of pay were not identical and this is a pre-condition for invoking Rule 8.5 of GCSR. We have reproduced Rule 8.5 of GCSR above. This submission of the respondent DMRC was recorded in the order dated 11.2.2016 and they were asked to file an affidavit, mentioning the

relevant pay scales. The affidavit has been filed but without elucidating on the said aspect. This contention was not pressed during the arguments. Today, during the course of arguments, a different stand is taken. It is submitted that Mr. Ashu Sharma was absorbed at the post of DGM on 24.12.2011 and, therefore, the petitioner cannot claim stepping-up of pay. In other words, Rule 8.5 of GCSR will not apply because the petitioner and Mr. Ashu Sharma were not holding the same post on the date when Mr. Ashu Sharma was absorbed as DGM on 24.12.2011. We have considered the said contention but do not find any merit in the same, for this aspect is not relevant in deciding applicability of Rule 8.5 of GCSR.

13. Till 16.9.2009, Mr. Ashu Sharma was in the CDA pay scale, but thereafter IDA pay scale was made applicable to him. He had opted for IDA pay scale on 16.9.2009. (We have already referred to Rule 7.1 of the GCSR and observed that when a DMRC recruit is promoted he is entitled to IDA pay scale.) At that time, the petitioner was working as JGM, having been promoted to the said post on 21.7.2009. Mr. Ashu Sharma was given officiating charge as JGM with effect from 21.7.2009, though he was holding the substantive post of DGM till he was confirmed and granted promotion as a JGM on 15.7.2012. In between, he was absorbed as DGM while officiating as JGM on 24.12.2011. With effect from 15.7.2012, both the petitioner and Mr. Ashu Sharma were holding the post of JGM. Post of JGM is a promotional post to which Mr.Ramesh Lal Dogra was promoted on 2.7.2009. Mr.Ashu Sharma had been promoted and confirmed as JGM on 15.7.2012. Both, Mr.Ramesh Lal Dogra and Mr.Ashu Sharma were entitled to and paid IDA pay scales applicable to the post of JGM. It is not the case of the DMRC that Mr.Ramesh Lal Dogra and Mr.Ashu Sharma were drawing two different scales of pay on or after 15.7.2012. Their pay scales were identical.

They belong to the same seniority group. The promotion of the post of JGM was in the same channel of promotion. With effect from the said date, Rule 8.5 of GCSR would be clearly applicable. The petitioner's pay would have to be stepped-up to the level of the pay being paid to his junior, i.e., Mr. Ashu Sharma.

14. We accordingly allow the present petition to the extent indicated above and the impugned order to this extent is set aside. The respondent/DMRC will make the payment of arrears to the petitioner within a period of two months from the receipt of copy of this order. Pay payable in future will be accordingly fixed by applying Rule 8.5 of the GCSR. In the circumstances of the case, there will be no order as to costs.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MARCH 23, 2016
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