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

\+ W.P.(C) 2733/2017 & CM No.11887/2017

DURGA DUTT SAINI ..... Petitioner

Through: Mr. S.N. Kaul, Advocate

versus

UNION OF INDIA & ORS ..... Respondents

Through: Ms. Shiva Lakshmi, CGSC

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

O R D E R

% 28.03.2017

Durga Dutt Saini, in this writ petition, impugns the order dated 13.12.2016, whereby OA No.574/2012 filed by him has been dismissed by the Principal Bench of the Central Administrative Tribunal (‘Tribunal’), New Delhi.

2. This is the second round of litigation, as the OA No.574/2012 was earlier disposed of by the Tribunal vide order dated 20.5.2015. This order was however set aside by the High Court in the WP(C) No.12196/2015 filed by the Union of India, primarily on the prayer made by counsel for the two contesting parties.

3. The petitioner is an officer in the office of the Controller General of Defence Accounts (‘CGDA’) service, under the Ministry of Defence. The

petitioner had joined as an Auditor and having earned promotions was posted in the cadre of the Assistant Accounts Officer (‘AAO’) with effect from 1.4.2005. He was promoted as the Accounts Officer with effect from 31.12.2012 and as the Senior Accounts Officer with effect from 01.04.2015.

4. The dispute pertains to the petitioner’s salary.

5. The respondents had issued a Gazette Notification dated 29.8.2008, which in paragraph 11(c) with reference to the Indian Audit and Accounts Department (IA & AD) and all organised accounts cadres, had stipulated:-

> *“(c) In the IA&AD and all organized accounts cadres, posts of Section Officers and Assistant Audit/Accounts Officers will be merged and placed in PB-2 with grade pay of Rs.4800 as recommended by the Commission. In modification of Sixth CPC recommendation, Audit/Accounts officers (AOs) will be placed in PB-2 with grade pay of Rs.5400 and Senior AOs will be placed in PB-3 with grade pay of Rs.5400/-.”*

Paragraph x(b) of the same Gazette Notification dated 29.8.2008, which relates to the CGDA service, which is not an organised accounts service reads :

> *“(x) Regarding Group ‘B’ cadres, the Commission’s recommendations will be modified in the following manner:-*
> *(a) XXXXXX*
> *(b) After 4 years of regular service in the Section Officer/Private Secretary/equivalent grade of Rs.4800 grade pay in PB-2, officers of Central Secretariat Service, Central Secretariat Stenographers Service and other similarly placed HQ services will also be granted the non-functional grade of Rs.5400 in PB-3 and not in*

PB-2."

6. As per the said Notification, benefit of grade pay of Rs.5,400/- in PB-3 was limited to Section Officers ('SO')/Private Secretaries and other officers in the Central Secretariat Services ('CSS'), Central Secretariat Stenographers Services ('CSSS') and similarly placed Headquarter Services and was not extended to the service, to which the petitioner belongs, i.e., Defence Account Department.

7. The petitioner however relies on the earlier Press Release dated 14.8.2008, which, in paragraph 11(v), had stated:-

> *"(v) Government has continued the present position of granting Group A scale to Group B officers after 4 years of service and these officers would be placed in PB-3 instead of PB-2 recommended by the Sixth CPC. This would benefit Group B officers of the Railways, Accounts Services, CSS, CSSS and DANICS & DANIPS."*

8. The Ministry of Defence had raised the issue of payment of grade pay of Rs.5,400/- in PB-3 to AAO's, with the Ministry of Finance. The Ministry of Finance vide Note dated 30.6.2011, had furnished the following clarification:

> *"M/o Defence may please refer to their notes on pre-pages regarding grant of the Grade Pay of Rs.5400/- to Assistant Account Officer of Defence Accounts Department on completion of 4 years of service in the grade.*
> *2. The matter has been examined in this Department and it is observed that the Cabinet Note dated 13.8.2008 inter-alia included as under:*

"5.3 (f) Modifications for Group B Cadres in the Central Government:-
i) Placement of Section Officers in the Central Secretariat Service (CSS)/Central Secretariat Stenographer Service (CSSS)/Railway Board Secretariat Services (RBSS)/Armed Forces Hqrs. Civil Services (AFHQCS)/Indian Foreign Service 'B' and officers of Delhi & Nicobar Island Police Service (DANIPS) who were in the pre-revised pay scale of Rs.8000- 13500 in PB-3 on non-functional basis after 4 years of services in the pre-revised scale of Rs.6500-10500 instead of PB-2 recommended by the 6th CPC.
ii) Placement of Sr. Accounts Services in Indian Audit & Accounts Department & other Organised Accounts Service in PB-3 instead of PB-2 recommended by the 6th CPC. Placement of Accounts Officers in PB-2 with GP of Rs.5400/- instead of GP of Rs.4800/- recommended by the CPC; and
iii) Grant of GP of Rs.5400/- in PB-2 to Group B Supervisors in Deptt. of Posts & Revenue etc. on nonfunctional basis after 4 years of Service in pre-revised pay scale of Rs.7500-12000 to ensure parity with their administrative counterparts."
3. On the perusal of the above as well as the minutes of the Cabinet meeting dated 14.8.2008, it is observed that no reference to such dispensation has been made therein. Further, the Resolution was also issued on the basis of actual Cabinet Note and its decision of the Cabinet. As per Cabinet's approval, the Sr. Accounts Officer of Organised Accounts Cadre have already been placed in GP of Rs.5400/- in PB-3 and Audit Accounts Officer in PB-2 with GP of Rs.5400/- instead of Rs.4800/- recommended by the 6th CPC. In view of the position brought out, it is not possible to agree to the proposal of MoD."

9. Learned counsel for the petitioner submits that, once the Central Government had issued the Press Release dated 14.8.2008, they are bound by the said statement. As per paragraph 11(v) of the Press Release, Group 'B' officers, after four years of service, are entitled to be placed in PB-3 with

Grade Pay of Rs. 5400, instead of PB-2 with Grade pay of Rs. 4800. The paragraph had stated that benefit would be given to Group 'B' officers in Railways, Accounts Services, CSS and CSSS etc. The said benefit was not be granted to the petitioner, who belongs to CGDA, i.e. the Defence Accounts Department, which is not an organised account service.

10. The petitioner in OA No.574/2012 had prayed for the following reliefs:

> *"(a)Allow the Application of the Applicant under section 19 of the Administrative Tribunals Act 1985 with interest.*
> *(b) Direct the respondents to grant the grade pay of Rs.5400/- to the applicant in PB-3 as approved by the Cabinet on 14/08/2008.*
> *(c) quash and set aside the impugned order dated 13/09/2011."*

11. We are in agreement with the findings recorded by the Tribunal that the Petitioner cannot predicate and base his claim on the basis of the Press Release dated 14.8.2008. Paragraph 11(v) of the Press Release as interpreted above does not apply to CGDA services. In any case, it would not confer a legal right. What will govern and is legally enforceable are the pay scales stipulated in the Gazette Notification dated 29.8.2008. The petitioner, as per the said Gazette Notification, is covered by paragraph x(c) quoted above, and is entitled to Grade Pay of Rs.4,800/- in PB-2. The petitioner as an AAO (i.e. Assistant Accounts Officer) was entitled on merger of the pay

scale/grade, pay of Rs.4,800/- in PB-2. Paragraph x(b) of the Notification, quoted above, was not applicable to the petitioner, as it was applicable to Section Officers/Private Secretaries in the equivalent grade of Rs.4,800/- in CSS, CSSS and similarly placed Headquarter Services. The petitioner, as the Tribunal has correctly recorded, did not belong to the organised Accounts Cadre and hence cannot claim parity with Section Officers in the Ministry of Defence, as his cadre was different.

12. The aforesaid position has been clarified by the Ministry of Finance in their Note dated 30.6.2011, which has been quoted above.

13. We may note that the petitioner had not pleaded violation of "Equal Pay for Equal Work." The OA does not refer to the necessary facets and aspects required to be pleaded and ascertained before the said principle can be applied. Validity of the Gazette Notification dated 29.08.2008 was not challenged on this precept or Article 14 or 16 of the Constitution.

14. Learned counsel for the petitioner has submitted that the Tribunal had earlier decided OA No.574/2012 favourably and has relied the order dated 20.05.2015. The argument has only to be noted and rejected. The order dated 20.5.2015, whereby OA No.574/2012 was first disposed of, was set aside vide order dated 11.02.2016 in WP(C) No.12196/2015. This order dated

11.2.2016 passed in WP(C) No.12196/2015 is on record and mentions the prayer made by learned counsel for the parties, which were accepted and the order dated 20.5.2015 was set aside, with a direction to the Tribunal to reconsider the matter afresh, without being influenced by the earlier order dated 20.05.2015. It was clarified that the High Court had not expressed any opinion on merits.

15. Lastly, learned counsel for the petitioner has submitted that his juniors are placed in higher pay scale. The petitioner is entitled to stepping up of pay. Reference is made to pleadings in paragraphs 4 and 15 of the OA. This issue has not been addressed or answered by the Tribunal. On query, learned counsel for the petitioner submits that juniors/subordinates to the petitioner have been granted the benefit of financial upgradation under the Modified Assured Career Progression Scheme ('MACP Scheme') and Assured Career Progression Scheme ('ACP Scheme'). Financial upgradation under the two schemes is granted to employees who have stagnated and is personal. The petitioner cannot ask for stepping-up of pay, in view of the financial upgradations granted to the juniors/subordinates. This is clearly the mandate of paragraph 20 of the MACP Scheme.

16. Learned counsel for the petitioner has drawn our attention to the order

dated 21.7.2016 passed by the Guwahati Bench of the Tribunal in ***Venetia Dolly Mawrie & Ors. v. Union of India & Ors., 2017(1)AISLJ 320***, wherein the decision in the case of ***Ashim Kumar Biswas & Ors. v. Union of India*** in OA No.040/00008/2014 has been referred to. The petitioner is misreading the position in law. The issue raised in the case of ***Ashim Kumar Biswas & Ors.*** (supra) was relating to the financial upgradation to be granted, while implementing the ACP/MACP Scheme. This is not the issue and contention in the present writ petition. The impugned order specifically and correctly notes that the petitioner having joined as an Auditor on 29.4.1986, was promoted as Senior Auditor on 26.11.1992, Section Officer on 6.8.2001 and AAO on 1.4.2005. In view of the promotions, the petitioner is not entitled to financial upgradations under the MACP Scheme/ACP Schemes.

17. For the aforesaid reasons, the writ petition has no merit and the same is dismissed. The pending applications are also dismissed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

MARCH 28, 2017
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