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

+ W.P.(C) 2634/2017, CM APPL 11450/2017  
GOVERNMENT OF NCT OF DELHI & ANR ..... Petitioners  
Through Mr. Santosh K. Tripathi, ASC with  
Mr. Rizwan, Advocate  
Versus  
SOMVIR RANA & ORS ..... Respondents  
Through Mr. Sudhir Nagar & Mr. Bhanu  
Sanoriya, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE CHANDER SHEKHAR**

**ORDER**

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**23.03.2017**

The impugned order dated 04.04.2016 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short), allows the OA No.3217/2009, filed by the promotee Trained Graduate Teachers, who are the respondents before us.

2. Respondents were promoted as Trained Graduate Teachers before or after 01.01.2006.

3. The question raised and answered in favour of the respondents by the Tribunal relates to fixation of their pay under the Central Civil Services (Revised Pay) Rules, 2008 ('Rules' for short) and whether there can be two pay scales for the same post of Trained Graduate Teachers, one for

promotees and the other for direct recruits.

2. The petitioners herein had applied Rule 7, which postulates multiplying the pre-revised basic pay with 1.86 factor and Rule 13, which provides for granting one increment equal to 3% of the pay band and pay being rounded off to the next multiplier of 10. As far as new direct appointees are concerned, they are given benefit of entry-level pay indicated in Section II of Part-A of the First Schedule of the Rules. The entry-level pay of direct appointee Trained Graduate Teachers was higher than the pay scale of the respondents fixed under Rule 7 read with Rule 13 of the Rules.

4. This anomaly was noticed by the petitioners themselves, who had issued clarification dated 13.03.2009, which reads as under:

“I am directed to say that matter relating to stepping up of pay of Seniors with the directly recruited juniors, recruited on or Central Pay Commission was taken up with Deptt. of Expenditure Ministry of Finance. It has been decided that stepping up of pay of seniors will be permitted with reference to suen of their directly recruited juniors who are recruited on or after 01.01.2006 and whose basic pay is more than that of the seniors subject to the following conditions:-

- (a) Stepping up the basic pay of seniors under the above provisions can be claimed only in the case of those cadres which have an element of direct recruitment and cases where a directly recruited junior actually drawing more basic pay than the seniors. In such cases, the basic pay of the seniors will be stepped up with reference to the basic pay of the juniors.

- (b) Using the above provision, Government servants cannot claim stepping up their revised basic pay with reference to entry pay in the revised pay structure for direct recruits appointed on or after 1.1.2006 as laid down in Section-II of part A of First Schedule to the CCS (RP) Rules, 2008, if their cadre does not have any element of directed recruitment or in cases, where no junior is drawing basic pay higher than them.
- (c) Stepping up of pay of the seniors in accordance with the above provisions shall not be applicable in cases where direct recruits have been granted advance increments at the time of recruitment.

2. This issues with the approval of the Ministry Finance (Department of Expenditure Implementation Cell), Govt. of India.”

5. The above clarification notices that pay scales at the same post in some cadres in the case of promotees were lower than the pay scales applicable to the direct recruits. To correct this anomaly, the clarification states that stepping up of basic pay of the seniors would be permissible in the case of those cadres (i) where appointment by way of direct recruit is permissible and (ii) when direct recruited junior actually draws basic pay more than the seniors.

6. This clarification has not been accepted by the Tribunal and, in our opinion, rightly. The anomaly and discrepancy of fixing lower pay scale for promotees amounts to invidious discrimination and violates of Article 14 of

the Constitution. 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. The difficulty in accepting the plea of stepping up in terms of the clarification dated 13.03.2009, is the second condition that requires, the direct recruits should have actually joined before any stepping up of pay can be granted. The date of joining would be different as filling up of the direct recruitment vacancies in the cadre would depend upon vacancy position, selection, etc. This is unacceptable as it would be fortuitous and even whimsical. In any case, the same post cannot have two pay scales - one for the promotee and other for the direct recruit for it violates the principle of “equal pay for equal work.” Stepping up of pay to be granted on satisfaction of the stipulated conditions would not rectify and undo the discrepancy and inconsistency inherent when two different pay scales are stipulated for the same post.

7. When and after initial pay of promotee Trained Graduate Teacher is fixed in terms of the order of the Tribunal, increment would be calculated and payable as in cases covered by Section II of Part A of the first schedule of the Rules as applicable to the direct recruits.

8. Similar, though not identical controversy had arisen before this Court

in WP (C) No.8058/2015, *Union of India Vs. Malbika Deb Gupta*, decided on 04.11.2006. The writ petition of the Union of India was dismissed after referring to the rule position and the illustrations given in the Rules.

9. However, we clarify that the dismissal of the writ petition would not have any bearing and does not amount to acceptance of the contention raised in some of the OAs, which have been disposed of by the impugned order, wherein the respondent-employees had submitted that the basic revised pay should be multiplied by the factor of 1.86.

10. For the aforesaid reasons, we do not find any merit in the present writ petition and the same is dismissed.

**SANJIV KHANNA, J**

**CHANDER SHEKHAR, J**

**MARCH 23, 2017**

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