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

+ **W.P.(C) 4322/2016**

PUSHP LATA SHARMA Petitioner
Through: **Mr.T.D. Yadav, Advocate.**

versus

THE GOVT. OF NCT OF DELHI & ANR Respondents
Through: **Mr.Santosh Kr. Tripathi, Advocate**
for R-1.
Mr.Pradeep Kr. Tanwar, LDC,
MAMC.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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17.10.2017

The petitioner has preferred the Original Application being OA No.1817/2014 before the Central Administrative Tribunal, Principal Bench, New Delhi with the grievance that her junior Shri S.R.S. Lingwal was drawing a higher pay upon pay fixation under the 4th CPC and his claim for upgradation of his pay by application of Rule 22 of the Fundamental Rules were not agreed to by the respondents. Before the Tribunal, the respondents filed its short reply and in Paragraph 4, the respondents stated as follows:-

“4. That the opinion of the Finance Department in view of above is as under:-

That the applicant and Sh SRS Lingwal joined as LDC

w.e.f.19.11.1979 and 30.12.1979 respectively. Consequently upon implementation of 4th CPC w.e.f. 01.01.1986 the pay of both these officials was fixed at the stage of Rs.1070/- with DNI on 01.11.1986 & 01.12.1986 respectively to raising the pay to Rs.1090/-. However, Sh S.R.S.Lingwal had exercised revised option for fixation of pay from the date of his increment and accordingly his pay was fixed w.e.f.01.12.1986 at the stage of Rs.1110/-.”

In the said case, the Tribunal dismissed the Original application by observing as follows:-

“9. This is a case where an employee opted for fixation of his pay on the next date of increment and the applicant did not opt for the same, which results in the difference of their pay, as between the applicant and Shri Lingwal. Therefore, there can be no comparison between the case of the applicant and Shri Lingwal to seek stepping up of pay. As regards Shri Tej Pal, the applicant has not supplied any document in his regard and, therefore, it is not at all possible for the respondents or for us to take any view in the matter. It is for the applicant to produce the necessary documents in respect of her claim, in absence of which no decision can be made based on such a bland claim.”

The submission of learned counsel for the petitioner is that it was for the respondent to explain in detail as to how Shri S.R.S. Lingwal was drawing a higher pay than the petitioner, when admittedly, the petitioner was senior to Shri S.R.S. Lingwal. The averment made by the respondents in Para 4 of the short reply filed before the Tribunal does not clearly explain the manner in which the pay revision has impacted the petitioner on the one hand and Shri S.R.S. Lingwal, on the other hand. Since the petitioner had not

exercised her option in terms of Rule 6 of the CCS(Revised Pay) Rules, 1986, by virtue of sub Rule 3 thereof, the petitioner claims that he had elected to be governed by the revised pay scale w.e.f. 01.01.1986.

In our view, the exercise undertaken by the Tribunal is, therefore, incomplete. Accordingly, we set aside the impugned order and remand the Original Application to the Tribunal for re-consideration. The respondent is directed to file a better and detailed affidavit to explain as to how Shri S.R.S. Lingwal who, admittedly, was junior to the petitioner was drawing her higher pay. Since the mere statement that Shri S.R.S. Lingwal has exercised revised option for fixation of pay on the date of his increment is not a sufficient explanation for the anomaly. The additional affidavit be filed by the respondents within four weeks and the petitioner may file his response within four weeks thereafter before the Tribunal.

The parties shall appear before the Tribunal on 09.01.2018. No further notice shall be required to be given to the parties.

VIPIN SANGHI, J

REKHA PALLI, J

OCTOBER 17, 2017

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