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

+ W.P.(C) 10367/2016

R.N. SRIVASTAVA

..... Petitioner

Through

Mr. Sudarshan Rajan, Mr. Arjun
Gadhoke and Mr. Vijay Kumar
Sharma, Advocates

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through

Mr. Amit Mahajan, CGSC for UOI

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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28.03.2017

The petitioner - R. N. Srivastava in this writ petition impugns the order dated 21.04.2016 passed by the Principal Bench, Central Administrative Tribunal (Tribunal) disposing of OA No. 3160/2012 with the following directions.

“6. In the order dated 10.10.2013 passed in OA No. 4008 of 2012 (L. D. Sharma and others Vs. Union of India and others), it was clearly observed by the Tribunal that the respondents had filed a short counter affidavit stating that the applicants were entitled for the relief claimed by them in the O.A. In the instant case, the respondents had filed a counter reply resisting the claim for the applicant. Thus, the submission made by

Mr. Sudershan Rajan, the learned counsel appearing for the applicant, before the Hon'ble High Court, that the respondents had conceded the applicant's claim is not borne out by the record. Ms. Avnish Kaur, the learned counsel appearing for the respondents, submitted that no instruction was received by her from respondents to give consent for passing of an order similar to the one passed by the Tribunal in I. D. Sharma & Ors. Vs. UOI & Ors. (supra). Section 22(2) of the Administrative Tribunals Act, 1985, mandates that the Tribunal shall decide every application made to it on a perusal of documents and written representations filed by the parties, and after hearing such oral arguments as may be advanced. Furthermore, if a concession made by a counsel is contrary to the pleadings and/or written representation of the party represented by him/her, the Tribunal is not bound to act upon the same, while deciding the application made to it in accordance with law.

7. However, considering the totality of the facts and circumstances of the case, and keeping in mind the judgment dated 21.08.2015 passed by the Hon'ble High Court of Delhi in W.P. (C) No. 7705 of 2014, I think that the ends of justice would be met, if the O.A. is disposed of with a direction that in the event the applicant makes a representation claiming release of his pensionary/terminal benefits on the basis of his salary with Grade Pay of Rs.5400/-, and payment of interest thereon, the respondents shall consider and take a decision on the applicant's representation by passing a speaking and reasoned order within six months from the date of receipt of the same. The applicant is free to furnish copies of the aforesaid pay slip for the month of September 2014, and the letter dated 6.2.2015 issued by the P.A.O. (Ptg.), Ministry of Urban Development & Poverty Alleviation, New Delhi, to the Pay & Accounts Officer, Central Pension Accounting Office, Ministry of Finance, Government of India, New Delhi, along with his

representation. Ordered accordingly.”

- 2) Pursuant to the aforesaid directions the respondents vide the order dated 19.08.2016 have reiterated that the petitioner would be entitled to third financial upgradation to the Grade Pay 4800 and not Grade Pay 5400 under the Modified Assured Career Progression Scheme (MACP).
- 3) The petitioner is a retired employee and submits that he is not in a position to again approach the Tribunal. It is submitted that other similarly situated employees have been granted benefit of grade pay of Rs.5400. The Tribunal in paragraph 6 of the impugned order dated 21.04.2016 quoted above, had referred to the OA No. 4008/2012 filed by **L. D. Sharma and 10 others**, who are working in the same service and are identically placed as the petitioner. They have been granted grade pay of Rs.5400. This is undisputed and not challenged.
- 4) The order dated 10.10.2013 passed in OA No.4008/2012, in the case of **L. D. Sharma and 10 others** reads:-

The applicants filed the present OA questioning the impugned order dated 20.11.2012 wherein the respondents have rejected the claim of the applicants for granting MACP benefits, which was originally granted and withdrawn later.

2. Now, the respondents have filed a short counter affidavit stating that the applicants are entitled for the relief claimed by them.

3. In view of the stand taken by the respondents, the OA is allowed, and the respondents are directed to pass appropriate speaking and reasoned orders on the claim of the applicants within eight weeks from the date of receipt of a copy of this order. No order as to costs.

5) On the last date of hearing, counsel appearing for the Union of India had sought time to obtain instructions whether other employees have been given benefit of grade pay of Rs.5400, whereas the petitioner alone is singled out and given grade pay of Rs.4800.

6) Learned counsel for the respondents states that this is factually correct and that other employees have been granted grade pay of Rs.5400. On merit, it is stated that grade pay of Rs.5400 may not be admissible.

7) We find that even on merits the case, the stand of the respondents is ambiguous and unclear. The petitioner who was originally appointed as a Mono/Line Operator in 1973 was asked to work as a Key Board Operators (Offset) in 1989. Further there has been merger of pay scale of Rs.5000-8000, Rs. 5500-9000 and Rs.6500-10500. As noticed above, the respondents in response to the OA No.4008/2012 had conceded and accepted the entitlement to L. D. Sharma and 10 others. We would recognise and accept that this acknowledgement was after due deliberation and application of mind.

8) In these circumstances, we would not like to relegate the petitioner in to the another round of litigation, noticing that he has retired and grade pay of Rs.5400 stands granted to all other employees after due consideration by the respondents themselves. The respondents have not withdrawn the said grade pay, inspite of contention raised in the present proceedings. Possibly, they cannot in view of the judicial order.

9) In the aforesaid circumstances, the present writ petition is allowed with the direction that the petitioner would be entitled to the

grade pay of Rs.5400, Arrears of pay and pension as well as other benefits, if any, would be paid within a period of three months after a copy of the order is received by the respondents. No costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

MARCH 28, 2017

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