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

\+ **W.P.(C) No.7379/2017**

Date of Decision: 26th September, 2017.

UNION OF INDIA & ANR ..... Petitioners
Through Mr.Kirtiman Singh, Adv. with Mr.Waize Ali Noor, Adv., Mr.Prateek Dhanda, Adv. & Mr.Vikramaditya Singh, Adv.

versus

SHASHI KANT & ORS ..... Respondents
Through Mr.S.K. Gupta, Adv. with Mr.Vikram Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

O R D E R
% **26.09.2017**

1. The petitioner-Union of India has filed the present petition assailing the order dated 6th March, 2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.1456/2015. The Tribunal has allowed the said Original Application preferred by the respondents to the extent that, they have been held entitled to pay fixation at the level of minimum entry pay applicable to Direct Recruits (DRs) to the post of Assistant Accounts Officer, along

with grade pay of Rs.4800/-from the date of their appointment by promotion. They have also been granted arrears arising out of the said pay fixation. The Tribunal has, however, declined the prayer made by the respondents/applicants, to treat them as DRs in the post of Assistant Accounts Officer. The Tribunal has also declined the prayer for interest on payment of arrears in the facts and circumstances of the case.

2. The respondents were appointed as Assistant Accounts Officer (AAO)(earlier called Junior Accounts Officer) under the 90% quota in different panel years after the implementation of the VIth Central Pay Commission Report (VIth CPC) i.e. after 01.01.2006. At this stage itself, we may refer to the Recruitment Rules (RRs) in respect of the said post of Junior Accounts Officer. The said post is to be filled by promotion, failing which by deputation. In case both these methods fail, then the posts are to be filled by direct recruitment. The extracts of the relevant Recruitment Rules are as follows:-

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90% by promotion failing which by deputation failing both by direct Recruitment. **Note:** The direct recruits will be selected on the basis of an Entrance examination conducted by Controller General of Accounts or any Authority specified by him. During the period of	Promotion xxx

probation they should qualify the Junior Accounts Officer (Civil) examination for substantive appointment failing which they are liable for discharge from service 10% by promotion	

3. The Central Civil Services (Revised Pay) Rules, 2008 (Revised Pay Rules) were notified on 29th August, 2008 Rules 8 thereof provide the manner of fixation of pay in the revised pay structure of the employees appointed as fresh recruits on or after1st January, 2006 while Rule 13 deals with fixation of pay on promotion on or after 1st January, 2006 on the implementation of the VIth CPC.

4. The said Rules resulted in the pay of the promotees being fixed at a lower scale than that of the DRs to the same post of Junior Accounts Officer. Consequently, the respondents approached the Tribunal to claim that they should be treated as DRs and they should be given the same pay scale as prescribed for the DRs. To this extent, the Tribunal held against the respondents, by holding that the respondents were promotees and not DRs under the aforesaid Recruitment Rules. The stand of the Petitioner before the Tribunal was that the Government had not accepted the recommendations of the National Anomaly Committee to the effect that whenever there was provision for direct recruitment in the Recruitment Rules, pay on promotion in case of promotees should be fixed at the prescribed minimum of the entry pay as prescribed for the DRs in the Revised Pay Rules, irrespective of the fact whether direct recruitment had actually taken

place or not. The petitioner has contended that the Government had decided to allow stepping up of pay only in cases when a junior DR is actually drawing more pay than his senior promotee. The conditions laid down by the Petitioner were as follows:-

> "(i) Stepping up of the pay of seniors can be claimed only in the case of those cadres which have an element of direct recruitment and in cases where a directly recruited junior is 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 pay of the directly recruited junior provided they belong to the same seniority list for all purposes.
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> (ii) Government servants cannot claim stepping up of their revised basic pay with reference to the entry pay in the revised structure for direct recruits appointed on or after 1.1.2006, as laid down in Section II of Part A of the First Schedule to the RS(RP) Rules, 2008, if their cadre does not have an element of direct recruitment or in cases where no junior is drawing basic pay higher than them.
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> (iii) Stepping up of pay of the seniors shall not be applicable in cases where direct recruits have been granted advance increments at the time of recruitment."

5. The Tribunal allowed the Original Application, as aforesaid, on the premise that since the Recruitment Rules do provide for direct recruitment, even if direct recruits may not be available as of now, they may be available in future. Thus, the Tribunal held that in situations, where there is a provision for direct recruitment and promotion to a post, the petitioner would have to allow the minimum entry pay to the promotees of the same batch, also as payable to the DRs. Allowing minimum entry pay to one batch, and not allowing the same to the

other would be discriminatory. The Tribunal also held that grant of lower pay scale to the promotees viz a viz the DRs was violative of the principle of `equal pay for equal work'.

4. The submission of Mr.Kirtiman Singh is that the courts should not interfere in the matter of pay fixation. In this regard, he has placed reliance on the decision in the ***State of West Bengal Vs. Subhas Kumar Chatterjee & Ors. (2010) 11 SCC 694,*** in particular on paragraphs 30 & 31 of the said decision which reads as follows:-

> "30. Yet another question that arises for our consideration is whether a writ of mandamus lies compelling the State to act contrary to law? The State Government having accepted the recommendations of the successive Pay Commissions gave effect to those recommendations by framing statutory rules being the ROPA Rules and scales of the employees have been accordingly fixed. The respondents did not challenge the vires of the said Rules under which they were entitled to only a particular scale of pay. The State Government is under obligation to follow the statutory rules and give only such pay scales as are prescribed under the statutory provisions. Neither the Government can act contrary to the rules nor the Court can direct the Government to act contrary to rules. No Mandamus lies for issuing directions to a Government to refrain from enforcing a provision of law. No court can issue Mandamus directing the authorities to act in contravention of the rules as it would amount to compelling the authorities to violate law. Such directions may result in destruction of rule of law.
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> 31. In the instant case, the impugned order of the High Court virtually compelled the State to give pay scales contrary to statutory rules under which pay scales of the

employees are fixed. The decision of the Chief Engineer being contrary to the ROPA Rules, 1998, cannot be enforced even if such a decision was taken under the directions of the Administrative Tribunal. The orders of the Tribunal as well as of the High Court suffer from incurable infirmities and are liable to be set aside."

5. Mr.Singh submits that it is not the respondent's case, who are promotees, that their pay had not been fixed as per Rule 13 of the CCS (Revised Pay) Rules, 2008 which, according to him, is the Rule dealing with fixation of pay of the promotees. He submits that since, as a matter of fact, there are no direct recruits who are junior to the respondents-drawing higher pay than the respondents, there is no question of actual discrimination against the respondents. He submits that Rule 8 of the CCS (Revised Pay) Rules, 2008, applies only to DRs who are recruited after 1st January, 2006. Therefore, the said Rule cannot be applied to the respondents who are promotees after 1st January, 2006. He further submits that the respondents had not challenged the said revised pay Rules on the ground of discrimination before the Tribunal, and unless the said rules were assailed, the same were enforceable.

6. On the other hand, Mr. Gupta has defended the impugned order. He has firstly drawn our attention to a decision of the Coordinate Bench of this Court in WP (C) No.2634/2017 titled ***Government of NCT of Delhi & Anr. Vs. Somvir Rana & Ors***. decided on 23rd March, 2017, wherein the Division Bench of this Court while dealing with a similar situation in respect of Trained Graduate Teachers (TGTs), held that fixation of different pay scales

for promotees and DRs would lead to invidious discrimination and violate Article 14 of the Constitution of India. The Division Bench held that when the same post with identical duties and responsibilities is occupied by two streams of employees, namely, promotees and DRs, ex facie, they cannot be given different pay scales. In that case as well, the Government had sought to defend this action by placing reliance on the provision for stepping up of pay of the promotees in the eventuality of a DR who is junior to the promotee, getting higher pay scale. The Division Bench had rejected the said submission by observing as follows:-

> "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 promotes amounts to invidious discrimination and violates Article 14 of the Constitution. The same post with identical duties and responsibilities, ex facie cannot have two different pay scales, one for the promotes 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 promote 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. Mr.Gupta submits that the Special Leave Petition preferred by the Government of NCT of Delhi in the said case, vide Diary No.23663 of 2017, was dismissed in limine on 1st September, 2017, by the Supreme Court of India. Mr.Gupta has also drawn our attention to three other decisions of Coordinate Benches of this Court, the first being ***Dasrath & Ors. Vs. Union of India & Anr.*** in WP (C) No.727/2015 decided on 27th January, 2015, the second being ***Ram Niwas Vs. Union of India & Ors.*** in WP (C) No.10071/2015 decided on 18th July, 2016 and the third being ***Union of India & Ors. Vs. Malbika Deb Gupta*** in WP (C) No.8058/2015 decided on 4th November, 2016. In ***Malbika Deb Gupta (supra)***, the Division Bench interpreted Rule 7A & Note-2A of the Revised Pay Rules which read as follows:-

> "7. Fixation of initial pay in the revised pay structure: (1) The initial pay of a Government servant who elects, or is deemed to have elected under sub-rule (3) of rule 6 to be governed by the revised pay structure on and from the 1st day of January, 2006, shall, unless in any case the President by special order otherwise directs, be fixed separately in respect of his substantive pay in the permanent post on which he holds alien or would have held a lien if it had not been suspended, and in respect of his pay in the officiating post held by him, in the following manner, namely :-
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> (A) in the case of all employees:-
> (i) the pay in the pay band/pay scale will be determined by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10.

(ii) if the minimum of the revised pay band/ pay scale is more than the amount arrived at as per (i) above, the pay shall be fixed at the minimum of the revised pay band/ pay scale;

Note 2A - Where a post has been upgraded as a result of the recommendations of the Sixth CPC as indicated in Part B or Part C of the First Schedule to these Rules, the fixation of pay in the applicable pay band will be done in the manner prescribed in accordance with Clause (A) (i) and (ii) of Rule 7 by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and rounding the resultant figure to the next multiple of ten . The grade pay corresponding to the upgraded scale as indicated in Column 6 of Part B or C will be payable in addition. Illustration 4A in this regard is in the Explanatory Memorandum to these Rules."

8. The Division Bench, while noting the said Rule, held that since the minimum of revised pay band/pay scale was more than the amount arrived at as per the formula laid down in Clause (i), the pay was liable to be fixed at the minimum of the revised pay band/pay scale in accordance with Clause (ii). The relevant extracts from the decision of the Division Bench in ***Malbika Deb Gupta (supra)*** reads as follows:-

"6. Rule 7A clause (i) postulates for computation of the revised pay by multiplication of the existing basic pay as on 01.01.2006 by a factor of 1.86 and rounding the resultant figure to the next multiple of ten. Thus the existing pay scales are to be multiplied by a factor of 1.86 and would be rounded off as indicated. However, clause (ii) thereof stipulates that where minimum revised pay scale is more than the amount arrived at as per clause (i), the pay will be fixed at the minimum of the revised basic pay/pay scale. The clause (ii) refers to the pay scale and grade pay as applicable on enforcement of the Revised Pay Rules, 2008. In case the minimum revised pay scale under the Revised Pay Rules, 2008 is more than the figure arrived at under clause (i) of Rule 7A, clause (ii) would be applicable.

7. The contention of the petitioners is that Rule 7A (ii) will not apply when Note 2A is applicable. We do not agree with the said argument. Note 2A does not contradict the said Rule 7A or carve out an exception overriding the mandate of Rule 7A. The note stipulates that for posts upgraded as indicated in Part B and C of the First Schedule of the Rules, the fixation of pay will be done in the manner provided in clauses (i) and (ii) of Rule 7A by multiplication of the pay scale as existing on 01.01.2006 by a factor of 1.86 and rounding of.. Note 2A, in effect, makes reference to clause (i) of Rule 7 Clause A and is identically worded as clause (i) to Rule 7A. This does not mean that clause (ii) to Rule 7A would not be applicable. If this was the intent and purpose of Note 2A, the Note would have been differently worded. In simple and plain words, it would have been stated that clause (ii) would not be applicable till first direct recruits were appointed or first W.P.(C) 8058/2015 & Connected matters Page 7 of 10 promotions post 1st January, 2006 were made. Reference to clause (ii) of Rule 7A would not have been made in this manner. Rule 7A and Note 2A are to be construed and interpreted harmoniously so as to make them consistent to avoid any conflict.

8. The argument of the petitioner ignores and contradicts the second and third sentence of Note 2A. The second and the third sentence in Note 2A state that the grade pay in the upgraded scale as indicated in Column 6 of Part B or C will be payable in addition and illustration 4A is the applicable illustration. Section II of Part B of the 1 st

Schedule in Column 6 refers to the corresponding grade pay applicable in the pay band. The earlier columns of the table in section II refer to the present scale, i.e., the pay scale as was applicable prior to 1.1.2006, and the pay scale granted consequent to the merger of the posts, and then states the corresponding or equivalent Pay band and grade pay applicable with reference to the revised pay scale.

9. Illustration 4A is as under:-
"Illustration 4A: Pay fixation in cases where posts have been upgraded e.g. posts in prerevised pay scale of Rs.3050-75- 3950-80-4590 to Rs.3200-85-4900 scale
1. Existing Scale of Pay Rs.3050-4590 (Corresponding Grade Pay Rs.1900)
2. Pay Band applicable PB-1 Rs.5200-20200
3. Upgraded to the Scale of Pay Rs.3200-4900 (Corresponding Grade Pay Rs.2000)
4. Existing basic pay as on 1.1.2006 Rs.3125
5. Pay after multiplication by a factor of 1.86 Rs.5813 (Rounded off to Rs.5820)
6. Pay in the Pay Band PB-2 Rs.5820
7. Pay in the pay band after including benefit of bunching in the pre-revised scale of Rs.3050-4590, if admissible Rs.6060
8. Grade Pay attached to the scale of Rs.2000 Rs.3200-4900 W.P.(C) 8058/2015 & Connected matters Page 8 of 10
9. Revised basic pay - total of pay in the pay band and grade pay Rs.8060"

The illustration refers to the computation of pay under both Rule 7A clause(i) and clause (ii).

10. Even otherwise, the interpretation propounded by the Union of India is incoherent and leads to absurdity. A new direct recruit, when appointed, is to be paid in the pay scale as per the 2008 Rules. He would be entitled the minimum of the pay band plus applicable grade pay. His

pay would be computed as per Rule 7A Clause (ii) of the Rules. However, employees on the same post prior to 1.1.2006 would not get the benefit of clause (ii) to Rule 7A and would have to wait till a junior is appointed to the same post after 1.1.2006. Thus, when the appointments are delayed, or not made, the benefit of the new pay scales under Part B and C would be delayed or even denied. Consequently, the contention of the petitioners that the respondents would be entitled to benefit of Rule 7A Sub Clause (ii) only from the date when the junior is appointed to the said post by way of direct recruitment or by way of promotion is fallacious and has to be rejected. The aforesaid argument is to cover up the anomaly which is being created as a result of their misinterpretation of Rule 7A (ii) and Note 2A.

11. One cannot accept that the same post can have two different pay scales, one for existing employees performing the same tasks and doing the same work on the ground that they were appointed or have been functioning on the said post prior to 1.1.2006, whereas a person appointed later in point of time would get the higher pay scale. Logically and as sequitor, the argument of the Union of India that where new appointments or promotions W.P.(C) 8058/2015 & Connected matters Page 9 of 10 were made, the employees working on the posts would immediately get the benefit of pay under Rule 7A Clause (ii) is wrong and fallacious. The principle of upgradation of pay of the senior on the junior getting a higher pay scale is applicable in certain situations. Note 2A does not prescribe and record any such precept.

12. Fixation of pay pursuant to the 2008 Rules is a right. This right cannot be defeated and postponed. It is not subject to the principle of stepping up of pay of the senior when the junior gets a higher pay. The decision of the High Court of Delhi in Dharmendra Yadav v Union of

> India & Ors., 2016 (5) SLR 644 (Delhi) is well reasoned and detailed. Similarly, the judgment dated 18.07.2016 passed in W.P.(C) No.10071/2015, Ram Niwas v. Union of India. referring to the decision in Dharmendra Yadav (supra) takes an identical view."

9. Mr.Gupta has also relied on the decision of the Supreme Court in ***Kamlakar & Ors. Vs. Union of India & Ors. (1999) 4 SCC 756***. The Supreme Court in this decision, inter alia, observed that once the employees are in one cadre, the distinction between DRs and promotees disappears, at any rate, so far as equal treatment in the same cadre for payment of pay scale is concerned. The birth marks have no relevance in this connection. If any distinction is made of their right to the concerned post that they are holding in relation to the scale, such distinction between DRs and promotees is not permissible.

10. We have considered the rival submissions of the parties and perused the record. We find that though at the first blush, the matter appears to involve interpretation of the Central Civil Service (Revised Pay) Rules, 2008, as sought to be contended by learned counsel for the petitioner, but on a closer examination, it is evident that the present case involves a very short question i.e. as to whether there can be two pay scales for the same post of Assistant Accounts Officer, one for promotees and the other for direct recruits and whether any Rule permits such differential treatment. We may notice that the

direct recruits appointed to the said post after 1st January, 2006, are being granted the pay scale prescribed for the Assistant Accounts Officer in the Recruitment Rules. There is, however, no dispute to the fact that on the other hand, the promotees who have earned promotion to the said post after 1st January, 2006, are being granted much lower pay scale and their pay is being calculated by resort to Rule 13. The said calculation of pay of the promotees is being done with reference to their pay in the feeder cadre post.

11. Thus, what emerges is that while the direct recruits are being granted pay prescribed in the Recruitment Rules for the said post, the promotees who are also occupying the same post of Assistant Accounts Officer in accordance with Recruitment Rules, are being deprived of the pay scale prescribed for the said post in the Recruitment Rules. The petitioners are not in a position to dispute the position that even though both promotees and direct recruits are discharging the same duties and have been appointed pursuant to the same Recruitment Rules, they are being given a differential treatment in respect of their pay scales. We are unable to find any justification for this discrimination.

12. The Supreme Court had as early as in the case of ***Kamlakar & Ors. Vs. Union of India & Ors. (supra),*** which has been relied upon by the petitioner, held that once employees coming from two different sources i.e. direct recruits and promotees are placed in one common cadre, there birth mark i.e. the source from which they joined the cadre, looses its relevance and no discrimination can be made thereafter in fixing their service conditions including pay scales. The

action of the Petitioner is, thus, clearly contrary to the dicta of the Supreme Court in the above case.

13. We have also considered the judgment of ***Govt. Of NCT of Delhi*** (supra) on which reliance has been placed by the learned counsel for the Respondents noted hereinabove and find that the Division Bench after considering of the Rules and the clarification dated 13.03.2009 issued by the Government held that the same post cannot have two pay scales, one for the promotees and other for direct recruits. The provision for two different pay scales for promotees and direct recruits is clearly violative of the principle of `equal pay for equal work'.

14. We have also considered the judgments relied upon by learned counsel for the petitioner and find that the said judgments only reiterate the well settled legal position that the State cannot be compelled to give pay scale contrary to the statutory rules.

15. Before we deal with this aspect of the matter it would be appropriate to reproduce Rule 13 (1) as in our view the same, in itself, provides for stepping up of pay of the promotees of the minimum of the higher pay band to which post promotion has taken place. Rule 13 reads as under:-

> "13. Fixation of pay on promotion on or after 1.1.2006 - In the case of promotion from one grade pay to another in the revised pay structure, the fixation will be done as follows:-
> (i) One increment equal to 3% of the sum of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple of 10. This will be added to the existing pay in the pay band.

> The grade pay corresponding to the promotion post will thereafter be granted in addition to this pay in the pay band. In cases where promotion involves change in the pay band also, the same methodology will be followed. However, if the pay in the pay band after adding the increment is less than the minimum of the higher pay band to which promotion is taking place, pay in the pay hand will be stepped to such minimum."

Having examined Rule 13(1) we find that the rule itself caters to situations where pay of the promotee after using the methodology prescribed in Rule 13 (1) is found to be lesser than the minimum of the higher pay band of the promotional post, the same needs to be stepped up to the minimum of the pay scale of the promotional post. We find that the judgments in the cases of ***UOI vs Malbika Deb Gupta*** (supra) and ***Dasrath & Ors v. UOI*** (supra), on which reliance has been placed by the learned counsel for the Respondents also while dealing with Rule 7 (A) clause 1 and 2 also take the same view. Thus it is clear to us that, Rule 13 itself provides for such a contingency for stepping up of the pay of the promotee to the minimum of the pay band of the promotional post and thus we see no violation of any Rule, in the directions given by the Tribunal to fix the pay of the Respondent Promotees at the level of minimum entry pay applicable for direct recruits.

16. In these circumstances, we are of the view that the decision of Coordinate Bench is in consonance with the settled legal principle of `equal pay for equal work' and there can be no justification for granting two different pay scales to persons holding the same post

merely on the basis of the source through which they are appointed.

17. In view of the aforesaid reason, we find no merit in the present petition which is, accordingly, dismissed.

The copy of this order be given dasti under the signatures of the Court Master of this Court.

VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

SEPTEMBER 26, 2017/aa