

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (CIVIL) No. 8891/2015**

% **Reserved on:** 23rd February, 2017
Date of Decision: 19th July, 2017

RISHI PAL

....Petitioner

Through Mr. Dilip Singh and Ms. Neha
Tandon, Advocate.

Versus

UNION OF INDIA & ORS

....Respondents

Through Mr. Rakesh Kumar, CGSC
with Mr. Dushyant Singh, Advocates for R-
1 to R-4.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. CHANDER SHEKHAR

SANJIV KHANNA, J.

Rishi Pal, in this writ petition, impugns the order dated 11th May, 2015, whereby the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) has dismissed OA No.2303/2014 filed by him.

2. The dispute pertains to entitlement to stepping-up of pay under the Central Civil Services (Revised Pay) Rules, 2008 which were notified on 29th August, 2008 vide GSR No.622(E), issued under the proviso to Article 309 and clause (5) of Article 148 of the Constitution. Thereafter vide S.R.O. 21(E) dated 9th September, 2008 the Civilians in Defence Services (Revised Pay) Rules, 2008 (hereafter called the "Revised Pay Rules, 2008") applicable to and governing the petitioner's post were notified. The Civilians

in Defence Services (Revised Pay) Rules, 2008 are *ipsissima verba* the Central Civil Services (Revised Pay) Rules, 2008. The Rules came into force with retrospective effect from 1st January, 2006.

3. The factual position is narrow and limited.

4. The petitioner, upon selection as a direct recruit through the Union Public Service Commission, was appointed as a Junior Works Manager/Mechanical (JWM/Mech) on 3rd July, 2006 in the pre-revised pay-scale of Rs.7450-225-11500. After implementation of the Revised Pay Rules, 2008 his pay was revised in terms of Rule 8 as per Section II, Part A of the First Schedule. To this extent, there is no dispute and lis.

5. One Rajesh Kumar Singh was working at the post of Chargeman (Technical) in the pre-revised pay scale of Rs.5500-175-9000. After implementation of the Revised Pay Rules, 2008 Rajesh Kumar Singh's pay was also fixed at the post of Chargeman (Technical) in accordance with Part B of the Revised Pay Rules, 2008 in Grade Pay of Rs. 4200 in PB-2, Rs. 9300-34800. Rajesh Kumar Singh was thereafter promoted to Assistant Foreman on 13th April, 2007 in the pre-revised pay scale of Rs. 6500-10500 and Grade Pay of Rs. 4600 under the Revised Pay Rules, 2008.

6. The Ordnance Factory Board, Ministry of Defence pursuant to its 1st (2011) Board Meeting held on 31st January, 2011, conveyed sanction of the Competent Authority on 4th February, 2011 for merger of posts of Assistant Foreman/Foreman/Storeholder in the pre-revised pay-scale of Rs.6500-200-10500 with the post of Junior Works Manager/Technical and Non-Technical in the pre-revised pay-scale of Rs.7450-225-11500, into a single grade of Junior Works Manager/Technical and Non-Technical in Pay Band of Rs.9300-34800 (PB-2) with the Grade Pay of Rs.4600 under the

provisions of Sub Para (ii), Section I and Para XVIII (3), Section II, of Part-B of the First Schedule to the Revised Pay Rules, 2008. The effect of the said notification was that Rajesh Kumar Singh, who had been promoted to the post of Assistant Foreman on 13th April, 2007, upon merger of the posts of Assistant Foreman with Joint Works Manager was inducted into the cadre of Junior Works Manager from 13th April, 2007.

7. Upon giving effect to the order dated 4th February, 2011 and induction as Junior Works Manager, Rajesh Kumar Singh was drawing more pay than the petitioner. The reason why Rajesh Kumar Singh, who is junior to the petitioner, was drawing more pay has been elucidated below. Suffice if we notice and record that Rajesh Kumar Singh's higher pay in the same pay scale/band was due to the stage or increments which he had earned vis-à-vis the petitioner.

8. Consequent to the aforesaid order dated 4th February, 2011, the petitioner made a representation seeking upgradation of pay relying upon Note 1 to Rule 10 of the Revised Pay Rules, 2008 whereas the respondents pleaded that the petitioner was not entitled to the said upgradation in view of Note 7 and Note 10 to Rule 7 of the said Rules.

9. In order to appreciate the controversy, we would like to reproduce the relevant portion of Rule 7(1)(A), Note 7 and Note 10 to Rule 7, Rule 10, and Note 1 to Rule 10 which read:-

“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 a lien 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 :-

(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;

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Note 7 - Where in the fixation of pay under sub-rule (1), the pay of a Government servant, who, in the existing scale was drawing immediately before the 1st day of January, 2006 more pay than another Government servant junior to him in the same cadre, gets fixed in the revised pay band at a stage lower than that of such junior, his pay shall be stepped upto the same stage in the revised pay band as that of the junior.

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Note 10 -In cases where a senior Government servant promoted to a higher post before the 1st day of January, 2006 draws less pay in the revised pay structure than this junior who is promoted to higher post on or after the 1st day of January, 2006, the pay in the pay band of the senior Government servant should be stepped up to an amount equal to the pay in the pay band as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to the fulfilment of the following conditions, namely:-

- (a) both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.

- (b) the pre-revised scale of pay and the revised grade pay of the lower and higher post in which they are entitled to draw pay should be identical.
- (c) the senior Government servants at the time of promotion should have been drawing equal or more pay than the junior.
- (d) the anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22 or any other rule or order regulating pay fixation on such promotion in the revised pay structure. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provision of this Note need not be invoked to step up the pay of the senior officer.

(2) Subject to the provisions of rule 5, if the pay as fixed in the officiating post under sub-rule (1) is lower than the pay fixed in the substantive post, the former shall be fixed at the same stage as the substantive pay.

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10. Date of next increment in the revised pay structure- There will be a uniform date of annual increment, viz. 1st July of every year. Employees completing 6 months and above in the revised pay structure as on 1st of July will be eligible to be granted the increment. The first increment after fixation of pay 1.1.2006 in the revised pay structure will be granted on 1.7.2006 for those employees for whom the date of next increment was between 1st July, 2006 to 1st January, 2007.

Provided that in case of persons who had been drawing maximum of the existing scale for more than a year as on the 1st of January, 2006, the next increment in the revised pay structure shall be allowed on the 1st day of January, 2006. Thereafter, the provision of Rule 10 would apply.

Provided that in cases where an employee reached the maximum of his pay band, shall be placed in the next higher pay band after one year of reaching such maximum. At the time of placement in the higher pay band, benefit of one increment will be provided. Thereafter, he will continue to move in the higher pay band till his pay in the pay band reaches the maximum of PB-4 after which no further increments will be granted.

Note1- In cases where two existing scales, one being a promotional scale for the other, are merged, and the junior Government servant, now drawing his pay at equal or lower stage in the lower scale of pay, happens to draw more pay in the pay band in the revised pay structure than the pay of the senior Government servant in the existing higher scale, the pay in the pay band of the senior Government servant shall be stepped up to that of his junior from the same date and he shall draw next increment in accordance with rule 10.”

10. Rule 7 (1) (A) (i) states that pay of all employees will be determined by multiplying the existing basic pay as on 1st January, 2006 by a factor of 1.86 and rounding off the resultant figure of the next multiple of 10. Clause (ii) states that 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.

11. Note 7 under Rule 7 relates to fixation of pay under Sub-Rule 1 in case of a Government Servant who was in service before the 1st of January, 2006 and was drawing pay higher than another Government Servant junior to him in the same cadre. This Note postulates upgradation or stepping up when such senior gets a lower pay than his junior in the revised pay band. This would not be applicable to the case of the petitioner as he had joined the service after the 1st of January, 2006 and was not in service before 1st of January, 2006.

12. Note 10 under Rule 7 would also not be applicable as it relates to promotion of a Government servant to a higher post before the 1st of January, 2006 who thereafter draws less pay in the revised pay structure than his junior, who was promoted to the said post on or after 1st of January, 2006. The petitioner was not in Government service before the 1st of January, 2006 and hence could not have been promoted to a higher post.

13. This brings us to Rule 10 and Note 1 thereof which is pivotal and is the most relevant Note relied upon by the petitioner. Rule 10 deals with increments in the revised pay structure. It postulates a uniform date for annual increment, i.e. the 1st of July every year. The latter portion of Rule 10 deals with method of computation and grant of first increment after the 1st of January, 2006. The two provisos to Rule 10 also relate to increment and we are not currently concerned with them.

14. Note 1 to Rule 10 relates to stepping up of pay and subsequent increments thereafter when two posts, which constitute feeder and promotional posts, are merged. This important facet cannot be ignored and has to be kept in mind while interpreting Note 1. Note 1 provides for cases where two existing scales (post) under the pre-revised pay rules - one being promotional scale (post) to the other, are merged. In such cases, Note 1 comes into play and postulates stepping up of pay of the senior Government servant to the level of the pay of the junior Government servant, provided the condition mentioned in Note 1 is satisfied. The condition is that the junior Government servant in the pre-revised scale should be at "equal or lower stage in the lower scale of pay", i.e. in the pre-revised scale.

15. The expression and the words "junior Government servant, now drawing his pay at equal or lower stage in the lower scale of pay, happens to

draw more pay in the pay band in the revised pay structure" are significant, but at the same time ambiguous and confusing. They have to be given appropriate and proper meaning. As noticed above, Note 1 is part of Rule 10, which relates to the date of next increment in the revised pay structure. The aforequoted portion of Note 1 should be read in such a manner so as to give it a rational and appropriate meaning in the context of Rule 10. This portion, according to us, should be read as "the junior Government servant drawing his pay in equal or lower stage in the lower scale of pay now happens to draw more pay in the pay band of revised pay structure than the pay of the senior Government servant in the existing higher pay scale, the pay band of the senior Government servant shall be stepped up to that of his junior from the same date and he shall draw his next increment in accordance with Rule 10". This is the only way we can appreciate and understand and give meaning to Note 1. Reference to "the junior Government servant drawing his pay at equal or lower stage in the lower scale of pay" refers to the stage in the pre-revised pay scale, i.e. in the pay scales before the Revised Pay Rules, 2008 came into effect. The senior Government servant, therefore, who draws a lower pay will be entitled to stepping up only if the junior in the pre-revised scale was at equal or lower stage in the lower scale of pay. Where the junior was at a higher stage in the lower scale of pay, i.e., pre-revised scale and now draws higher pay, benefit of stepping up under Note 1 would not be available.

16. The facts of the case would in fact justify and show the reason why the petitioner would not be entitled to the said benefit. We would begin by referring explanatory Memorandum, to Rules 9 and 10, issued along with the Revised Pay Rules, 2008, which are as under:-

“Rule 9 & 10- These rules prescribe the manner in which the next increment in the new scale should be regulated. The provisos to this rule are intended to eliminate the anomalies of junior Government servants drawing more pay than their senior by the operation of substantive part of this rule and also taking care of the Government servants who have been drawing pay at the maximum of the existing scale for more than one year as on 1.1.2006 and also those Government servants who have been stagnating at the maximum of the existing scale and are actually in receipt of stagnation increment on ad hoc basis.”

The Memorandum states that the provisos to Rule 10 are intended to eliminate the anomalies of a junior Government servant drawing more pay than the senior by operation of the substantive part of the Rule and it takes care of Government servants who have been drawing pay at the maximum of the existing scale for more than one year as on 1st January, 2006. Thus, benefit of stepping up is not to be given in all cases, and would be restricted to cases where the conditions of Note 1 are satisfied, including the stipulation with regard to "equal or lower stage in the lower scale of pay".

17. The junior officer, i.e. Rajesh Kumar Singh, was as on 1st January, 2006 working as a Chargeman in the pre-revised scale of Rs.5500-175-9000. His basic pay as on 1st January, 2006 under the pre-revised scale was Rs.7075. The pre-revised pay scale of the next promotional post, i.e. Assistant Foreman was Rs.6500-200-10500. As on 1st January, 2006 the junior officer was earning more than the initial basic pay of the Assistant Foreman, i.e. more than Rs. 6500. The junior officer was promoted as Assistant Foreman on 13th April, 2007 and his pay on promotion in the pre-revised scale of Rs.6500-200-10500 was fixed at Rs.7300. The petitioner's pay at that time as Junior Works Manager was Rs.7450. With effect from 1st July, 2007, it was on account of grant of increment of Rs.225 in the pre-

revised scale of Rs.7450-225-11500, that the petitioner became entitled to basic pay of Rs.7675. Thus, prior to merger of the post of the Assistant Foreman and Junior Works Manager in the pre-revised scales, the petitioner was drawing higher basic salary. The position, however, underwent a change with the implementation of the Revised Pay Rules, 2008 as the post of Chargeman was upgraded to Pay Band-2 (Rs.9300-34800) with Grade Pay of Rs.4200. The post of Chargeman was never merged. However the pay scale was upgraded to Grade Pay of Rs. 4200, which was the fitment Grade also applicable to those in the pre-revised scale of Rs. 6500-200-10500. Therefore upon implementation of the Revised Pay Rules, 2008 the Junior officer with effect from 01.01.2006, even when he was Chargeman, had drawn higher pay of Rs. 17360 on 01.01.2006, whereas the petitioner's salary under the Revised Pay Rules, 2008 on appointment on 03.07.2006 was revised to Rs. 17140. Further, the post of Assistant Foreman was merged/upgraded as Junior Works Manager in Pay Band-2 with Grade Pay of Rs.4600 vide sanction dated 31st January, 2011. It was, in these circumstances, that the pay scale of the junior officer became higher, both in the lower post of Chargeman with effect from 1st January, 2006 and then on promotion of the junior officer on 13th April, 2007 as Assistant Foreman, which was treated as the date of merger of the post of Assistant Foreman with Junior Works Manager.

18. With effect from 1st January, 2006, the petitioner though in Grade Pay of Rs.4600 in Pay Band-2 was drawing basic pay of Rs.17140, but the junior officer though in Grade Pay of Rs.4200 in Pay Band-2 as Chargeman was paid basic pay of Rs.17360. This difference became substantially larger with effect from 13th April, 2007, when the pay of the Junior Officer in

Grade Pay of Rs.4600 was fixed at Rs.18290, whereas the pay of the petitioner in Grade Pay of Rs.4600 was even then Rs.17140. The pay of the petitioner with effect from 1st July, 2007 became Rs.17660, whereas basic pay of the junior officer with effect from 1st July, 2007 became Rs.19390. Thus, difference in the two has continued since then. This difference is justified as the junior officers had joined service on 01.01.1990 and the higher salary/pay in the post of Junior Works Manager or even Chargeman was on account of increments earned and counted for computing the salary/pay in the same Grade Pay of Rs. 4600 or even Rs. 4200. The requirement of Note 1 to Rule 10, of "equal or lower stage" in the pre-revised pay scale is not satisfied.

19. In view of the above discussion, we do not find any merit in the present petition and the same is dismissed. There is no order as to costs.

Sd/-
(SANJIV KHANNA)
JUDGE

Sd/-
(CHANDER SHEKHAR)
JUDGE

JULY 19th, 2017
NA /VKR/SSN