

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

Decided on: 15.02.2018

+ **W.P.(C) 11264/2015 & C.M. APPL.31779/2017**

RAJ KAPOOR SINGH AND ORS.

.... Petitioners

Through: Ms. Jyoti Singh, Sr. Advocate with Mr. Sameer Sharma, Mr. Amandeep Joshi and Mr. Himanshu Gautam, Advocates.

versus

REGISTRAR GENERAL HIGH COURT OF DELHI AND ANR.

.... Respondents

Through: Mr. Zahid Hanief, for Mr. Naushad Ahmed Khan, Advocate, for GNCTD/Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioners are employed as Judicial Assistants through exclusive promotion quota provided for the purpose in the Schedule to the Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972. Their grievance pertains to disparity; pay fixation in the pay band –II of ₹ 9300-34,800 (Grade Pay ₹ 4600/-).

2. The undisputed facts are that the petitioners joined the establishment of this Court and were promoted on various dates in the year 2013-2014. Rule 2(iii) provides *inter alia* for equal status posts; equal as to what such posts are; the second Schedule spells out what such 'equal status' posts are.

3. The relevant extracts to Schedule 2 are as follows :-

“SCHEDULE-II

Equal Status posts :

(i) Secretary to the Chief Justice.

(ii) (Administrative Officer (Judicial), Court Masters, Private Secretaries to Judges, Librarian, Interpreters.

(iii) Readers, Senior Judicial Assistants, Senior Judicial Translators, Senior Personal Assistants and Senior Assistant Librarians.

(iv) Chief Cashier, Judicial Assistants, Judicial Translators and Personal Assistants.”

4. The grievance which the petitioners urged before this Court is of unequal treatment amongst them and the members of the other equal status posts such as Judicial Translators and Personal Assistants. It is contended that being posts of ‘equal status’, the four categories (Junior Translators, Personal Assistants, Chief Cashier and Judicial Assistants) enjoy the same identical pay scale. Yet, in the case of Junior Translators and Personal Assistants, the entry level pay fixation is at Basic Pay ₹ 12,540 + Grade Pay ₹ 4600/- however, the Petitioners when promoted, their pay was fixed as ₹ 10,800 + Grade Pay ₹ 4600/-.

5. It is contended that the unequal treatment of equals is discriminatory. Learned Senior counsel highlights that the previous decision of this Court in *Meenu Goyal* in WP(C) No. 1528/1992 decided on 14.10.1992) established parity between Judicial Assistants and Personal Assistants vis-a-vis the pay scales. Those proceedings were initiated by the Personal Assistants, who sought and were granted parity. Rel. *Manoj Kumar Vs. Delhi High Court* in WP(C) No. 6522/2012 decided on 02.05.2013. In *Manoj Kumar*’s case, the

Court held that all the 'equal status' posts, such as, Personal Assistants, Judicial Assistants, Judicial Translators and Chief Cashier, were entitled to a common grade pay of ₹ 4600 per month (in the concededly applicable pay band), i.e. Pay Band of ₹ 9300 to 34,800.

6. The High Court Establishment resists the petitioners' plea and particularly states that there is no discrimination. The two reasons cited in support of its contention by the High Court are that the pay fixation is in accordance with Rule 8 of the Central Civil Services (Revised Pay Rules, 2008), which makes a distinction between the fixation of pay in a revised pay scale of employees appointed as fresh recruits after 1.1.2006 on the one hand, and, fixation of pay of promotees on the other, who are entitled to one increment equal to 3% of the sum of the pay in the same pay band and the existing pay to be reckoned for the purposes of fixation after promotion. It is also stated that the pay fixation upon promotion is based upon the formula prescribed in Rule 22 (c) in FRSR 22 (Fundamental Rules together with the Supplementary Rules), applicable to Central employees). Learned counsel lastly submits that the challenge to pay fixation in this case was also based upon the decision of the Anomaly Committee dated 17.07.2012 (a copy of the Minutes of the meeting of the said Anomaly Committee is placed on record).

7. The relevant extract of the said decision is as follows :-

“8.3. item No. 5 (ii), (iv) (with 32 and 33, (v)(vii) – Rule 8 of the Revised Pay Rules Fixation of pay on promotion.

Staff Side stated that anomaly in this case is basically due to the fact that it is for the first time that CPC has recommended specific entry level pay for Direct Recruits (DRs). This has resulted in employees who were appointed in

service prior to the DRs and got promoted earlier getting less pay as compared to their counterparts recruited directly and who joined after 1.1.2016. The Official Side stated that in such cases stepping up of pay is permissible subject to certain conditions. However, the Staff Side insisted that on promotion, the pay of all the promotes should be fixed at the entry level of pay of that post as in the case of the direct recruits, wherever there is a provision of direct recruitment in the RRs.

The Staff Side requested that in cases where no direct recruitment actually took place even though RRs provided for the same or when a DR did not join, stepping up of pay should be considered.

This suggestion of the Staff Side was considered by the Official Side, who responded by stating that wherever there is a provision of direct recruitment in the Recruitment Rules, pay on promotion would be fixed at the prescribed minimum of the Entry Pay as provided for the Direct Entrants in the Revised Pay Rules, irrespective of the fact whether direct recruitment has actually taken place or not. The Staff Side agreed to close this issue thereafter.”

8. From the above facts, it is evident that the dispute in question is narrow. The petitioners' grievance of discrimination and disparity; results from the pay fixation of those of equivalent cadres, who are placed at higher stages of pay of the same pay band. The petitioners upon promotion to the pay band of ₹ 9300-34,800/- are placed at the level of ₹ 10,800/-, whereas, those in the cadres of Personal Assistants and Judicial Translators are accorded a benefit of almost ₹ 2,000/- more at the same entry stage. The High Court explains this disparity, premised upon the operation of Rule 8 & 13 of the Revised Pay Rules, 2008 and also upon the pay fixation formula provided by FR-22.

9. The pleadings in this case would show that historically right from the Third Pay Commission onwards, there has been complete parity with respect to treatment *vis-a-vis* pay, salary and allowances and other benefits applicable to the four equivalent posts (Judicial Assistants, Judicial Translators, Personal Assistants and Chief Cashiers). This equality or parity or status was reinforced by referring to two judgments of this Court in *Meenu Goyal and Manoj Kumar's* case cited earlier. The only explanation given for differential treatment now is on account of Rule 13 of the CCS (Revised Pay) Rules of 2008.

At this stage, it would be essential to notice the relevant provision of the revised pay Rules, the extracts of which are, as under :-

“8. Fixation of pay in the revised pay structure of employees appointed as fresh recruits on or after 1.1.2006 – Section II of Part A of the First Schedule of these Rules indicates the entry level pay in the pay band at which the pay of direct recruits to a particular post carrying a specific grade pay will be fixed on or after 1.1.2006.

13. Fixation of pay on promotion 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 :

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 band will be stepped to such minimum.”

10. The High Court also relies upon the Anomaly Committee's decision of 2012. Entry to the pay band ordinarily entails similar treatment in accordance with Rules then existed, which appeals to the same rationale of Rules 8 and 13. At the same time, the special features which may attach to every cadre cannot be ignored. The historical parity between the four cadres in this case is not in dispute; in fact, it remains. The Rule 8 of the High Court's Rule, in fact, states that in one of the equivalent cadre/posts anyone appointed to an equivalent cadre or category, "may be transferred to a post of 'equal status' to another category". This means that inter-changeable or transfer between the post of Personal Assistant and Judicial Assistant or Judicial Assistant or any other equivalent post is permissible in the schedule-even in public interest; the rationale, the Anomaly Committee appears to have adopted to define the parity.

11. The Anomaly Committee in the opinion of the Court, made general observations and was not confronted with the situation like the present one, where inter-changability of posts is permissible and more particularly, a cadre of 'equal status' is to be filled through recruitment process - in other words, where the posts of equal status enjoying the same pay scale but subject to different recruitment process such as in the case of Judicial Assistants and Chief Cashier which are filled 100% by promotion as the other two cadres of Judicial Translators through direct recruits. The disparity supports and gets highlighted. This apparent distinction was not addressed by the Anomaly Committee. The two judgments of this Court with respect to parity of cadres and the entitlement of each to the benefits which are given to the other, has not been in any manner justified. In these circumstances,

the Court is of the opinion that the existing differential treatment accorded to Judicial Assistants, whose pay band is fixed at a lower level (direct recruits entry level Judicial Translators and Personal Assistants); clearly amounts to discrimination and violates Article 14 of the Constitution.

12. For the above reasons, a direction is issued to the respondents to ensure that the pay fixation of the petitioners and others, similarly placed and promoted in the respective cadres and Judicial Assistants and Chief Cashier, are fixed at the same scale that is given to the Personal Assistants and Judicial Translators, as and when they were promoted. It is however, clarified that the fixation of pay is to be re-fixed and the attending benefits calculated; the actual arrears shall be paid from the date of the filing of the present petition i.e. from 1.12.2015 (having regard to the fact that these petitions were filled on 18.11.2015). Consequently, arrears and differential pay, salary and allowances, etc. shall be fixed and disbursed to all the concerned within four months from today.

13. The writ petition is disposed of.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

FEBRUARY 15, 2018/P