

Sr. No. 213

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.7466 of 2013 (O&M)
Date of Decision: 17.01.2019**

Rattan Chand

... Petitioner

Versus

Union of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Rajeev Anand, Advocate,
for the petitioner.

Mr. Sudhir Nar, Senior Panel Counsel,
for the respondent-UI.

ARUN MONGA, J.(ORAL)

The present writ petition has been filed for issuance of a writ in the nature of certiorari to quash the impugned order dated 29.03.2012 (Annexure P-11), whereby the petitioner has been denied stepping up of his pay at par with his juniors.

2. The denial of equal pay to the petitioner at par with his junior is ostensibly on the ground that at the time of promotion as 'Assistant Commandant' he had opted to get his pay fixation straightway instead of waiting to earn next increment in the rank held as 'Inspector' prior to his promotion. The petitioner has denied that he had ever made any such option.

3. Succinctly, the facts of the case are that the petitioner was promoted as 'Assistant Commandant' on 28.09.2004 and as per

Central Service Revised Pay Rules, 2008, the pay of the petitioner was fixed as Rs.18240/- according to 6th Central Pay Commission, whereas the pay of the similarly ranked officers who were junior to the petitioner was fixed at Rs.18590/-.

4. Feeling aggrieved, the petitioner submitted representations dated 16.12.2009 and 20.03.2010 (Annexures P-1 and P-2) respectively to the respondents. Said representations of the petitioner were turned down vide impugned order dated 23.06.2010 (Annexure P-3) on the ground that his pay was fixed on promotion as 'Assistant Commandant' on a straightway basis whereas the pay of others was fixed on the date of accrual of next increment. By another letter dated 11.07.2011, the petitioner was informed that the petitioner had opted for fixation of his pay on straightway basis, therefore, he was getting lesser salary on promotion as 'Assistant Commandant'.

5. In order to rectify pay anomalies which resulted owing to the options exercised by the various employees at the time of promotion, the respondents as 'one time measure' allowed them to revise their options by Signal/Order dated 05.03.2012 (Annexure P-10). It is the case of the petitioner that he was not allowed to exercise his option on the ground that since his promotion/fixation of pay was prior to implementation of recommendation of the 6th Pay Commission, therefore, he was not entitled to seek revision of his option. The said Signal was followed by a specific impugned order dated 29.03.2012 (Annexure P-11) informing the petitioner that the pay could be refixed from 01.01.2006 whereas his case

was of before 01.01.2006.

6. In the reply filed on behalf of the respondents, the stand taken primarily is that since the petitioner had himself opted for straightway fixation of his pay on his promotion, therefore, he was dis-entitled to seek rectification of his pay anomaly.

7. A perusal of the reply shows that it is the conceded case that juniors of the petitioner are getting higher salary. On the other hand, nothing has been produced on record to show that the said anomaly resulted owing to the option exercised by the petitioner at the time of his promotion whereas the stand of the petitioner is that he never exercised any such option at the time of his promotion and his pay was fixed by the respondents without his option.

8. Having gone through the pleadings and record appended thereto and having heard rival contentions of both the learned counsels, I am of the view that the stand taken by the respondents does not stand the judicial scrutiny. It is a settled principle of service jurisprudence that the seniors on appointment to higher post cannot get less pay than the juniors. The same, in any case, is clearly reflected from the Fundamental Rules which are relied by the respondents. The relevant portion of the Fundamental Rule 22 is extracted hereinbelow:-

“(23) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior. a) As a result of application of FR 22-C(Now FR 22(1) (a)(1). In order to remove the anomaly of a Government servant promoted or appointed to a higher

post on or after 01.04.1961 drawing a lower rate of pay in that post than another Government Servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

- a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre'*
- b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;*
- c) The anomaly should be directly as a result of the application of FR 22-C. For example, if given in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.*

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay."

9. The rule leaves no manner of doubt that if junior is getting higher pay, then the senior, as a matter of right, is entitled for stepping up of his pay in order to rectify the pay anomaly. It is not the case of the respondents that the specified conditions for such stepping up of pay are not satisfied in the present case.

10. Assuming that the petitioner had exercised his option for fixation of the pay at the time of his promotion, though the same is belied by the reply/record of the respondents produced before this Court, that, in any case, would be of no consequence. Reason is that the Government of India vide Office Memo dated 12.12.1997 followed by Memo dated 25.02.2003 as reproduced in para 14 of the writ petition clearly lays down that an employee is entitled for rectification of the pay anomalies pursuant to an unforeseen development and even due to change of Rules. Existence and correctness of the said memo dated 12.12.1997 are not denied by the respondents.

11. The case of the petitioner is on much better footing. He is not claiming the rectification of pay fixation owing to unforeseen circumstances or due to any change of Rules. His case simpliciter is that his juniors are getting higher pay than him which is a conceded position in the present case. As far as the objection of the respondents that the petitioner had himself opted for straightway fixation, the same is overruled as the record clearly reflects that petitioner had not exercised that option. Even otherwise exercise of that option would not come in his way while seeking pay parity.

12. In view of the observations as noted, the present writ petition is allowed. Respondents are directed to take appropriate steps to rectify the pay anomaly of the petitioner within a period of 03 months. The monetary benefits accruing to the petitioner owing to the pay fixation are confined to 38 months prior to filing of the

present writ petition which will be paid along with interest @6% per annum.

13. Petition is allowed in the aforesaid terms.

17.01.2019	(ARUN MONGA)
	JUDGE
vandana	
Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No