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

\+ **W.P.(C) 9346/2018**

DR. KANWAL SINGH ..... Petitioner

Through: Mr.Amit Kumar, Advocate.

versus

UNIVERSITY GRANT COMMISSION (UGC) & ANR ..... Respondent

Through: Mr.Apoorv Kurup, Ms.Nidhi Mittal and Mr.Siddharth Nigotia, Advocates for R-1.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

<u>O R D E R</u>

% **13.11.2019**

1. The Petitioner has challenged an order dated 19th July, 2018 in OA No. 687/2018 passed by Central Administrative Tribunal (CAT), New Delhi. The said O.A. which was filed by the Petitioner was dismissed on the ground of limitation and the same was not disposed on merits. The operative portion of the order of CAT is as under:

> "5. On the face of it, the OA is barred by limitation. Section 21 of the Administrative Tribunals Act stipulates the limitation within which an application seeking the relief before the Tribunal is required to be filed. There is also provision for condonation of delay, in case proper explanation is put forth. In the instant case, cause of action, if at all, can be said to have accrued to the applicant, in the year 1996, when his pay scale was fixed. Once he accepted the pay scale, albeit under protest in July, 1996, he was expected to seek redressal within a short time thereafter.

> 6. Assuming that the ratio of the judgment of the Hon'ble Supreme Court in M.R. Gupta vs. Union of India & Ors. 1996 AIR 669 came to the rescue of the applicant as long as in service, he should have sought redressal at least when he was in service. He did not take any steps even after retirement in the year 2009. About nine years have elapsed from the date of retirement. He approached this Tribunal at this stage.
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> 7. We find no basis to entertain the O.A. and accordingly, dismiss it. There shall be no order as to costs."

2. The Petitioner has made the following prayer in this writ petition:

> "(i) Quash & Set aside the impugned Order dt.19.07.2018 in O.A.No.687/2018 [(ANNEXURE.P/1(IMPUGNED)], passed by the Learned Central Administrative Tribunal, Principal Bench, New Delhi and consequently allow the OA No. 687/2018 by quashing the impugned Order No.F.5-9/95 (Admn.I/A&B), dt.27.11.2017 [ANNEXURE.A/1 (IMPUGNED) before the Learned Tribunal], in favour of the petitioner and against the respondents with heavy cost.
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> (ii) May also please to pass any other or further order(s)/direction(s) as deem just & proper in the interest of justice."

3. In brief, the case of the Petitioner is that he was appointed as an Education Officer in University Grants Commission ('UGC') through proper channel. An offer of appointment was made to him by the letter dated $14^{th}/15^{th}$ March, 1995 offering the pay scale of Rs.3000-4500. A copy of the said appointment letter is on record and the relevant paragraph 1 is reproduced hereunder:

> "I am directed to refer to your application dated 23/6/1994 for the post of Education Officer in the University Grants Commission and the subsequent interview taken by you on

> 29/11/94 and to inform you that you have been selected for appointment as Education Officer in the office of University Grants Commission on an initial pay of Rs.3000/- p.m. in the scale of pay of Rs.3000-100-3500-125-4500 plus usual allowance as admissible to the Central Govt. Servants of similar status. In case, your present substantive pay happens to be more than the minimum of the scale of pay of the post of Education Officer in the UGC, your pay will be protected. In case, you decide to retain your lien with your present employer in one form or the other, the UGC will not bear any liabilities and the payments on account of leave salary + pension contribution, if any, in this regard, will be payable by you."

4. The Petitioner joined UGC on 29th March, 1995 as an Education Officer and he submitted his last salary certificate issued by National Fertilizers Limited, (NFL) where he was working as Principal in a Senior Secondary School run by the said organisation. The relevant extract of the said certificate dated 27th March, 1995 is reproduced herein below:

"**Pay Scale**	**:**	**Rs. 3000/- - 4200/-**
Basic	:	Rs. 3400/-
DA	:	Rs. 1488/-
Adhoc Reliefs	:	Rs. 3645
Total -		Rs. 8533/-"

5. Since the salary drawn by the Petitioner before joining UGC was protected as per rules, he was therefore granted basic pay of Rs.3400/- per month in the pay scale of Rs.3000-4500 by office order No. 119/95 dated 24th May, 1995. The relevant portion of the said order is as under:

> "Dr. Kanwal Singh is appointed as Education Officer in a temporary capacity in the office of the University Grants Commission on as pay of Rs.3400/- p.m. plus usual allowances in the scale of pay of Rs.3000-100-3500-125-4500 w.e.f. 28.03.1995."

6. The further case of the Petitioner is that once he joined UGC as Education Officer, the pay scale for the post of Principal in his previous organisation, i.e. NFL, was revised from Rs.3000-4500 to Rs.4400-8300 with effect from 1st January, 1992 and accordingly his basic pay was also revised from Rs.3400/- to Rs.4600/- with effect from 1st March, 1992, Rs.4800/- with effect from 1st March, 1993, Rs.5000/- with effect from 1st March, 1994 and Rs.5200/- with effect from 1st March, 1995. Accordingly, a revised salary certificate was issued on 8th November, 1995, showing his basic pay at Rs.5200/- p.m. with effect from 1st March, 1995. The relevant portion of the said revised salary certificate is reproduced herein below:

> "Consequent upon the Revision of Pay Scales on implementation of New Wage Structure for all categories of employees with effect from 1.1.1992 as per agreement reached between the Management and the Recognised Union/Officer Association, the revised last pay scale and pay in respect of Shri Kanwal Singh (E. No. 06/8105) Designation Principal in FSS School has been fixed as under:-

Pay Scale	**:4400-200-5800-250-8300**
Basic	: Rs.5200/-
DA	: Rs.788.30
Adhoc Reliefs	: Rs.4845/-
Total	: Rs.10833.30/-"

7. The Petitioner preferred a representation on 20th November, 1995 along with the new salary certificate seeking re-fixation of his pay. The revised pay certificate was confirmed by the Respondents from previous employer of the Petitioner by letter dated 18th December, 1995. The desired information was provided by NFL by letter dated 8th January, 1996 giving the year-wise details of his fixation of salary and mentioning that his revised final last pay as on 27th March, 1995 was as under:

"Revised Final Last Pay in Rs. as on 27.3.1995.

Basic	: 5200/-
DA	:1211/60 (On IDA Pattern)
LTE	: 1100/-
Canteen Coupon	: 700/-
Medical Allowance	: 475/-
Washing Allowance	: 50/-
Electricity Allowance	: 96.70/-
Project Allowance	: 1000/-
Non teaching Allowance	: 1000/-
Total	: 10833.30
HRA	: 450.00 (Fixed for this pay scale)
Grand Total	: 11283.30"

8. Another detailed representation was submitted by the Petitioner seeking pay fixation as per his revised pay scale in the previous organisation. Instead of fixing his pay at an appropriate stage, the Respondents took a u-turn and acted in a highly unreasonable manner by re-fixing the basic pay of the Petitioner at Rs.3000/- p.m. instead of Rs.5200/- per month as per rules. Earlier, the Respondents had proposed to fix his basic pay at Rs.4500/- i.e. maximum of the pay scale of Rs.3000-4500 with personal pay of Rs.700/-. However, instead of increasing his basic salary from Rs.3400/- to Rs.4500/-, it was reduced to Rs.3000/- per month. Then office order No. 139/96 dated 24th July, 1996 was issued, which is reproduced here under:

> "In partial modification of Office Order No.119/95 (No.F.5-9/95(Admn.I/A&B) dated 24.5.1995, it has been decided to refix the pay of Dr. Kanwal Singh, Education Officer at Rs.3000/- p.m. in the scale of pay of Rs.3000-100-3500-125-4500 w.e.f. 28.03.1995 (FN).
>
> The other terms and conditions of appointment will remain the same as already notified."

9. The Petitioner was subjected to recovery of the difference of the basic pay in view of its reduction from Rs.3400/- p.m. to Rs.3000/- p.m. So, he suffered substantial financial loss. The Respondents should have fixed his basic pay at Rs.5200/- (Rs.4500/- being maximum of the pay scale + Rs. 700 as personal pay). The Respondents ought to have protected pay of the Petitioner in terms of OM dated 17th June, 1965 of Ministry of Finance but they did not do so in violation of their own circulars and OMs and as a consequence thereto, Applicant's pay was fixed on the lower side even upon revision of pay as per 5th, 6th and 7th Pay Commissions. Despite repeated representations, this anomaly in the initial pay fixation of the Petitioner was not removed.

10. The grounds of challenge in nutshell are that the Petitioner was entitled for protection of the pay which he was already drawing before joining the Respondent organisation; even as per offer of appointment Respondents were obliged to grant the pay protection; instead of revising his pay upwards, the Respondents reduced his basic pay to Rs.3000/- instead of earlier basic pay of Rs.5200/- in the previous organisation and under these circumstances, the Petitioner had approached CAT where Respondents had filed a detailed counter affidavit in which preliminary objection of limitation was also taken and vide impugned order, the OA filed by the Petitioner was dismissed by the Tribunal. The said order is assailed on the legal grounds that the Tribunal had admitted the case for adjudication on merits and had issued notice to the Respondents which had already filed its detailed reply. So, there was no question of limitation coming in the way; the order passed by CAT runs contrary to the law laid down by the Hon'ble Supreme Court in the matter of ***MR Gupta v. Union of India & Ors. 1995 SCC (5) 628***

which has been followed in other matters and if the CAT had appreciated the facts and circumstances of the case and the legal propositions, the impugned order could not have been passed.

11. Along with the petition, the complete record of CAT has been filed. On 17th January, 2019 this Court passed the following order:

> "The petitioner has preferred the present writ petition to assail the order dated 19.07.2018 passed by Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 687/2018. The petitioner's Original Application to seek a direction to the respondents to re-fix his pay scale from the date he joined the service with the respondent – University Grants Commission (UGC) with consequential benefits, has been rejected by the Tribunal on account of the Bar of Limitation.
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> The petitioner was earlier serving with the National Fertilizers Limited (NFL). He joined the UGC in the year 1995 as an Educational Officer. His letter of appointment contained the condition that his pay will be protected. The petitioner's pay was, accordingly, fixed after granting him pay protection on 24.05.1995.
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> The petitioner states that the UGC asked the NFL to intimate the revised last pay that would have been drawn by the petitioner, on account of pay revision in NFL from a date before the petitioner joined the UGC. On 08.01.1996, the NFL issued the revised last pay certificate. The grievance of the petitioner - when he approached the Tribunal, in the year 2018, was that the said revised last pay certificate was not given effect to, and his pay was not fixed in terms of the said last pay certificate.
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> The cause of action to seek the revised pay fixation in the UGC in terms of the letter of appointment issued to the petitioner, whereby his pay was protected, arose in the year 1996 itself. The petitioner did not agitate the issue when the said cause of action arose, within the period of limitation. Consequently, the Tribunal was justified in rejecting the

> petitioner's claim for consequential benefits of arrears of pay.
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> The submission of learned counsel for the petitioner is that when he retired from service from the UGC on 30.11.2009, his pension had been fixed on the basis of last pay drawn by him. He submits that the right to receive the correctly fixed pension is a continuing right, and gives a fresh cause of action from month to month. He submits that the petitioner is entitled to seek appropriate pay fixation on the basis of the revised last pay certificate issued by the NFL. However, the relief may be restricted as admissible under the Law of Limitation. The petitioner may, prima facie, be entitled to pay fixation on the basis of the last revised pay certificate issued by NFL on 08.01.1996. He may be entitled to fixation of his last pay drawn and fixation of his pension accordingly. However, his claim for arrears cannot be entertained for a period exceeding three years prior to filing of the O.A.
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> Limited to the aforesaid aspect, issue notice. Counsel for the respondent accepts notice. Counter affidavit, if any, be filed within 6 weeks. Rejoinder, be filed before the next date of hearing.
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> List on 12.07.2019."

12. Notice was issued in terms of the above order. No counter affidavit has been filed. We have heard the arguments of Counsel for both parties. It is pertinent to note that the counter affidavit of the Respondents filed in the CAT is already on record. Since the challenge has been confined only to the claim of arrears of pension dues not exceeding three years prior to filing of the OA, the question of limitation stands answered. As far as the merits of this matter are concerned, the stand of the Respondents is that the Petitioner's pay was correctly fixed vide letter dated 24th July, 1996 after considering his representation and after due consultation that the previous employer as well as DOPT. The Petitioner had superannuated in November,

2009. The substantive pay of the Applicant has been protected by Respondents from the date of his joining. The Respondents have relied upon the rules for pay fixation stated under DOPT OMs dated 7th August, 1989 and 10th July, 1998, which have been relied by the present Petitioner also. It has been submitted on behalf of the Respondent that it is the Pay + Dearness Allowance drawn by the candidate recruited from Public Sector Undertaking which to be protected. The relevant portion of the OM has been reproduced as under:

> "2. The question as to how pay protection can be given in the case of candidates recruited from Public Sector Undertakings, etc., has been engaging the attention of the Government for some time. The matter has been carefully considered and the President is pleased to decide that in respect fo candidates working in Public Sector Undertakings, Universities, Semi-Government Institutions or Autonomous Bodies, who are appointed as direct recruits on selection through a properly constituted agency including departmental authorities making recruitment directly, **their initial pay may be fixed at a stage in the scale of pay attached to the post so that the pay and D.A., as admissible in the Government will protect the pay + D.A. already being drawn by them in their parent organizations."**

13. As per the Respondents, the assertion of the Petitioner is incorrect to the extent that only his pay is to be protected and rather it is the pay + Dearness Allowance which is to be protected. As per the revised salary certificate dated 27th March, 1995 from NFL, the Petitioner was entitled to basic pay of Rs.5200 + Dearness Allowance of Rs.1211.60. So, his previous monthly entitlement was Rs.6411/- and when he was appointed with Respondents, his basic pay was fixed at Rs.3000/- + Dearness Allowance at the rate of Rs.125% i.e. Rs.3750/-, totalling to Rs.6750/-. Thus, his basic pay and

Dearness Allowance, which he was entitled to draw in his previous employment was duly protected as per rules. Even the Department of Personnel Training (DoPT) by office note dated 26th March, 1996 has confirmed as under:

> "If the UGC is following Govt. rules, the pay of the official concerned will be fixed under the DoPT O.M. dated 7-8-1989."

14. The internal audit cell had re-analysed the pay package of the Petitioner following his representation dated 6th March, 1996 and it was found that his pay was fixed higher than it ought to have been in the first place. DoPT was consulted and accordingly his pay was re-fixed. It has been denied that there is any ground to challenge the order regarding pay fixation and it has been prayed that the writ petition be dismissed.

15. It is clear that the DoPT's OMs dated 7th August, 1989 and 10th July, 1998 make it evidently clear that where candidates have been recruited in Government service from Public Sector Undertakings, then their initial pay is to be fixed in the scale of pay which is attached to the post so that the pay and Dearness Allowance to be paid to the Government servant should be protected at the cumulative level, which was already drawn by him in his previous organisation. In the present case, the Petitioner was drawing Rs.6411/- (basic pay Rs. 5,200 + Dearness Allowance Rs.1211.60).

16. After appointment with UGC, basic pay was erroneously fixed at Rs.3400/- which was later on rectified and re-fixed at Rs.3000/- and a Dearness Allowance of Rs.3750/- was to be added to it making it a total of Rs.6750/- p.m., which is much more than the substantive pay which was

drawn by the present Petitioner while working as Principal in NFL. The Petitioner has been misconstruing 'substantive pay' to mean only the basic pay ignoring the Dearness Allowance but the aforementioned OMs make it very clear that what is to be protected is his basic pay + Dearness Allowance and not the basic pay alone. In the present case, the UGC has followed the directions contained in above-mentioned circulars of DoPT and moreover, consultation with DoPT was also made before re-fixing the salary of the Petitioner in response to his representation.

17. There was no illegality in fixing the basic pay of the Petitioner at Rs.3000/- p.m. from the date of his joining the UGC along with applicable Dearness Allowance and other benefits and allowances, etc. There is no merit in the writ petition and there is no question of re-fixing the salary or resultantly the pension being drawn by the present Petitioner after his retirement on 30th November, 2009. His pension has been rightly fixed on the basis of last pay drawn by him.

18. The petition has no merit and the same is hereby dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 13, 2019

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