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

% **Date of Decision: 27th January, 2021**

\+ **W.P. (C) 520/2021**

AJAY KUMAR PURI & ORS. .....Petitioners
Through: Mr. D. P. Sharma, Advocate

Versus

UNION OF INDIA & ORS. .....Respondents
Through: Mr. Abhay Prakash Sahay, CGSC with Ms. Mannu Singh and Ms. Indira Goswaini, Advocate

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

ASHA MENON, J: (Oral)

CM APPL.1344/2021

Exemption allowed, subject to all just exceptions.

W.P. (C) 520/2021

1. The petition has been heard by way of video conferencing.

2. The petitioners are presently working as Assistant Accounts Officers (AAOs) in their parent cadre with the Government of NCT of Delhi (GNCTD). In response to an Advertisement issued by the Department of Telecommunications (for short, 'DoT'), Ministry of

Communications & Information Technology, Government of India, through Circulars dated 27th December, 2012/5th November, 2012 and with reference to letter dated 1st October, 2012 of the Assistant Director General (SEA), Ministry of Communications & Information Technology, Government of India, Sanchar Bhawan, Ashoka Road, New Delhi, they applied for appointment as AAOs. Having passed the Departmental AAO exam and fulfilling the eligibility conditions, they were taken on deputation by the DoT. Some of the copies of the appointment offers have been placed on the record as Annexure P-4 to the O.A. No.3380 of 2019, which was filed before the Central Administrative Tribunal (for short, the 'Tribunal').

3. This O.A. had been filed with a grievance that the petitioners had been treated at par with the 'promotees' by the DoT when in actual fact they ought to have been treated as 'direct recruits' as per the Recruitment Rules of 2018 and granted the minimum pay-scale of 'direct recruits' of Rs.13,350/- corresponding to the Grade Pay of Rs.4800/- instead of what they had been given i.e. the pay-scale of Rs.9300 - 34,800/- + Grade Pay of Rs.4800/-.

4. Vide the impugned order dated 26th November, 2019, the Tribunal dismissed the O.A. with the following observation: -

> *"6. The applicants are the permanent employees of the GNCTD, occupying various posts and were in the pay scale of Rs.5200-20200 + Grade Pay of Rs.1900. On being selected and appointed as AAO in the Department of Telecommunications by way of deputation, they were extended the pay scale of Rs.9,300+Grade Pay Rs.4800. It was indeed a*

phenomenal increase. The applicants did not raise any objection as to the fixation of the pay structure, when they were appointed on deputation. It is only after they were repatriated to the parent department, that they made a representation, stating that their pay structure should have been Rs.13500 with Grade Pay of Rs.4800. Hardly, any basis is shown for this. In any case, the principle of estoppel and acquiescence comes into play."

5. Dissatisfied, the applicants filed a review application contending that the borrowing department had fixed the pay of the applicants erroneously under Rule 13 of CCS (RP) Rules, 2008 treating them as 'promotees' to the minimum stage of pay of Rs.9300/- in the PB-II which corresponds to Grade Pay of Rs.4200/- whereas the applicants being outsiders belonging to GNCTD cadre, they were 'direct recruits' appointed for a specified period on deputation and were entitled for fixation of their pay under Rule 7 of the said Rules, ensuring minimum pay of Rs.13,350/- in the PB-II corresponding to Grade Pay of Rs.4800/- of the deputation post. However, vide order dated 6th January, 2020, the Tribunal rejected the review application holding that all the points urged by the applicants were dealt with in the order dated 26th November, 2019.

6. Aggrieved by these two orders, the present petition has been filed with the following prayers: -

"a). Issue a writ in the nature of certiorari quashing the impugned order dated 26.11.2019 in Original Application No. 3880/2019 and Order dated 06.01.2020 in the Review Application NO.05/2020 in Original Application No. 3880/2019 passed by the

Learned Central Administrative Tribunal, Principal Bench, New Delhi.

b). Set aside and quash the impugned order dated 13.05.2013 fixing the pay of the petitioners under Rule 13 of the CCS (RP) Rules, 2008 treating them as 'Promotees' on joining their on their appointment as AAO.

c). Set aside and quash the impugned order No.25-03/2015-SEA-II dated 11.11.2019, fortified by the arbitrary, irrelevant and discriminatory observations of Department of Expenditure made vide ID Note No. 3-19/2019-E.III(A) dated 19.08.2019/ e FTS 1122213/2019, in denying correct re-fixation of their pay.

d). Direct the respondents to fix the pay of the petitioners to Rs. 13350/- under THE FIRST SCHEDULE, PART-A, Section-II corresponding to GP of Rs. 4,800/- in Table 2 for PB-2(Rs.9,300-34,800) & under Rule 7 of the CCS (RP) Rules, 2008.

e). Direct the respondents to give all consequential benefits as outcome of the above relief.

f). Direct the respondents to pay litigation charges as deemed appropriate.

g). Pass any other order as may be deemed just and proper in the facts & circumstances of the case."

7. Learned counsel for the petitioners, Sh.D.P.Sharma, submitted that the Tribunal had erred in rejecting the claims of the petitioners. It was also submitted that the letter dated 19th August, 2019 issued by the Department of Expenditure, Ministry of Finance, Government of India had arbitrarily rejected the claim of the petitioners for parity with the 'direct recruits' on the plea that as per the Recruitment Rules (RRs)

applicable during the period 1st January, 2006 to 31st December, 2015, there was no element of direct recruitment and that the RRs for recruitment to the post of AAOs through promotion, failing which deputation, and failing both, by direct recruitment, were effective only from 2nd April, 2018. The learned counsel on the basis of a Resolution placed on the record as Annexure A-3 claimed that the department had on 20th August, 2009 recommended change in the RRs which finally came into force in April, 2018 incorporating the option of direct recruitment and therefore, once the Rules introduced direct recruitment and since the petitioners were "appointed" on deputation, they had to be treated as 'first-time appointees', to be placed at par with the 'direct recruits'. Learned counsel submitted that the petitioners did not belong to the DoT but were employees of the GNCTD and could not be treated as 'promotees' because they could not have been promoted in the DoT. He relied on the definitions as provided in the "FAQs on Recruitment Rules" issued by the Government of India dated 24th March, 2009, placed at Annexure-P5, to support this argument.

8. The learned counsel also drew our attention to the Table reproduced in the writ petition in para No.2.19 to contend that the minimum entry pay for 'direct recruits' for a post with Grade Pay of Rs.4800/- was Rs.13,350/- whereas Rs.9300/- was the minimum entry pay for a Grade Pay of Rs.4200/- and that once the petitioners were placed in the Grade Pay of Rs.4800/-, automatically they were entitled to receive a pay of Rs.13,350/- compatible with the said Grade Pay.

9. After hearing the learned counsel and perusing the record, we find no merit in the submissions made. Admittedly, the petitioners were

LDCs/UDCs at the time they had applied to the post of AAO on deputation with DoT. As is clear from the definitions relied upon by the learned counsel for the petitioners himself, the 'deputationists' are not the same as 'direct recruits'. If the petitioners cannot be equated to 'promotees', by the same logic, they are also not 'direct recruits'. The argument of the learned counsel for the petitioners that because subsequently in the year 2018, the RRs were revised to include the appointment as AAOs through promotion and in the absence of eligible persons for promotion, by deputation and direct recruitment, the explanation offered by the Department of Expenditure, Ministry of Finance, Government of India vide letter dated 19th August, 2019 was incorrect, cannot be accepted. The petitioners will be governed by the contemporaneous RRs in force at the time they were taken as AAOs in the DoT. Moreover, the resolution (Annexure A-3) refers to the need to bring new RRs after the amalgamation/merger of the Department of Posts and the Department of Telecommunications. Nothing else has been brought to our notice to justify the claim of the petitioners for being placed at a higher pay. The learned counsel has conceded that at the same Grade Pay, there were different Pay Bands. Thus also there can be no automatic pegging of the Pay Band, as sought by the learned counsel on the basis of the Grade Pay i.e. of Rs.13,350/- for Grade Pay of Rs.4800/-. In fact, from the very Table, reproduced in the petition, it is clear that as per Rule 13 of the CCS (RP) Rules, the minimum pay remains Rs.9300/- for 'promotees' with different Grade Pays.

10. It is important to note that deputation is governed by specific terms. In the instant case, the Advertisement itself, placed at Annexure-

P3, records clearly that some posts of AAOs in the pay-scale of Rs.9300-34,800/- + Grade Pay of Rs.4800/- in the DoT are to be filled up by transfer on deputation basis. The O.M. relating to offer of appointment to the post of AAOs in the DoT has been placed on the record as Annexure A-4 (colly.) and is dated 26th February, 2013. The terms and conditions have also been listed in this O.M.. The period of deputation was to be initially for a period of one year extendable upto 3 years and candidates who were willing to work for a minimum period of three years and who could be so spared by their parent department, alone were to be considered for appointment. It also records that the appointment was purely temporarily on deputation basis and also that the terms and conditions of deputation of the officers selected shall be regulated in terms of the Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) OM No. 6/08/2009-Estt. (Pay II) dated 17th June, 2010 and other rules and instructions on deputation issued from time to time. The O.M. dated 23rd April, 2013, pursuant to acceptance to the offer of appointment conveyed vide O.M. dated 26th February, 2013 and placed on record as Annexure A-5 (colly.), reiterates that the deputation of the officers was governed by the terms and conditions of the O.M. dated 17th June, 2010. Most importantly, it also gave the officers an option for electing the scale of pay of the present organization plus deputation allowance or the scale of pay of the deputation post in terms of the DoP&T Guidelines dated 17th June, 2010.

11. Admittedly, the petitioners were in the pay scale of Rs.5200-20,200/- + Grade Pay of Rs.1900/- in their parent departments and clearly they did not opt for their existing pay-scale with deputation allowance.

They opted for the scale that was advertised and to which they were appointed i.e. Rs.9300/- + Grade Pay of Rs.4800/-. The learned Tribunal was right in observing that the claims of the petitioners were barred by the principle of estoppel and acquiescence. Through some of the representations that have been placed on the record as Annexure A-10 (colly.), it is apparent that the petitioners completed their deputation by the year 2015-16. Even if it is assumed that the modification in the RRs was pending consideration since 2009, this fact can in no way accrue to the benefit of the petitioners as only those who were taken on deputation after the modified RRs could even stake any claim, if at all, of parity with 'direct recruits', though we make no comment on the merits of such a claim. Since the revised RRs were not applicable to those promoted/appointed on deputation, the stand taken by Department of Expenditure, Ministry of Finance, Government of India in the letter dated 19th August, 2019 cannot be faulted.

12. We do not find any error in the conclusions drawn by the Tribunal. The petition lacks merits and is dismissed.

13. The judgment be uploaded on the website forthwith. Copy of the judgment be also forwarded to the learned counsel through e-mail.

ASHA MENON, J

MANMOHAN, J

JANUARY 27, 2021

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