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

Judgment reserved on: 12.09.2022

% **Judgment delivered on: 11.10.2022**

\+ **W.P.(C) 14339/2005 and C.M. No. 7956/2020**

TEJPAL SINGH MAAN ..... Petitioner

Through: Mr. Vidya Sagar and Mr. Amolak, Advocates.

versus

GOVT. OF N.C.T. OF DELHI & ORS ..... Respondent

Through: Mrs. Avnish Ahlawat, Standing Counsel, GNCTD (Services), Mr.Nitesh Kr. Singh, Ms. Laavanya Kaushik and Ms. Aliza Khan, Advocates for respondents.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SATISH CHANDRA SHARMA, C.J.

1. The present writ petition is arising out of an order dated 07.12.2004, passed in O.A. No. 704/2004 passed by the Central Administrative Tribunal (CAT) rejecting the Original Application preferred by the Petitioner. The

facts of the case reveal that the Petitioner, at the relevant point of time, was serving Trained Graduate Teacher (Science), (*TGT (Science) for short)* at Government Boys Senior Secondary School No.1 Shaktinagar, Delhi-7 and he was granted a time bound senior scale of TGT on 10.03.1996 on completion of 12 years of qualifying service in the entry scale of TGT and his basic pay was fixed at Rs.2000/- in the pay scale of Rs.1640-2900. That the Central Civil Services Revised Pay Scale Rules, 1997, came into force in September/ October 1997. However, the pay scales were upgraded w.e.f. 01.01.1996.

2. The Rules of 1997 provided that when the pay of a Government Servant is brought over to the revised scale from a date later than 01.01.1996 his pay from such later date is to be fixed under the Fundamental Rules and not as provided under Rule 7 of the CCS Revised Pay Rules 1997.

3. The Government of India issued an Office Memorandum dated 26.03.1998 and the same provided that the pay of the Government employees who opt to switch over to the revised pay between 01.01.1996 and 31.12.1996, in respect of the post held by him on 01.01.1996. will also be fixed as per Rule 7of the CCS Revised Pay Rules, 1997. The Office Memorandum dated 26.03.1998 is reproduced as under:

"No.16(1)/16/98
Govt. of India
Ministry of Finance
Department of Expenditure

New Delhi; the March 26, 1998
Chaitra 5,1920 (Saka)

OFFICE MEMORANDUM

Sub: Central Civil Services (Revised Pay) Rule, 1997
Fixation of pay of Government servants who opt for
The revised scale of pay from a date subsequent to 1.1.1996

In terms of the provisions contained in Rule 9 of the Central Civil Services (Revised Pay) Rules, 1997, where a Government servant continues to draw his pay in the existing scale of pay and is brought over to the revised scale from a date later than the 1st day of January 1996, his pay from the later date in the Revised Scale is to be fixed under the Fundamental Rules and under Rule 7 of the said Rules.

On further consideration and in exercise of the power available under Rule 13 of the Central Civil Services (Revised Pay) Rules, 1997, the President is pleased to decide that the pay of Government Servants who opt to switch over to the revised scale of pay from the date of their next increment falling after 1.1.1996 not later than 31.12.1996 in respect of the post held by them on 1.1.1996 shall be fixed in accordance with the provisions of Rule 7 of the Central Civil Services (Revised Pay) Rules, 1997.

The option in the format appended as the Second Schedule to the Central Civil Services (Revised Pay) Rules, 1997 may be exercised within 3 months from the date of issue of this O.M. The option once exercised shall be final. The option now provided under these orders can be exercised afresh even by those Government servants who have already exercised their option prior to the issue of these orders to switch over to the revised scales.

However, the pay of Government Servants who opt to switch over to the revised scales.

a) from date of increment falling subsequent to 31.12.1996 or

b) from any date after 1.1.1996, for reasons other than their date of increment falling during 1996.

Shall be fixed under Rule 9 of the Central Civil Services (Revised Pay) Rules, 1997

Ministry of Home affairs etc. are requested to bring the contents of these orders to the notice of all concerned expeditiously within time so that *the need for extending the date of exercising an option under these orders may not arise*

In so far as persons serving in the Indian Audit & Accounts Department are concerned, these issue after consultation with the Comptroller & Auditor General of India.

Hindi version is enclosed.

Sd/-
(Arvind Kumar)
Deputy Secretary to the Govt. of India. "

4. It is an undisputed fact that the Petitioner opted to switch over to the revised pay with effect from 01.01.1996 keeping in view the CCS Revised Pay Rules 1997. The Petitioner was drawing a pay at Rs.1900/- in the pre-revised pay scale of Rs.1400-2600 and, consequently, the pay of the Petitioner was fixed at Rs. 6025/- in the revised pay scale of Rs.5500-9000.

5. The facts of the case further reveal that the Government of India issued another Office Memorandum dated 30.07.1999 relaxing the rates of option and provided that the pay of the Government employees who opt to switch over to the revised pay between 01.01.1996 and 31.12.1997 in respect of the post held by him on 01.01.1996 will also be fixed as per Rule 7 of the CCS Revised Pay Rules, 1997.

6. The option was required to be exercised within 6 months from the date of the issuance of the Office Memorandum and the option was also made available to those persons who had already exercised their option earlier. The office memorandum dated 30.07.1999 reads as under:

"F. No. 7(29)-EIII(A)/97
Govt. of India/ Bharat Sarkar
Ministry of Finance/ Vitta Mantralaya
Department of Expenditure/ Vyay Vibhog

New Delhi, the 30th July, 1999

OFFICE MEMORANDUM

Sub: Central Civil Services (Revised Pay), Rule, 1997
Fixation of pay of Government servants who opt for
The revised scale of pay from a date subsequent to 1.1.1996

In terms of the provisions contained in Rule 9 of the Central Civil Services (Revised Pay) Rules, 1997, where a Government servant continues to draw his pay in the existing scale of pay and is brought over to the revised scale from a date later than the IS day of January 1996, his pay from the later date in the Revised Scale is to be fixed under the Fundamental Rules and not under Rule 7 of the Central Civil Services (Revised Pay) Rules 1997. In fixation of these provisions it has been decided vide this Ministry's O.M. No. 16 (1)/1C/98 dated 26 March, 1998, that the benefit of fixation of pay under Rule 7 of the Central Civil Services (Revised Pay) Rules, 1997 may be allowed to Government servants who elect to come over to the revised scales from the date of their increment falling after 1.1.1996 but not later than 31.12.1996 in respect of posts held by them on 1.1.1996.

2. On further consideration and in exercise of the power available under Rule 13 of the Central Civil Services (Revised Pay) Rules, 1997, the President is pleased to decide that the pay of Government Servants who opt to switch over to the revised scale of pay from the date of their next increment falling after 1.1.1996 not later than 31.12.1997 in respect of the post held by them on 1.1.1996 shall be fixed in accordance with the provisions of Rule 7 of the Central Civil Services (Revised Pay) Rules, 1997.

3. The option in the format appended as the Second Schedule to the Central Civil Services (Revised Pay) Rules, 1997 may be exercised within 6 months from the date of issue of this Office Memorandum, The option once exercised shall be final. The option now provided under these orders can be exercised afresh even by those Government servants who have already exercised their option prior to the issue of these orders to switch over to the *revised scales from the date of increment falling on or after 1.1.1997 but not later than 31.12.1997, However, the pay of Government Servants who opt to switch over to the revised scales.*

c) from date of increment falling subsequent to 31.12.1997 or

d) from any date after 1.1.1997, for reasons other than their date of increment falling during 1997.

Shall be fixed under Rule 9 of the Central Civil Services (Revised Pay) Rules, 1997.

Ministry of Home affairs etc. are requested to bring the contents of these orders to the notice of all concerned expeditiously within time so that the need for extending the date of exercising an option under these orders may not arise.

In so far as persons serving in the Indian Audit & Accounts Department are concerned, these issue after consultation with the Comptroller & General of India.

Hindi version is enclosed.

Sd/-
(B. Kumar)
Deputy Secretary to the Govt. of India"

7. The Petitioner pursuant to the aforesaid office memorandum in the month of August, 1999 changed his option of fixation of pay from 01.01.1996 to 10.03.1996 and as per the changed option, the pay fixation authority has carried out a re-pay fixation of the Petitioner by fixing the pay of the Petitioner at Rs. 6900 as on 10.03.1996 by an order dated 20.11.1999. The pay fixation of the Petitioner was duly approved by the Pay Fixation Officer.

8. The Petitioner started drawing the salary as per re-fixation order from November 1999, however, the arrears of pay were not paid to the Petitioner and the Petitioner submitted a representation on 16.08.2000, 21.09.2000, 11.10.2000 and 20.02.2001.

9. The facts of the case further reveal that no arrears were paid to the Petitioner and an order was issued on 17.05.2001 reducing the pay of the Petitioner from Rs.6900 to Rs.6500 as on 10.03.1996 as well as directing recovery against the Petitioner and the Petitioner protested in the matter immediately by submitting a representation dated 19.09.2001. The Petitioner also approached the Tribunal by filing an Original Application i.e. O.A. No. 3137/2001. The Tribunal disposed of the said O.A. by an order dated 21.11.2001 directing the Director of Education to treat the petitioner's Original Application as his representation and to pass a reasoned order after hearing the Petitioner. The Order was passed by the Directorate of Education rejecting the claim of the Petitioner on 20.12.2001 and the Petitioner preferred a second Original Application i.e. O.A. No. 1233/2002.

10. The Second Original Application preferred by the Petitioner was disposed of by an order dated 23.09.2003 and the Respondents therein were directed to issue a show cause notice and after receiving a reply to pass a final order in the matter.

11. The Petitioner was served with a show cause notice as directed by the Tribunal and, thereafter a corrigendum to the show cause notice was also issued on 07.11.2003 and the Petitioner did submit a reply in the matter and finally an order was passed upholding the pay fixation of the Petitioner at Rs.6500/- w.e.f. 10.03.1996. The order dated 15.01.2004 is reproduced as under:

GOVT. OF N.C.T OF DELHI
DIRECTORATE OF EDUCATION DISTT. NORTH
LUCKNOW ROAD, DELHI.

No. F.DDE(N)/ 2003-4
Dated 15.1.04

ORDER

Whereas a showcase notice dated 16.10.2003 was served upon Sh. T.P.S.Mann with the direction to submit his reply with regard to his pay fixation and Sh. Maan has furnished his reply on 20.10.2003 wherein he has referred the judgment of Hon'ble CAT, O.M. dated 263.98 and O.M. dated 30.7.99. Besides this Sh.Maan has also referred to certain typographical errors in the Show Cause Notice dated 16.10.2003 which have been rectified by an order dated 7.11.2003 and has been accepted by said Sh.Mann as he has not made any representation to the amendment made.

Whereas the Hon'ble Court has decided O.A. No. 1233 of 2002 holding that

"(a) the impugned orders are quashed

(b) Before passing any such order, a show cause notice should be served to the applicant; and (c) after the reply which must be filed within 15 days of the receipt of the same, the respondents may pass a speaking order which should be communicated to the applicant". And

Whereas Sh. Maan has taken a plea that as per the judgment/order of Hon"ble CAT the part (a) should be implemented first whereby he contends that his earlier pay should be restored and he should be paid arrears arising out of such restoration and then issue show cause notice later i.e. (b) of the judgment. It is made clear that the order of CAT does not mean to understand that the pay of Sh. Maan was erroneously fixed and it should be restored and he be paid arrears by the orders of CAT clearly indicates that as no show cause notice was served to Sh. Maan, which was necessary while civil rights were affected and, therefore, the Hon'ble CAT has quashed the order on technical ground i.e. violation of principle of Natural Justice. The order of CAT does not speak on the merits of the case and directed to issue show cause notice and thus the part (b) was to be implemented first which has been done in the instant case and, therefore, the plea taken by Sh. Maan is not tenable in the light of the judgment of Hon'ble CAT and, *Whereas Sh. T.P.S.Mann while working as TGT in Govt. Boys Senior Secondary School, NO.1, Shakti Nagar, Delhi as on 1.1.96 in the pay scale of Rs. 1400-2600 and drawing salary at the state of Rs. 1900/- was accorded the revised pay scale of Rs. 5500-175-9000 and his pay was fixed at the stage of Rs. 6025/- in the revised pay scale w.e.f. 1.1.96 in the light of rule 7 of CCS (Revised Pay) Rules 1997 as per option exercised by. Sh. Mann under Rule 6 of the said Rules.*

And Whereas, Sh. Mann while working in the senior scale of TGT i.er. 1640-2900 and drawing pay @ Rs. 2000/- on 10.3.96 was fixed @ 6500/- in the revised scale of Rs. 6500-200-10500 w.e.f. 10.3.96 with date of next increment on 1.3.97, as per provisions of FR 22 (1) (A) (2)

And whereas subsequent to above fixation of pay Sh.Mann changed his option stating that his pay should be fixed in the revised scale of Rs. 6500-200-10500 directly in the senior scale w.e.f.10.3.96 and relying on the option of Sh. Mann, the office refixed his pay in the revised scale of senior scale w.e.f. 10.3.96 @ 6900/- with DNI1.3.97 and

Whereas Sh.Mann in his reply to the showcause notice dated 16.10.2003 has referred to para 3 (b) of O.M. dated 26.3.98 wherein it has been mentioned "From any date after 1.1.96 for the reasons other than their date of increment falling during 1996 shall be fixed under rule 9 of the Central Civil Services (Revised Pay) Rules 1997. Sh.Mann has also stated that the same language has been mentioned in the O.M. dated 30.7.1999 and

Whereas the Rule 7 clearly speaks that the pay of such officers shall be fixed under rule 9 of CCS (R.P) Rules 1997 which postulates as under.

Where Government servant continues to draw his pay in the existing scale and is brought over to revised scale from a date later than the 1st day of January 1996 his pay from the later date in the revised scale shall be fixed under FUNDAMENTAL RULES" and therefore it is made clear that under the normal fundamental rules the benefit of hunching is not allowed which is admissible only in the case of the fixation of pay under Rule 7 of CCS 51 (RP) Rules 1997 and therefore as per Fundamental Rules the pay of Sh. Mann was liable to be fixed @ 6500/- w.e.f. 10.3.96 and has been fixed rightly and

Whereas the case of Sh.Maan has been examined in the light of the provisions of relevant rules and in the light of the instructions/provisions of *various O.M. and the undersigned is of the opinion that Sh.Maan has no valid reasons to get his pay fixed @ 6900/- w.e.f. 10.3.96 being contrary to the existing instruction.*

And now therefore it is apparent that the contention of Sh. Mann made in his various representations regarding fixation of pay in the senior scale @, 6900/-w.e.f. 10.3.96 is not tenable and the undersigned is of the considered view that the pay fixed from 1.1.96 @ 6025/- and subsequently from 10.3.96 @ 6500/- is absolutely correct in the light of the aforesaid provisions and it is also well settled law that the wrong cannot be allowed to perpetuate and should be discontinued as soon as it is noticed.

This is issued in pursuance of direction of Hon'ble CAT in OA No.1233 of 2003 dated 23.09.2003

Sd/-
(Dr. R.K. Sharma)
Dy. Director of Education
Distt. North.

Sh. T.P.S. Mann
Through Head of the School"

12. The Petitioner preferred a third Original Application before the CAT and the CAT has dismissed the third O.A. i.e. O.A. No. 704/2004 after hearing the parties at length. The operative portion of the order passed by the Tribunal as contained in paragraphs 5 to 9 reads as under:

> *"5. The main point raised by the applicant was that his pay was fixed earlier at Rs. 6025/- in the pay scale of Rs.5500-9000/-. At that time there was a provision that when any employee opts a date later than 1.1.96, his pay was required to be fixed as per Rule 9 of the CCS(Revised Pay) Rules, 1997. As per that rule, no benefit of bunching was admissible at that time. Bunching means that fixation of pay shall ensure that every employee gets atleast one increment in the revised pay scale for every three earned increments in the existing scale of pay. Later on, two O.M.s dated 26.3.1998 and 30.7.1999 were*

issued by Govt. Para 2 of the CM dated 30.7.1999 reads as under:

"On further consideration and in exercise of the power available under Rule 13 of the Central Civil Services (Revised Pay) Rules, 1997, the President is pleased to decide that the pay of Government servants who opt to switch over to the revised scale of pay from the date of their increment falling on or after 1.196 but not later than 31.12.97 in respect of the post held by them on 1.1.96, shall also be fixed in accordance with the provisions of Rule 7of the Central Civil Services (Revised Pay) Rules, 1997"

6. The applicant changed his option for the purpose of pay fixation from 1.1.96 to 10.3.96. He was drawing a basic pay of Rs.200/- on 10.3.96 in the pay scale of Rs.1640-2900/-. His pay was rightly fixed at Rs.6900/- as per ready reckoner at page 21 filed with the rejoinder, giving him the benefit of bunching as per Rule 7 of the CCS(Revised Pay) Rules, 1997, as provided for in the OM dated 30.7.99. His pay could not, therefore, be reduced to Rs.6500/- by the respondents.

7. On the other hand, the respondents have taken the stand that if a Govt. servant continues to draw his pay in the existing scale and is brought over to the revised scale from a date later than the 1.196, his pay from the later date in the revised scale is required to be fixed under FRs and under FRs, the benefit of bunching is not allowed which is available only in the case of fixation of pay under Rule 7 of the CCS(Revised Pay Rules, 1997. His pay has, therefore, been rightly fixed at Rs.6500/- w.e.f. 10.3.96.

8. It is observed that the provision in both the O.Ms provide that if an employee opts to switch over to the revised scale of pay from the date of his increment falling on or after 1.1.1996 but not later than 31.12.1997, in respect of post held by him on 1.1.1996, his pay shall be fixed in accordance with the provisions of Rule 7 of the CCS(Revised) Pay Rules, 1997. The case of the applicant falls within the purview of this provision *in the Rule. On 1.1.1996, he was a TGT in the pay scale of Rs.1400-2600 and was drawing a basic pay of Rs.1900/- in that scale. After introduction of the revised pay scale of Rs.5500-9000 w.e.f. 1.1.1996, as a result of implementation of the 5th Central Pay Commission recommendations, the corresponding pay in the revised scale works out to Rs.5762/- but after giving him the benefit of bunching of 3 increments, his pay was fixed at Rs.6025/- p.m. Later he opted for fixation of pay from the date of his next increment as on 10.3.1996. It may be stated that according to the provision made in para 2 of the O.M. dated 30.7.199 reproduced in para 5 above, the revision in the pay scale from the date of increment falling after 1.1.1996, is to be made in respect of the post held by the applicant on 1.1.1996. In other words, he cannot take the benefit of the post and the scale of the post held by him later than 1.1.1996. On 1.1.1996, he was holding the post of TGT in the scale of Rs.1400-2600 and not the senior scale of Rs.1640-2900 which scale was granted to him only on 10.3.1996. Accordingly, he was entitled to an increment in the same of Rs.1400-2600 and his pay stood at Rs.1950/- on 10.3.1996 in the pre-revised scale of Rs.1400-2600 (Revised Rs.5500-9000). The corresponding pay in revised scale works out to Rs.5911/- p.m. according to the Model Table 23 for fixation of pay. However, his pay was notionally fixed at Rs.6200/- after giving him the benefit of bunching of four increments. On this date, he was also granted the senior scale of Rs. 6500-10,500. Now his pay was required to be fixed in the senior scale. After giving him the benefit of one increment of Rs.175/- on Rs.6200/-under FR 22(1) (a) (1), his pay works out to Rs.6375/-. Since there is no stage of Rs.6375/- in the pay scale of Rs.6500-10,500/-, he was granted the minimum of the pay scale and his pay was rightly fixed at Rs.6500/- on 10.3.96. It would thus be seen that the applicant was required to be given the benefit of bunching and additional increment in the scale of pay held by him on 1.1.1996 and not in the scale held by him on a subsequent date. However, the Department had earlier inadvertently fixed his pay at Rs.6900/- by giving him the benefit in the senior scale of Rs.6500-10,500, which was not in accordance with the instructions contained in* *the two O.Ms referred to above. When this mistake came to their notice, they rectified the same and refixed his pay at Rs. 6500/- instead of Rs.6900/- The final decision in this regard has now been taken by the respondents after giving due opportunity to the applicant by issuing a show cause notice and the position has been explained in detail in the order dated 15.1.2004 (Annexure-A). In our opinion, his pay has rightly been fixed at Rs.6500/- w.e.f10.3.1996, in terms of the relevant rules and instructions on the subject.*

9. As a result of the above discussions, we do not find any merit in the OA and the same is dismissed, without any order as to costs."

13. Learned Counsel while arguing the matter before this Court has raised various grounds and it has been vehemently argued that the Department as well as the Tribunal have erred in law and on facts by holding that the Department had originally fixed the pay of the Petitioner at Rs.6900/- by granting him the benefit in the senior pay scale of Rs.6500/-10500 inadvertently and the Tribunal has also erred in law and on facts in upholding the pay fixation at Rs.6500/- w.e.f. 10.03.1996.

14. Learned Counsel has further argued before this Court that the Tribunal has committed an error in law and on facts and it was the applicant's case that his pay was fixed earlier at Rs.6025 in the pay scale of Rs.5500-9000/- and at that point of time there was a provision that when any employee opts a date later than 01.01.1996, his pay was required to be fixed as per Rule 9 of the CCS Revised Pay Rules, 1997. As per that rule, no benefit of bunching was admissible. (Bunching means that fixation of pay

shall ensure that every employee gets at least one increment in the revised pay scale for every 3 earned increments in the existing scale of pay).

15. The Petitioner has argued before this Court that the Office Memorandum dated 26.03.1998 and 30.07.1999 were issued by the Government of India and paragraph 2 of the Office Memorandum dated 30.07.1999 provides for pay fixation keeping in view Rule 7 of the Central Civil Services Revised Pay Rules, 1997. Therefore, after he has changed the option revising the cut-off date for grant of higher pay scale from 1.1.1996 to 10.03.1996, his pay was rightly fixed at Rs.6900/- and by no stretch of imagination it could have been reduced to Rs.6500/-

16. The Petitioner has also raised a ground stating that the grant of senior scale of pay to the Petitioner on 10.03.1996 on completion of 12 years of service should have been treated as a grant of increment and as the said grant falls between 01.01.1996 and 31.12.1997, he is entitled to opt for switching over to the revised scale w.e.f. 10.03.1996.

17. The Petitioner's contention is that by treating his option from 10.03.1996, he should have been fixed in the revised pay scale under Rule 7 of the CCS (Revised Pay) Rules 1997 by giving him the benefit of bunching and the Tribunal has erred in law and on facts in not granting him the benefit as prayed for.

18. Learned Counsel for the Petitioner has also argued before this Court that the Tribunal has committed an error in law and on facts by taking into account the Petitioner's pay in the revised pay scale as Rs.1950/- (Basic pay) in the pre-revised scale of Rs.1400-2600 as on 10.03.1996 and, in fact, the

Petitioner's basic pay as on 10.03.1996 in the pre-revised pay scale is Rs.2000 in the pay scale of Rs.1640-2900.

19. The Petitioner's sole grievance is that he has not been given the benefit of the Office memorandum dated 30.07.1999 in the matter of pay fixation and the findings arrived at by the Tribunal are erroneous in nature.

20. It is the case of the Petitioner that the department, instead of giving him his arrears, reduced his pay. The Petitioner has submitted that pursuant to Order dated 21.11.2001 of the Ld. CAT, the Director of Education called the Petitioner to his office on 12.12.2001 and on that date, the Petitioner was given only two minutes to put forward his case, pursuant to which Order No. FS/ DE/ 2001/ 8262-63 was passed wherein the Order No. SNI/ 2001 dated 17.05.2001 was further confirmed and it was erroneously held that no arrears are payable to him. Further, there were many other similar cases like the case of the petitioner, but only his pay has been decreased. The Petitioner has submitted that the Ld. Tribunal committed an error in applying a reasoning which was not put forward by any of the parties in their contentions before the Ld. CAT. It is the case of the Petitioner that the post held by the Petitioner on 01.01.1996 and also on 10.03.1996 was the same, the only difference was that he was granted a senior scale on the same post, as on 10.03.1996 due to the length of his service. Thus, on this premise, the entire reasoning of the Impugned Order falls. The fact that he was given a time bound senior scale on 10.03.1996 due to completion of 12 years of service, cannot be construed to mean that the post he held as on 01.01.1996, changed as on 10.03.1996, it is only an increment which has been granted to the Petitioner.

21. The Petitioner has cited paragraph 3 of the O.M. dated 30.07.1999 and submitted that in accordance with the same, it is Rule 7 of the Revised Pay Scale which shall be applicable to him and not Rule 9. Further, the Petitioner has stated that in accordance with paragraph 22.43 of the recommendations of the 5th Central Pay Commission, the senior pay scale cannot be treated as a promotional scale. The Petitioner submits that the ACP Scheme which was implemented on 09.08.1999 consists of a promotional scale scheme, however, the same is not applicable to the instant case as the Petitioner's case relates to fixation of pay as on 10.03.1996. It was submitted that the finding of the Ld. Tribunal that the pay of the Petitioner was fixed as per Fundamental Rule 22 (1)(a)(1) is incorrect and the same was fixed as per Fundamental Rule 22 (1)(a)(2) as is substantiated by Order dated 15.01.2004. The Petitioner further submits that it is only Rule 7 of the Revised Pay Scale which is applicable to his case and not the Fundamental Rules. Accordingly, in the pre-revised scale, his pay of Rs. 2000 came after 6 increments, thus, as per bunching benefits, two increments are applicable to him as per the Revised Pay Scale, thus, he is entitled to Rs. 6900 as his pay and the Tribunal has erroneously held that the Petitioner would not be entitled to benefit of bunching. The Petitioner submits that in accordance with Rule 3(3) of Revised Pay Rules, the post of TGT envisages three scales (i) Entry, (ii) senior and (iii) select. Further, that the Petitioner fell under the senior scale as on 10.03.1996.

22. Learned counsel for the Petitioner has placed heavy reliance upon a judgment delivered in the case of ***R.K. Sabharwal and Others v. State of Punjab and Others***, (1995) 2SCC 745.

23. We have heard learned counsel for the parties at length and perused the record.

24. The undisputed facts of the case reveal that the Petitioner is aggrieved by the order dated 15.01.2004 by which the pay of the Petitioner has been fixed at Rs.6500 w.e.f. 10.03.1996. The Petitioner while working as TGT in Govt. Boys Senior Secondary School, Shakti Nagar, Delhi was drawing a salary at the stage of Rs.1900 as on 01.01.19996 in the pay scale of Rs.1400-2600.

25. The pay scale of the Petitioner was revised pursuant to the recommendations of the Sixth Pay Commission keeping in view the CCS (Revised Pay) Scale Rules, 1997 as per the option exercised by him only under Rule 6 of the said Rules.

26. The Petitioner while working in the senior scale of TGT i.e. Rs.1640-2900 and drawing the pay at the stage of Rs.2000 as on 10.03..1996 was fixed at Rs.6500 in the revised pay scale of Rs.6500-10500 w.e.f. 10.03.1996 with the next date of increment on 01.03.1997 keeping in view the provisions of Fundamental Rule 22 (1) (A) (2).

27. The Petitioner later on changed his option stating that his pay should be fixed in the revised pay scale of Rs.6500-10500 directly in the senior pay scale w.e.f. 10.03.1996 and keeping in view the option submitted by him, his pay was fixed in the revised scale of senior scale w.e.f 10.03.1996 at the stage of Rs.6900.

28. The Petitioner's pay fixation at the stage of Rs.6900 in the pay scale of Rs.6500-10500 was erroneous keeping in view the Rule 7 and 9 of the CCS (Revised Pay) Scale Rules, 1997.

29. Rule 7 and 9 of the CCS (Revised Pay) Scale Rules, 1997 reads as under:

> ***"7. Fixation of initial pay in the revised scale:***
>
> *(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 scale on and from the 1st day of January, 1996, 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) an amount representing 40 per cent of the basic pay in the existing scale shall be added to the 'existing emoluments' of the employee;*
>
> *(ii) after the existing emoluments have been so increased, the pay shall thereafter be fixed in the revised scale at the stage next above the amount thus computed.*
>
> *Provided that -*
>
> *(a) if the minimum of the revised scale is more than the amount so arrived at, the pay shall be fixed at the minimum of the revised scale;*
>
> *(b) if the amount so arrived at is more than the maximum of the revised scale, the pay shall be fixed at the maximum of that scale.*

Provided further that

where in the fixation of pay, the pay of Government servants drawing pay at more than four consecutive stages in an existing scale gets bunched, that is to say, gets fixed in the revised scale at the same stage, the pay in the revised scale of such of these Government servants who are drawing pay beyond the first four consecutive stages in the existing scale shall be stepped up to the stage where such bunching occurs, as under, by the grant of increment(s) in the revised scale in the following manner, namely:

(a) for Govt. servants drawing pay from the 5th upto the 8th stage in the existing scale - by one increment

(b) for Govt. servants drawing pay from the 9th upto the 12th stage in the existing scale, if there is bunching beyond the 8th stage - by two increments

(c) for Govt. servants drawing pay from the 13th upto the 16th stage in the existing scale, if there is bunching beyond the 12th stage - by three increments

If by stepping up of the pay as above, the pay of d Government servant gets fixed at a stage in the revised scale which is higher than the stage in the revised scale at which the pay of a Government servant who was drawing pay at the next higher stage or stages in the same existing scale is fixed, the pay of the latter shall also be stepped up only to the extent by which it falls short of that of the former.

Provided also that -

The fixation thus made shall ensure that every employee will get atleast one increment in the revised scale of pay for every three increments [inclusive of stagnation increment(s), if any] in the existing scale of pay.

Explanation - For the purpose of this clause "existing emoluments" shall include, *(a) the basic pay in the existing scale:*

(b) dearness allowance appropriate to the basic pay admissible at index average 1510 (1960=100), and

(c) the amounts of first and second instalment of interim relief admissible on the basic pay in the existing scale;

(B) in the case of employees who are in receipt of special pay/allowance in addition to pay in the existing scale which has been recommended for replacement by a scale of pay without any special pay/allowance, pay shall be fixed in the revised scale in accordance with the provisions of clause (A) above except that in such cases "existing emoluments" shall include -

(a) the basic pay in the existing scale;

(b) existing amount of special pay/allowance;

(c) admissible dearness allowance at index average 1510 (1960=100) under the relevant orders; and .

(d) the amounts of first and second instalments of interim relief admissible on the basic pay in the existing scale and special pay under the relevant orders;

(C) in the case of employees who are in receipt of special pay component with any other nomenclature in addition to pay in the existing scales, such as personal pay for promoting small family norms, special pay to Parliament Assistants Central (Deputation on Tenure) Allowance, etc., and in whose case the same has been replaced in the revised scale with corresponding allowance/pay at the same rate or at a different rate, the pay in the revised scale shall be fixed in accordance with the provisions of clause (A) above. In such cases the allowance at the new rate as recommended shall be drawn in addition to pay in the revised scale of pay;

(D) in the case of medical officers who are in receipt of non-practising allowance, the pay in the revised scale shall be fixed in accordance with the provisions of clause (A) above except that in such cases the term "existing emoluments" shall not include NPA and will comprise only the following:-

(a) the basic pay in the existing scale;

(b) dearness allowance appropriate to the basic pay and non-practising allowance admissible at index average 1510 (1960=100) under the relevant order; and

(c) the amounts of first and second instalments of interim relief admissible on the basic pay in the existing scale and non-practising allowance under the relevant orders,

and in such cases, non-practising allowance at the new rates shall be drawn in addition to the pay so fixed in the revised scale.

Note 1 - The Government servants drawing pay upto the stage of Rs.1030 in the existing scale of Rs.775-12-871-14-955-15-1030-20-1150 shall be fixed in S-2 scale of pay and those drawing pay beyond the stage of Rs.1030 shall be fixed in S-3 scale of pay.

Note 2 - Where the increment of a Government servant falls on 1st day of January, 1996, he shall have option to draw the increment in the existing scale or the revised scale.

Note 3 - Where a Government servant is on leave on the 1st day of January, 1996, he shall become entitled to pay in the revised scale of pay from the date he joins duty. In case of Government servant under suspension, he shall continue to draw subsistence allowance based on existing scale of pay and his pay in the revised scale of pay will be subject to final order on the pending disciplinary proceedings.

Note 4 - Where a Government servant is holding a permanent post and is officiating in a higher post on a regular basis and *the scales applicable to these two posts are merged into one scale, the pay shall be fixed under this sub-rule with reference to the officiating post only, and the pay so fixed shall be treated as substantive pay.*

The provisions of this Note shall apply, mutatis mutandis, to Government servants holding in an officiating capacity posts on different existing scales which have been replaced by a single revised scale.

Note 5 - Where the existing emoluments as calculated in accordance with clause (A), clause (B), clause (C) or clause (D), as the case may be, exceed the revised emoluments in the case of any Government servant, the difference shall be allowed as personal pay to be absorbed in future increases in pay.

Note 6 - Where in the fixation of pay under sub-rule (1), pay, of a Government servant, who, in the existing scale was drawing immediately before the 1st day of January, 1996 more pay than another Government servant junior to him in the same cadre, gets fixed in the revised scale at a stage lower than that of such junior, his pay shall be stepped upto the same stage in the revised scale as that of the junior.

Note 7 - Where a Government servant is in receipt of personal pay on the 1st day of January, 1996, which together with his existing emoluments as calculated in accordance with clause (A), clause (B), clause (C) or clause (D), as the case may be, exceeds the revised emoluments, then, the difference representing such excess shall be allowed to such Government servant as personal pay to be absorbed in future increases in pay.

Note 8 – In the case of employees who are in receipt of personal pay for passing Hindi Pragya, Hindi Typewriting, Hindi Shorthand and such other examinations under the "Hindi Teaching Scheme", or on successfully undergoing training in cash and accounts matters prior to the 1st day of January, 1996, while the personal pay shall not be taken into account for purposes of fixation of initial pay in the revised scales, they *would continue to draw personal pay after fixation of their pay in the revised scale on and from the 1st day of January, 1996 or subsequently for the period for which they would have drawn it but for the fixation of their pay in the revised scale. The quantum of such personal pay would be paid at the appropriate rate of increment in the revised scale from the date of fixation of pay for the period for which the employee would have continued to draw it.*

Explanation -For the purpose of this Note, "appropriate rate of increment in the revised scale" means the amount of increment admissible at and immediately beyond the stage at which the pay of the employee is fixed in the revised scale.

Note 9 - In cases, where a senior Government servant promoted to a higher post before the 1st day of January, 1996 draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1996, the pay of the senior Government servant should he stepped up to an amount equal to the pay 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 and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical.

(c) the senior Government servants at the time of promotion 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 scale. 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.

The order relating to refixation of the pay of the senior officer in accordance with the above provisions should be issued under Fundamental Rule 27 and the senior officer will be entitled to the next increment on completion of his required qualifying service with effect from the date of refixation of pay.

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9. Fixation of pay in the revised scale subsequent to the 1st day of January,1996 - Where a Government servant continues to draw his pay in the existing scale and is brought over to revised scale from a date later than the 1st day of January 1996, his pay from the later date in the revised scale shall be fixed under the Fundamental Rules and for this purpose his pay in the existing scale shall have the same meaning as of existing emoluments as calculated in accordance with clause(A), clause(B), clause(C) or clause(D), as the case may be, of sub-rule(i) of rule 7 except that the basic pay to be taken into account for calculation of those emoluments will be the basic pay on the later date aforesaid and where the Government servant is in receipt of special pay or non-practising allowance, his pay shall be fixed after deducting from those emoluments an amount equal to the special pay or non-practising allowance, as the case may be, at the revised rates appropriate to the emoluments so calculated."

30. The aforesaid Rules provide that, in case, a Government servant continues to draw his pay in the existing scale and is brought over to revised scale from the date later than 1st January, 1996, his pay from the later date in the revised scale shall be fixed under Fundamental Rules i..e at Rs.6500/- w.e.f. 10.03.1996.

31. The erroneous pay fixation i.e. fixing his pay at the stage of Rs.6900 as on 10.03.1996 was contrary to the statutory provisions and in those circumstances an order was passed fixing his pay at the stage of Rs.6500/- w.e.f. 10.03.1996 as well as recovery was also ordered against him.

32. In the considered opinion of this Court, the Tribunal was justified in upholding the pay fixation.

33. The undisputed facts of the case make it very clear that on 01.01.1996, the Petitioner was holding the post of TGT in the scale of Rs.1400-2600 and was not in the senior scale of Rs.1640-2900. The pay scale of Rs.1640-2900 was granted only on 10.03.1996 and accordingly he was entitled to an increment in the scale of Rs.1400-2600 and his pay stood at Rs.1950/- on 10.03.1996 in the pre-revised scale of Rs.1400-2600 which was revised to Rs.5500-9000. The corresponding pay in the revised pay scale comes to Rs. 5911/- per month according to Model Table 23 for fixation of pay.

34. The pay of the Petitioner was notionally fixed at Rs.6200/- after giving him the benefit of bunching of 4 increments and he was also granted the senior scale of pay of Rs.6500-10500.

35. The Petitioner was granted the benefit of 1 increment of Rs. 175/- at the stage of Rs.6200 keeping in view the Fundamental Rule 22 (1) (A) (2) making his pay at Rs. 6375.00/-. However, as there was no stage of Rs.6375/- in the pay scale of Rs.6500-10500, he was granted the minimum pay scale and his pay was fixed at Rs.6500 as on 10.03.1996.

36. This Court is of the considered opinion that the Petitioner was entitled for bunching and additional increment in the pay scale held by him on 01.01.1996 and not in the pay scale held by him on a subsequent date. The Department initially committed a mistake by fixing his pay at Rs.6900/- in the pay scale of Rs.6500-10500 which was contrary to the Office Memorandums dated 26.03.1998 and 30.07.1999 and the moment the mistake was detected, it was rectified by the Respondents. The Respondents have also followed the Principles of Natural Justice and fairplay while passing the impugned order and the Tribunal was justified in upholding the order in the matter of pay fixation of the Petitioner. However, as the Petitioner is a class III employee, the question of recovery in the peculiar facts and circumstances of the case, as it is creating undue hardship is not at all justified keeping in view the Judgment delivered in the case of ***State of Punjab v. Rafiq Masih (White Washer)*** [(2015) 4 SCC 334].

37. Resultantly, the pay fixation fixing the Petitioner's pay at Rs.6500/- w.e.f. 10.03.1996 is upheld and the recovery order against the Petitioner is hereby quashed.

38. Reliance placed by the Petitioner on ***R.K. Sabharwal*** (supra) is misplaced. The aforesaid judgment relates to promotion and reservation and in the aforesaid case the Hon'ble Supreme Court was dealing with an issue of computation of percentage of reservation and it was held that the same has to be done in relation to the number of posts comprising the cadre and not in relation to the vacancies. The aforesaid judgment relied upon is certainly not applicable in the facts and circumstances of the present case.

39. The petition is dismissed. The pay fixation done by the authority is upheld. However, the recovery is quashed. No order as to costs.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

OCTOBER 11, 2022
N.Khanna