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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 17.10.2022.

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W.P.(C) 6246/2006

UOI THR. SECRETARY & ANR

..... Petitioners

Through: Mr. Anil Soni, CGSC with Mr. Rahul Mourya, Advocate

versus

J.N.GHOSH

..... Respondent

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SATISH CHANDRA SHARMA, C.J. (ORAL)

CM APPL. 45032/2022

1. The present application has been filed on behalf of the Petitioners for restoration of W.P.(C) 6246/2006 and recalling of the Order dated 19.09.2022 passed by this Court in W.P.(C) 6246/2006, wherein this Court had dismissed the writ petition for want of prosecution.
2. Mr. Anil Soni, learned CGSC, submits that he was very much present in the Court premises, however, at the time when the matter was called he was arguing another matter before a Division Bench and, therefore, he could not appear in the matter. However, learned CGSC, submits that he is ready to argue the matter today itself and prays for restoration of the writ petition

to its original number.

3. In view of the above, W.P.(C) 6246/2006 is restored to its original number.

4. The application is disposed of.

W.P.(C) 6246/2006

5. The present Writ Petition is arising out of the order dated 03.10.2005 passed by the Central Administrative Tribunal (CAT) in OA No. 200/2005.

6. The undisputed facts of the case reveal that the Respondent before this Court (Applicant before the CAT) became an employee of Union of India by joining the Post of Assistant Superintendent (AS) in the National Central Survey Organization (Field Operation Division) in the Department of Statistics on 14.09.1970. The Post of AS was carrying a Pay Scale of Rs. 210-425/-. The Respondent employee was subsequently promoted to the Post of Superintendent.

7. While Respondent employee was working on the post of Superintendent, a demand was made by the existing employees of the Department in the 13th meeting of Departmental Council held in May, 1978 claiming a pay revision in respect of the Post of Assistant Superintendent from Rs. 470-750/- to Rs. 550-900/- with effect from 01.01.1978.

8. It is undisputed that Departmental Council could not reach at a consensus in the matter of revision of pay as there was no agreement between the Government of India and the members of the Departmental Council. In those circumstances, an Arbitration Board was constituted to look into the matter and an Award was passed by the Arbitration Board on

05.09.1989. The Award passed by the Board of Arbitration reads as under:

“The Assistant Superintendent of the FOD, NSSO, Govt. of India shall be given pay at the existing scale of Rs. 470-750 plus special pay of Rs. 75/- per month. This special pay of Rs. 75/- per month shall count as pay for all purposes as per Rules. This Award shall take effect on and from 01.05.1982.”

9. A presidential sanction was accorded in the matter in respect of grant of Rs. 75/- per month to AS for the period with effect from 01.05.1982 and in the present case, the Respondent employee was working on the Post of AS from 01.05.1982 to 31.12.1984, and was drawing the pay in the Pay Scale of Rs. 470-750/-. He was confirmed on the post of the AS with effect from 19.05.1984, and later on was confirmed on the Post of Superintendent by an order dated 24.07.1987.

10. The Respondent employee was given the benefit of special pay of Rs. 75/- per month from 01.05.1982 to 31.12.1984, but he was denied the benefit beyond December, 1984 as he was promoted to next higher post of Superintendent. He was denied the benefit of special pay of Rs. 75/- on promotion to the next higher post of Superintendent with effect from January, 1985, and in those circumstances, the Original Application was preferred before the CAT.

11. The Respondent employee came up with the case claiming parity with one Sh. Balwant Singh. It was categorically stated that the benefit of counting of the special pay of Rs. 75/- in fixation of pay in the Pay Scale of Rs. 550-900 was denied to the said Sh. Balwant Singh while fixing the Pay in the Pay Scale of Rs. 550-900 on promotion from the post of AS to the

Post of Superintendent. Sh. Balwant preferred an Original Application i.e. O. A. No. 708-HR-1996 titled Shri Balwant Singh Vs. U.O.I & Others. The CAT has allowed the Original Application preferred by Sh. Balwant Singh by an order dated 20.05.2003 directing the Respondents therein to refix the pay of the Applicant therein on his promotion to the post of Superintendent with effect from 28.01.1985 after taking into account the special pay of Rs. 75/- drawn by him in the lower post of Assistant Superintendent on substantive basis treating the same as part of the basic pay in terms of provisions of Government of India's order, and grant him all consequential benefits.

12. The order passed by the CAT in the case of **Shri Balwant Singh** (Supra) as contained in Paragraph 7 and Paragraph 8 reads as under:

“7. We have considered the rival contentions of learned counsel for the parties. The issue in this case relates to the period prior to 30.8.1989. Therefore, the provisions contained in Government of India, Ministry of Finance OM No. 6(1)E.III/B/(65) dated 25.02.1965 incorporated as Order No. (27) in Appendix 8 of Swamy's Compilation of F.R.S.R., Part-I General Rules – 1992 Edition and the O.M. dated 8th January, 1968 incorporated as Note 2 (a) thereunder, are applicable in this case. After going through these provisions, it becomes clear that the condition of special pay having been drawn continuously for a minimum period of three years as well as certificate of continued drawal of special pay but for the promotion is not to be insisted upon for fixation of pay in the promotion post in the case of persons holding substantively the lower post carrying special pay in lieu of a separate higher scale. This interpretation becomes more clear from the Government of India, Ministry of Finance O. M. No. 7(35)E.III/87 dated 1.9.1987 issued in pursuance of the

implementation of the Award of the Board of Arbitration in case of treatment of special pay granted to U.D.Cs. in Non – Sectt. Administrative Offices on promotion, incorporated as clause (b) of Order No. (28) in the Appendix ibid. It has been made clear in these orders that the special pay drawn by UDCs shall be taken into account for fixation of pay on promotion, subject to the condition:-

“(i) That the incumbent is a substantive holder of the post to which the special pay is attached;

OR

(ii) That the incumbent, on the date of his appointment to higher post, is officiating in the lower post to which the special pay is attached, continuously for a period of not less than three years.”

The applicant in this case was holding the post of Assistant Superintendent in the Respondent department in substantive capacity prior to his promotion as Superintendent w.e.f. 28.1.1985 and was in receipt of Rs. 75/- as special pay in pursuance of the implementation of Award of Board of Arbitration vide Department of Statistics Order No. B-12014/4/85-USS-I dated 5.9.1989, Annexure A-5, which provides that the special pay has to be counted as pay for all purposes as per the rules. Taking inspiration from this and other provisions discussed above, the applicant is held entitled to count the special pay of Rs. 75/- drawn by him in substantive capacity as Assistant Superintendent for fixation of his pay on his promotion as Superintendent w.e.f. 28.1.1985. The ratio of Full Bench decision in K. R. Gupta’s case (Supra) does not apply to the facts of the present case.

8. In view of what has been discussed above, this O.A. is allowed. Impugned order dated 28.7.1995, Annexure A-1 is quashed. The respondents are directed to re-fix the pay of applicant on his promotion to the post of Superintendent w.e.f. 28.1.1985 after taking into account the special pay of Rs. 75/-

drawn by him in the lower post of Assistant Superintendent on substantive basis treating the same as part of his basic pay in terms of the provisions of Government of India's orders mentioned above and grant him al consequential benefits. These directions be complied with within a period of four months from the date a certified copy of this order is produced before the competent authority. No order as to costs."

13. The order passed by the CAT in the case of **Shri Balwant Singh** (Supra) was subjected to judicial scrutiny before the Punjab and Haryana High Court, and the Punjab and Haryana High Court dismissed the Writ Petition No. 18254/2003 preferred by the Union of India by an order dated 21.11.2003. The order passed by the Punjab and Haryana High Court reads as under:

"The case set-up by the Respondent no. 1 – applicant is squarely covered by a full Bench decision of the Central Administrative Tribunal, rendered in the case of K. R. Gupta Vs. Union of India & Others (O. A. No. 78-HR of 1997) decided on 3.10.2001. This apart, the rule which has been reproduced by the Central Administrative Tribunal also lays down that special pay drawn by UDC shall be taken into account for fixation of pay on promotion subject to the condition that the incumebtn is a substantive holder of the post to which the special pay is attached. The applicant-respondent no. 1 was holding the post of Assistant Superintendent in the petitioner-department in substantive capacity prior to his promotion as Superintendent w.e.f. 28.1.1985 and was in receipt of Rs. 75/- as special pay in pursuance of the implementation of the Award of Board of Arbitration vide Department of Statistics Order No. B-12014/4/85-USS-1 dated 5.9.1989 (Annexure P/5), which provides that the special pay has to be counted as pay for all purposes as per the rules.

We find no reason to interfere with the aforesaid finding of the

Tribunal.

Dismissed.”

14. As the Applicant’s case was identical to that of **Shri Balwant Singh** (Supra), the Central Administrative Tribunal has allowed the Original Application preferred by the present Respondent employee. Paragraphs 12, 13 and 14 of the order passed by the CAT reads as under:

“12. We have given our careful consideration to the rival contentions of the parties. At the outset, it is stated that the contention of the respondents that the Tribunal’s order was contrary to rules, it is pertinent to mention here that when the respondents found that the Tribunal’s order was contrary to rules, they in consultation with the nodal Ministries of Finance and Law approached the Hon’ble Punjab & Haryana High Court. The Hon’ble High Court had dismissed their writ petition giving them certain directions. When the High court has upheld the order of the Tribunal, the Respondents cannot now state that the Tribunal’s order was contrary to rules.

13. It is an admitted fact that a writ petition before the Hon’ble Punjab & Haryana High Court filed against the order of the Chandigarh Bench of the Tribunal was dismissed. It is also an admitted fact that Shri Balwant Singh was similarly placed person as the applicant in the instant OA. A comparable chart prepared by the applicant at page 9 of the OA clearly shows that the applicant and Shri Balwant Singh both were promoted to the post of Superintendent on 18.1.1985 and promoted to regular Superintendent on 24.7.1987, therefore, the case of the applicant in the present OA is covered, on all fours, by the judgment of the Chandigarh Bench of the Tribunal.

14. In the facts and circumstances of the case, we direct the respondents to mutates mutandis follow the order dated 20.5.2003 passed by the Chandigarh Bench of the Tribunal in

Balwant Singh's case (supra) and refix the pay of the applicant on his promotion to the post of Superintendent with effect from January 1985 after taking into account the special pay of Rs. 75/- drawn by him in the lower post of Assistant Superintendent on substantive basis treating the same as part of his basic pay in terms of the provisions of Govt. of India's orders mentioned above and grant him all consequential benefits. The above directions shall be complied with by the respondents within a period of three months from the date of receipt of a certified copy of the present order. No costs."

15. This Court has carefully perused the material on record. It is an undisputed fact of the case that the Respondent employee before this Court, and Sh. Balwant Singh are similarly placed.

16. The service details of Sh. Balwant Singh and the Respondent Employee are detailed as under:

<u>Balwant Singh</u>	<u>J. N. Gosh</u>
1. Appointed as 07.09.1970 Asstt. Supdt. in NSSO(FOD), Govt. of India	14.09.1970
2. Declared as 13.06.1983 Permanent Asstt. Superintendent in NSSO (FOD), Govt. of India	13.06.1983
3. Promoted to 18.01.1985 the Post of Superintendent in NSSO(FOD),	18.01.1985

Govt. of India

4. Promoted to 24.07.1987 24.07.1987
regular
Superintendent
in NSSO(FOD),
Govt. of India

5. Promoted to 13.06.1997 13.06.1997
ad-hoc Gr.IV of
ISS as Assistant
Director

6. Promoted to 07.10.2003 07.10.2003.
regular Gr.IV of
ISS as Assistant
Director

17. Service details of the Respondent, and in Sh. Balwant Singh as aforesaid establish that Sh. Balwant Singh and Respondent employee in the present case were promoted to the post of Superintendent from 18.01.1985. They were regularly promoted to post of Superintendent on 24.07.1987, and in those circumstances, the CAT was justified in allowing the Application as both the cases were identical in nature.

18. The other important aspect of the case is that the Respondent is a retired employee who has attained age of superannuation. Keeping in view the fact that the Respondent has retired, this Court is not inclined to deny him the benefit, which has already been extended to an identically placed person as this will amount to discrimination, and will be violative of Article 14, 16 and 21 of the Constitution of India.

19. The Respondent employee in the present case was holding the Post of

AS in substantive capacity prior to his promotion as Superintendent with effect from 28.01.1985, and was in receipt of Rs. 75/- special pay pursuant to an Award passed by Board of Arbitrator dated 05.09.1989, which provided that special pay has to be counted as pay for all purposes as per Rules, and, therefore, the Respondent employee was rightly held to be entitled to amount of special pay of Rs. 75/- drawn by him in substantive capacity as AS for fixation of Pay on his promotion as Superintendent with effect from 28.01.1985.

20. This Court in order to maintain parity in respect of two identically placed employees, as benefit was already extended to Sh. Balwant Singh, does not find any reason to interfere with the order passed by the CAT.

21. The Writ Petition is dismissed.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J.

OCTOBER 17, 2022

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