In the High Court at Calcutta
Constitutional Writ Jurisdiction
<u>Appellate Side</u>

Before:
The Hon'ble Justice Lapita Banerji

W.P.A. 22675 of 2022

Pulak Baran Chakraborty
Vs.
The Union of India & Ors.

For the petitioner	: Mr. Uttiya Ray, Adv. Mr. Arnab Mandal, Adv.
For ECL	: Mr. Manik Das, Adv.
For Union of India	: Ms. Sumita Sarkar, Adv.
Hearing Concluded on	: 26.07.2023.
Judgment on	: 10.08.2023.

<u>Lapita Banerji, J.:-</u> The petitioner is an ex-employee of Eastern Coalfields Limited (in short, "ECL"). The petitioner retired from service in 2012.

2. By an Office Memorandum dated May 02/07, 2009, the Coal India Limited (CIL) revised the pay of Board Level and below Board Level Executives of CIL and its subsidiary companies with effect from January 1, 2007. The existing scales of E1 to E5 and M1 to M4 were re-named as E1 to E9. The current and revised scales are reproduced in a tabular form hereinbelow for easy reference:

Sl. No.	Current	Revised
(i)	E1	(E1)
(ii)	E2	(E2)
(iii)	E3	(E3)
(iv)	E4	(E5)
(v)	E5	(E6)
(vi)	M1	(E7)
(vii)	M2 & M3	(E8)
(viii)	M4	(E9)

3. All the Executives, who were on the rolls as on January 1, 2007, but, subsequently ceased to be in service on account of superannuation, resignation, VRS and death, were held to be eligible for benefits of revised scale upto the period they were in employment.

4. The petitioner was given the fitment benefit pursuant to the Circular dated May, 2009. After his fitment in the new scale in E8 being in M2 Grade, the petitioner was found to be receiving less Basic Pay than some of his juniors. Such *anomaly* was noticed in respect of some of his other colleagues/senior employees of ECL.

5. The petitioner's grievance is that due to such *anomaly* in pay fixation, some juniors, who were promoted 6 years after the petitioner in M2 Grade, received more Basic Pay than the petitioner. Despite several representations, such *pay anomaly* was not rectified by the Director (Personnel), ECL.

6. Several representations were made for stepping up of the pay of the petitioner in accordance with the Fundamental Rules 23 and 24 pertaining to Central Civil Service (CCS) Rules - for removal of *pay anomaly*. An Anomaly

Committee was constituted as there were many representations from the employees.

7. By an Office Order dated September 6, 2011, certain conditions for Removal of *Pay anomaly* consequent upon revision of pay scales of the Executives with effect from January 1, 2007, were stipulated. After the said Office Order was issued on September 6, 2011, the same was followed by a Corrigendum dated December 5, 2011.Since the Employer/ECL did not take any decision regarding fixation of *pay anomaly* that existed in respect of 12 executives, clarifications were sought from the General Manager (Personnel) on March 30, 2017 and May 8, 2018 regarding the decision of the Internal Pay Anomaly Committee with regard to Removal of such *anomaly*.

8. Several applications were made by the petitioner under the Right To Information Act, 2005. The petitioner on several occasions wanted to know the basis on which Circular of CIL, the *pay anomaly* of one Shekhar Saran and one C.V. Sood were removed, whereas, the *pay anomaly* for the petitioner was not. Since the petitioner was placed on exactly same footing as Shekhar Saran, the petitioner wanted to know on the basis of which Circular, the petitioner's claim was not considered and the claim of Shekhar Saran was considered. The petitioner was not satisfied with the answers given by the Central Public Information Officer (CPIO) and also the First Appellate Authority. The petitioner was informed about the Circulars dated September 6, 2011, December 5, 2011 and September 10/12, 2016. The petitioner was well aware of the contents of such Circulars. The First Appellate Authority held that the

petitioner should approach the ECL for removal of *pay anomaly* since the personal file of the petitioner was with the ECL.

9. The petitioner filed a Second Appeal on July 10, 2018. The Second Appeal was disposed of by an Order dated November 5, 2019 by the Chief Information Commissioner. Before the Second Appellate Authority, the respondent/CPIO, ECL admitted that there was no circular on record which prevented ECL from rectifying the *anomaly* of the Basic pay of the appellant/petitioner. The Chief Information Commissioner directed CPIO, ECL to provide copies of note sheets, documents to the petitioner comprising of the reasons for pendency of the issue regarding rectification of the *anomalies* in the Basic pay of the petitioner within 4 weeks from the date of receipt of the Order in the Second Appeal.

10. In compliance of the Order passed by the Second Appellate Authority, 5 letters from the Senior Manager (P), ECL and General Manager (P), CIL were forwarded to the petitioner along with a Note regarding the discussion dated April 25, 2017 in the 112th Meeting of CIL. However, the queries of the petitioner were not answered by the said documents.

11. The petitioner again made representations including the ones on March 4 2020, December 6, 2020 to the Director (Personnel), ECL for removal of *pay anomaly*. Such representations were not responded to.

12. Thereafter, the petitioner was constrained to file the previous writ petition being WPA 11551 of 2020. The said representations were directed to be disposed of, by Order dated April 29, 2022 passed by an Hon'ble Coordinate

Bench. The Internal Pay Anomaly Committee of ECL was directed to pass a reasoned order in accordance with law.

13. Mr. Ray, learned counsel appearing on behalf of the petitioner submitted that CIL's Anomaly Committee held a meeting on August 11, 2011 for removal of *anomalies* in pay of senior executives compared to the junior executives. The said Anomaly Committee followed the basic principles laid down in FR 22 & FR 23 for *stepping up* the pay of senior officers in comparison to the junior officers. Cases where senior officers stagnated in pre-revised pay scales, prior to January 1, 2007 whereas the junior continued to draw annual increment and equated their pay with the seniors or started earning more, were also taken into consideration.

14. Based on the recommendations of the Anomaly Committee an office order dated September 6, 2011 was issued by the General Manager (Personnel). It appears from the contents of the office order dated September 6, 2011 that the basic principles for removal of *anomaly* as laid down in FR 22 & FR 23 needed to be adhered to for removal of *anomaly* in pay uniformly, by ***stepping up*** the pay of such senior to the pay of his junior, from such day the *anomaly* arose. Under the said office order, the aggrieved executive had to apply individually, indicating the name of the junior who was in the same grade/scale and on promotion getting more pay than him. The subsidiaries of CIL were required to constitute a committee of officers for examining such representations and submitting its recommendations for removal of *anomalies*.

15. He submitted that since the office order dated September 6, 2011 was to give effect to FR 22 & FR 23, it could not stipulate conditions which were against the basic object/spirit of FR 22 & FR 23. Representation of the petitioner vis-a-vis his junior one Manoj Kumar was considered by the Internal Anomaly Committee pursuant to the order of the Coordinate Bench. The Anomaly Committee decided to reject the same by seeking to strictly/literally construe the conditions as laid down in the Office order dated September 6, 2011, conjunctively. The manner in which the Pay Anomaly Committee of ECL sought to interpret the conditions laid down in September 2011 office order is not in accordance with the Fundamental Rules.

16. He further submitted that another employee of ECL, one Shekhar Saran was similarly placed like the petitioner vis-à-vis one Debol Gangopadhyay. Relying on the same office order and applying the same principles, the pay of the said Shekhar Saran was consciously and decisively ***stepped up***. The Director (Personnel) and Director (Finance) must have approved of the said decision of the Pay Anomaly Committee, for the same being approved by the Comptroller and Auditor General of India. Therefore, the rejection of the petitioner's case is arbitrary and illegal, being discriminatory and violative of principles of Articles 14, 16 and 21 of the Constitution of India.

17. He relied on a judgment reported in (2008) 13 SCC 1 (**Commissioner of Central Excise, Bolpur vs. Ratan Melting & Wire Industries**) to contend that a circular which is contrary to statutory provisions has no real existence in the eye of law.

18. Next, he relied on a judgment reported in AIR 1997 SC 1783 (**Union of India & Ors. vs. P. Jagdish & Ors.**). In that case, the writ petitioners/respondents in the appeal had been promoted earlier to the higher category of Head Clerks compared to their juniors who were continuing in a lower category of senior clerks. The juniors who were promoted later to the post of Head Clerks got their pay fixed at a higher level than that of the respondents. It was held that following the provisions of Fundamental Rules for removing the *pay anomaly,* of a government servant promoted or appointed to a higher post drawing lower pay in that post compared to a government servant junior to him in a lower grade and promoted subsequently to the higher post, the principle of ***stepping up*** of pay is applied. In such cases, pay of the senior officer in the higher post is required to be ***stepped up*** to a figure equal to the pay, as fixed for the junior officers in that higher post. The ***stepping up*** is required to be done with effect from the date of promotion or appointment of the junior officer.

19. He also relied on a judgment reported in (2009) 3 SCC 94 (**Gurcharan Singh Grewal & Anr. vs. Punjab State Electricity Board & Ors.**). In that case, it was held that, it is a well-settled principle of law that a senior cannot be paid lesser salary than his junior even if there was a difference in the incremental benefits. Since the scale given to the writ petitioner was less compared to the scale of a junior officer, such anomaly should not have been allowed to continue and ought to have been rectified. The pay of the appellant

no.1 should have been ***stepped up*** to the scale of pay of the junior officer as was done for the appellant no.2.

20. Next, he relied on a decision reported in (2022) 6 SCC 183 (**Union of India & Ors. vs. C. R. Madhava Murthy & Anr.**). In that case, by way of granting the benefits of Assured Career Progression (ACP) Scheme, the persons who were juniors to the writ petitioners started drawing higher pay. The said scheme was introduced to remove stagnation at a particular post. When the writ petitioners prayed for ***stepping up***, removal of anomaly by fixing their salary at par with their juniors, the Central Administrative Tribunal rejected the same. The High Court allowed the writ petitioners' prayer on consideration of FR 22 by *stepping up* the pay of a senior on promotion drawing lesser pay than the juniors. The Hon'ble Apex Court held that the High Court correctly allowed the pay of the writ petitioners to be ***stepped up*** since a junior of the writ petitioners was getting higher scale under the ACP.

21. Mr. Das, learned counsel appearing on behalf of ECL submitted that by circular dated September 6, 2011 the ***stepping up*** of the pay of a senior to remove *pay anomaly* was subject to the following conditions:

> *" a) The senior officer was all along drawing higher or same basic pay than his junior prior to 01.01.2007.*
>
> *b) Such senior and juniors are covered under the same seniority list and belong to the same grade.*
>
> *c) The senior executive at the time of promotion was drawing same or higher basic than the juniors.*
>
> *d) Any anomaly in pay of senior shall not be considered if his junior was granted any additional increments or any increment as incentive or reward or the pay of such senior was reduced due to punishment."*

22. Since the petitioner received Rs.25,000/- as basic pay (less pay) than his counterpart Manoj Kumar whose basic pay was Rs.25,100/- on January 1, 2007, condition – '**a**' of the senior officer all along drawing higher or same basic pay was not fulfilled. Furthermore, under condition – '**d**' any anomaly arising out of the junior getting additional increments or any increment as incentive/reward would not entitle the senior to get his pay ***stepped up***. Also under condition – '**b**' as the senior and junior were not covered under the same seniority list and did not belong to the same grade the *pay anomaly* could not be rectified.

23. He referred to a decision reported in AIR 1967 SC 948 (**Hindustan Antibiotics Ltd. vs. The Workmen**) to contend that the Fundamental Rules do not apply to employees of Public Sector Undertakings (PSUs). There is no Constitutional protection for employees of PSUs. He referred to a decision reported in AIR 1970 SC 1150 (**Dr. S. L. Agarwal vs. The Genral Manager, Hindustan Steel Ltd.**) to contend that the employees of PSUs/autonomous bodies/corporations are not holders of civil posts under the Union of India. Therefore, they cannot claim protection of Article 311.

24. He also relied an unreported judgment passed in the High Court at New Delhi in WP (C) 11846 of 2019 (**Kamal Kumar Kalia & Ors. vs. Union of India & Ors.**) to contend that just because PSUs and nationalized banks are considered to be "State" under Article 12 of the Constitution of India for the purpose of entertaining writ proceedings, it does not follow that the employees

of PSUs/nationalized banks assume the status of Central and State Government employees.

25. Considering the rival submissions of the parties and the materials placed on record this Court finds that pursuant to the Order dated April 29, 2022, the Pay Anomaly Committee passed a Reasoned Order on July 27, 2022. The Reasoned Order dated July 27, 2022 is impugned in the present writ petition. The Impugned Order recorded that the issue of **removal** of *anomaly* was considered in accordance with Circular dated September 6, 2011. FR 22 and FR 23 need to be adhered to in terms of the Circular. *Anomaly* in pay should be removed by ***stepping up*** of the pay of seniors to the pay of the juniors from the day such *anomaly* has arisen subject to the following conditions stipulated in Clause 5 of the Circular. Such conditions are:-

(a) The senior officer was all along drawing higher or same basic pay than his junior prior to 01.01.2007.

(b) Such seniors and juniors are covered under the same seniority list and belong to the same grade.

(c) The senior executive at the time of promotion was drawing same or higher basic than the juniors.

(d) Any anomaly in pay of senior shall not be considered if his junior was granted any additional increments or any increment as incentive or reward of the pay of such senior was reduced due to punishment.

The case of the petitioner in comparison to his junior one Manoj Kumar was analysed in tabular format. The same is set out hereinafter:-

Sri P. B. Chakraborty (EIS No.900009911)					Sri Manoj Kumar (EIS No. 9000092222)					Reason for Difference
Date	Grade	Reason of Change	Basic Rate (A)	2^{nd} PRC Basic Rate (conversion factor – 2.3166) (A)	Grade	Reason of Change	Basic Rate (B)	2^{nd} PRC Basic Rate (conversion factor – 2.3166) (B)	Basic Rate Diff. (A-B)	
01-01-2007	M2		25000	57919	M1		25100	58150	-231	
01-04-2007	M2	INC	25600	59657	M1	INC	25700	59895	-238	
01-04-2008	M2	INC	26200	61446	M1	INC	25700	61690	-244	
17-05-2008	M2		26200	61446	M2	PROM	26200	63550	-2144	Sri Manoj Kumar get promotion in M-2 and get increment ofRs.1860

26. The Impugned Order held that the pre-conditions of removing the *pay anomaly* under Clause 5(a) of the Circular dated September 6, 2011 was not fulfilled. A senior officer had to draw a scale of basic pay, *higher* or *same* **"all along"** than his junior prior to January 1, 2007. In the instant case, the petitioner drew a basic pay of Rs.25,000/-, whereas, his junior drew a basic pay of Rs.25,100/- as on April 1, 2006. Furthermore, the petitioner drew a basic pay of Rs.25,600/-, whereas, his junior drew a basic pay of Rs.25,700/- as on April 1, 2007. Therefore, the pre-condition laid down in 5(a) for Removal of *anomaly* was not fulfilled.

27. The Impugned Order further proceeded on the basis that the petitioner was in a higher grade i.e. M2, whereas, the said Manoj Kumar was in a lower grade i.e. M1 on January 1, 2007. Therefore, the petitioner being in higher grade could not claim the fixation of *pay anomaly*, pursuant to Clause 5 (b) of the Circular. Had both the employees being in the same lower grade of M1, the petitioner being senior in the same Grade could have prayed for rectification. Since the petitioner is in M2 (higher Grade), even though senior, he could not pray for rectification.

28. Interpretation sought to be given to the Circular dated September 6, 2011 was that someone, who was not promoted, could pray for rectification/correction of *pay anomaly* being a senior, but, being promoted to a higher grade, the same senior could not pray for rectification of such *pay anomaly.* Therefore, by being promoted his situation would be worse off than an employee who was not promoted.

29. To the mind of this Court such an interpretation cannot be accepted with due respect as it proceeds on an erroneous appreciation of fact and law. This Court is constrained to hold that the said interpretation is so unreasonable that no reasonable person could have arrived at the same. The perversity in the decision making process is apparent on the face of the records.

30. It is a well settled principle of law that subordinate legislation has to be interpreted in consonance with statutory Rules governing the same issue. The statutory Rules will have precedence over a Regulation or an Office Circular/Memorandum.

31. In the Impugned Order, it was held that FR 22 and FR23 were embedded in the Circular dated September 6, 2011 and therefore, there was no need to further consider the provisions of the said Rules. The Impugned Order proceeded on the basis that it was not prudent to examine the provisions of Fundamental Rules issued by Notification dated June 16, 1989 which was issued prior to the Company's Circular dated September 6, 2011.

32. The Impugned Order suffers from complete non-application of mind since it erroneously holds that since the Fundamental Rules were notified on June 16, 1989, it would not be prudent to examine the same, as CIL's Circular is a latter one dated September 6, 2011. The Pay Anomaly Committee has proceeded to hold that a company's Circular can supersede the Fundamental Rules of the Government of India, which is an incorrect position of law.

33. It is true that an employee working in the Public Sector Undertaking (PSU) cannot seek for implementation of the Fundamental Rules or seek to be

treated in a manner in which the Central Government and State Government employees are treated. However, a PSU being a "State" within the meaning of the Article 12 of the Constitution of India has to act fairly, reasonably and in a manner that is not arbitrary, discriminatory. The petitioner has not sought for implementation of the Fundamental Rules prior to the company embedding the basic principles of FR 22 and 23 in the Office Circular dated September 6, 2011.

34. After seeking to embed the Fundamental Rules in the Office Order, the General Manager, CIL did not have the authority/jurisdiction to interpret the same in a way that would frustrate the object of the said Rules.

35. Any Circular, that seeks to embed the Fundamental Rules, has to do so in cohesion with the objectives of the same and not contrary thereto.

36. It was incumbent on the General Manager, CIL to take into consideration the *mischief* that FR22/23 was seeking to prevent. No condition could be stipulated which run contrary to the *mischief rule* of statutory interpretation.

37. The Impugned Order is spectacularly silent on the issue why employee Saran, who was similarly placed like the petitioner, was given the benefits upon ***stepping up*** of his pay by the General Manager (Personnel), whereas, the petitioner's case was not considered. Therefore, the allegation of the petitioner regarding the management of the ECL adopting a back-door policy for rectifying the Basic Pay of some of the executives, as raised in the representations dated March 4, 2020 and December 6, 2020, remain uncontroverted, to the mind of

this Court. The act on the part of ECL is violative of Article 14 of the Constitution of India.

38. This Court relies on a decision reported in (2009) 7 SCC 205 (**General Manager, Uttaranchal Jal Sansthan vs. Laxmi Devi & Ors.**) where the Hon'ble Apex Court held that it failed to understand how a mere circular, which has no force of law, could prevail over the statutory Rules. Executives instructions cannot run contrary to Statutory provisions/Rules.

39. A beneficial reference may be made to another decision reported in (2004) 2 SCC 297 (**DDA & Ors. vs. Joginder S. Monga & Ors.**). In that case, it was held that where a conflict arises between a Statute and an Executive Instruction, undoubtedly the former will prevail over the latter.

40. In this case, there is no conflict between the Office Order/Circular and the Fundamental Rules to the extent the *pay anomaly* has been sought to be removed by relying on the basic principles of the FR 22 & FR 23. However, the conditions stipulated in the office order dated September 6, 2011 have to be given a harmonious interpretation with the basic principles of FR 22 and FR 23.

41. In the light of the discussions hereinabove, this Court sets aside and/or quashes the Impugned Order dated July 27, 2022 and directs the fixation of pay of the petitioner in accordance with the principles laid down in FR 22 and FR 23 as embedded in Circular dated September 6, 2011. The benefits given to the employee Shekhar Saran would have to be kept in mind while fixing the

pay of the petitioner. By discriminating the petitioner vis-à-vis Shekhar Saran the authorities have acted in violation of the principles of Article 14 of the Constitution of India. The petitioner cannot be unfairly and illegally discriminated against the other employees of the company.

42. The *pay anomaly* in the petitioner's Basic pay is directed to be removed by the Pay Anomaly Committee by ***stepping up*** the same to the pay of said Manoj Kumar, from the date he was paid Rs.25,100/- as compared to Rs.25,000/- paid to the petitioner, if the petitioner is otherwise entitled to the same. The said decision will be taken 1 month for date.

43. The Committee will compute the arrears of pay payable to the petitioner by ***stepping up*** the same and disburse the same within a month of computation of the same. The said arrears will be paid with an interest of 6 percent per annum from the date when the anomaly was rectified for the employee Shekhar Saran till the date of actual disbursal of the amount. Accordingly, **WPA 22675 of 2022** is **disposed** of.

44. All parties to act on server copy of this Order as downloaded from the official website of this Hon'ble Court.

45. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Lapita Banerji, J.)