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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 04.09.2023

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Judgment delivered on: 01.11.2023

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LPA 437/2019 and CM APPL. 50978/2019 & 25790/2022

INDRAPRASTHA POWER GENERATION CO LTD..... Appellant

Through: Mr. R.K. Vats and Ms. Kumari Alka,
Advocates.

versus

BIJENDER SINGH MEENA & ANR

..... Respondents

Through: Mr. Raj Singh Phogat, Advocate for
respondent No.1.**J U D G M E N T****SATISH CHANDRA SHARMA, C.J.**

1. The present Letters Patent Appeal (“LPA”) arises out of the judgment dated 04.04.2019 (“**Impugned Judgment**”) delivered by the Learned Single Judge in W.P.(C.) No. 10217/2016 titled as “*Bijender Singh Meena v. Govt. of NCT of Delhi & Anr.*”.

2. The writ petitioner/Respondent no. 1 in the underlying writ petition challenged the Office Memorandum dated 30.03.2016 by which the appellant Indraprastha Power Generation Co Ltd (“**IPGCL**”) had rejected the representation of the Respondent No. 1 to grant the benefit and arrears of



pay fixation of selection grade pay of Rs. 3100 w.e.f. 07.06.1996 and pay revision based on aforesaid grade pay.

3. The writ Petitioner had further sought upgradation as per the approval of Board of Directors (“**BOD**”) in their resolution no. 68.2.4 and 65.2.4 dated 12.03.2014, and also sought benefits of Time Bound Promotional Scale (“**TBPS**”) as given to the other similarly placed employees of IPGCL with financial benefits as a consequence of quashing of order dated 30.03.2016.

4. The learned Single Judge, while allowing the writ petition, has quashed the memorandum dated 30.03.2016 and has held that the writ Petitioner/ Respondent herein are entitled to the benefit of arrears of pay fixation of selection grade pay of Rs. 3100 w.e.f. 07.06.1996, and further upgradation as per the approval of the Board of Directors in their Resolution No. 68.2.4 and 65.2.4 dated 12.03.2014. Furthermore, it was also stated by the Learned Single Judge that Respondent No. 1 is also entitled to the benefits of TBPS at par with other similarly placed employees of IPGCL.

5. The Learned Single Judge has also directed the Appellant company to comply with the directions issued in the matter within 4 weeks of the date of receipt of the order.

6. The undisputed facts of the case reveal that the Respondent No.1 was appointed as a Turner/ Machinist in Delhi Electric Supply Undertaking (“**DESU**”) *vide* appointment letter dated 16.05.1996 in the pay scale of Rs. 1200-2190 (later on revised to Rs. 4000-100-7100) and, thereafter, further revised to Rs. 8500-26300+GP Rs. 2800 as per the recommendations of the



Wage Revision Committee (“WRC”). The Respondent No. 1 joined to the said post on Turner/ Machinist on 07.06.1996.

7. The Appellant company is a successor company of the erstwhile Delhi Vidyut Board (DVB), and came into existence under the Delhi Electricity Reforms Act, 2000 and Rules made thereunder. The Respondent No.1 became an employee of IPGCL.

8. That the Respondent No.1 was granted first TBPS on completion of 10 years of service w.e.f. 07.06.2006 in the pay scale of Rs. 10900+34800+GP Rs. 3600 as per the recommendation of WRC (pre-revised 5500-175-8650) *vide* order dated 03.08.2006. It is pertinent to note that as per the scheme, it is not a regular promotion granted to the employee, however, he is placed in a higher pay scale of the promotional post.

9. That the Board of Directors of IPGCL/ PPCL in its meeting held on 07.11.2012, *vide* Resolution No. 62.2.13 and 59.2.9 approved Unified Promotion Policy, rationalization of scales/ grade pay/ post and bunching/ grouping of similar posts in IPGCL/PPCL for the category of B, C and D employees.

10. That *vide* order dated 29.01.2013, the designations as approved by the Board were circulated. The post of Junior Coal Mill Mechanic and Junior Mechanic (Turbine), Junior Mechanic (Lub.) and Junior Motor Mechanic with existing pay band of Rs. 8500-26300+2900 GP along with Turner/Machinist with existing pay band of Rs. 8500-26300+2800 GP (i.e., prior to UPP/rationalization) were clubbed/bunched at W-4 level (Category-C) and re-designated as Fitter (Mechanic) Grade. -II (SG) in the pay band of



Rs. 8500-26300+Rs. 3100 (GP) w.e.f. the date of approval of the Board of Directors i.e., 07.11.2012. Furthermore, it was stated that effective date for newly created post will be from the date of approval of the board.

11. That, another order was issued by the Appellant company on 20.03.2013 clarifying the details in respect of Unified Promotion Policy i.e., old designations of the various posts, new designations of the various posts, old pay band + grade pay and new pay band + grade pay.

12. The order dated 20.03.2013 makes it clear that the Respondent No. 1 was designated as Turner/ Mechanist with pay band and grade pay of Rs. 8500-2600+3100 (GP) on account of rationalization/bunching of the grade pay/ posts.

13. It was also mentioned in the aforesaid order that the effective date of the new designation as well as the new pay band + grade would be applicable w.e.f. 07.11.2012, and not w.e.f. 07.06.1996. The order further clarifies that the Respondent No.1 was re-designated from his earlier designation and previous pay band and grade pay of 2800 to his new designation and pay band of Rs. 3100 w.e.f. 07.11.2012 and not w.e.f. 07.06.1996, and on account of rationalization/bunching of grade pay/posts and, not on account of promotion. The aforesaid clarification was issued by the Respondents *vide* Office Memorandum dated 30.03.2016.

14. The undisputed facts further reveal that the erstwhile Turner/ Machinist cadre which was redesignated as Fitter (Mechanic) Grade II (SG) made various representations objecting to clubbing of both the post. Accordingly, the matter was referred to Empowered Committee. The



Empowered Committee in its meeting dated 12.03.2014 *vide* Resolution No. 65.2.4 and 68.2.4 resolved as under:

(a) As per para 3.1 and 3.1.1 of proposal, en-bloc placement of employees holding the post/level of GP of Rs. 3100, W- 4 level to GP of Rs. 3600, W-5 level- who fulfilled the following eligibility criteria:

“Where employees have earned 1 substantive promotion to level of Rs. 3100 Grade Pay or where employees were directly inducted to the post having grade pay of Rs. 2900 and above.”

(b) As per the para 3.3 of proposal, de-bunching of Machinist/Turner cadre from Fitter (Mech.) cadre, creation of new hierarchy of Machinist/Turner Cadre, its sanctioned strength and unified promotion rules by keeping the Turner/Machinist post employees as Machinist/Turner Gr. II (SG) were to be kept at the same level of Grade Pay of Rs. 3100.

15. The proposal for de-bunching of Turner/ Machinist cadre from Fitter (Mechanic) cadre was circulated Manager (HR)-III/12-13/14 dated 06.05.2014. The said order dated 06.05.2014 categorically mentioned that the order shall be applicable from the date of approval of the Board of Directors w.e.f. 12.03.2014.

16. The undisputed facts further reveal that a provisional seniority list was published on 15.09.2014 and the Respondent No.1 based upon the provisional seniority list under some misconception/ misunderstanding, exerted his claim of treating the date of appointment in the post of Mechanist/ Turner Grade II (SG) of Rs. 3100 as on 07.06.1996.



17. The Board of Director *vide* Resolution dated 26.11.2014, No. 68.2.4 and 65.2.4 approved the de-bunching of the cadre of Machinist/ Turner from Fitter Mechanic Cadre and 7 officials, including the Respondent No.1, *vide* order dated 26.11.2014, were placed under new designation and pay band and grade pay as Machinist/ Turner Grade II (SG) at Rs. 8500-26300+3100(GP) w.e.f. 12.03.2014.

18. The final seniority list dated 27.11.2014 clarified that new designation of Machinist/Turner Gr. II (SG) and New Pay Band & Grade Pay of Rs. 8500-26300+3100 (GP) shall be applicable from date of approval of Board of Directors i.e., 12.03.2014 for de-bunching of Machinist/Turner Gr. II(SG) from Fitter (Mech.) Gr. II(SG).

19. The Petitioner being aggrieved by the aforesaid grant of pay fixation and grade pay of Rs.8500-26300+3100 (GP) which was granted to him w.e.f. 12.03.2014, submitted representations dated 14.01.2016, 20.11.2015 and 12.02.2016 in the matter and raised a claim for grant of the same pay scale w.e.f. 07.06.1996. The representation preferred by the Petitioner was rejected by an office memorandum dated 30.03.2016. The Petitioner being aggrieved in the matter, preferred a writ petition i.e., W.P.(C.) No. 10217/2016, and prayed for the following reliefs:

“(a) To call for the records of the impugned Office Memorandum No. Manager (HR) III/IPGCL/15-16/423 dated. 30-03-2016 passed by the respondent No. 2.

(b) Issue a writ, order or directions in nature of mandamus or CERTIORARI or like nature to quash the Office Memorandum No. Manager (HR) III/IPGCL/15-16/423 dated 30-03-2016 passed by the respondents by which the respondents had arbitrarily and illegally rejected the representation of the



Petitioner submitted to grant the benefits & arrears of pay fixation of Selection Grade pay of Rs 3100 w.e.f 07-06-1996 and pay revision based on that and further up gradation as per the approval of the Board of Directors in there resolution No. 68.2.4 & 65.2.4 dated 12-03- 2014 and further benefits of TBPS as given to the other similarly placed employees of the IPGCL and to pass on the order of financial benefits as a consequences of the quashing and further to order cost of litigation in favour of the Petitioner;

(c) To pass any other/further order/ direction as this Hon'ble Court may deem fit and proper in the light of facts and circumstances explained above, in favour of the Petitioner and against respondents, in the interest of justice."

20. The facts of the case further reveal that the Unified Promotion Policy Rules for the cadre of Turner/ Machinist were rectified by the Board for ex-post facto approval and was circulated *vide* office order dated 16.06.2017. The Appellant company revised modified TBPS for category B, C, D employees in suppression of BOD resolution no. 81.2.9 and 79.2.9 dated 27.09.2016 and the Respondent No.1 in terms of the aforesaid became eligible for 2nd TBPS in Grade Pay of Rs. 4600 however, due to vigilance/disciplinary case against him, his 2nd TBPS is still pending.

21. The learned Single Judge after hearing the parties at length has quashed the office memorandum dated 30.03.2016 and the operative paragraphs, as contained in paragraph 13 to 23 read as under:

"13. I have heard learned counsel for the parties and perused the material on record.

14. Fact remains that the Board of Directors on 07.11.2012 vide Resolution No.62.2.13 and 59.2.9 approved unified rules of promotion as well as rationalisation of scales/grade pay/posts in IPGCL/PPCL.



15. In para 3.4 of the said resolution, it is proposed that only ₹ 3100/- grade pay may be treated as selection grade and all the employees (as against 30% proposed earlier) who meet the basic eligibility of promotion may be granted the grade pay of ₹ 3100 on completion of 5 years of regular service, subject to fitness by DPC.

16. In para 3.6 of the resolution, it is mentioned that the effective date of promotion of the Selection Grade is after completion of 5 years from the date of entry in the GP of ₹ 2800/-, therefore, it would have retrospective effect. However, if the date of entry into the grade of ₹ 2800/- is prior to the date of unbundling i.e., 01.07.2002, it would be counted from the date of unbundling only. Therefore, all functional promotions would be granted prospectively from the date of approval of the recommendations of DPC. In case of retrospective promotion, fixation benefit would be given from the retrospective date, however, no arrears for the period shall be paid and employees will draw higher Basic and Grade pay prospectively from the date of issuance of order.

17. It is not in dispute that the petitioner was re-designated as Fitter Mechanic Grade-II in the pay band of ₹ 8500-26300 in the grade pay of ₹3100 w.e.f. 07.06.1996 as per rules of Unified Rules of Promotion as well as rationalization of scales/grade pay/posts in IPGCL/PPCL by the office order dated 20.03.2013 mentioned above with the approval of the Board of Directors vide Board Resolution No.62.2.13 and 59.2.9 dated 07.11.2012. Thereafter, vide office order dated 06.05.2014, the respondents had placed seven employees of Annexure P-4 from serial No.01 to 07 from W-4 level to W-5 level leaving behind the petitioner at W-4 level. However, there is no explanation to this effect. Further, the respondents in the Resolution No.2.2 have kept Grade pay of ₹ 2200, ₹2400, ₹ 2800, ₹ 3100, ₹ 3600 etc. contrary to the guidelines of the pay commission and the Government of Delhi and NCR.

18. In the case of Union of India vs. Atul Shukla: AIR 2015 SC 1777 whereby the Hon'ble Supreme Court has held that there can be no differential treatment between an employee directly



recruited vis-a-vis another who is promoted. So long as the two employees are a part of the same cadre, they cannot be treated differently either for purposes of pay and allowances or other conditions of service, including the age of superannuation. The underlying principle is that so long as the officers are a part of the cadre, their birth marks, based on how they joined the cadre is not relevant. They must be treated equal in all respects i.e., salary, other benefits and the age of superannuation.

19. As discussed above, the petitioner was re-designated as a Fitter Mechanic Grade-II in the pay band of ₹ 8500-26300 in the grade pay of ₹3100 w.e.f. 07.06.1996 as per rules of Unified Rules of Promotion as well as rationalization of scales/grade pay/posts in IPGCL/PPCL by the office order dated 20.03.2013 mentioned above with the approval of the Board of Directors vide Board Resolution No.62.2.13 and 59.2.9 dated 07.11.2012. Thereafter, vide office order dated 06.05.2014, the respondents had placed seven employees of Annexure P-4 from serial No.01 to 07 from W-4 level to W-5 level leaving behind the petitioner which was discriminatory and arbitrary order of the respondents. As the petitioner was placed in the pay scale of ₹ 8500-26300 in grade pay of ₹ 3100 w.e.f. 07.06.1996 by the office order dated 20.03.2013 as well as office order dated 27.11.2014 whose corresponding pay scale in the 5th CPC is ₹ 4200-100-9100 which has been again revised to the pay scale of ₹ 10900-34800 of grade pay of ₹ 3600 in the 6th CPC in the IPGCL. Thus, the petitioner is entitled the pay scale of ₹ 10900-34800 of grade pay of ₹ 3600 since 07.06.1996 and consequential TBPS and upgradation.

20. In view of above discussion and the settled position of law, I hereby quash the memorandum dated 30.03.2016 passed by the respondents. Consequently, the petitioner is entitled to the benefits and arrears of pay fixation of selection grade pay of ₹ 3100 w.e.f. 07.06.1996 and pay revision with further upgradation as per the approval of the Board of Directors in their resolution No.68.2.4 and 65.2.4 dated 12.03.2014.



21. *I hereby make it clear that petitioner is also entitled to the benefits of TBPS at par with other similarly placed employees of IPGCL.*

22. *The directions passed by this Court shall be complied with within four weeks from the receipt of this order.*

23. *In view of above, the petition is allowed and disposed of, accordingly.”*

The Learned Single Judge while passing the aforesaid impugned judgment stated that the Petitioner was re-designated as Fitter Mechanic Grade-II in the pay-band of Rs. 8500-26300 in the grade pay of Rs. 3100 with effect from 07.06.1996 as per the UPP as well as rationalization of scales/grade pay-post in IPGCL/PPCL by office order dated 20.03.2013. There was no explanation furnished by the Appellant Organization as to why the 7 employees were placed from W-4 level to W-5 level leaving behind the respondent at W-4 level.

22. The Learned Single Judge after placing reliance on ***Union of India Vs. Atul Shukla***, AIR 2015 SC 1777 stated that there can be no differential treatment between an employee directly recruited vis-à-vis another who is promoted. So long as the two employees were a part of the same cadre, they cannot be treated differently either for the purpose of pay and allowance or other conditions of service, including the age of superannuation. The underlying principle is that so long as the officers are a part of the cadre, their birth marks, based on how they joined the cadre is not relevant. They must be treated equal in all respects i.e., salary, other benefits and the age of superannuation.



23. The Learned Single Judge reiterated its stand that the Respondent had placed seven Employees from W-4 level to W-5 leaving behind the petitioner which was discriminatory and arbitrary order of the Respondent. Furthermore, as the Petitioner was placed in the pay scale of Rs. 8500-26300 in grade pay of Rs. 3100 as office order dated 27.11.2014 whose corresponding pay scale in the 5th CPC is 4200-100-9100 which has been placed in the pay scale of Rs. 10900-34800 of grade pay of Rs. 3600 in the 6th CPC in the IPGCL. Therefore, it was held by the Learned Single Judge that the Petitioner is entitled to the pay scale of Rs. 10900-34800 of grade pay of Rs. 3600 since 07.06.1996 and consequential TBPS and upgradation.

24. The Learned Single Judge has finally arrived at a conclusion that the Writ Petitioner is entitled to the benefits of arrears of pay fixation of selection grade pay of Rs. 3100 with effect from 07.06.1996 and pay revision with further upgradation as per the approval of the BOD in resolution no. 68.2.4 and 65.2.4 dated 12.03.2014.

25. The Learned Single Judge has also set aside the order dated 30.03.2016 issued to Respondent No. 1 by the Appellant Company rejecting representation of the Writ Petitioner.

26. Learned Counsel for the Appellant has vehemently argued before this Court that the Learned Single Judge findings as to the discrimination and arbitrariness are erroneous being contrary to the material on record as on 06.05.2014 the seven employees from Serial no. 1-7 belonging to Fitter (Mech.) Gr. II (SG) cadre fulfilled the eligibility criteria as per para 3.1.1 of the proposal for placement from W-4 level (Rs. 8500-26300+3100 GP) to



W-5 level (Rs. 10900-34800+3600 GP). However, the respondent no. 1 along with 6 others at Serial no. 8-14 in the office order dated 20.03.2013 failed to meet the eligibility criteria since the employees belonged to Machinist/Turner Gr. II (SG) cadre w.e.f. 12.03.2014 and held that W-4 level (Grade Pay-3100) by virtue of rationalization of scale/grade pay instead of substantive promotion to level of Rs. 3100 Grade Pay or directly inducted to post having grade pay of Rs. 2900 and above.

27. It is submitted by the appellant that impugned judgment has proceeded on incorrect finding that the policy of appellant in implementing rationalization of scales/grade pay/posts for category B/C/D is retrospective in operation (w.e.f. 07.06.1996) whereas the policy as well as office orders pursuant thereto ex-facie manifest that its operation is prospective (w.e.f. 07.11.2012 i.e., from the date of approval). Furthermore, the reliance placed on para 3.4 and 3.6 of the resolution no. 62.2.13 and 59.2.9 by Learned Single Judge is misplaced and erroneous as the same are applicable to promotion and not to the cases of rationalization and de-bunching as in the present case.

28. It is further stated that the Learned Single Judge finding as to the entitlement of arrears in respect of fixation of grade pay of Rs. 3100 is erroneous and contrary to material on record as para 2.2 of proposal would reveal that on account of rationalization there would be adjustment in the grade pay by adding/deducting equivalent amount from the basic pay so that there is no net gain/loss to the employees and therefore, no financial implication for the company. This was also mentioned in office order dated 29.01.2013. Similarly difference in grade pay due to bunching was to be merged in the basic pay in the pay band. As such no arrears were to be



payable on account of rationalization/bunching of the scales/grade pay/ posts.

29. The Learned Counsel for the Appellant has also stated that *vide* order dated 06.05.2014 the proposal for de-bunching as per para 3.3 of proposal of Machinist/Turner cadre from Fitter (Mech.) cadre was circulated. Aforesaid order also clearly stated that the said order shall be applicable from the date of approval of BOD i.e., 12.03.2014. It was further reiterated in the office memorandum dated 30.03.2016. Therefore, finding of Learned Single Judge as to entitlement of fixation of grade pay w.e.f. 07.06.1996 and arrears in respect thereof are erroneous and contrary to material on record.

30. *Per Contra*, the Learned Counsel for the Respondent no. 1 has submitted that the appellant had stated in order no. Manager (HR)-III/12-13/15 dated 06.05.2014 applies to substantive promotee and not to the time scale promotee and thus, the appellant has treated the substantive promotes and the time scale promotes differently though however having same post/pay scale/duties and thus, violated rights of respondent no. 1 under Article 14, 16 and 21 of the Constitution of India.

31. It is submitted by the Respondent No. 1 that appellant in clause 2.2 of resolution 62.2.13 have kept grade pay of Rs. 2200, 2400, Rs. 2800, Rs. 2900, Rs. 3100, Rs. 3200, Rs. 3600 etc. contrary to guidelines of pay commission and Govt. of Delhi and NCR.

32. It is also submitted by the Respondent No. 1 that respondent no. 1 was placed in the pay scale of Rs. 8500-26300 in grade pay of Rs. 3100 w.e.f. 07.06.1996 by office order dated 20.03.2013 as well as office order dated 15.09.2014 and finally order dated 27.11.2014 whose corresponding pay scale in the 5th CPC is Rs. 4200-100-9100 which has been again revised to



pay scale of Rs. 10900-34800 of Rs. 3600 after sixth CPC and exercise of WRC recommendation in the IPGCL. Thus, the Respondent No.1 is entitled to pay scale of Rs. 10900-34800 of grade pay Rs. 3600 since dated 07.06.1996 and consequential TBPS and upgradation in accordance with similarly situated employee.

33. It is submitted by the Respondent No. 1 that appellant has placed seven employees from Serial no. 1-7 from W4 level (Rs. 8500-26300+3100 GP) to W5 level (Rs. 10900-34800+3600 GP) leaving behind the respondent no. 1 arbitrarily at W-4 level (Rs. 8500-26300+3100 GP) and thus, Appellant Company had seriously discriminated the service conditions of the respondent no. 1.

34. Heard Learned Counsel for the Parties at length and perused the record, the matter is being disposed of at motion hearing stage itself with the consent of the Parties.

35. The undisputed facts of the reveal that the Board of Directors (BOD) of IPGCL/PPCL in its meeting held on 07.11.2012 *vide* Resolution no. 62.2.13 and 59.2.9 approved Unified Promotion Policy (UPP), rationalization of scales/grade pay/post and Bunching/Grouping of similar posts in IPGCL/PPCL for category of B, C & D employees. The rationalization of the Grade Pays was approved as per para 2.2 of the proposal (Supplementary Agenda Note) The Bunching/Grouping of similar posts was approved as per the details in para 2.3 of the proposal (Supplementary Agenda Note). While paras 3.3 to 3.7 of the proposal (Supplementary Agenda Note) dealt with promotions.

36. Therefore, Reliance placed on paras 3.4 and paras 3.6 of the aforesaid resolutions in the impugned judgement was misplaced as the same are



applicable to promotions and not to the cases of rationalization and debunching as was to be made applicable to the case of Respondent No.1. The aforesaid was also made explicit in the office memorandum dated 30.03.2016.

37. The Learned Single Judge has erred on facts in coming to the conclusion that the effective date of grade pay of Rs 3100 was w.e.f., 07.06.1996 in the case of respondent no.1. The post of Jr. Coal Mill Mechanic and Jr. Mech. (Turbine), Jr. Mech. (Lub.) and Jr. Motor Mech with existing pay band of Rs. 8500-26300+ 2900 GP along with Turner/Machinist with existing pay band of Rs. 8500-26300+ 2800 GP (i.e., prior to UPP) were clubbed/bunched at W-4 level (Category-C) and re-designated as Fitter (Mech.) Gr. -II (SG) in the pay band of Rs. 8500-26300+Rs. 3100 (GP) w.e.f. the date of approval of the BOD i.e., 07.11.2012. Furthermore, it was stated that effective date for newly created post will be from the date of approval of the board i.e., 07.11.2012. The proposal for debunching as per paras 3.3 of the proposal of Machinist/Turner Cadre from Fitter (Mech) cadre was circulated *vide* manager (HR)-III/12-13/14 dated 06.05.2014. The aforesaid order clearly stated that the said order shall be applicable from the date of approval of BOD i.e., 12.03.2014. The Respondent no. 1 is holding the post of Machinist/Turner Gr. II (SG) with pay band and Grade pay 8500-26300+3100(GP) w.e.f 12.03.2014 and as such Respondent no. 1 is not entitled to the benefits of pay fixation and arrears thereof in respect of aforesaid post w.e.f 07.06.1996. The aforesaid was also made explicit in the office memorandum dated 30.03.2016



38. Further the Learned Single Judge in the impugned judgement has granted the arrears in respect of fixation of grade pay of Rs 3100 to respondent no 1 w.e.f. 07.06.1996 which cannot be sustained. Para 2.2 of the abovementioned proposal would reveal that on account of rationalization as aforesaid there would be an adjustment in the grade pay by adding/deducting equivalent amount from the basic pay so that there is no net gain/loss to the employee and therefore no financial implication for the company which was also mentioned in the office order dated 29.1.2013. Similarly, para 2.3 of the proposal the difference in Grade Pay due to bunching was to be absorbed in the basic pay in the pay band.

39. The decision *vide* meeting dated 12.03.2014 provided the eligibility criteria for promotion from W-4 level, GP of Rs. 3100 to W-5 level, GP of Rs. 3600. The para 3.1 and 3.1.1 of proposal are as follows:

“Where employees have earned one substantive promotion to level of Rs. 3100 Grade Pay or where employees were directly inducted to the post having grade pay of Rs. 2900 and above.”

As per the para 3.3 of proposal, de-bunching of Machinist/Turner cadre from Fitter (Mech.) cadre, creation of new hierarchy of Machinist/Turner Cadre, its sanctioned strength and unified promotion rules by keeping the Turner/Machinist post employees as Machinist/Turner Gr. II (SG) were kept at the same level of Grade Pay of Rs. 3100.

40. The seven employees from S. No. 1 to 7 in the office order dated 20.03.2013 belonging to Fitter (Mech) Gr II (SG) cadre as on 06.05.2014 fulfilled the above stated eligibility criteria as per 3.1.1 of the proposal for placement from W-4 level (Rs 8500-26300=3100 GP) to W-5 level (Rs 10900-34800+3600 GP) and their placement were circulated *vide* office



order Manager (HR)-III/12-13/15 dated 6-5-2014. However, Respondent no 1 along with 6 others at S. No 8 to 14 in the office order dated 20.03.2013 failed to meet the eligibility criteria as aforesaid since these employees belonged to Machinist/Turner Gr. II (SG) cadre w.e.f. 12.03.2014 and held the W-4 level at Grade Pay Rs 3100/- post by virtue of rationalization of scales/grade pay/debunching from Fitter Mechanic Gr II (SG) to Machinist/Turner Gr II (SG) instead of substantive promotion to the level of Rs 3100/- Grade Pay or directly inducted to the post having Grade Pay of Rs 2900 and above. This was explicitly stated so in office memorandum dated 30.03.2016. In view of the above the learned Single Judge has erred in facts in finding arbitrariness and discrimination in the case of respondent no. 1 as on the effective date of being directly appointed at Grade Pay of Rs 2900/- and above were entitled to promotion from W-4 level to W-5 level which was applicable to employees S. No. 1 to 7 in the Seniority List and not to respondent no 1 as on his date of appointment in 07.06.1996 his Grade pay was Rs 2800/- and the respondent never earned substantive promotion to level of Rs 3100/- Grade pay. Further, not a single employee who was employed as a Machine/Turner was given promotion from 07.06.1996.

41. The judgment relied upon by the learned Single Judge in the case of *Atul Shukla* (supra) won't be applicable in the present case as the present case relates to rationalization of different posts and consequent bunching/debunching of the post which was not the controversy involved in *Atul Shukla*'s case. Also, for the reasons given above Respondents are not similarly placed to make the ratio of *Atul Shukla*'s case applicable to the facts of this present case. Consequently, the Office Memorandum dated 30.03.2016 is upheld.



42. Resultantly, this Letter Patent Appeal is allowed, the order passed by the Learned Single Judge is set aside.

43. In compliance of the order dated 26.11.2019, the Appellant had deposited amount of Rs. 42,419/- which were in respect of arrears payable to Respondent no.1 with the Registry. As the appeal stands allowed the amount deposited by the Appellant in respect of payment of arrears be released in favour of the Appellant.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SANJEEV NARULA)
JUDGE

NOVEMBER 01, 2023