

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

Judgment reserved on: 09.11.2022

% **Judgment delivered on: 23.01.2023**

+ **W.P.(C) 11091/2015 & CM APPL. 37844/2022**

SURYA DEV RANA & ORS Petitioners

Through: Mr. Padma Kumar S., Advocate.

versus

GOVT. OF NCT OF DELHI & ANR Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik and Ms. Aliza Alam, Advocates for GNCTD.

Mr. Roshan Lal Goel & Mr. Ramkumar, Advocates for Respondent No.3.

+ **W.P.(C) 12211/2015**

ANIL KUMAR AND ORS Petitioners

Through: Mr. Padma Kumar S., Advocate.

versus

GOVT. OF NCT OF DELHI AND ORS Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik and Ms. Aliza Alam, Advocates for GNCTD.

Mr. Kumar Rajesh Singh, Standing Counsel with Ms. Punam Singh, Advocate for Respondent No.4.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present writ petition has been filed assailing the order dated 22.12.2014 passed by the Central Administrative Tribunal (Hereinafter referred as "the Tribunal"), Principal Bench, New Delhi in O.A. No. 2843/2011. In the said O.A, the petitioners' approached the Tribunal seeking two prayers, namely - re-fixation of their pay in accordance with the upgraded pay scale accepted by the Central Government pursuant to the recommendations of the 6th Central Pay Commission (Hereinafter referred as "CPC") and parity of pay with the direct recruits recruited on or after 01.01.2016 (effective date of implementation of the recommendations of 6th CPC. In the impugned order, the Tribunal rejected the first prayer of the petitioners and found the fixation of their pay to be in accordance with the Central Civil Services (Revised) Pay Rules, 2008 (Hereinafter referred as "the 2008 Rules" or "Revised Pay Rules") issued on 29.08.2008. The second prayer was granted and thus, this challenge to the impugned order is limited to the extent of rejection of the petitioners' first prayer.

2. The undisputed facts of the case reveal that after the issuance of the 2008 Rules, the posts of Primary School Teachers (PSTs), Trained Graduate Teachers (TGTs) and Post Graduate Teachers (PGTs) came to be upgraded and they were entitled to the revised pay scales we.f. 01.01.2016. For the calculation of the revised pay, the respondents were to proceed in

accordance with Rule 7(1)(A) of the 2008 Rules. Upon the fixation of scales, the petitioners felt aggrieved and approached the Tribunal urging that the respondents have applied the relevant rules erroneously. The case of the petitioners was that their pay scale was upgraded within the 5th CPC regime and subsequent revision, as per Rule 7 of the 2008 Rules, was to be applied on the upgraded pay scale w.e.f. 01.01.2016. The Tribunal, after a detailed analysis, observed that the respondents have not erred in calculating the revised pay of the petitioners in terms of Rule 7 and in accordance with the multiplier of 1.86 provided therein. Para 5 of the impugned order is relevant and is reproduced for ready reference thus:

"5. We heard counsels for the parties and perused the record, as has been captioned hereinabove, in terms of Rule 7(1)(A), which is the case of applicants also, the pay in the pay band/pay scale was to be determined by multiplying the existing pay as on 01.01.2006 by factor of 1.86 and rounding off the resultant figure to the next multiple of ten and if the minimum of the revised pay band/pay scale was more than the amount arrived at as per Rule 7(1) (A)(i) above, the pay was required to be fixed at the minimum of the revised pay band/pay scales. Admittedly the existing pay as defined in the rules means, the pay drawn in the prescribed existing scale of pay including stagnation increment. Even in the illustration relied upon by the parties (ibid) it has been made explicit that the existing basic pay had to be the pay drawn in the prescribed existing scale of pay and not in the upgraded pay scale. Had the pay required to be multiplied by a factor of 1.86 been the minimum of the upgraded scale of pay, then in illustration 4A it could be the amount 3200 which could have been multiplied, but it is not so. It is the amount of 3125 i.e. the existing basic pay as on 1.1.2006 in the pre-revised pay scale which is multiplied by 1.86 to arrive at the revised pay structure of an employee, whose pay could be upgraded from Rs. 3050-75-3950-80-4590 to Rs.3200-85-4900. A confusion could be created in the minds

of the applicants only because the revised pay band plus grade pay for the pre-revised scale (S-5) for 3125 and 3200 is same i.e.6060."

After reproducing the fitment tables, the Tribunal then noted thus:

"Thus the respondents granted the applicants, the benefit of the revised pay as indicated against the basic pay drawn by them in the pre-revised pay scale and the grade pay as mentioned in column 6 against the upgraded pay scale. In terms of the clarification issued by the Ministry of Finance OM F.No. 1/1/2008-IC dated 13.10.2008, again the pay of the applicants in the upgraded pay scale was required to be fixed by applying the fitment table attached to OM dated 30.08.2008."

After analyzing the relevant OM, the Tribunal then concluded thus:

".. Thus if we go strictly by rules and instructions, there is no infirmity in the fixation of pay of the applicants and the same is fixed with due regard to the rules. Besides after the recommendation of the Sixth CPC, there could be no pay scale like 4500-7000, 5500-9000 and 6500-10500/- and these are only the pay bands and the grade pay which could be operative and the pay scales are only referred to as guiding factor to identify the grade pay admissible to an employee.....In brief applicants can say that w.e.f. 1.01.2006, they are entitled to draw their pay with reference to the pay band in which they were placed and the grade pay applicable to the post held by the, but cannot ask for fixation of their pay first in the upgraded pay scales as introduced by the Fifth CPC and then in the pay band/grade pay introduced by Sixth CPC..."

3. The petitioners have assailed the aforesaid order by submitting that the statutory rule prescribed for upgradation of their pay scale as on 01.01.2006, before undertaking the exercise of revision of pay scale in accordance with Rule 7(1)(A) of the 2008 Rules. As per the petitioners, the correct interpretation of the revised rules would mean that upgradation of the

pay scale would be done prior to the determination of pay as on 01.01.2016 and thereafter, the multiplier would be applied from the date fixed. The petitioners further submit that if the pre-revised pay scale is to be considered as the existing pay scale as on 01.01.2006, then revision would have no beneficiary and there would be no upgradation from the scale under 5th CPC regime.

4. Contrarily, the respondents have submitted that the impugned order has interpreted and applied the revised rules correctly and the petitioners are not entitled to any relief. It is further submitted that in cases wherein posts were upgraded along with revision of pay scale, the revised pay would be calculated by multiplying the basic pay as on 01.01.2006 with 1.86 and adding the upgraded Grade Pay (of upgraded post) to the same. To buttress the submission, the respondents have placed reliance upon the decision of the Hon'ble Supreme Court in ***Union of India and Ors. v. K.V. Rama Raju and Ors.***, (2018) 16 SCC 752, wherein, as the submission goes, the matter in issue was authoritatively decided by the Apex Court and the same is squarely applicable to the facts of this case.

5. We have gone through the case documents and heard the parties at length. We may now proceed to consider the controversy.

6. The outcome of the present controversy rests on the decision of a narrow issue i.e. whether, for the purpose of determination of initial pay after the implementation of 6 CPC, the 2008 Rules/ Revised Pay Rules prescribed for the multiplier of 1.86 to be applied to the pre-revision pay scale or on the upgraded pay scale.

7. Since the petitioners' concern pertains to the fixation of initial pay, it is not in dispute that Rule 7 would be applicable to this case. Rule 7 provides for "fixation of initial pay in the revised pay structure", and we proceed to reproduce the relevant extract of the same for effective consideration. The same reads thus:

"7. Fixation of initial pay in the revised pay structure:

(1) The initial pay of a Government servant who elects, or is deemed to have elected under sub-rule (s) of rule 6 to be governed by the revised pay structure on and from the 1st day of January, 2006, 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) the pay in the pay band pay scale will be determined by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10.

(ii) if the minimum of the revised pay band/pay scale is more than the amount arrived at as per (1) above, the pay shall be fixed at the minimum of the revised pay band/pay scale;

Provided further that:-

Where, in the fixation of pay, the pay of Government servants drawing pay at two or more consecutive stages in an existing scale gets bunched, that is to say, gets fixed in the revised pay structure at the same stage in the pay band, then, for every two stages so bunched, benefit of one increment shall be given so as to avoid bunching of more than two stages in the revised running pay bands. For this purpose, the increment will be

calculated on the pay in the pay band. Grade pay would not be taken into account for the purpose of granting increments to alleviate bunching.

...

...

(iii) The pay in the pay band will be determined in the above manner. In addition to the pay in the pay band, grade pay corresponding to the existing scale will be payable.

Note - Illustration 1 on the above is provided in the Explanatory Memorandum to these Rules.

(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 pay band and grade pay without any special pay/allowance, pay shall be fixed in the revised pay structure in accordance with the provisions of clause (A) above.

(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 pay structure with corresponding allowance/pay at the same rate or at a different rate, the pay in the revised pay structure shall be fixed in accordance with the provisions of clause (A) above. In such case, the allowance at the new rate as recommended shall be drawn in addition to pay in the revised pay structure from the date specified in the individual notifications related to these allowances.

Note 2A - Where a post has been upgraded as a result of the recommendations of the Sixth CPC as indicated in Part B or Part of the First schedule to these Rules, the fixation of pay in the applicable pay band will be done in the manner prescribed

in accordance with Clause (A) (i) and (ii) of Rule 7 by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and rounding the resultant figure to the next multiple of ten. The grade pay corresponding to the upgraded scale as indicated in Column 6 of Part B or C will be payable in addition. Illustration 4A in this regard is in the Explanatory Memorandum to these Rules.

Note 7 - Where in the fixation of pay under sub-rule(1), the pay of a Government servant, who, in the existing scale was drawing immediately before the 1st day of January, 2006 more pay than another Government servant junior to him in the same cadre, gets fixed in the revised pay band at a stage lower than that of such junior, his pay shall be stepped upto the same stage in the revised pay band as that of the junior.

Explanation - For the purpose of this Note, "appropriate rate of increment in the revised pay structure" means 3% of the sum of the pay in the pay band and the grade pay at the stage at which the pay of the employee is fixed in the revised pay structure." (emphasis supplied)

8. An analysis of the aforesaid Rule provides that Rule 7(1)(A)(i), read with Note 2A and Illustration 4 annexed with the Explanatory Memorandum to the 2008 Rules, forms the legal basis for the calculation of initial pay of the petitioners. Rule 7(1)(A) (i) is categorical and provides that the revised pay shall be calculated by multiplying the existing basic pay as on 01.01.2006 with 1.86 and rounding off the figure so arrived at to the next multiple of 10. Note 2A supplements this Rule and provides for fixation of pay in cases wherein the posts have been upgraded. It provides that when a post is upgraded, the revised pay shall be calculated by a *two-way formula* as follows -

- i. The existing basic pay as on 01.01.2006 to be multiplied with 1.86 and the figure so arrived at to be rounded off to the next multiple of 10;
- ii. Since the post has been upgraded, the upgraded Grade Pay shall be added to the revised pay figure arrived at under point (i) above.

Note 2A also refers to Illustration 4A provided in the Explanatory Memorandum annexed with the 2008 Rules. A perusal of Illustration 4A makes it amply clear that the revised pay is to be calculated in the manner indicated above i.e. multiplying the existing basic pay as on 01.01.2006 by 1.86, rounding off the figure so arrived at to the next multiple of 10 and finally, adding the upgraded Grade Pay component to the revised pay figure (for upgraded posts as in the petitioners' case).

9. We may also refer to O.M. F.No. 1/1/2008-IC dated 13.10.2008, which was issued as a clarificatory memorandum by the Department of Expenditure, Ministry of Finance, Government of India. The O.M. titled *"Fixation of pay in the pay bands where posts have been upgraded as a result of recommendations of Sixth CPC – clarification regarding"* provides clarification on Note 2A and provides thus:

"2. Accordingly, in cases of upgradation of posts as a result of recommendations of Sixth CPC, the fitment table attached with the O.M. of even number dated 30th August, 2008 corresponding to the pre-revised scale shall be used for the purpose of determination of pay in the pay band. To the pay in the pay band so determined, the grade pay corresponding to the upgraded post is to be added. This will be the revised pay of

the Government servant who has been upgraded as a result of Sixth CPC recommendation."

The aforesaid clarification makes it amply clear that the fitment table corresponding to the "*pre-revised scale*" shall be used for the purpose of determination of pay in the pay band and to the pay so determined, the "*grade pay corresponding to the upgraded post*" is to be added.

10. The petitioners have not disputed the import of the aforesaid rule(s) apart from contending that the multiplier of 1.86 ought to be applied to the minimum of the upgraded pay scale/pay band prescribed in the revised pay scales and not to the existing basic pay under the pre-revision pay scale. In our considered opinion, the argument deserves to be rejected. The scheme enunciated in the 2008 Rules is fairly clear and leaves no scope for a contrary view. The principles of statutory interpretation demand that the statutory rules must be given their literal meaning unless the same leads to an absurdity in law. The literal meaning emanating out of the legal position, as discussed above, is our best guide in this case and we see no absurdity or infirmity in the same. In fact, the petitioners have also not pointed out any infirmity in the literal meaning of the rules. Moreover, adopting the interpretation advanced by the petitioners would amount to the conferment of double benefit. If at all there was confusion regarding the meaning of the rules, the same stood ousted by the clarificatory memorandum dated 13.10.2008 issued by the Government of India, as discussed above.

11. In order to further dispel the interpretation advanced by the petitioners, we may also refer to the Definition clause of the 2008 Rules. Rule 3(1) defines "*existing basic pay*" as -

“(1) ... pay drawn in the prescribed existing scale of pay, including stagnation increments), but does not include any other type of pay like 'special pay' etc.”

The definition makes it clear that the existing pay is the pay being drawn in the existing scale of pay. Thus, for the calculation of existing basic pay as on 01.01.2006 under Rule 7(1)(A) the existing pay scale needs to be taken into account i.e. the pre-revision pay scale and multiplier of 1.86 would be applied to the same. There is no basis in rules, or in any legally sustainable construction of the rules, to hold that the multiplier would be applied to the upgraded pay scale, To do so would amount to putting the cart before the horse, as what is being sought is some kind of a notional upgradation of the pay scale even before the calculation for upgradation is done. The exercise of upgradation requires certain calculations to be made on the existing pay scale so as to arrive at the upgraded figure. We see no merit in thinking otherwise.

12. Furthermore, the decision of the Hon'ble Supreme Court in **K.V. Rama Raju** (supra) is of guiding value in this case. Rejecting a similar contention pertaining to the interpretation of Rule 7 in that case, the Court noted thus:

"3. It is clear that the pay had to be determined by multiplying the existing basic pay as on 1st January, 2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10 in terms of the rule.

4. The view taken that the multiplying factor is to be applied to the revised pay-scale is contrary to the above rule.”

13. On the force of precedent as well of reasoning advanced in the aforesaid decision, we find ourselves in complete agreement with the same. Thus, we find no merit in this petition. The decision of the Tribunal does not suffer from any infirmity, and we uphold the same.

14. In view of the above discussion, this writ petition stands disposed of as dismissed.

15. Interim applications, if any, shall also stand disposed of in the aforesaid terms. No order as to costs.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

JANUARY 23, 2023