

13.05.2024
Court No.13
Item No.33
pk

WPA 20554 of 2023

**Sri Rudra Prasad Ray
Vs.
The Union of India and others**

Mr. Ayan Banerjee,
Mr. Dhiman Banerjee
... for the petitioner.

Mr. Arjun Ray Mukherjee,
Ms. Subhendu Sengupta
... for the State.

Mr. Soumak Bera,
Mr. Ashok Halder
... for the respondent nos. 1 to 3.

1. Exception to the report filed by the respondent nos. 1 to 3 is kept with the record.
2. The facts of the case are already recorded in the order of the Co-ordinate Bench. However, for the purpose of the disposal of the writ petition, the said facts are set out again hereunder.
3. The petitioner was a judicial officer serving under the State of West Bengal under the control of the High Court Administration. While he was holding the post of Civil Judge(Senior Division) under the State Judiciary, the petitioner claims to be posted on deputation as a competent authority with the Metro Railway under the Ministry of Railways, Government of India.

4. While serving at the Metro Railway, the petitioner exercised option to receive the benefits and pay scales of the Metro Railway.
5. Pay scales of judicial officers in the petitioner's parent organisation under the State Judiciaries came to be revised pursuant to the directions of the Shety Commission with effect from 01.01.2016.
6. Such revised pay scales and benefits were higher than that which was being received by the petitioner under the Metro Railway.
7. The petitioner came to be repatriated back to his parent service with the State Judiciary on July, 2023 and is now posted as ACJM, Kurseong. The petitioner seeks the difference between the refixed pay in the parent cadre with that of the pay drawn by him at the Metro Railway for the period from 06.08.2019 till 30.04.2023.
8. Counsel for the petitioner relies upon the Regulation of Terms and Conditions Governing Deputation/Foreign Service of Employees to/From Central Government dated 08.09.2022 issued by the Ministry of Personnel Public Grievances and Pensions, DoPT.
9. Regulation 4.4(d) stipulates as follows :

“(d) Based on the revised/same option of the employee, in the event of proforma promotion/appointment to non-functional selection grade/revision/upgradation of scales of

pay/level (in the Pay Matrix) in the parent cadre, his/her pay will be re-fixed with reference to the revised entitlement of pay in the parent cadre. However, if the initial option was for the pay scale of the deputation post and no change in option already exercised is envisaged, the pay already drawn in deputation post will be protected if the pay revised is less.”

10. The respondents in their affidavits have stated

that since the petitioner has himself opted for the pay scale payable at the Metro Railway, he cannot claim any sums of money. Alternately, it is submitted that the petitioner would have to refund any special benefit, he may have received by reason of the services at the Metro Railway, if he wants any refund of any differential amount.

11. This Court has carefully heard arguments

advanced by the learned counsel for the parties. Rule 4.4(d) set out above is clear, explicit and unambiguous. The upshot of the Rule essentially mean that an employee on deputation from the State Government to the Central Government and vice versa would get the benefit of a higher pay scale in either the parent organisation or the post of deputation. This is in essence the concept of pay protection to ensure that even an employee on deputation does not lose the benefits of a higher pay in his parent organization, even if revised while he is on deputation to another Govt. body. The employee's right and claim to the best pay,

has been given primacy by the Central Government.

12.To put it on another way had the petitioner not been chosen to go on deputation to the Metro Railways (Central Government), he would have been entitled to the revised higher pay scale in his parent organisation i.e. State Judiciary.

13.The petitioner is, therefore, entitled to the difference between the revised pay at his parent cadre with the State Judiciary and the pay scale he received during the time he was in deputation together with any automatic increment upon refixation.

14.In the above circumstances, though the petitioner has prayed for the difference for the period from 06.08.2019 to 30.04.2023 in prayer 'C' to the writ petition, based on the pleadings and the clarification by the respondents, he shall be entitled to the aforesaid difference together with additional increment between the pay he received at Metro Railways and the pay at the parent cadre for the period between 06.08.2019 to 14.07.2023 from the Metro Railways.

15.Insofar as the issue of any refund of additional benefits received at the Metro Railways is concerned, it is found that the same are attached to the post in question. The Respondent/Metro

Railways cannot seek refund of any amount from the petitioner to any benefit attached to the post as competent authority with them.

16. It is submitted by Id. Counsel that the petitioner has forgone the services of two home guard and one PSO which he was entitled to the parent cadre while he was serving as competent authority in the Metro Railways.

17. The respondents therefore shall not be entitled to seek any refund from the petitioner. Let the difference as indicated above be paid to the petitioner by the respondent nos. 2 and 3 within a period of one month from the date of receipt of a copy of this order along with a copy of the writ petition.

18. The writ petition is allowed and disposed of.

19. There will be no order as to costs.

20. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)