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

% **Decision delivered on: 29.08.2024**

+ **W.P.(C) 575/2024 & CM APPL. 2548/2024**

GOVT OF NCT OF DELHI AND ORS

.....Petitioners

Through: Mr. P.S. Singh CGSC with
Mrityunjay Kumar Singh and
Annu Singh Advocates

versus

MAHFOOZ ALI

.....Respondent

Through: Mr. Nilansh Gaur, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (O R A L)

1. By way of the present writ petition filed under Article 226 read with 227 of the Constitution of India, the petitioners have sought the following relief:

“(a) quash and set aside the pre-se perverse order dated 18.05.2023 passed in O.A. No. 3179 of 2017 passed by Central Administrative Tribunal, Principal Bench New Delhi.”

2. Notice issued which is accepted by the learned counsel for respondent and with the consent of learned counsel for parties, the present petition is taken up for final disposal.

3. The case of the respondent before the learned Central



Administrative Tribunal (“CAT”) was that the respondent’s juniors were drawing higher pay than respondent and respondent’s pay should be stepped up.

4. However, the learned counsel for the petitioners clarified that the persons whom respondent is referring to and his juniors are actually his batch mates. To substantiate this, counsel for the petitioners points towards paragraph 4.8 of the O.A. highlighting that the date of appointment of all these persons indicates that they were all appointed during the year 1986 on the dates which are very near to each other. The respondent was appointed on 01.06.1986 whereas another person ASI Sat Pal was appointed on 02.06.1986, and two of the persons ASI Subhod Kumar and ASI Bhim Singh were appointed on dates prior to the appointment of the respondent. Therefore, the persons drawing higher pay are not his juniors. They are all batchmates and some of them have been appointed before the respondent.

5. The counsel for the petitioners drew the attention of the CAT to the averments made in paragraph 2 and 3 of their counter reply, which reads as under:

“2. That the applicant was drawing Rs.3800/- P.M. w.e.f. 01.06.1999 in the pay scale of Rs.3050-75-3950-80-4590, and granted his 1st ACP Scheme (12 years) on 09.08.1999 as per Department of Personnel and Training’s OM No.35034/1/97-Estt. (D) dated 09.08.1999 (A true copy of the same is annexed as Annexure R--1) fixing his pay @Rs.3965/- P.M. instead of Rs.3880/- P.M. (if on option) w.e.f. 09.08.1999 in the pay scale of Rs.3200-85-4900 vide order No. 10287- 92/CR/PCR dated 10.07.2000.

3. That the applicant enjoyed the benefit of drawing more pay than his counterparts from 09.08.1999 to next date of increment of others in the



same pay scale. He did not submit his option as per the above said O.M. and his pay was fixed whereas his counterparts had submitted their option to fix their pay from the date of their next increment and get loss of drawing less pay from the applicant from 9.8.1999 to the date of increment of his counterparts. Time limit for exercising of option under FR 22 (a) is 30 days which applicant had not exercised. As per point No. 8 of above O.M. the financial upgradation under the ACP Scheme shall purely personal to the employee and shall have no relevance to seniority position. As such, there shall be no additional financial upgradation for the senior employee on the ground that the junior to his employee in the grade has got higher pay-scale under the ACP Scheme.”

6. It was argued before the learned Tribunal that the fixation of pay has been done strictly in accordance with his entitlement and if the respondent subsequently got to draw less pay, the responsibility for the same rests squarely on his shoulders as he did submit the requisite option under FR 22a within the period prescribed for the same. Therefore, the respondent could not agitate the same as initially he was a beneficiary by way of getting a higher pay but later on if his salary is less than his counterparts, he is precluded from agitating the same.

7. Learned counsel for the petitioners drew attention to the memorandum dated 09.08.1999 before learned CAT and so before this Court, which details the conditions of ACP Scheme and submitted that paragraph 8 therein clearly mentions that financial upgradation under the ACP Scheme is purely personal and has no relevance to the seniority position. Thus, nobody can claim the benefit of stepping up of pay in the event of the junior drawing higher pay only on account of financial upgradation under ACP scheme.

8. Learned Counsel for the petitioners submitted that after the grant



of the first ACP with effect from 09.08.1999, the respondent's pay was fixed at Rs. 3965/- while his counterparts who had exercised their option were given Rs. 3880/-, highlighting that the respondent was initially drawing higher salary than his counterparts even though they too had joined on the same date. Once the respondent chose not to exercise his option as required, he was precluded from making a claim at a later stage.

9. The issue before the learned CAT was that whether similarly situated persons will get salary at par with their counterparts.

10. Admittedly, the persons junior to the respondent are drawing higher pay and allowances. Both the fundamental rules and also Central Civil Services (revised pension) Rules provide for correcting this anomaly by way of stepping up the pay of the senior to bring it at par with the junior. This anomaly in the present case has a reason, i.e., on account of grant of financial upgradation under ACP. The said issue has been adequately thrashed out in the order dated 10.03.2023 passed in O.A. No. 3653/2017 as referred by the learned CAT. The learned CAT further quoted the relevant extract from the said judgment which has further relied upon the judgment passed in O.A. No. 3079/2012. Moreover, the said order has extensively quoted from the observations of the Hon'ble High Court in a similar matter. Para 4 of the said judgment passed in O.A. No. 3653/2017 reads as under:

"4. Learned counsel draws support from an order dated 10.12.2013 passed by this Bench of the Tribunal in OA No 3079 of 2019 wherein this



Tribunal had held that in cases where an anomaly had arisen on account of grant of MACP/ACP to the junior, stepping up of pay would be attracted if the senior is drawing lesser pay although there may not be grant of a higher grade pay. He further draws attention to a judgement passed by the Hon'ble Supreme Court in Civil Appeal number 2087-2088 of 2022 which had examined this issue in detail and settled the principle that even if the anomaly has been created on account of upgradation under the ACP scheme, the pay of senior was required to be stepped up. For the sake of appreciating the law laid down by the Hon'ble Supreme Court, it would be appropriate to quote the relevant extracts of the said judgment. Before that it would be relevant to reiterate that in the said matter also, the grievance of the applicants before the Tribunal (respondents before the Hon'ble Supreme Court) was that their claim for stepping up of pay had been denied on the ground that the juniors were drawing higher salary on account of ACP/MACP Scheme and hence in terms of the clarification of the government, benefit of FR 22 could not be extended to them in their favour. The Hon'ble Supreme Court had thrashed out this issue threadbare and recorded as follows:

“5. The High Court has therefore rightly relied and/or considered FR 22 and the order issued by the Government of India on removal of anomaly by stepping up of pay, which reads as under: -

“(22) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior - (a) As a result of application of FR 22 -C. [Now FR 22 (I) (a) (1)]. In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely: -

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;*
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;*
- (c) The anomaly should be directly as a result of the application of FR-22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the*



senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer."

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR-27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay. [G.I., M.F., O.M. No.F.2 [78)-E.III (A)/66, dated the 4th February, 1966]"..

6. Therefore, it was a case where a junior was drawing more pay on account of upgradation under the ACP Scheme and there was an anomaly and therefore, the pay of senior was required to be stepped up. Hence, in the facts and circumstances of the case, the High Court has rightly directed the appellants herein to step up the pay of the original writ petitioners keeping in view of pay scale which has been granted to the juniors from the date they have started drawing lesser pay than their juniors. We are in complete agreement with the view taken by the High Court. No interference of this Court is called for. 7. In view of the above and for the reasons stated above, the present appeals deserve to be dismissed and the same are dismissed, accordingly.""

11. In view of above, learned CAT rightly directed the petitioners that the respondent is entitled to the award of stepping up of pay with effect from the date higher pay was awarded to the immediate junior.

12. Accordingly, we find no error or perversity in the order passed by the learned CAT, finding no merit in the present petition, the same is dismissed along with pending application.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 29, 2024/riya