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

Date of decision: 15.01.2024

\+ W.P.(C) 12653/2023 & CM APPL. 49888/2023 (stay)

UNION OF INDIA & ORS. ..... Petitioners

Through: Ms.Pratima N Lakra, CGSC with Ms.Kashish G Baweja, Adv.

versus

AKHILESH KUMAR RASTOGI ..... Respondent

Through: Mr.Manjeet Singh Reen, Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

<u>REKHA PALLI, J (ORAL)</u>

1. The present petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 22.11.2022 passed by the learned Central Administrative Tribunal (Tribunal) in O.A. No. 1139/2022.
2. Vide the impugned order, the learned Tribunal has, while quashing office orders dated 09.08.2021 and 20.01.2022, allowed the OA preferred by the respondent and has consequently directed the petitioner to remove the anomaly in his pay scale *vis-à-vis* Mr. Sachidanand Jha (Mr. Jha), who is junior to him as per the seniority list of Income Tax Officers. The petitioner has, accordingly, been

directed to grant all consequential benefits to the respondent by appropriately stepping up his pay at par with Mr. Jha, from the date the said anomaly in the pay arose.

3. The respondent joined the Income Tax Department as an Upper Division Clerk (UDC) on 24.02.1988 and was with passage of time, promoted as Tax Assistant, Senior Tax Assistant, Office Superintendent and finally as Inspector of Income Tax in 2004, on which post, both he and Mr. Jha are presently working. The respondent was till October 2006, all along drawing higher pay than Mr. Jha, whereafter, on account of his clearing the Departmental Exam for Income Tax Officers, the pay of Mr. Jha was enhanced by granting him two advance increments. Upon realizing that from this date, Mr. Jha was receiving higher pay than him, the respondent submitted representations dated 09.09.2021 and 23.09.2021 to the petitioners. Both these representations were rejected vide order dated 22.01.2022, compelling the respondent to approach the learned Tribunal by way of O.A. 1139/2022, which has been allowed vide the impugned order.

4. In support of the petition, learned counsel for the petitioner submits that the impugned award is wholly perverse as the learned Tribunal has failed to appreciate the effect of the OM dated 26.10.2018 issued by the Department of Personnel & Training (DoPT). By drawing our attention to paragraph nos.2(c) and 3 (h) of the aforesaid OM, she contends that the said OM makes it clear that a junior officer drawing more pay than his senior counter-part would not constitute anomaly of pay in cases where the former was granted additional increment on

acquiring higher qualifications. She, therefore, contends that Mr. Jha, having cleared the Departmental examination for Income Tax Officers in 2006, he was granted two additional increments due to which his pay became more than that of the respondent. This increase in the pay of Mr. Jha, being a result of advance increments granted to him, would in terms of the OM dated 26.10.2018, not qualify as a reason for upgrading the pay of the respondent, which aspect the learned Tribunal has failed to appreciate. She, therefore, prays that the impugned order be set aside.

5. On the other hand, Mr. Manjeet Singh Reen, learned counsel for the respondent supports the impugned order. He submits that the very same Departmental Examination of Income Tax Officers, which Mr. Jha has cleared in 2006, was already cleared by the respondent way back in 1993 and again in 2001. Consequently, he had also been granted two increments and therefore, similar increments having been granted to both the respondent and Mr. Jha on account of clearing the same exams, the respondent could not receive lesser pay than Mr. Jha. He further submits, once it is an admitted position that the respondent was placed at Serial No. 1526 as against Mr. Jha, who has been placed at Serial No. 1626 in the seniority list of Inspectors, there was clearly an anomaly in the pay being received by the respondent *vis-a-vis* his junior Mr. Jha, which has been correctly directed by the learned Tribunal to be removed. He, therefore, prays that the writ petition be dismissed.

6. Having considered the rival submissions of the learned counsel for the parties and perused the record, we find that both parties are *ad idem*

that the respondent is senior to Mr. Jha in the seniority list of Inspectors, which posts, both these officials are holding as on date. The parties are also *ad idem* that both the respondent as also Mr. Jha have cleared the Departmental Examination for Income Tax Officers, the respondent having cleared the same much prior to October, 2006, when Mr. Jha cleared the said exam. Infact, it is also an admitted position that both Mr. Jha and the respondent were granted two additional increments on account of clearing this Departmental Exam. Learned counsel for the petitioner has, by placing reliance on the OM dated 26.10.2018 urged that the case of the respondent for stepping up of pay was not maintainable, being barred under clause 3(h) thereof. In the same vein, she has also relied on clause 2(c) of this OM and therefore it may be apposite to note herein below, clauses 2(c) and 3(h) of the OM dated 26.10.2018 which read as under:

"Department of Personnel and Training

Dated. 26.10.2018

OFFICE MEMORANDUM

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2 (c) the anomaly is directly as a result of the application of the provisions of Fundamental Rule 22(I)(a)(1) read with Rule 13 of CCS(RP)Rules, 2016. For example, if the junior officer was drawing more pay in the existing pay structure than the senior by virtue of any advance increments granted to him, the provisions of this sub-rule should not be invoked to step up the pay of the senior officer.

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3. The following instances/events wherein juniors draw more pay than seniors, do not constitute anomaly and, therefore, stepping up of pay will not be admissible in such events:

(h) Where a junior gets more pay due to additional increments earned on acquiring higher qualifications."

7. Upon perusal of the aforesaid clauses, even though the plea of the petitioner that Mr. Jha is drawing higher pay on account of the advance increments being granted to him as a result of qualifying the Departmental Exam appears to be attractive on the first blush, upon consideration of the fact that the respondent had cleared the very same exams way back in 1993 and 2001, we have no hesitation in holding that this plea must fail. Clause 2(c) and 3(h) of the OM, which deal with grant of advance increments to an employee on his acquiring higher qualification, would not be applicable to a situation like the present, where a senior employee seeking stepping-up of pay had acquired the very same qualifications much prior in time.
8. In the present case, the respondent having acquired the very same qualification based on which Mr. Jha was given two advance increments, cannot be told that he will draw lesser pay than Mr. Jha, despite having cleared the very same exam more than 10 years ago. In our view, it is for removing such anomalies as in the present case that the provision for stepping up of pay was introduced in the Fundamental Rules.
9. In the light of the aforesaid, we have no hesitation in holding that the learned Tribunal was justified in directing that the pay of the respondent must be stepped-up to bring the same at par with the pay being drawn by Mr. Jha w.e.f., 18.10.2006. We, therefore, find no

infirmity with the impugned order.

10. The writ petition being meritless is, accordingly, dismissed with all pending applications.

REKHA PALLI
(JUDGE)

TUSHAR RAO GEDELA
(JUDGE)

JANUARY 15, 2024
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