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कर्मचारी भविष्य निधि संगठन
(श्रम एवं रोजगार मंत्रालय, भारत सरकार)
Employees' Provident Fund Organisation
(Ministry of Labour & Employment, Govt. Of India)

मुख्य कार्यालय/Head Office

भविष्य निधि भवन, 14-भीकाजी कामा प्लेस, नई दिल्ली - 110 066

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Website: www.epfindia.gov.in, www.epfindia.nic.in

No. HRM-III/VII/8(1)16/Court Case/

Date:

To,

All Regional P F Commissioners-I &II,
In -Charge of Regional Offices.

Sub:- Forwarding of judgement of OA No. 051/78 of 2016 in the matter of Bhavesh Kumar Gupta Vs. UOI & Ors. -reg.

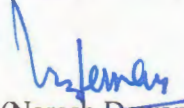
Sir,

A copy of the judgement dated 10.08.2017 passed by the Hon'ble CAT Court, Patna Bench at Ranchi in OA No. 051/78 of 2016 in the matter of Sh. Bhavesh Kumar Gupta Vs. UOI & Ors is forwarded herewith for circulation/guidance of all offices.

This judgement may be utilised for deciding the cases of similar nature where matters have been raised/referred to CAT by officials solely on the application of the pay fixation rules especially after 6th pay structures were implemented.

Encl:- As above.

Yours Faithfully,


(Naresh Dewan)

Regional P F Commissioner-II(HRM)

03.11.2017

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CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, RANCHI
REGN.NO.: OA/051/00078/2016

Reserved on : 07/08/2017

Date of Order: 10/8/2017

C O R A M

HON'BLE MR. S.K. PATTNAIK, JUDICIAL MEMBER
HON'BLE MR. A.K. UPADHYAY, ADMINISTRATIVE MEMBER

Bhavesh Kumar Gupta, s/o Sh. Mahesh Prasad, aged about 37 years, resident of Hesal, Devi Mandap Road, Ratu Road, PO-Hehal, PS-Sukhdeonagar, District-Ranchi.

..... Applicant.

By Advocate[s]: Mr. M.A.Khan

-Vrs.-

1. Union of India through Central Provident Fund, Commissioner, Employee, Provident Fund Organisation, Head Office, New Delhi-110 066.
2. Regional Provident Fund Commissioner, Employee Provident Fund Organisation, Regional Office, Bhagirathi Complex, near Circuit House, Karamtoli, Ranchi-834 001.
3. Assistant Provident Fund Commissioner [Admn-1], Regional Office, Bhagirathi Complex, near Circuit House, Karamtoli, Ranchi-834 001.

..... Respondents.

By Advocate: Ms. M.Patra.

ORDER

Per Mr. A.K. Upadhyay, A.M:- This OA has been filed seeking

the following reliefs :-

- "8(i) To quash the order dated 24.03.2014 [Annexure-7].
- (ii) To direct the respondents to extend the benefits of scales of Rs.6500-10500 w.e.f. 28.04.2008 in view of the relevant rules along with arrears and consequential benefits.
- (iii) Any other order/s, direction/s as Your Lordships may deem fit and proper in the interest of justice."

2. The applicant's case is as follows:-

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12/8/17

[i] He was appointed on 24.11.1999 as Lower Division Clerk in the scale of Rs.3050-4590 at regional Office, Mumbai. Subsequently, he appeared in the departmental examination and qualified as Jr. Hindi Translator [JHT] on 28.04.2008 in the scale of Rs.5000-8000 which was upgraded to Rs.6500-10500 w.e.f. 01.01.2006.

[ii] As his date of promotion was 28.04.2008 in the pay scale of Rs. 5000-8000, he was eligible for the upgraded scale of Rs.6500-10500 w.e.f. 01.01.2006 by Head Office Order No. HRD/1[12]99/Pt.II/CAT Case/76389-76539 dated 09.01.2009 [Annexure-A/1].

[iii] As per rule 6[3] CCS [Revised] pay scales, a Govt. employee may exercise the option to the revised 6th pay structure w.e.f. his date of promotion. The applicant's date of promotion dated 28.04.2008 was between 01.01.2006 and the date of notification of the Revised Rules 2008 i.e. 29.08.2008. The applicant opted for fixation w.e.f. the date of promotion as per Annexure-A/2.

[iv] On the date of promotion i.e. 28.04.2008 the applicant's basic has to be fixed at Rs.16290/- as follows:-

Basic pay applicable on the later		
date i.e. 28.04.2008	=	6500.00
Dearness pay @ 50%	=	3250.00
Pre-revised dearness allowance		
as on 01.01.2006 @ 24%	=	<u>2340.00</u>
Total pay is applicable		12090.00
In Pay Band [9300-34800]		
The grade pay corresponding		
to the pre-revised pay scale	=	<u>4200.00</u>
Total	=	16290.00

But, his pay has been fixed by the respondents at Rs.9300 + Rs.4200 = Rs.13500.

[v] The applicant has received the 6th pay benefits from



27.04.2008 as per the rules. If his pay is revised w.e.f. the date of promotion i.e. 28.04.2008, the said arrears is liable to be recovered and the applicant is willing to have this recovered provided his pay is fixed correctly treating him at par with Central Secretariate employees at the pay scale of Rs.6500-10500 w.e.f. 01.01.2006.

3. The respondents have stated in their reply that the applicant is suppressing some vital material facts with an intention to get undue advantage in his favour by suppressing the truth. He has been citing an office order dated 09.01.2009 which contained some errors but as soon as that error came to notice, it was rectified by issuing a corrigendum dated 12.01.2009. The applicant has deliberately not mentioned that corrigendum dated 12.01.2009 which indicated that 'recommended pay scale' was to be read in place of 'revised pay scale' in the 3rd column of the table of the order dated 09.01.2009. Another Circular No. HRD/1[12]99/RR/Pt-II/12313 dt. 08.06.2009 was also issued under which the pay of the applicant was fixed [Annexure-A/3]. The operative part of this circular is as follows :-



"The issue has been examined in consultation with Minister of Labour & Employment and Govt. has clarified that the fixation of pay shall be made in accordance with the O.M. No. 1/1/2008-IC dated 13.09.2008 issued by the Department of Expenditure. It is clarified that in the case of upgradation as recommended by the pay commission, the pay in the pay band will be fixed with reference to their fitment table corresponding to pre-revised pay scale. However, the grade pay corresponding to the upgraded post will be granted.

In view of the above, the pay of Junior Hindi Translator in the pre-revised scale of Rs.5000-8000 will be fixed in correspondence with fitment table corresponding to that scale [as per Department of Expenditure O.M. No.

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1/1/2008-IC dated the 30.08.2008] and their grade pay will be Rs.4200/-."

4. The respondents have further stated that the pay scale of JHT was revised from existing pay scale of Rs. 5000-8000 to Rs.5500-9000 w.e.f. 01.01.1996 vide HO Circular No. HRD/28[1]2012/CGIT/470 dated 11.04.2012, which has been annexed with the written statement. Hence, the pre-revised scale as mentioned in the circular dated 08.07.2009 is to be considered as Rs.5500-9000. Accordingly, the revised pay scale was fixed by multiplying Rs.5500 with the factor of 1.86 as provided in the CCS[RP] Rules, 2008. Therefore, as per respondents, the applicant's pay has been correctly fixed as per the office order dated 06.07.2016 [Annexure-A/6] and the arrear which the applicant has received from 01.01.2006 to 27.04.2008 is required to be recovered/adjusted.

5. The applicant has filed a rejoinder in which, besides reiterating his submissions made in the OA, he has submitted that as per Section 5[D][7] of the EPF Act, 1952, the EPF employees have to be extended equivalent pay scale to the Central Govt. employees. Therefore, the pre-revised pay scale of JHT have to be treated as Rs.6500-10500 w.e.f. 01.01.2006. Along with the rejoinder, the applicant has attached the Department of Expenditure OM No. F No.1/1/2008-IC dated 24.11.2008 by which the revised pay scales for official Language Posts in various sub-ordinate offices of the Central Govt. have been circulated as follows :-



Designation	Recommended pay scale	Corresponding Pay Band & Grade Pay	
		Pay Band	Grade Pay
Jr. Translator	6500-10500	PB-2	4200
Sr. Translator	7450-11500	PB-2	4600
Asstt. Director [OL]	8000-13500	PB-3	5400
Dy. Director [OL]	10000-13500	PB-3	6100
Jt. Director [OL]	12000-16500	PB-3	6600
Director [OL]	14300-18300	PB-3	7600

6. Heard the parties and perused the records.

7. It is observed that the respondents have fixed the pay of the applicant in the 6th CPC scale as on 28.04.2008 which is the date of promotion. As per the applicant's contention, he had given the option for fixation with effect from this date. Therefore, as far as giving effect to the pay fixation in the revised pay scale on 28.04.2008 is concerned, there is no dispute between the parties. Further, it is also stipulated in the Rules that if an employee opts for a later date for pay fixation, whatever arrears he had got for the period 01.01.2006 to the date prior to the pay fixation, i.e. 27.04.2008 in this case, this has to be refunded. On this statutory provision also there is no dispute between the parties. The only limited dispute is what is the pre-revised pay scale which has to be taken as the reference for fixing in the revised pay scale by multiplying with the stipulated factor of 1.86. The respondents' contention is that it is the actual pre-revised pay drawn by the employee that has to be multiplied by the factor of 1.86. If the pay

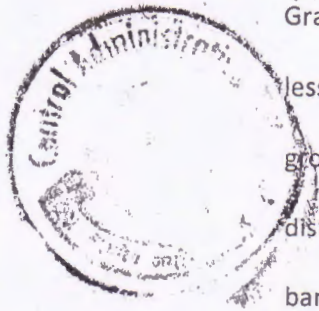


scale is upgraded pursuant to 6th CPC recommendations, it only means that the grade pay corresponding to the upgraded pay scale will be granted to the employee.

8. Since this is purely a matter of interpreting the rules, we now proceed to examine the provisions of Central Civil Services [Revised Pay] Rules, 2008 notified vide GSR No. 621(E) dated 29.08.2008 and OM No. 1/1/2008-IC dt. 30.08.2008 and OM No. 1/1/2008-IC dt. 13.10.2008, which is the main instrument governing the pay fixation in the revised pay scales.

9. In the 6th Pay Commission recommendations, most of the pre-revised scales were given a corresponding Pay Band and Grade Pay. Since the number of pay bands after revision were much less compared to the number of pre-revised scales, in several cases a group of different pay scales were given a new long Pay Band, with distinction between them by distinct grade pays, i.e. in a long pay band there were a number of distinct grade pays.

10. Another special feature of the 6th CPC recommendations was that in some cases a number of posts (i.e. scales) at different levels were merged into one designation, i.e. one grade pay. In some cases, there were also upgradation of earlier posts. Thus, on top of the standard formula for pay fixation, special elements in the form of "Notes" and "Illustrations" were introduced to deal with the cases of "Merger" or "Upgradation". In the present case, there was upgradation of pay scales, which causes enormous amount of



confusion. However, since the Rules are very clearly drafted, we will base our findings on the explicit provision of the rules.

11. The methodology for pay fixation has been given in the Rule-7 of the CCS(RP) Rules, 2008. The cases of upgradation and merger have been dealt in Note 2A and 2B of Rule 7 of the CCS(RP) Rules 2008 which deal with the question "Fixation of initial pay in the revised pay structure". The relevant portion of Rule-7 and Note 2A and Rule 2B of Rule 7 are quoted below for better appreciation:-

"Rule 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(3) 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 in 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 01.01.2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10.
- (ii)

Provided further that

Note 2A- Where a post has been upgraded as a result of the recommendations of the Sixth CPC as indicated in the 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 01.01.2006 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 will be payable in addition. Illustration 4A in this regard is in the Explanatory Memorandum to these Rules. (Emphasis supplied).

Note 2B- In the case of merger of pay scales, pay in the revised pay bands will be fixed in the manner prescribed in



accordance with Clause (A) (i) and (ii) of Rule 7 by multiplying the **existing basic pay** as on 01.01.2006 by a factor of 1.86 and rounding the resultant figure to the next multiple of ten. The grade pay corresponding to the merged scale will be payable in addition. Illustration 4B in this regard is in the Explanatory Memorandum to these Rules. (*Emphasis supplied*)

12. Thus, in both the cases, the key concept is the "existing basic pay". For understanding the meaning and intent of these rules, we need to refer to illustration 4A and 4B Explanatory memorandum which are as follows:-

Illustration 4A:- Pay fixation in cases where posts have been upgraded e.g. posts in pre-revised pay scale of Rs. 3050-75-3950 to Rs. 3200-85-4900 scale.

1. Existing Scale of Pay Rs. 3050-4590
(Corresponding Grade Pay Rs. 1900)
2. Pay Band applicable PB-1 Rs. 5200-20200
3. Upgraded pay scale Rs. 3200-4900 (Corresponding Grade Pay Rs. 2000)
4. Existing basic pay as on 01.01.2006 Rs. 3125/-
5. Pay after multiplication by a factor of 1.86- Rs. 5813
(Rounded as Rs. 5820)
6. Pay in the Pay Band-2 Rs. 5820/-
7. Pay in the pay band after including benefit of bunching in the pre-revised scale of Rs. 3050-4590, if admissible – Rs. 6060/-
8. Grade Pay attached to the scale of Rs. 3200-4900-Rs. 2000
9. Revised basic pay-total of pay in the pay band and grade pay- Rs. 8060.

Illustration 4B :- Pay fixation in cases where pay scales have been merged. pre-revised pay scale of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500

1. Existing Scale of Pay Rs. 5000-150-8000
2. Pay Band applicable PB 2 Rs. 9300-34800
3. Merged with the scale of pay Rs. 6500-200-10500
4. Existing basic pay as on 1.1.2006 Rs. 5600
5. Pay after multiplication by a factor of 1.86 Rs. 10416
(Rounded off to Rs. 10420)
6. Pay in the Pay Band PB 2 - Rs. 10420



7. Pay in the Pay Band after including benefit of bunching, if admissible - Rs. 10420
8. Grade Pay attached to the scale of Rs. 6500-200-10500- Rs. 4200
9. Revised basic pay-total of pay in the pay band and grade pay- Rs. 14620

13. Thus, in either case whether upgradation or merger, "the existing basic pay" has been taken as the actual pay drawn by the employee in the pre-revised pay scale. After the basic pay in the pre-revised pay scale has been replaced as per the prescribed formula under the rules, the corresponding Grade Pay for the upgraded pay scale or the higher pay scale due to merger has been added. This has been further confirmed by Ministry of Finance OM dated 13.10.2008 which states as follows:



"Accordingly, in cases of upgradation of posts as a result of recommendations of Sixth CPC, the fitment table attached with the OM 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."

14. In the present case, the respondent authorities have separately asked the advice of the Department of Expenditure who have given their advice which has been cited in para-3 above. This advice also reiterates the same provision mentioned in the CCS(RP) Rules, 2008.

15. As far as revising the scale of Rs. 5000-8000/- to Rs. 5500-9000/- is concerned, this has nothing to do with the 6th CPC. This has been issued in some other...

01.01.1996. Therefore, for fixation in the 6th CPC pay scales, the department has correctly taken Rs. 5500 as the pre-revised pay for multiplying with the factor 1.86.

16. The Department has fixed the pay as per the statutory Rules issued under the rule making power under Article 309 of the Constitution of India. The Rules do not leave any scope for ambiguity. It is trite that the first principle of interpretation of a statute is that it has to be read for its literal or common sense meaning. It has been held by the Hon'ble Supreme Court in the matter of Jagdish Ch. Patnaik & Ors. Vs. State of Orissa & Others [(1998) 4 SCC 456] that *"when the language used in the statute is unambiguous and on a plain grammatical meaning being given to the words in the statute, the end result is neither arbitrary, nor irrational nor contrary to the object of a statute, then it is the duty of the court to give effect to the words used in the statute because the words declare the intention of the law making authority best."* Similar view has been held in numerous other judgments.

17. In conclusion, there is no merit in the OA. Hence, dismissed. No order as to costs.

[A.K. Upadhyay] 14/1/17
Member [Admn.]

[S.K. Pattnaik] 15/1/17
Member [Judl.]

Skj/Srk.

11-8-17