

**P. Ravi Kumar and Others Vs. National Technical Research Organisation,
Through Its Chairman, Old Jnu Campus, Block-3, New Delhi and Others**

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Feb-15-2012

Judge : V.K. Bali, Chairman & the Honourable Dr. Ramesh Chandra Panda,
Member (a)

Appeal No. : OA Nos.1169 of 2011 & 2443, 3808 of 2011

Appellant : P. Ravi Kumar and Others

Respondent : National Technical Research Organisation, Through Its Chairman,
Old Jnu Campus, Block-3, New Delhi a

Advocate for Pet/Ap. : For the Applicants: Devesh Singh with T.N. Tripathi, R.K. Shukla, Uday N. Tiwari with Abir Phukan, Advocates. For the Respondents: Krishan Kumar, Advocate.

Judgement :

Dr. Ramesh Chandra Panda, Member (A)

1. By this common order, we are proposing to decide three Original Applications with the consent of the counsel for parties, as the issues involved in these OAs are same.

2. This is the 2nd round of litigation for some of the applicants. The OA No.2951/2011 was disposed of vide order dated 16.8.2011 with directions to the respondents to consider the representations of the applicants pending with them within a period of six weeks. Consequently, the NTRO finding their representations devoid of merits rejected the same in the order dated 30.9.2011 (Annexure-A1). Impugning the said order, the applicants are before the Tribunal in the instant OAs. As per the consensus of the parties, the OA No.3808/2011 has been taken up as the lead OA to outline the facts and flag the issues for our consideration and determination. Relief(s) claimed in the OA No.3808/2011 are as follows:-

“a) Quash and set aside the order No.V(B)/Misc/11017(61)-10662 dated 30.09.2011 directing the respondents to reconstitute a fitment committee with regard to grant of pay scale as well as grade pay under PB3 + grade pay Rs.5400/- as granted to similarly placed persons. and further direct the respondent to treat the applicants at par with other similarly placed persons as mentioned in para 4(5) of the OA.

b) To quash and set aside the order dated 29.11.2010 whereby the respondents granted the grade pay of Rs.4800 in PB2 instead of grade pay Rs.5400 in PB3 (Annexure-2)

c) Direct the respondents to consider refixing the scale of the above named applicants in the pay scale 8000-275-1350 in PB3 Rs.15600-39100 (PB-3) with grade pay Rs.5400 w.e.f. 01.01.2006 that existent in NTRO Technical Cadre structure.”

3. We heard Shri Devesh Singh with Shri T.N. Tripathi and Shri R.K. Shukla, learned counsel for the applicants in OA Nos. 3808/2011 and OA No.1169/2011; Shri Uday N. Tiwari with Shri Abir Phukan, learned counsel for the applicants in OA No.2443/2011. Shri Devesh Singh, learned counsel led the arguments on behalf of the applicants in all these OAs and other learned counsels in the respective OAs endorsed the contentions so advanced by Shri Devesh Singh.

4. The relevant background of the relief(s) claimed by the applicants may be stated here. The National Technical Facilities Organization renamed as National

Technical Research Organisation (NTRO) under the direct charge of the National Security Advisor (NSA) in the Prime Minister's Office (PMO) to which transfer of 330 posts along with incumbents from Aviation Research Centre (ARC) under the Cabinet Secretariat was ordered. As the posts/incumbents have included technical and administrative employees and their cadre structure and career progression of ARC and NTRO are different, the Fitment Committees were constituted with the approval of the 1st respondent for undertaking the fitment exercise of the technical employees of ARC into the technical cadre of NTRO. Modalities for fitment were first finalized by the said Committee on the basis of which the ex-ARC Technical Cadre Employees were fitted into the Technical Cadre of NTRO in various grades from the lowest post of Technicians to the top most post of Senior Technical Officers. The fitments were given effect to retrospectively from the date when the ex-ARC employees joined the NTRO on their transfer with the post from ARC between February 2006 and 2007. It is admitted fact that the said Committee finalized its recommendations in the first quarter of 2008 prior to the 6th CPC recommendations. The said fitment inter lia included two categories of Technical posts viz, (1) Deputy Field Officers (Tech) [DFO(T)] and (2) Field Officers [FO(T)] of ARC in the pre-revised pay scale of Rs.5500-9000/- and Rs.6500-10500 respectively.

5. At the time of fitment, some of the DFO(T)s were in receipt of the higher pay scale of FO i.e. Rs.6500-10500/- due to their financial upgradation under Assured Career Progression (ACP) Scheme in ARC. It must be noted at this stage that in terms of Government Instructions, ACP is a financial upgradation benefit available to the Government employees serving in a particular post/scale without actually getting promotion and the benefit of such financial upgradation is personal to the employees concerned without any bearing on their career progression, promotion or seniority purposes. All such Government Employees in receipt of ACP are to be treated as holding the substantive post in the regular pay scale (prior to grant of the financial upgradation) and not holding the post of the ACP pay scale for any other purpose.

6. We notice that the fitments were done for all those employees, based on three criteria viz; (i) length of service rendered by the ex-ARC officials in the substantive

post which they were holding at the time of coming over to NTRO, (ii) their service records including ACRs and (iii) their performance in the interview conducted for the purpose. It is noticed from the averments of the respondents that (a) the DFOs (T) in the pre-revised pay scale of Rs.5500-9000/- with ten years or more service in that grade, were fitted as Technical Officer (B) in the pre-revised pay scale of Rs.7450-11500/-. (b) the DFOs with five years or more service but less than 10 years in that grade were fitted as Technical Officer (A) in the pre-revised pay scale of Rs.6500-10500 and (c) the DFOs with less than five years in that grade were given lateral fitment as Technical Assistants (B) in the same pre-revised pay scale i.e. Rs.5500-9000. In respect of Field Officers (T) they were fitted in two grades viz. (i) the FO (T) in the pre-revised pay scale of Rs.6500-10500/- with less than five years in that grade were fitted as Technical Officer (B) in the pre-revised pay scale of Rs.7450-11500 and (ii) the FOs (T) with five years or more service in that grade were fitted as Technical Officer (C) in the pre-revised pay scale of Rs.8000-13500/-. Orders implementing the said fitments were issued on 17th April, 2008 individually for all the ex-ARC employees so fitted into the NTRO Cadre, retrospectively from the date they joined the NTRO along with their post.

7. The 6th Central Pay Commission (CPC) introduced Pay Bands and Grade Pay. Issue in the present OAs is both on the Pay Bands but on higher Grade Pay. The learned Counsel for the applicants highlighted that the applicants are getting PB-2 with Grade Pay of Rs.4800 which should be changed to PB-3 and Grade Pay of Rs.5400. This aspect of the controversy has been rebutted by the respondents. We may refer to the issue now.

8. Sixth CPC merged more than one pay scales existing under 5th CPC to a Pay Band but differentiated the posts in each Pay Band by the Grade Pay. We may refer to the mergers which took place to the pay scales indicated in Para 6 above. The pre-revised pay scales of Rs.5000-8000/- and Rs.5500-9000/- were merged to Rs.6500-10500/-, which would mean these three pre-revised pay scales got merged to one Pay Band i.e. PB-2 (Rs.9300-34800) + Grade Pay of Rs.4200/-. The pay of the fitted officers were also revised and the Technical Officers 'A' were granted the revised PB-2 (Rs.9300-34800) + Grade Pay of Rs.4200/-. The next higher grade of Technical Officer-B in the pre-revised pay scale of Rs.7450-11500

was revised to PB-2 (Rs.9300-34800)+GP Rs.4600/- and the pre-revised pay scale of Rs.8000-13500/- for Technical Officer-C was revised to PB-3 (Rs.15600-39100)+Grade Pay of Rs.5400/-. The respondents averred that the NTRO did not have the Grade Pay of Rs.4800 but the said Grade Pay was existing in the ARC. Due to the Government decision, the pre-revised pay scale of Rs.6500-10500/- was upgraded and merged to the pre-revised pay scale of Rs.7450-11500/- and in the 6th CPC revised to PB-2 + Grade Pay of Rs.4600/-. As such in terms of the said Government Instructions, the erstwhile posts of Technical Officer 'A' and Technical Officer 'B' were merged and redesignated as Technical Officer and granted the revised pay in PB-2+GP Rs.4600/-.

9. In the meantime, the ARC got the pay of its employees further revised and all the FO(T) in the pre-revised pay scale of Rs.6500-10500 were granted the revised PB-2 + GP Rs.4800 equivalent to the pre-revised pay scale of Rs.7500-12000. The DFO(T) constituting the feeder grade of the promotional post of FO(T) who were in receipt of the ACP Pay Scale of Rs.6500-10500 were also accordingly given the grade pay of Rs.4800 in PB-2. All of them were granted the revised grade pay of Rs.4800 by ARC, who fixed their pay and made entries in their respective Service Books. Since these ex-ARC officers got the higher grade pay of Rs.4800/- retrospectively by virtue of their getting the pay fixed by ARC, on whose strength they were as on 1.1.2006, the said grade pay was allowed to them as a personal benefit in NTRO, since the pre-revised pay scale of Rs.7500-12000 revised to PB-2+GP Rs.4800 is not available in the Technical Cadre of NTRO and the pay granted to them by the Government was protected.

10. Shri Devesh Singh very labouriously argued that there had been invidious discrimination against the applicants by not granting them Grade Pay of Rs.5400. His submission was that as on 01.01.2006 in ARC, there Grade Pay was fixed at Rs.4800 and on getting absorbed later on in the NTRO, some others of Ex ARC Field Officers got Rs.5400 as Grade Pay. This contention was opposed by Shri Krishna Kumar, learned counsel appearing on behalf of the respondents. He submitted during the final hearing a comparative statement which disclosed that those (eleven FO(T)s) who got their financial upgradation under ACP Scheme and were getting pre-revised pay in the Pay Scale of Rs.8000-275-13500 and four

others who had put in longer period of service than the applicants as FO (T)s were fitted as Technical Officer-‘C’ in the Pay Band-3 with Grade Pay of Rs.5400. Even seven of these 15 Technical Officers-‘C’ have retired. We do not find any justification in this ground as the Fitment Committee spelt out three specific criteria/modalities and categorised FOs, coming from ARC, and on the basis of these modalities the officers were fitted. We do not find any discriminatory approach on the part of NTRO.

11. Another principal contention canvassed by Shri Devesh Singh for the applicant's claim of Grade Pay of Rs.5400 was that the claim would be covered by the Fundamental Rule (FR) 22(1)(a)(2). This contention needs to be analysed in the background of the provision in FR 22(1).

"FR.22(I).- The initial pay of a government servant who is appointed to a post on a time-scale of pay is regulated as follows:-

(a)(1).- Where a government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees one hundred only whichever is more."

"FR.22(I)(a)(2).- When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis."

In this context of FR provision, we find that the contention of the learned counsel is rather devoid of merits as the FR 22(1) applies in case of promotion and

discharging higher duties when an additional increment is to be granted and that is not the case in these OAs. The Hon'ble Supreme Court has interpreted the context of applicability of FR 22(1)(a)(2) in Syed Abdul Qadir Versus State of Bihar [2009-3-SCC-475] in the following terms :-

“39. Rule 22(I)(a)(1) provides that when a government servant is promoted or appointed to a higher post and the higher post he is promoted carries duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees one hundred only whichever is more.

40. According to FR.22(I)(a)(2), the benefit of an additional increment, which is available to a government servant under FR.22 (I)(a)(1), would not be available to the government servant if the higher post he is promoted or appointed to does not carry duties and responsibilities of greater importance than those attaching to the post held by him.”

12. Shri Krishna Kumar, learned counsel on behalf of the respondents submits that there has been proper protection of applicants pay and as they have not been promoted in the NTRO but the designation has been changed after getting each case examined as per the modalities fixed by the Fitment Committee, there is no discrimination or arbitrariness. He further contends that none of these employees got promoted in ARC with retrospective effect, but only got their pay revised consequent upon implementation of the recommendations of the 6th CPC and further revision/clarifications issued by the Government from time to time.

13. When the revised grade pay of Rs.4800/- were granted to the ex-ARC employee in NTRO as mentioned above, they represented for grant of Rs.5400/- grade pay on the ground that since they were given fitment one stage above in NTRO than what they were holding in ARC, they were entitled to the grade pay of Rs.5400/-. It must be noted that Rs.5400 is the grade pay of the next higher Pay Band i.e. PB-3. NTRO has PB-2 with Grade Pay Rs.4600 for the applicants and protected the Grade Pay of Rs.4800 admissible in PB-2 granted to them by ARC.

The post of Technical Officer 'C' in the pre-revised pay scale of Rs.8000-13500/- has been revised to the PB-3+Rs.5400 of Grade Pay. This post of Technical Officer 'C' and PB-3 with Grade Pay Rs.5400 is the promotion post for the applicants. Legally, all of the applicants being in the post of Technical Officer-'B' they are not entitled to such a Pay Band and Grade Pay of their promotional post i.e. Technical Officer 'C'.

14. As is evident from the above paras, the ex-ARC employees were fitted into the Technical Cadre of NTRO based on various criteria including (i) the regular service rendered in the posts they were holding in ARC. (ii) Past performance and (iii) Interview performance. It must be noted that Grade Pay of Rs.5400 is admissible in PB3 and not in PB2.

15. Taking into account the totality of facts and circumstances of the case in these three applications, we come to the considered view that the orders dated 29.11.2010 and 30.09.2011 are just, fair and reasonable and the applicants have been granted the admissible pay protection. Thus, both orders are legally sustainable.

16. Resultantly, finding no merits in these cases, three OAs are dismissed. There shall, however, be no order as to costs.

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