

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/020/00706/2021

Date of CAV: 10.03.2022

Order Pronounced on: 15.03.2022



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

Between:

Y. Madhava Rao, S/o. Y. Venkateswarlu,
Aged 45 years, Occ: SPM SVN Colony,
R/o. Flat No. 302, Saver Homes 3/3,
Guntur Division, Guntur – 522007.

... Applicant

(By Advocate: Mr. B. Gurudas)

Vs.

1. Union of India Rep. by
The Secretary to the Govt. of India,
M/o. Communications & IT,
Dept of Post, Dak Bhavan, New Delhi – 110 001.
2. The Chief Postmaster General,
AP Circle, Vijayawada – 520 010.
3. The Postmaster General,
Vijayawada Region, AP Circle,
Vijayawada – 520002.
4. The General Manager,
Postal Accounts, AP Circle, Vijayawada -13.
5. The Superintendent of Post Offices,
Guntur Division, Guntur – 522007, AP.
6. The Post Master,
Guntur HO 522 001, AP.

....Respondents

(By Advocate: Mr. B. Siva Sankar, Sr. PC for CG)

ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Admn. Member)

2. The OA is filed in regard to pay fixation of the applicant as per 7th CPC.



3. Brief facts of the case are that the applicant working as Postal Assistant in the respondents organization was granted 1st financial upgradation under the Modified Assured Career Progression (for short **MACP**) scheme w.e.f. 1.9.2008 by fixing his basic pay as Rs.13,160 under FR 22(I)(a)(1) and later promoted to the Lower Selection grade (*for short LSG*). With the advent of the 7th CPC for fixing of pay, CCS (Revised Pay) Rules 2016 (*for short RP Rules 2016*) were framed by Ministry of Finance (*for short MOF*) (Annexure A-I). Upon granting second financial upgradation w.e.f 28.10.2017 applicant was directed to exercise option as envisaged under FR 22(1)(a)(1) which was complied with by the applicant and his pay was accordingly fixed from Jan 2018 to July 2018. Again GOI called for option vide OM dated 12.12.2018 and the applicant chose to get his pay fixed from the next date of increment and the request was acceded to by the Draw & Disbursing Officer (*for short DDO*) by fixing his pay as Rs.52,000 w.e.f 1.1.2019. All of a sudden, the DDO revised the pay from Rs.52,000 to Rs.49,000 from 1.6.2019. Aggrieved, the OA is filed.

4. The contentions of the applicant are that no notice was issued before reducing the pay. The applicant voluntarily credited the alleged excess amount on being advised so. Respondents after several representations were submitted intimated that the reduction was effected based on the clarification given by R-4 vide letter dated 21.5.2019 (Annexure A-VIII),

which indeed was stayed by the Dept. of Posts (*for short DOP*) vide letter dated 30.1.2020 (Annexure A-IX). The DOP has reiterated the Rules in Annexure A-I on 8.4.2021 by stating that officials can exercise option in terms of Rules 5 & 6 of the Revised Pay Rules. Hence the option submitted holds good. The respondents informed vide letter dated 16.09.2021 that the option exercised by the applicant with reference to 7th CPC was incorrect and that his pay w.e.f 1.1.2016 has been regulated as per Rules 5 & 6 of RP Rules 2016. This action of the respondents is contrary to the orders of the MOF and DOP cited. Applicant exercised the correct option and his pay was correctly fixed as Rs.52,000 and paid up to May 2019. From 1.6.2019, it was irregularly reduced by R-6 by wrong interpretation of the Rules 5 & 6 of RP Rules 2016.



5. Respondents per contra state that the pay of the applicant was fixed under FR 22 (1)(a)(1) as Rs.10,380 + 2800 after granting 1st MACP w.e.f. 1.9.2008. Thereafter, with the advent of 7th CPC, the RP Rules 2016 were framed and the pay of the applicant had to be fixed as per Rules 5 & 6 of the said Rules. The pay of the applicant was fixed as per his option as on 1.1.2016 as Rs.42,800. Thereafter, he was granted the 2nd financial up gradation w.e.f. 28.10.2017. On the direction of R-6, applicant has exercised the option to fix his pay w.e.f. the date of financial upgradation and therefore, the pay was fixed as Rs 47,600. On the request of the staff side, GOI decided to allow the employees to re-exercise their option in 7th CPC vide DOE letter dated 12.12.2018 under RP Rules 2016 without modifying Rules 5 & 6 contained therein. Applicant thereupon gave an option to fix the pay from the date of the next increment instead of 1.1.2019



with an undertaking to refund any excess paid due to wrong fixation. The pay was thus fixed as Rs.49,000 as on 1.7.2018. However, R-6 has wrongly fixed as Rs.52000 as on 01.07.2018 after giving 2nd financial upgradation w.e.f. 28.10.2017. As per Rule 5 of RP Rules, the option for fixing pay with 2nd financial up-gradation is permissible only if the date of such up-gradation fell between 1.1.2016 and the date of notification of rules ie 25.7.2016. The applicant in anticipation that his pay would be re-fixed, has credited a sum of Rs.1,02,318/- on 24.01.2019 towards excess pay and allowances paid from 01.01.2016 to 31.12.2018. R-4 gave a clarification that officials who got promotion/financial up-gradation after the notification of RP rules 2016 on 25.7.2016 are not entitled to exercise the option/revised option to come over to the revised pay structure on the date of promotion /financial upgradation. Hence, the pay of the applicant was revised to Rs.49000 w.e.f 1.6.2019 and the 2nd financial up-gradation was implemented w.e.f 28.10.2017 with the pay fixed as Rs.47,600. After adjustment of excess amount paid a sum of Rs.82,907 was refunded on 20.7.2019. After 2 years applicant represented on 18.8.2021 to fix pay after taking into consideration the 2nd financial up-gradation, which was rejected by R-6 on the ground that the 2nd MACP was granted after notification of RP rules 2016. DDO initially violated the RP Rules 2016 by fixing the applicant's pay from the date of 2nd MACP instead of subsequent increment. The pay of the applicant correctly revised as per Rule 5 explanatory note 1, MOF memo dated 12.12.2018 & DOP memo dated 8.4.2021. DOP has only directed vide letter dated 30.1.2020 to withdraw the letter issued by R-4 on 22.5.2019 and instructed to refer cases of the

nature in question to it. There is no misinterpretation of rules and the respondents have a right to correct a mistake committed.



Applicant filed a rejoinder wherein he asserts that the applicant credited the amount of Rs.1,02,318/- on the directions of the DDO and not voluntarily. Applicant claims that he has sought fixation of pay from the date of pay fixation vide option dated 13.11.2017 (R-3/30) and was representing continuously. Once pay is fixed as per rules, no recovery can be ordered as per Hon'ble High Court of Andhra Pradesh judgment in K.V.Krishnaiah & Ors v State of AP in WP No.1652 of 2022.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about reducing the pay of the applicant from Rs.52000 to 49000 w.e.f. 01.06.2019 (Annexure A-VI). Any reduction of pay will have far reaching adverse civil consequences. As per Principles of Natural, when any administrative order is issued impinging on the right of an employee, a notice has to be given and thereafter, depending on the reply, a decision has to be taken supported by valid reasons. No notice was given by the respondents before reducing his pay and directing him to pay the alleged excess pay paid to him. The respondents have not answered this averment as it ought to be in any of their long reply having a repetitive character running into 27 pages. Primarily, for the violations of the Principles of Natural Justice the impugned order dated 16.09.2021 is liable to be considered as invalid in the eyes of law as observed by the Hon'ble Supreme Court as under:

In A.K. Kraipak and others v. Union of India and Others, (1969) 2 SCC 262, the Constitutional Bench, dwelling on the role of the principles of natural justice under our Constitution, observed that as every organ of the State is controlled and regulated by the rule of law, there is a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a quasi-judicial or administrative power are those which facilitate if not ensure a just and fair decision.



In **Delhi Transport Corporation v. DTC Mazdoor Union**, 1991 AIR 101, 1990 SCR Supl. (1) 142, Hon'ble Apex Court observed as under:

“The 'audi alteram partem' rule which, in essence, enforces the equality clause in [Article 14](#) of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party-in- question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations. Moreover, the Rule of Law, which permeates the Constitution of India, demands that it has to be observed both substantially and procedurally. Rule of law posits that the power to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination.”

A person cannot be condemned without being heard. Rule of law has to be upheld. The respondents cannot short circuit law and act in a high handed manner. The respondents are expected to issue notice to the applicant giving reasonable time to respond and thereafter, they can take a view in the matter as per rules/ law. We find that the respondents have not done anything of that sort as is required under law.

II. Further, Rule 5 of the CCS (RP) Rules, 2016, which is extracted hereunder, speaks about the next or any subsequent increment.

“5. Drawal of pay in the revised pay structure:- Save as otherwise provided in these rules, a Government servant shall draw pay in the Level in the revised pay structure applicable to the post to which he is appointed:

Provided that a Government servant may elect to continue to draw pay in the existing pay structure until the date on which he earns his next or any subsequent increment in the existing pay structure or until he vacates his post or ceases to draw pay in the existing pay structure:

Provided further that in cases where a Government servant has been placed in a higher grade pay or scale between 1st day of January, 2016 and the date of notification of these rules on account of promotion or upgradation, the Government servant may elect to switch over to the revised pay structure from the date of such promotion or upgradation, as the case may be.



Explanation 1.- *The option to retain the existing pay structure under the provisos to this rule shall be admissible only in respect of one existing Pay Band and Grade Pay or scale.*

Explanation 2.- *The aforesaid option shall not be admissible to any person appointed to a post for the first time in Government service or by transfer from another post on or after the 1st day of January 2016 and he shall be allowed pay only in the revised pay structure.*

Explanation 3.- *Where a Government servant exercises the option under the provisos to this rule to retain the existing pay structure of a post held by him in an officiating capacity on a regular basis for the purpose of regulation of pay in that pay structure under Fundamental Rule 22, or under any other rule or order applicable to that post, his substantive pay shall be substantive pay which he would have drawn had he retained the existing pay structure in respect of the permanent post on which he holds a lien or would have held a lien had his lien not been suspended or the pay of the officiating post which has acquired the character of substantive pay in accordance with any order for the time being in force, whichever is higher.”*

The aspect of ‘subsequent increment’ has not been elaborated anywhere in the Rule nor did the respondents bother to file any executive instructions delving upon the meaning of ‘subsequent increment’. Without explaining the meaning of subsequent increment, the respondents’ interpretation that the benefit can be extended only to those who have been placed in a higher grade pay/ scale between 1st January 2016 and the date of notification of the rules i.e. 25.07.2016, could be a misunderstanding of the spirit of the rule. Besides, the respondents are not competent to interpret the rule when the



nodal Ministry i.e. Ministry of Finance has not been approached to explain the aspect of 'subsequent increment'. Unless a clarification is received from the Ministry of Finance on the issue of subsequent increment, the respondents denying the benefit sought, would not be appropriate in the eyes of law. Hence, we direct the respondents to seek a clarification from the Ministry of Finance as to whether the subsequent increment would mean any financial up-gradation beyond the date of notification of the Rules and in consonance with the extension given by the Government to revise the option vide their latest letters dated 12.12.2018. In granting permission to revise the option on 12.12.2018, may be, the Government thought of giving benefit of later up-gradations to be reckoned while fixing the pay. These questions have not been dealt with anywhere in the reply statement and hence, the direction to approach the Ministry of Finance for clarity on the application of the Rule 5(a) & 5(b) of CCS (RP) Rules, 2016. On receipt of the reply/ clarification from the Ministry of Finance, the respondents may grant the benefit to the applicant, if he is eligible and if not as per the interpretation of the respondents, a notice has to be given to the applicant and thereafter, a decision has to be taken upon receipt of the response from the applicant. If the applicant is further aggrieved with the decision of the respondents after issue of the notice, then he is granted liberty to challenge the clarification given by the respondents/ Ministry of Finance, if he so desires, by citing appropriate legal grounds and judgments of the superior judicial fora supporting his contention.

III. With the above direction, the OA is disposed of with no order as to costs.



/evr/

(B.V. SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER