

## Government of Haryana

### Finance Department

No. 5/4/2001-5 PR (FD)

15<sup>th</sup> January, 2002

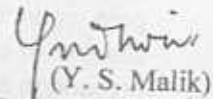
### Office Memorandum

**Subject: Fixation of pay on promotion to a post the functional pay scale of which is equal to or lower than the 1<sup>st</sup> or 2<sup>nd</sup> High Standard Scale under the Higher Standard Scales Scheme in the pre-revised scales or 1<sup>st</sup> or 2<sup>nd</sup> ACP under the ACP Scheme of 1998 or any other Scheme.**

1. The Finance Department has issued clarifications on the subject mentioned above vide its two letters mentioned below:-
  - (i) No. 5/4/2001-5PR(FD) dated 2.3.2001
  - (ii) No. 1/37/2001-2PR(FD) dated 4.12.2001
2. The two sets of instructions referred to above deal with altogether different situations. The present instructions are being issued in continuation of letter bearing No. 5/4/2001-5PR(FD) dated 2.3.2001.
3. With the introduction of the Scheme of Higher Standard Scales with effect from 1.1.94 and the introduction of ACP Scheme with effect from 1.1.96, there would be numerous cases where the 1<sup>st</sup>/2<sup>nd</sup> Higher Standard Scale or the 1<sup>st</sup>/ 2<sup>nd</sup> ACP, as the case may be, would be identical with or higher than the functional pay scale of the promotion post in the hierarchy. The rules provide that benefit of fixation of pay at the stage next above is not permissible in such cases as this benefit already stands granted to the employee at the time of grant of the relevant Higher Standard/ ACP Scale at an advanced point in time even though such employee was not performing duties of the higher post at that time. FD has clarified the matter in this respect vide its instructions dated 2.3.2001 and attention is invited to para 7(ii) and para 8 of the instructions in this respect.
4. It is re-iterated for the purposes of clarity that any pay scale granted to an employee under any incentive/ welfare scheme (e.g. the Higher Standard Scale Scheme or the ACP Scheme) or granted on account of acquiring higher qualifications, which is other than the functional pay scale of the substantive post, is in the nature of a personal scale. Such a personal scale, in a large number of cases, may be equal to or higher than the functional pay scale of the promotion post in the hierarchy.
5. It has come to the notice of the Finance Department that a number of cases have been decided by the Hon'ble Punjab & Haryana High Court wherein directions have been issued to provide the benefit of one increment/fixation of pay at the stage next above in cases where a person is drawing his pay in a scale which is not the functional scale of the post but is in the nature of a personal scale and where such personal scale is identical with or higher than the functional pay scale of the promotion post. While the State Government

has preferred SLPs against the orders of the Hon'ble Punjab & Haryana High Court in a number of such cases, there are a number of other cases which are still pending adjudication before the Hon'ble Punjab & Haryana High Court. It is also likely that in certain cases even the SLPs filed against the orders of the Hon'ble Punjab & Haryana High Court might have been dismissed.

6. It is brought to the notice of all concerned that the Hon'ble Supreme Court of India has already laid down the law on this subject while deciding the case of *Union of India and others Vs. Ashok Kumar Banerjee* on 13.5.98 in Civil Appeal No. 2699/97 and reported in the Services Law Reporter (1998(4) SLR 381-84). This fact of the law already having been laid down by the Hon'ble Supreme Court of India in the matter was neither in the notice of the Finance Department nor, probably, in the notice of the Law Officers defending cases on behalf of the State Government before the Hon'ble Punjab & Haryana High Court/Hon'ble Supreme Court of India. Hence, a copy of the judgment ibid is annexed with these instructions.
7. Keeping the above in view, the Departments are advised to take action as under:-
  - (i) In so far as pay is to be fixed in such cases, the same should be fixed in accordance with the clarifications given in para 7(ii) and para 8 of the instructions bearing No. 5/4/2001-5PR(FD) dated 2.3.2001.
  - (ii) In cases that are still pending adjudication before the Hon'ble Punjab & Haryana High Court, the position of law having been laid down by the Hon'ble Supreme Court of India in the matter should be specifically brought to the notice of the Bench at the time of hearing of the pending cases.
  - (iii) In matters where SLPs in the Hon'ble Supreme Court of India have been filed against the orders of the Hon'ble Punjab & Haryana High Court, the fact of this judgment be brought to the notice of the defending counsels in the Hon'ble Supreme Court of India.
  - (iv) In cases where SLPs were filed in the Hon'ble Supreme Court of India and the same have been dismissed, review petitions be filed in the Apex Court on the strength of the judgment of Hon'ble Apex Court without any further delay.

  
(Y. S. Malik)

Commissioner & Special Secretary Finance  
for Financial Commissioner & Secretary to  
Government, Haryana, Finance Department.

To

All Administrative Secretaries/ Heads of Departments/ Divisional Commissioners/ Deputy Commissioners/ SDOs (Civil) in Haryana/ Registrar, Punjab & Haryana High Court at Chandigarh/ Accountant Generals (A&E)/ (Audit), Haryana with five spare copies in each case for use in the Branches/ offices.

## Annexure

## SUPREME COURT OF INDIA

Before : Sujata V. Manohar and M. Jagannadha Rao, JJ  
Civil Appeal No. 2699 of 1997

(From the judgment and Order dated 3.12.93 of the Central Administrative Tribunal, Calcutta in OA No. 241 of 1993)

Decided on 13.5.1998

Union of India & Ors.

Appellants

Versus

Ashoke Kumar Banerjee

Respondent

For the Appellants : Mr. P.P.Malhotra, Sr. Advocate with Ms. Binu Tamta (Mr. Vineet Malhotra), Advocate for Mr. CVS Rao, Advocates.

For the Respondent: In person.

Constitution of India, Article 16- Fundamental Rule 22(1)(a)(i) read with OM (A) No. 11014/91 dated 22.3.1991-Stepping up pay-Assistant Junior Engineer after completion of 15 years of service was fitted in the scale of Rs. 2000-3500 of Assistant Engineer and pay fixed at Rs. 2600/- on 1.1.1991- Actual and functional promotion to the post of Assistant Engineer on 1.8.1991-He is not entitled to get the pay fixed once again for the second time-The officer having received the same benefit in advance, while working as Junior Engineer and while not actually functioning as an Assistant Engineer, is not entitled to the same benefit of fresh fitment in the scale of Rs. 2000-3500 when he is promoted on 1.8.1991 as Assistant Engineer-This is because as on 1.8.1991, he is not being fitted into the "time-scale of the higher post" as stated in the FR-That situation was already over when the OM was applied to him on his completion of 15 years-For the applicability of the FR 22(1)(a)(i) it is not merely sufficient that the officer gets a promotion from one post to another involving higher duties and responsibilities but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post. (Para 8)

## JUDGMENT

**M.Jagannadha Rao, J.** – This appeal is preferred by the Union of India and the C.P.W.D. against the order of the Central Administrative Tribunal, Calcutta dated 3.12.93 passed in OA No. 241 of 1993. By that order, the Tribunal directed that the pay of the petitioner in the promotional post should be fixed in terms of FR 22(1)(a)(i) with effect from 1.8.1991 and all consequential benefits including arrears should be paid to him within a period of 3 months from the date of communication of this order.

2. The facts relevant to the case are as follows: The respondent was working in the C.P.W.D. as JE in the senior scale Rs. 1640-2900 and as he had put in 15 years service as JE, he was granted the Assistant Engineer's scale of Rs. 2000-3500 (in terms of Government of India, Ministry of Urban Development (I Division) No. 12014/2/87 IW II dated 22.3.1991). By giving him the necessary increment, his pay was fixed at Rs. 2600/- as on 1.2.1991 by applying FR 22(1)(A)(i) as permitted in the said order. This was after the respondent opted for this scale. The date of his next increment which fell on 1.2.1991 was taken into account while granting him the increment mentioned in the FR. Later he was promoted, pursuant to

certain orders of the CAT in an earlier OA, as Assistant Engineer. He, then filed the present OA claiming that FR 22(I)(a)(i) is to be applied to his case once again and his pay should be refixed in the scale of 2000-3500 by giving him fresh benefit of the increment permitted by the said FR. The CAT opined that as this was his actual promotion from the post of Junior Engineer to Assistant Engineer, and as he was necessarily discharging higher duties and responsibilities, he was entitled to a fresh application of the said FR 22(I)(a)(i).

3. The appellants contend that this would amount to giving the benefit of FR twice over and this is not permissible. The respondent has been served and notices have been sent to him that his case will be heard on a specific date but he has not chosen to be present and we are, therefore, proceeding to decide the case on merits, setting him ex parte.

4. The point for consideration is whether the respondent who was drawing Rs. 1640-2900 as Junior Engineer and who on completion of 15 years service as Junior Engineer was given benefit of FR 22(I)(a)(i) in the Assistant Engineer's scale of Rs. 2000-3500 as per OM(A)-11014/91 dated 22.3.91 w.e.f. 1.1.91 is again entitled on regular promotion as Assistant Engineer on 1.8.91 to the benefit of the same FR22(I)(a)(i)?

5. Under the OM(A)-11014/91 dated 22.3.91 it is stated that in the C.P.W.D. the Junior Engineers Association and Sectional Officers (Horticulture) Association made certain demands and an agreement was signed on 20.3.1991 between the Government and the Association. As per the first part of said agreement there would be 2 scales of JE/SO (Hort) in CPWD, one in the scale of Rs.1400-2300 and another in the scale of Rs. 1640-2900. Those who completed 5 years service in the entry grade Rs. 1400-2300 will be placed in the grade of Rs. 1640-2900, subject to rejection of those found unfit. This higher grade will not be treated as a promotional one but will be non-functional and the benefit of FR 22(I)(a)(i) will not be admissible, while fixing the pay in the higher grade, as there will be no change in duties and responsibilities. We are not concerned here with the above portion of the agreement. We are, however, concerned with the second part which reads as follows:

"(ii) Junior Engineers/Sectional Officers (Horticulture), who could not be promoted to the post of Assistant Engineers/Assistant Directors (Horticulture) in the scale of Rs. 2000-3500, due to non-availability of vacancies in the grade of Assistant Engineer/Assistant Directors (Horticulture) will be allowed the scale of Assistant Engineer/Assistant Directors (Horticulture) i.e. Rs. 2000-3500, on a personal basis, after completion of 15 years of total service as Junior Engineer/Sectional Officer (Horticulture), till their normal turn for the functional promotion comes as Assistant Engineer/Assistant Director (Hort). This personal promotion will be given on fitness basis."

It will be noticed that as per this part of the OM, those JEs who have completed 15 years of service would get the scale of Rs. 2000-3500 (which is the scale of the promotional post i.e. Assistant Engineers/Assistant Directors (Horticulture)). This benefit is given to avoid frustration of the Junior Engineers and Sectional Officers (Horticulture) who would otherwise be stagnating for want of vacancies in the next promotional post. In that light, they are allowed to draw the scale of Rs. 2000-3500 on a personal basis, provided they have completed 15 years till their normal turn for the functional promotion comes as Assistant Engineer/Assistant Director (H). This personal promotion will be given on fitness basis.

6. In the present case, while working as Junior Engineer the respondent completed 15 years in the scale of Rs. 1640-2900 and he became entitled to be fitted in the scale of Rs. 2000-3500 of Assistant Engineers and got his pay fixed accordingly at Rs. 2600 by giving him the benefit of the increment as stated in FR 22(I)(a)(i) and as permitted by the second part of the OM. This was because, even though the OM is dated 22.3.91, it was agreed that benefit of FR 22(I)(a)(i) would be given from 1.1.91.

7. Thereafter, Respondent was actually or functionally promoted as Assistant Engineer on 1.8.1991 and he then wanted benefit of FR 22(1)(a)(i) to be given to him once again as he had then assumed higher duties and responsibilities of a superior post functionally. Question is whether his claim is justified?

FR 22 reads as follows:

FR 22(1): 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 increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which pay has accrued or rupees twenty five only, whichever is more.

Save in cases of appointment on deputation to an ex-cadre post, or to a post on ad hoc basis, the Government servant shall have the option to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the Pay of the lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/ promotion, to be exercised within one month from the date of such regular appointment.

Provided that where a Government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time scale of the lower post, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time scale of the lower post or rupees twenty five, whichever is more."

8. In our view, the respondent having received the same benefit in advance, while working as Junior Engineer and while not actually functioning as an Assistant Engineer, is not entitled to the same benefit of fresh fitment in the scale of Rs. 2000-3500 when he is promoted on 1.8.91 as Assistant Engineer. This is because as on 1.8.91, he is not being fitted into the "time-scale of the higher post" as stated in the FR. That situation was already over when the OM was applied to him on his completion of 15 years. For the applicability of the FR 22(1)(a)(i) it is not merely sufficient that the officer gets a promotion from one post to another involving higher duties and responsibilities but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post. If, as in this case, the benefit of the higher scale has already been given to him by virtue of the OM there is no possibility of applying this part of the FR which says

"his initial pay in the time scale of 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 twenty five only, whichever is more."

9. Further, the respondent is a junior officer in the category of JEs and he has already got the benefit of the FR on completion of 15 years. If he is to be given a second benefit on the basis of the same FR, then he would be getting more than his seniors, who might have got promoted earlier and might have got benefit of the FR 22(I)(a)(i) only once, such an anomaly was not obviously intended by the FR.

10. For the aforesaid reasons, the appeal is allowed and the order of the Tribunal is set aside and the OA is dismissed. In the circumstances, there will be no order as to costs.

APPEAL ALLOWED.