

HIGH COURT OF DELHI

WRIT PETITION (CIVIL) NO. 2427 of 2001

Date of decision: 13<sup>th</sup> September, 2006.

Dr. Dinesh Kumar & Anr. ....Petitioners  
through: Ms. Kiran Singh, advocate.

Versus

Union of India & Ors. ....Respondents.  
through: Mr. V.K. Rao, Advocate

**Coram :**

**Hon'ble Mr. Justice Manmohan Sarin.**  
**Hon'ble Ms. Justice Aruna Suresh.**

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? *yes*
- (3) Whether the judgment should be reported *yes* in the Digest ?

**Aruna Suresh, J.**

1. The petitioners were appointed as S-2 Scientists with the Agricultural Research Service of Indian Council of Agricultural Research in the scale of Rs. 1100-1600 on 1.10.1975.
2. Petitioner no. 1, Mr. Dinesh Kumar was promoted as S-3 Scientist on 1.7.1979 in the pay scale of Rs. 1500-2000.

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Similarly, petitioner no. 2 Shri G.C. Srivastava was promoted to the rank of Scientist S-3 in the above said grade on 1.7.1980. After serving in the grade of S-3 for five years of assessment as on 31.12.1985, the petitioners became eligible to a senior scale of Rs. 1800-2250. In the meantime, the pay scales were revised on the recommendation of the 4<sup>th</sup> Pay Commission report w.e.f., 1.1.86. Both the above said scales were merged and scale of Rs. 4500-7300 was introduced w.e.f., 1.1.86. The petitioners claimed fixation of pay firstly in the lower grade of Rs.1800-2250(pre-revised scale) and then re-fixation in the revised scale of Rs. 4500-7300 w.e.f., 1.1.86 with annual increment w.e.f., 1.7.86, as their salaries were re-fixed in the revised scale of Rs. 4500-7300 w.e.f., 1.1.86 without giving any benefit of the promotion in the scale of Rs. 1800-2250. Petitioners filed OA 493/99 before the Central Administrative Tribunal (hereinafter referred to as 'Tribunal') claiming fixation of their pay firstly in the scale of Rs. 1800-2250 and thereafter, w.e.f., 1.1.86 to be fixed in the revised scale of Rs. 4500-7300 with annual increment w.e.f., 1.7.1986 as they had been denied the benefit of fixation of salary in the scale of Rs. 1800-2250 and the salary was fixed by the respondents straightway in the scale of Rs. 4500-7300.

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3. The principal Bench of the Tribunal dismissed the O.A. vide order dated 1.5.2000 holding that since both the scales of Rs. 1500-1800 and Rs. 1800-2250 were merged and they happened to be the same i.e., Rs. 4500-7300, the benefit of FR 22(1) (a)(i) cannot apply.

4. Present writ petition is a sequel to the said order dated 1.5.2000. Learned counsel for the petitioners; Ms. Kiran Singh has urged that as the five years period got completed on 31.12.85, the petitioners were eligible and should have been granted the fixation of pay on the said date in the scale of Rs. 1800-2250 and the benefit accrued therein should be protected while fixing the salary in the revised scale. She has also placed reliance on the case of another Scientist Dr. V. Balasubramaniam, who, it is stated, had similarly completed his five years assessment on 31.12.1985 and was duly given increment in the then existing grade and, thereafter, the same was protected while fixing the pay in the revised scale of Rs. 4500-7300. Ms. Kiran Singh also described the respondents' shifting stand with regard to Dr. V. Balasubramaniam, where initially it had been contended for non-application of the benefit for the petitioners to urge that the increment did not fall due on 1.1.1986 as had fallen due in the case of Dr. V.

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Balasubramaniam. Ms. Kiran Singh has also placed reliance on Smt. Grace Mathews Vs. Director, Central Fisheries Research Institute and Ors., Civil Appeal No. 6063/93 decided on 23.2.1994.

5. While opposing the writ petition, Shri V.K. Rao has not joined issue on the factual aspects. He has submitted that the two scales commencing from Rs. 1500-2000 and Rs. 1800-2250 w.e.f., 1.1.1986 are merged into a common scale of Rs. 4500-7300. Therefore, under these circumstances, when the scale of Rs. 1800-2250 had ceased to exist on 1.1.86 and the only existing scale was with regard to Rs. 4500-7300, the respondents, accordingly, fixed the salary of the petitioners within that scale giving the benefit of one increment which was a perfectly legitimate exercise of discretion in accordance with the Rules. He also claims that the grant of the benefit of pay fixation to Dr. V. Balasubramaniam was a mistake which should have been corrected and the confirmation of erroneous benefit to one party will not confer any vested right on the petitioners to claim the same benefit. He further submitted that Grace Mathew's case would not advance the petitioners case since the ratio decidendi of the case is that the benefit be extended to each categories of Scientists across the board and it does not

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deal with the actual pay fixation and since the scales of Rs. 1500-2000 and Rs. 1800-2250 were not in existence the petitioner could not claim any benefit of them.

6. For facility of reference FR 22(I)(a)(1) is reproduced:-

**F.R.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.

[Save in cases of appointment on deputation to an ex-cadre post, or to a post on ad hoc basis or on direct recruitment 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 re-fixed in accordance with this Rule

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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 one hundred], whichever is more."

7. Thus, as per FR 22(I)(a)(1) the salary of a government servant holding a post in a substantive or temporary or officiating capacity who has been promoted 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 has to 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. Therefore, the petitioners are entitled to be fixed in the pay scale of 1800-2250 after completion of their five years of assessment period

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ending on 31.12.1985 by invoking FR FR 22(I)(a)(1). However, w.e.f., 1.1.86, the revised scales of Rs. 4500-7300 became applicable in view of the 4<sup>th</sup> Pay Commission Report. It has resulted into fixation of the pay of the petitioners under the revised scale without fixing their pay in the old scale of 1800-2250 on their promotion.

8. The Indian Council of Agricultural Research, vide its letter No. 24-1/86-Cdn.(A&A) (Pt.) dated 23.2.87 informed all the Directors, Project Directors and Officers on special duty etc. regarding clarifications furnished by the Ministry of Finance, Department of Expenditure to the point and doubt raised by it.

9. To a point of doubt wherein employee is promoted from lower post to higher post w.e.f. 1.1.86 whether his pay is to be fixed with reference to the pre-revised scale applicable to the post on 1.1.86 and re-fixed under F.R.22-C in the revised scale or whether his pay is to be fixed from 1.1.86 in the revised scale applicable to the higher post without first fixing it in the pre-revised scale of pay, it was clarified that in the case of an employee promoted to a higher post w.e.f., 1.1.86, the pay in the revised scale on 1.1.86 is to be fixed first with reference to the lower post and then FR 22(C) [corresponding New FR 22(I)

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(a)(1)] applied for fixation of pay in the higher post.

10. To another point of doubt respondent No.1 has issued a clarification that in case an employee whose date of increment falls due on 1.1.86 his increment is to be allowed first in the existing scale and pay fixed in the revised scale later.

11. Vide Office Memorandum dated 23.3.1995, a clarification was issued by the Government of India, Ministry of Finance, Department of Expenditure whereby it was decided that Government servant whose increment fell on 1.1.86 may be allowed an option to get his pay re-fixed from 1.1.86 in the following manner:-

"The pay in the revised scale as on 1.1.86 may be fixed without taking into account the increment due on 1.1.86. After the pay in the revised scale is so fixed, the increment may be allowed on 1.1.86 in the revised scale".

12. This option was to be exercised within a period of six months from the date of issue of these orders. In case no option was exercised, it should be presumed that the government employee had opted to get his pay fixed by drawing increment in the pre-revised scale and thereafter, the pay being fixed in

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the revised scale in accordance with the provisions of OM No. 7 (21)-E.III/87 dated 4.5.87.

13. Vide OM No. 1/2/87-Estt. (Pay-I), dated 9.11.1987, it was decided that in all cases of promotion to the next higher grades or posts taking place on or before 1.1.86, where pay has to be fixed under F.R. 22-C, the government servants may be given an option for fixation of their pay on such promotions as under:-

"a) either their initial pay may be fixed in the higher grades or posts on the basis of F.R. 22-C straightaway without any further review on accrual of increment in the pay scale of the lower grades or posts, or

b) their pay on promotion may be fixed initially at the stage of the time scales of the promoted grades or posts above their pay in the lower grades or posts, which may be refixed on the basis of the provisions of F.R. 22-C on the dates of accrual of next increment in the scales of pay of the lower grades or posts.

All other existing conditions regarding such pay fixation will, however, continue to be applicable.

Option in terms of para above shall be exercised within a period of three months in case of officers who have been promoted on or after 1.1.86, till the date of issue of these orders. In case of promotion after the date of issue of these orders, option shall be given within one month of the date of

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promotion. Option once exercised shall be final."

14. Another OM No. 13/2/97-Estt. (Pay-I) dated 12.12.1997 was issued in reference to the earlier OM Nos. F.7/1/80-Estt.(P.1) dated 26.9.1981 and F.13/26/82-Estt. (P.I) dated 8.2.1983 and it was decided that in all cases, the Government servant subject to the fulfilment of the eligibility conditions as prescribed in the relevant recruitment rules, on his appointment to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, has an option from the date of promotion or appointment as the case may be, to have the pay fixed under the Rule FR 22 (I)(a)(1) from the date of such promotion or appointment or to have the pay fixed initially at the stage on 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 re-fixed in accordance with this rule on the date of accrual of next increment in the scale of the lower grade or post. It was emphasised that in the order of appointment or promotion, a clause to this effect is required to be incorporated.

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15. Considering the relevant FRSR Rules and various office memorandums issued by the Ministry of Defence, Department of Expenditure, New Delhi, petitioner no. 1 was granted personal pay in the pay scale of Rs. 1800-2250 (pre revised) w.e.f., 1.1.86 vide letter dated 27.6.90 and petitioner no. 2 Dr. G.C. Stivastava vide letter dated 25.4.1990 on the basis of the five yearly assessment for the period ending 31.12.1985. However, I.C.A.R. vide its Circular No. F.4-1/90-AU dated 20.12.1990, stopped implementation of practice of five yearly assessment because of merger of scales of Scientists S-3 to S-5 into one single scale of 4500-7300 w.e.f., 1.1.86.

16. The order dated 27.6.90 and 25.4.90 were recalled and the pay of the petitioners was re-fixed as of Rs. 4650/- w.e.f., 1.1.86 with the date of next increment as 1.1.97 in the revised pay scale of 4500-7300 and confirmed by the Finance and Accounts Officer, IARI, Delhi. In other words the previous orders of fixation of the pay of the petitioners in the old scale on promotion as on 1.1.86 was withdrawn. The petitioners' grievance is that their salary should have been first fixed in the scale of Rs. 1800-2250 (pre revised) on 1.1.86 and subsequently their salary should have been fixed in the revised scale of 4500-7300 from the date of their next increment i.e., 1.7.86.

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17. Petitioners opted that firstly their pay should be fixed on promotion in the pre-revised scale and subsequently in the revised scale on the date of their increment i.e., 1.1.86/1.7.86. However, the salary of Dr. V. Balasubramaniam, Principal Scientist working in DRR, Hyderabad was fixed on 11.7.1996 by placing him first in the pay scale of 1800-2250 (pre revised) w.e.f., 1.1.86. Thereafter, fixing his pay in the revised pay scale of Rs. 4500-7300(revised) w.e.f., 1.1.86 at Rs. 4950.00 by extending the benefit of the assessment up to 31.12.85. Respondents have assailed this fixation of pay of Dr. Balasubramaniam as erroneous in law and asserted that the petitioners cannot be given benefit which has been given wrongly to Dr. V. Balasubramaniam. It is not disputed that if the pay of a person is erroneously fixed, the benefit cannot be extended to the other incumbents. Respondents have also tried to justify this fixation of salary by stating that the increment of Dr. V. Balasubramaniam fell on 1.1.86. Fixation of salary of Dr. V. Balasubramaniam cannot be taken as example by us while considering the grievance of the petitioners in the matter before us.

18. Petitioners have further placed reliance on OA 1742/91, Grace Mathew Vs. The Director, Central Marine

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Fisheries Research Institute decided by the Central Administrative Tribunal, Ernakulam Bench on 25.9.1992. In this case applicant, Smt. Grace Mathew who was a scientist S-2 (Senior Scale) in the Field Lab of Central Marine Fisheries Research Institute (CMFRI), Kochi claimed grant of selection grade to her which was denied to her. She was recruited as Scientist S-I in ICAR on 23.12.76. Her assessment for the year 1985 was to be completed before 31.12.1985. As a result of the said review on 31.12.1985, she was promoted to the grade of Scientists S-2 in Agricultural Research Service vide letter dated 25.4.90 in the pay scale of Rs. 1100-50-1600 (pre-revised) w.e.f., 1.7.1986. In the meantime, the scale of Scientist working in the Agricultural Research Services were revised w.e.f., 1.1.86. As per the revised pay scales Scientist S-I were given the scale of 2200-4000 and Scientist S-2 with total service in Agricultural Research Services on 31.12.1985 exceeding 8 years were to get Selection Grade in the scale of Rs. 3700-5700. She claimed that in view of this she should have been first fixed in the scale of Rs. 2200-4000 on 1.1.86 and thereafter in the selection grade of Rs. 3700-5700 w.e.f., 1.7.86 as she had completed eight years of service on 31.12.1985.

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19. She also relied upon the case of Shri S. Muthuswamy who was placed in the scale of Rs. 3700-5700, i.e., Selection Grade, in similar circumstances. Her claim was refuted by the respondent in view of certain restrictions imposed in regard to fixation of pay of Scientist in the circular from the Deputy Director (Finance) of ICAR dated 27.3.1990.

20. It was under these circumstances, the Tribunal was pleased to hold that even as per the OM dated 20.12.90, issued by the Council, benefit of five yearly assessment completing on 31.12.1985 has to be given to the applicant and the promotion has to be given on the basis of assessment as on 31.12.1985. She was entitled for the consequential benefit of the assessment as on 31.12.85. Since she became Scientist S-2 w.e.f., 1.7.86 and had completed more than eight years of service as on 1.7.86, she was entitled to be designated as Scientist Selection Grade and her pay should be fixed in the scale of Rs. 3700-5700. The letter dated 20.12.1990, according to the Tribunal, did not alter the situation. It is relevant to point out that this order was challenged in the Supreme Court of India in Civil Appeal No. 6063/1993. However, the appeal resulted into dismissal.

21. In view of this judgment, Indian Council of Agricultural Research issued letter dated 6.9.1995 whereby it communicated its decision to extend the benefit of five yearly assessment for the period ending 31.12.1985 w.e.f., 1.1.1986/1.7.1986 to all similarly placed Scientists in S-1 and S-2 Grades vide office order dated 15.12.1994 with a clarification that the benefit of promotion w.e.f., 1.7.86 was admissible to the ARS Scientists in all grades and it was not restricted to the scientists who were promoted to the erstwhile S-1 & S-2 grades w.e.f., 1.1.86/1.7.86. It was further directed that necessary action shall be taken to settle the cases of similarly placed scientists in all the grades.

22. The grievance of the petitioners is that this communication has not been implemented and the representations have been rejected. They have been denied the benefit of their fixation of salary initially on promotion at the pre-revised scale and subsequently in the revised scale w.e.f., 1.1.86/1.7.86. Learned counsel for the respondent has tried to distinguish Grace Mathew Vs. The Director, Central Marine Fisheries Research Institute & Ors from the facts and circumstances of this case and according to him the said decision is not applicable to the present petitioner. Letter dated 6.9.95 is still in force and has

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not been withdrawn. The Tribunal did consider regarding the extent of benefit of five yearly assessment for the period ending 31.12.1985 and observed that the Grace Mathew having been given the assessment benefit of five years as on 31.12.1985 was promoted as Scientist S-2 w.e.f., 1.7.86 accordingly. Since she had completed more than eight years of service in ARS on 31.12.85, she was entitled to the Scientist Selection Grade in the pay scale of 3700-5700 w.e.f., 1.7.1986, the date of her increment.

23. While dismissing the Civil Appeal preferred by the Department against the order of the Tribunal, the Hon'ble Judges of Apex Court rejected the distinction made by the Government between the persons who were promoted as S-2 before 1.1.86 and those who were promoted, thereafter, with the observations that simple language of the memorandum did not suggest any such thing. It was observed that at whatever point of time any person is promoted from S-1 to S-2 his pay scale has to be fixed either of the two grades keeping in view the factum of the case.

24. Thus, it is clear that in view of the observation made by the Tribunal and finally by the Hon'ble Judges of the Supreme

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Court, letter dated 6.9.95, was circulated extending the benefit of five yearly assessment for the period ending 31.12.85 w.e.f., 1.1.86/1.7.86 of all similarly placed scientists in all grades. As already observed this letter is still in force and has not been withdrawn. The petitioners in this case, therefore, cannot be denied the benefit of promotion in the pay scale of 1800-2250 on the basis of five yearly assessment as on 31.12.1985 on the plea that the pay scale of Rs. 1500-2000 regulating the pay scale of Scientist S-3 and the higher scale of Rs. 1800-2250 stood merged into one scale of Rs. 4500-7300 w.e.f., 1.1.86 by virtue of 4<sup>th</sup> Pay Commission Report. The respondent had rightly fixed the salary of the petitioner no. 1 vide letter dated 27.6.90 and that of petitioner no. 2 vide letter dated 25.4.90 on the basis of five yearly assessment for the period ending 31.12.85 in the pay scale of Rs. 1800-2250 (pre revised) as personal pay to them w.e.f., 1.1.86 which was erroneously withdrawn later on. Petitioners are entitled to fixation of their salary in the pay scale of 1800-2250 (pre revised) as on 1.1.86 and thereafter, in the revised scale of Rs. 4500-7300 under 22(1) (a)(i) in the higher post.

25. The Tribunal in our view without correctly appreciating the provisions of Rule 22(1) (a)(i) dismissed the OA

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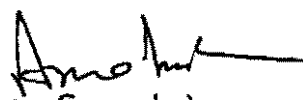
of the petitioners while observing that since the revised scale both for the lower and the higher post applicable to the petitioners i.e., 1500-2000 and 1800-2250 happened to be the same i.e., 4500-7300 the benefit of FR 22(1) (a)(i) could not apply. Similarly, proviso to FR 22(1) (a)(i) has been wrongly interpreted that the pay scale in the lower scale has to be different from that of the higher post and since the pay scale in the lower post and in the higher post happened to be same i.e., 4500-7300, the petitioners were not entitled to the benefit of FR 22(1) (a)(i). As already discussed, at the time when the petitioners were promoted w.e.f., 1.1.86 on the basis of five yearly assessment ending 31.12.1985 in the higher post in pay scale of 1800-2250 from Scientist S-3 they were drawing their pay in the pay scale of Rs. 1500-1800. The case of the petitioners squarely falls within the scope of clarification furnished by the Ministry of Finance to the Indian Council for Agricultural Research letter no. 24-1/86-Cdn.(A&A) dated 8.10.86. Clarification to point 2 raised by the counsel makes it clear that in the case of an employee promoted to a higher post with effect from 1.1.86 the pay in the revised scale on 1.1.86 is to be fixed first with reference to the lower post and then FR 22(C) applied for fixation of pay in the higher post. The petitioners are also entitled to fixation of their pay in view of the

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letter of ICAR dated 6.9.1995.

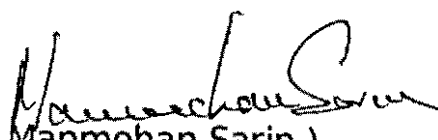
26. Hence, the order of the Tribunal dated 1.5.2000 is hereby quashed.

27. Writ petition is allowed. The respondents are directed to fix the pay of the petitioners firstly in the time scale of Rs. 1800-2250 (pre revised) on promotion w.e.f., 1.1.86 and thereafter, re-fix their pay in the revised pay scale of Rs. 4500-7300 in accordance with Rule 22 (1)(a) (i) of the FRSR Rules within a period of three months from the date of this order.

The petition stands disposed of.

  
( Aruna Suresh )  
Judge

September 13<sup>th</sup>, 2006  
rs

  
( Manmohan Sarin )  
Judge