

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

O.A/350/564/2014

Date of Order: 05.03.2020

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

Manohar Kumar, aged about 35 years, son of Late Nanda Kishore Prasad Yadav, working as Junior Hindi Translator in the office of Central Excise, Customs & Service Tax under the Siliguri Commissionerate, C. R. Building, Haren Mukherjee Road, Hakim Para, Siliguri – 734001 and residing at C/o Dibu Mukherjee, Plot No. B-4, Tea Auction Road, Green Park, Mallaguri, Siliguri – 734405.

--Applicant

-Versus-



1. Union of India, service through the Secretary, Ministry of Finance, Department of Revenue, 15, Safdarjung Road, Near Race Course, New Delhi – 110003.
2. The Secretary, Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, North Block, New Delhi – 110001.
3. The Secretary, Ministry of Finance, Department of Expenditure, Implementation Cell, North Block, New Delhi 110001.
4. The Additional Commissioner, (P&V), Central Board of Excise & Customs, Adarshdham Building, Vapi Daman Road, District – Valsad, Gujarat – 396191.
5. The Assistant Chief Accounts Officer, Central Excise, Commissionerate, Siliguri, office of the Commissioner, Central Excise, Customs & Service Tax, C. R. Building, Haren Mukherjee Road, Hakim Para, Siliguri – 734001.

--Respondents

For The Applicant(s): Mr. P. C. Das, counsel

For The Respondent(s): Mr. L.K. Chatterjee, counsel
Mr. M. K. Ghara, counsel

O R D E R

Per: Ms. Bidisha Banerjee, Member (J):

Heard both sides.

This application has been preferred to seek the following reliefs:

"a) To quash and/or set aside the officer letter dated 21.11.2013 issued by the Senior Accounts Officer office of Pay & Accounts, Central Excise, Customs & Service Tax, Vapi of office of Central Board of Excise & Customs whereby and whereunder it has been decided that the applicant is not entitled to get the Grade Pay of Rs. 4600 which has been fixed in terms of the office memos of the Government of India, Ministry of Finance, Department of Expenditure, Implementation Cell dated 24.11.2008 and 27.11.2008 and 13.11.2009.

b) To quash and/or set aside the impugned decision of the Assistant Chief Accounts Officer, Central Excise, Commissionerate, Siliguri office of the Commissioner, Central Excise, Customs and Service Tax in respect of recovery of excess amount from the salary of the present applicant vide office order dated 16.01.2014 which is absolutely illegal and arbitrary by violation of the office memos of the government of India, Ministry of Finance Department of Expenditure, Implementation Cell dated 24.11.2008 and 27.11.2008 and 13.11.2009 and against the decision of Learned Central Administrative Tribunal, Ernakulam Bench dated 14th October, 2013.

c) To declare that the fixation order which has been made by the respondents authority dated 5.2.2013 in respect of granting pay scale of Rs. 4300-34800 is in respect of the present applicant is in accordance with law and in accordance with the office memos of the Government of India, Ministry of Finance, Department of Expenditure, Implementation Cell, dated 24.11.2008 and 27.11.2008 and 13.11.2009 and in the light of the decision of Learned Central Administrative Tribunal, Ernakulam Bench dated 14th October, 2013.

d) To quash and/or set aside the Department of Personnel & Training's office memo dated 19th September 2013 which is clearly contradictory to the office memos of the Government of India, Ministry of Finance Department of Expenditure, Implementation Cell dated 24.11.2008 and 27.11.2008 and 13.11.2009."

2. On 25.04.2014, the following order was passed by this Bench:

"Issue notice to the respondents. Ld. counsel for the applicant is directed to file affidavit of service in course of this date and to re-serve the respondent along with the copy of this order.

2. The respondents shall file reply within 4 weeks indicating their stand with regard to the Larger Bench decision in OA 656/12 and OA 953/12 and DOPT OM dated 19.9.12 which the Ld. counsel for the applicant alleges to run contrary to the Larger Bench decision wherein Jr. Hindi Translator shall be entitled to Grade Pay of Rs. 4600. Rejoinder, if any, be filed within 2 weeks thereafter. As the impugned order violates the Larger Bench decision it shall remain stayed till the next date. List on 23.6.2014.

3. Plain copy of this order be handed over to Ld. Counsel for communication and compliance."

The Interim order was continued from time to time.



3. Today at hearing, Ld. counsel for the applicant brought to our notice that in compliance of the interim order, the Grade pay of Rs. 4600/- was restored and recovery of excess payment was held up. The order dated 03.07.2015 records as follows:

"Sub: Compliance of Order dated 25.04.2014 of CAT, Calcutta -reg.

Ref:- O.A No. 350/00564/2014 – Sri Manohar Kumar Vs. U.O.I & Ors.

Please refer to your letter dated 19-06-2015 on O.A No. – 00564/2014 Sri Manohar Kumar Vs Union of India & others..

1. Restoration of Salary in Higher Grade:



In pursuance of the Hon'ble CAT (Interim) order dated 25-04-2014 the competent authority has restored Grade Pay of Sri Manohar Kumar, Jr. Hindi Translator at **Rs 4600/- in PB 2 of Rs. 9300/ to Rs 34800/-** on 19.03.2015.

The Payment for the month from January, 2015 to March, 2015 at enhanced Grade Pay of Rs. 4600/- have been drawn by Sri Manohar Kumar, Jr. Hindi Translator and he drawn arrears of Dearness allowances also subsequently for the enhanced Grade Pay of Rs. 4600/- for the month of January, 2015 to March, 2015 resulted out of enhanced DA from 107% to 113% w.e.f 01.01.2015.

2. Held up of recovery of excess payment of Rs 5,74,103/-

(i) The Assistant Chief Account officer, Vapi informed vide letter dated 16-01-2014 to the ACAO, Siliguri Commissionerate to re-fix his Grade Pay (GP) of Rs. 4,200/- and to recover the amount of excess payment of Rs. 5,74,103/- drawn during the period from 17-04-2006 to 31-03-2014.

(ii) But as per order (Interim) of Hon'ble CAT Calcutta dated 25-04-2014 the competent authority **with held recovery process of the amount of Rs. 5,74,103/- alleged as excess payment** drawn during the period from 17-04-2006 to 31-03-2014 as informed by the Assistant Chief Account officer, Vapi.

3. Payment of arrear of salary amount for short payment.

(A) In pursuance of information received from the Assistant Chief Account officer, Vapi Siliguri Commissionerate paid salary to Sri Manohar Kumar, Jr. Hindi Translator at Grade Pay of Rs. 4200/- with effect from 01-04-2014 to 31-03-2015 which resulted short payment of salary of Rs. 1,16,148.00.

(B) In terms of interim order dated 25-4-2014 of the Hon'ble CAT an **Arrear Bill** vide bill No. 16/ARR-PAY/Slg/Com/15-16 dated 01-4-2015 of **short payment of salary amounting to Rs. 1,16,148.00** for the period 01-04-2014 to 31-03-2015 was sanctioned and sent to **PAO CBEC, Siliguri** on 07-04-2015 for immediate payment to Sri Manohar Kumar."

4. Ld. counsel further invited our attention to a decision in O.P. (CAT).

467 of 2012 (UOI & Ors vs. T. P. Leena), which records the following:

"The contention of the petitioners is that the Tribunal ought not to have found that the pay scale of Junior Hindi Translator was revised to Rs.7450-11500 w.e.f 1.1.2006 because the said pay scale is attached to the post of Senior Hindi Teacher and not to the post of Junior Hindi Translator. According to the petitioners, since grade pay of Rs.4600/- is attached to the post of Senior Hindi Translator, the Tribunal ought to have found that the respondent who is Junior Hindi Translator was only to be treated as continuing in the very initial grade pay of Rs.4200/- instead of in the grade pay of Rs.4600/-. According to them, the initial grade pay of the respondent could only be taken as Rs.4200/-. Based on same, it is contended that the respondent would be entitled to the first and second financial upgradations only with the grade pay of Rs.4600/- and Rs.4800/- respectively. It is their case that as the respondent was drawing the grade pay of Rs. 4600/- from 1.1.2006 as a consequence of the first financial upgradation under ACP Scheme which was in force from 9.8.1999 till 31.8.2009, she is eligible only for the second financial upgradation on completion of 20 years that too, only with the grade pay of Rs.4800/-. Essentially, the contentions of the petitioners would reveal that according to them, paragraph 5 of the OM dated 13.11.2009 is not applicable to the respondent. We have already adverted to the reasoning conclusions and findings of the Tribunal. They were adverted to in detail only to see whether they invite an interference. In our considered view, the Tribunal has carefully and correctly considered the circumstances that would make paragraph 5 of the MACP Scheme applicable in a given case. Bearing in mind the admitted factual position that on merger of the scales of pay of Rs.5000-8000 and Rs.5500-9000, the pay scales in the revised pay structure, the pay band as also the grade pay in respect of the said erstwhile scales of pay remained the same viz., Rs.9300- 34800, pay band 2 and Rs.4200/- respectively and on applying the policy under the scheme in the case of the respondent with reference to her service particulars, as taken note of hereinbefore, we find no reason to decline the eligibility of the respondent for financial upgradation in view of clause 5 of the MACP.

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For the foregoing reasons, we find no jurisdictional or legal infirmity in the order passed by the Tribunal in holding the respondent entitled to first financial upgradation in the pay scale Rs.9300-34800 with the grade



For the foregoing reasons, we find no jurisdictional or legal infirmity in the order passed by the Tribunal in holding the respondent entitled to first financial upgradation in the pay scale Rs.9300-34800 with the grade pay of Rs.4800/- w.e.f 1.9.2008 and grade pay of Rs.5400/- in the same pay scale w.e.f. 30.3.2010. Consequently, there is no reason for interfering with the order to grant arrears pursuant to such fixation of pay to the respondent as well. In the circumstances, this application is liable to fail. Accordingly, it is dismissed."



5. Based on the aforesaid decision, ld. counsel for the applicant would claim that since a Jr. Hindi Translator upon grant of 1st MACP would be entitled to a Grade pay of Rs. 4800/-, a Jr. Hindi Translator's Grade Pay should be Rs. 4600/- and not Rs. 4200/-.

6. We note that the decision of the Hon'ble High Court in T.P. Leena, supra, has not been interfered with by the Hon'ble Apex Court in SLP No. 28536/2012, dated 15.10.2012.

7. Ld. counsel for the applicant would also cite the Full Bench's decision in OA/953/2012 (T.M. Thomas vs. UOI & Ors), where the Full Bench of the Tribunal was considering whether JHTs in the Subordinate Officers of the Central Government are entitled to Grade Pay of Rs. 4600/- from 01.01.2006 on the basis of OM dated 13.11.2009 or not, and the Full Bench observed that, "Thus it has to be accepted that the question, as to whether the JHTs are entitled for Grade Pay of Rs. 4600/- on the basis of the IM dated 13.11.2009 was answered positively in O.A 107/2011 and was confirmed by the Hon'ble High Court in OP (CAT) No. 467/2012" and held as under:

"22. In the circumstances, the reference as to whether JHTs in the Subordinate Offices of the Central Government are entitled to Grade Pay of Rs. 4600/- from 01.01.2006 on the basis of the OM dated 13.11.2009 or not has to be held to be in favour of the applicants and in

hold that both the OAs are liable to be allowed and the same are accordingly allowed."

8. Such being the admitted position, we have no hesitation to hold that the present applicant, a Jr. Hindi Translator, would be entitled to Grade Pay of Rs. 4600/-, in terms of the cited orders. We order accordingly. Let appropriate orders be issued within 3 months, with consequential benefits of arrears etc. No costs.



(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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