

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA**

OA No./050/00232/2020

Due to COVID-19 Pandemic, case has been heard & decided through  
Video Conferencing

Date of CAV : 04.12.2020

Date of order : 27.01.2021

**CORAM**

Hon'ble Shri M.C. Verma, Member [ J ]  
Hon'ble Shri Sunil Kumar Sinha, Member [ A ]



NARENDRA KUMAR SINHA SON OF LATE B.K.P. SINHA, ADMINISTRATIVE OFFICER-III, OFFICE OF THE COMMISSIONER OF INCOME TAX (ADMN & TPS), CR BUILDING, BIRCHAND PATEL PATH, PATNA-800001 (BIHAR).....  
APPLICANT

BY ADVOCATE : SHRI M.P.DIXIT

**VERSUS**

1. THE UNION OF INDIA THROUGH THE SECRETARY, MINISTRY OF FINANCE, GOVERNMENT OF INDIA, DEPARTMENT OF REVENUE, NEW-DELHI-110001.
2. THE CHAIRMAN, CENTRAL BOARD OF DIRECT TAXS, MINISTRY OF FINANCE, GOVERNMENT OF INDIA, DEPARTMENT OF REVENUE, NEW-DELHI-110001.
3. THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX (BIHAR & JHARKHAND), CR BUILDING, BIR CHAND PATEL PATH, PATNA-800001.
4. THE COMMISSIONER OF INCOME TAX (ADMN & TPS), CR BUILDING, BIRCHAND PATEL PATH, PATNA-800001.

..... RESPONDENTS.

BY ADVOCATE: SHRI H.P.SINGH

**ORDER**

**Per M.C.Verma- Member [Judicial]**

1. The applicant, being aggrieved by Order dated 26.02.2020 (Annexure-A/8), whereby his pay scale has been reduced again from Rs.1350-2200 to Rs.1200-2040 and being aggrieved by Order dated

17/18.03.2020 ( Annexure -A/11), whereby recovery from his salary towards overpayment has been directed, has preferred instant OA seeking quashing of Orders dated 26.02.2020 & 17/18.03.2020 and a direction/command to the respondents to refund the amount, if any recovered, along with interest.

2. The facts of the case lie within a narrow compass and have been stated in detail in the pleading of the OA. At threshold it is significant and necessary to state, for the purpose of adjudication of this matter the backdrops indisputable facts emerged from the records, which are as under:-



(i) The applicant was appointed, on 26.03.1990 as Data Entry Operator [in short DEO], in the pay scale of Rs.1200-2040 [Annexure-A/1] and while working as DEO in aforesaid pay scale of Rs.1200-2040 he, vide office order no.90 of 2003-04 dated 11.11.2003 was allowed the benefit of upgraded pay scale of Rs.1350-2200 with effect from the date of his initial appointment in the Department, i.e. from 26.03.1990 but on the same date the respondents, vide corrigendum dated 11.11.2003 [Annexure-A/2] recalled the office order dated 11.11.2003 whereby benefit of upgraded pay scale was granted on the ground that he was DEO Grade-A before cadre restructuring.

(ii) The applicant thereafter, filed OA No.961/2004 before this Tribunal which was allowed on 30.09.2004 [Annexure-A/3], Review Application No.35/2004 filed by the applicant to correct some typographical error in the Order passed in OA No.961/2004

was allowed on 05.10.2004 [Annexure-A/4] but Review Application No.48/2004 filed by the respondents was dismissed on 06.01.2005.

(iii) Respondents, assailing the order passed by the Tribunal filed a writ petition, CWJC No.3153/2005 on the file of Hon'ble Patna High Court which was dismissed on 25.07.2006 [Order's copy Annexure-A/6] and SLP [Civil] No. 2911/2008 preferred by the respondents was also dismissed by the Hon'ble Supreme Court on 16.03.2009 [Order's copy Annexure-A/7].



(iv) That after dismissal of the SLP, the respondents complied with the order passed by this Tribunal and extended the benefit of pay scale of Rs. 1350-2200.

(v) **Now** vide Order dated 26.02.2020 [Annexure-A/8] pay scale of applicant has again been ordered to be reduced from pay scale of Rs.1350-2200 to scale Rs.1200-2040 from the date of his appointment as DEO and recovery from his monthly salary has been directed. Impugned Order shows that in terms of the judgment dated 09.12.2014 passed in Civil Appeal No.10862-67 of 2014, the pay of the applicant has been re-fixed in the scale of Rs.1200-2040 w.e.f. 26.03.1990 and the excess salary paid has to be recovered accordingly.

3. Mentioning the past history, quoted above as to how the applicant was allowed the benefit of upgraded pay scale from the date of his initial appointment in the Department, applicant did plead in instant OA that on 27.02.2020 he received an order dated 26.02.2020 [Annexure-A/8]



whereby his pay scale of Rs.1350-2200 has been ordered to be reduced to the pay scale of Rs.1200-2040 w.e.f. 26.03.1990, i.e. from the date of his appointment as DEO and also about recovery from his monthly salary towards overpayment. He pleaded that said order, after a lapse of 30 years without any show cause, is illegal, arbitrary and without application of mind as well as punitive in nature as also against the natural justice and therefore is unsustainable in the eye of law for the simple reason that he was upgraded in the pay scale of Rs.1350-2200 by the order of this tribunal and said order of the Tribunal has been upheld by Hon'ble High Court and also by the Hon'ble Supreme Court. That the order dated 09.12.2014 passed by the Hon'ble Supreme Court in the case of Secretary, DOPT vs. T.V.L.N. Mallikarjuna Rao and Others (as mentioned in the impugned order) is not applicable in the case of the applicant since it was on different facts and the applicant was also not a party in that case and that the applicant's case is entirely different from the case of Mallikarjuna Rao & Ors. Applicant also pleaded that he filed a detailed representation, dated 02.03.2020 before the respondents requesting them to recall the impugned order but the respondents did not consider his request and rejected his representation vide order dated 17/18.03.2020 [Annexure-A/11].

4. The OA was filed on 20/3/2020 and thereafter the applicant has also did prefer one MA dated 20/7/2020, bearing No.101/2020 stating that applicant is going to superannuate on 31/7/2020 and the respondents has issued letter ( letter dated 23/6/20, Annexure P/1 of the MA) directing the recovery of alleged overpaid amount of Rs.9,48,241/- from his retiral dues

and contending that realizing/ recovery of the amount of Rs.9,48,241/- shall subject to outcome of the OA. It has been prayed in the MA to direct the respondent authorities to ensure payment of entire pensionary benefits including pension without giving effect to the impugned orders.

5. The OA was filed on 20/3/2020 but due to Covid-19 it could come on Board only on 22/7/2020 and on that day, after hearing the applicant's counsel and the counsel of respondents, who also has appeared after having been served with the advance copy of the OA, this Tribunal pleased to stay the recovery.



6. The respondents filed their written statement and contested the case. According to them the order dated 17/18.03.2020, an order under challenge, is a communication from the office of PCCIT, Patna to the applicant, intimating him that his pay has been re-fixed as a result of implementation of the judgement of Hon'ble Supreme Court and therefore, it cannot be reversed. The respondents have also given the background of the applicant stating that he joined the Department on 26.03.1990 as Data Entry Operator in the pay scale of Rs.1200-2040 later, being a graduate, he was placed in the pay scale of Rs.1350-2200 on 11.11.2003 but was reverted to 1200-2040 on 11.11.2003, applicant did file OA No.961/2003 before the Central Administrative Tribunal, Patna Bench, Patna claiming that he should be given the pay scale of Rs.1350-2200 on the basis of Department of Expenditure OM No.F7[1]/IC/86[44] dated 11.09.1989 (Sheshadri Committee Recommendation] and the Central Administrative Tribunal, Patna Bench, vide its order dated 30.09.2004 [Annexure-A/3], passed in OA 961/2003 and vide order dated

05.10.2004 passed in RA No.35/2004 [Annexure-A/4] directed to grant the scale of Rs.1350-2200 to him w.e.f. the date of his appointment. Later, the appeals filed by the Govt. against this order were dismissed by Hon'ble High Court of Patna [Annexure-A/6] and Hon'ble Supreme Court [Annexure-A/7]. Accordingly, the applicant was placed in the scale of Rs.1350-2200 w.e.f. the date of his appointment, i.e. from 26.03.1990.



7. For justifying the impugned orders it has been pleaded by respondents that CBDT issued letter from F.No.C-18013/3/2011 Ad VII dated 31.03.2011 [Annexure-R/2] giving direction that in all such cases of Data Entry Operators who were recruited against the Recruitment Rule, that prescribed matriculation as the minimum qualification but were graduate at the time of recruitment/entry in service, will be given all the consequential benefits with effect from their entry in service including grade [DEO-'B'] and pay scale but consequent upon the judgment of the Apex Court in Civil Appeals No.10862-67 of 2014 [Annexure-A/9], the CBDT, vide its letter dated 01.05.2019 [Annexure-R/3] observed that Boards letter dated 31.03.2011 [Annexure-R/2] has become infructuous and therefore stands withdrawn ab-initio. That all the CCAs were directed to implement the judgment dated 09.12.2014 passed by the Hon'ble Supreme Court and re-fix the pay accordingly and, therefore, the in terms of the judgment dated 09.12.2014 in Civil Appeal No.10862-67 of 2014 (case titled of Secretary, Department of Personnel Public Grievances and Pensions vs. T.V.L.N. Mallikarjuna Rao and Others). The pay of applicant has been re-fixed and he was placed in the scale of Rs.1200-

2040 w.e.f. his date of appointment i.e. 26.03.1990 and the excess salary paid to the applicant is to be recovered accordingly.

8. Learned counsel Shri M.P.Dixit Advocate, appearing for the applicant contended that decision dated 09.12.2014 passed in the case of Secretary, DOPT vs. T.V.L.N. Mallikarjuna Rao and Others cannot be said to cover the case of the applicant nor it is applicable in the case of the applicant since the applicant was not a party in that case nor his SLP was referred to anywhere in the judgement passed by the Hon'ble Supreme Court. He urged that in fact the applicant was initially appointed in the pay scale of Rs.1200-2040 and subsequently upgraded by virtue of Tribunal's order in the pay scale of Rs.1350-2200 and the respondents of Civil Appeal No. 10862-67/2014 were in the pay scale of Rs.1150-1500 and, therefore, the applicant's case is entirely different from Mallikarjuna Rao's case.



9. Shri H.P. Singh Advocate, learned Senior Standing Counsel, appearing for the respondents submitted that in terms of the judgment dated 09.12.2014 passed in Civil Appeal No.10862-67 of 2014 the pay of the applicant has been re-fixed, that the Hon'ble Apex Court in para 28 of said judgment observed that both the Tribunal and the Hon'ble High Court failed to notice that the Data Entry Operator-B in the scale of Rs.1350-2200 is a promotional post and only those who have six years' experience are eligible for such promotion and that the promotion grade and the entry grade cannot have the same pay scale. Learned counsel urged further that the claim of applicant of pay scale of Rs.1350-2200 is contrary to the observation of the Hon'ble Apex Court. That direction of

the Tribunal to grant the applicant pay scale of Rs.1350-2200 was challenged and when their writ petition was dismissed, respondents preferred SLP also but their SLP was dismissed by Hon'ble Supreme Court in limine, without any explicit findings and that the judgment of the Hon'ble Supreme Court dated 09.12.2014 has been pronounced giving reason, after considering various similar cases in details and therefore, the ratio of this judgement is fully applicable to the case of the applicant especially because of specific rulings of the Hon'ble Supreme Court given in paragraph 32 of the judgment. He referred paragraph 28 & 32 of the judgment.



10. The respondent's counsel further has submitted that the applicant has referred to Para 4 of the DOPT OM F.No.8/03/2015-Estt [Pay-1] dated 02.03.2016 and claims that no recovery should be made in accordance with Rafiq Masih case. However, Para 4 is applicable in cases where payments has mistakenly been made by the employer but in this case, payments were made in pursuance to the order passed by the Tribunal which was held to be wrong by Hon'ble Apex Court vide its judgment and order dated 09.12.2014 [Annexure-A/9]. He concluded his submission stating that in instant case fixation/re-fixation of pay has been done in order to give effect to the judgement of the Hon'ble Supreme Court passed in Civil Appeal No.10862-67 of 2014.

11. Having heard the counsel of parties to lis and from perusal of pleadings, the issue evolved for adverting is when benefit of upgraded pay scale to the applicant had been extended pursuant to final outcome of litigation, in between the applicant & the respondents, which had reached



up to Hon'ble Supreme Court thereafter whether under the cover of judgement of the Hon'ble Supreme Court passed in Civil Appeal No. 10862-67/2014 said benefit could legally be withdrawn by the respondents by re-fixing and by reducing the pay scale of the applicant, particularly when the applicant was not a party in Civil Appeal No. 10862-67/2014 nor judgment passed in his case was directly or indirectly was under challenge in Civil Appeal No. 10862-67/2014 ?



12. As observed by Hon'ble Supreme Court, in Para 24 & 25 in decision of Civil Appeal No. 10862-67/2014, prior to 1986 there were in existence of two grades of operators viz. Junior Key Punch Operators in the scale of Rs.260-400 and Senior Key Punch Operators in the scale of Rs.350-560. The pay scales of all these posts was revised to Rs.950-1500 and Rs.1200-2040 respectively w.e.f. 1.1.1986 pursuant to recommendation made by the Fourth Pay Commission. These posts came to be re-designated as Data Entry Operator, Grade-A and Data Entry Operator, Grade-B in the scale of Rs.1150-1500 and Rs.1350-2200 respectively pursuant to the Office Memorandum dated 11.9.1989 whereby the Electronic Data Processing Posts have been reorganized.

13. With a view to consider different pay scale on the recommendations of the Fourth Pay Commission, a Committee was constituted to suggest reorganization of the existing Electronic Data Processing Posts and on recommendation of the Committee, the Government of India issued Office Memorandum dated 11.9.1989 prescribing therein different pay scales and different grades of Data Entry Operators besides the mode and manner of recruitment and qualifications

for each entry grade post as well as eligibility and experience for promotional grades.

14. Electronic Data Processing Posts, as per aforesaid Office Memorandum dated 11.9.1989 are:- Data Entry Operator Grade-A in pay scale of Rs. 1150-1500, Data Entry Operator Grade-B in pay scale of Rs. 1350-2200 & Data Entry Operator Grade-C in pay scale of Rs 1600-2660.



Data Entry Operator Grade-A has been prescribed as a entry grade post for Higher Secondary with knowledge of Data Entry work whereas Data Entry Operator Grade-B, the criteria provided is: *“This will be entry grade for graduate with knowledge of Data Entry work of promotional grade for Data Entry Operator Grade-A”*. It has also been provided that if as a result of above review, pay scale of any post undergoes a change the pay of existing incumbents will be fixed as per fundamental Rule 23 read with FR 22(a)(ii).

15. The DOPT, based on the suggestion of aforesaid Office Memorandum dated 11.9.1989 forwarded a copy of the Model Recruitment Rules, by OM No. AB14017/75/89- Estt.(RR) dated 13<sup>th</sup> February 1990 for various categories of Data Entry Operators. Said Model Recruitment Rules provides the grades of DEO with scales of pay and qualification are:- Data Entry Operator Grade-A in pay scale of Rs. 1150-1500, Data Entry Operator Grade-B in pay scale of Rs. 1350-2200 & Data Entry Operator Grade-C in pay scale of Rs 1600-2660. Data Entry Operator Grade-A has been prescribed as a entry grade post for Higher Secondary with knowledge of Data Entry work whereas Data Entry Operator Grade-B, the criteria provided is: *“This will be entry grade for*

*graduate with knowledge of Data Entry work of promotional grade for Data Entry Operator Grade-A failing which by transfer on deputation, and percentage by direct recruitment”.*

16. Rule regulating the method of recruitment to group ‘C’ (Technical) posts in the Electronic Data Processing Discipline of the field of the Central Board of Excise and Custom, commonly known as the “Electronic Data Processing, Discipline (Group ‘C’ Technical Posts) Recruitment Rules 1992 has been notified on 03/04/1992 and said Rule also provide Data Entry Operator Grade-A as a entry grade post for Higher Secondary with knowledge of Data Entry work whereas Data Entry Operator Grade-B according to these Rules, is *entry grade for graduate with knowledge of Data Entry work of promotional grade for Data Entry Operator Grade-A failing which by transfer on deputation, and percentage by direct recruitment”.*



17. Impugned Order of the OA in hand shows that in terms of the judgment dated 09.12.2014 passed in Civil Appeal No.10862-67 of 2014, the pay of the applicant has been re-fixed in the scale of Rs.1200-2040 w.e.f. 26.03.1990 and the excess salary paid has to be recovered accordingly. As is evident from Para 1 & 32 of the judgment dated 09.12.2014 passed in Civil Appeal No.10862-67 of 2014 respondents/stake holders in that case were posted in different departments in Ministries of Union of India as Data Entry Operator Grade-A and they moved applications before the Central Administrative Tribunal for grant of Pay scale w.e.f. 01/01/1986. The Tribunal allowed their application and the order passed by the Tribunal was affirmed by

High Court. It has already been laid down in OA No.961/2004 that the applicant was Data Entry Operator Grade-B and that finding has since attained finality.

18. At the cost of repetition it is reiterated herein that Applicant was appointed, on 26.03.1990 as Data Entry Operator in Income Tax Department, in the pay scale of Rs.1200-2040 and when after allowing him the benefit of upgraded pay scale of Rs.1350-2200 was recalled, vide corrigendum dated 11.11.2003 [Annexure-A/2] on the ground that he was DEO Grade-A before cadre restructuring, he filed OA No.961/2004 before this Tribunal which was allowed on 30/9/2004, and it was also observed in Para 8 the decision of the OA that applicant was never deemed to be in pay scale of DEO grade A but would be deemed in DEO grade B. The Relevant portion of in Para 8 the decision of the OA is reproduced herein below :-



*“8. The main ground of denying the applicant the pay scale of Rs.1350-2200 is that the applicant was placed in Grade-‘A’ at the time of restructuring. It is quite clear that when the applicant was appointed in the year 1990 there was no classification of Grade-‘A’, ‘B’ and ‘C’. The applicant, who was Graduate at the time of appointment, was appointed as DEO in the pay scale of Rs.1200-2040, whereas, for Grade-‘A’, the pay scale is Rs.1150-1500, whereas, for Grade-‘B’ it is Rs.1350-2200. It would, therefore, be clear that the applicant was never from the date of his appointment deemed to be in the pay scale of DEO Grade ‘A’. Besides, as per submissions made by the applicant, which has not been contested, the DEO with Matriculation certificate were to be designated as Grade ‘A’ and those with Graduate qualification were to be designated as Grade ‘B’. Therefore, it would logically follow that the applicant would be deemed to be in Grade ‘B’ because he could not have been given a lower pay than what was given to him at the time of appointment. ....”*

19. Needless to say that aforesaid decision dated 30/9/2004 passed in OA No.961/2004 has since attained the finality as the CWJC No.3153/2005 assailing said decision on the file of Hon'ble Patna High Court has been dismissed, and the SLP [Civil] No. 2911/2008 preferred by the respondents has also been dismissed on 25.07.2006 and the respondents, thereafter had extended the benefit of pay scale of Rs. 1350-2200 to the applicant.



20. Learned counsel for respondent vehemently has also argued that the judgment of the Hon'ble Supreme Court dated 09.12.2014 has been pronounced giving reason, after considering various similar cases in details and in paragraph 32 of the judgment of Hon'ble Supreme Court have held that any decision rendered by any Tribunal or any High Court contrary to their this decision is wrong and therefore the previous order in favour of applicant is of no significance.

21. Paragraph 32 of the judgment of Hon'ble Supreme Court passed in Civil Appeal Nos.10862-67 of 2014 is concluding Para and it reads:-

*“ 32. In view of the findings recorded above we hold that Data Entry Operators Grade-A are not entitled for Scale of pay of Rs.1350-2200 w.e.f. 1.1.1986 or thereafter merely on the basis of their qualifications or for the fact that they have completed their period of requisite service. **We further hold that any decision rendered by any Tribunal or any High Court contrary to our decision is wrong.** Further in view of the reasons and findings recorded above while we hold that the respondents are not entitled to the benefit as they sought for before the Tribunal or the High Court, all the impugned orders passed by the CAT Benches and the High Courts in favour of the respondents being illegal are set aside.”*



22. It is true that in said Para Hon'ble Supreme Court have held that any decision rendered by any Tribunal or any High Court contrary to their decision is wrong but said decision has not been quashed. Further as found in Para 11 of the judgment, appellant of Civil Appeal No.10862-67 of 2014 brought, before Hon'ble Supreme Court, only four judgments & Order passed by the different Benches of the Central Administrative Tribunal, namely, [i] Judgement dated 28.09.1999 passed by CAT Jabalpur Bench in O.A. No.142/1995; [ii] Judgement dated 01.10.2001 passed by CAT Lucknow Bench in OA No.150/2001; [iii] Judgement dated 27.04.2004 passed by CAT Mumbai Bench in OA No. 737/2002; [iv] Judgement dated 19.12.2006 passed by CAT Madras Bench in OA No.352 to 354/2005. No reference of Order dated 30/9/2004 passed by CAT Patna Bench in OA No.961/2004 is there in judgment passed in Civil Appeal No.10862-67.

23. The legal proposition propounded in Parkash Chandra Pathak Vs. State of UP AIR 1960 SC 195 still holds the field, wherein it has been held that decisions even of highest court on question which are essentially question of fact, cannot be cited as precedents governing the domain of other cases which must rest in the ultimate analysis upon their own particular facts. No case on facts can be on all fours with those of another. As noted above in judgment dated 09.12.2014 passed in Civil Appeal No.10862-67 of 2014 respondents/stake holders were posted in different departments in Ministries of Union of India as Data Entry Operator Grade-A and as far the applicant of this OA relates, it has already been laid down in OA No.961/2004 that the applicant was Data Entry Operator

Grade-B and said finding has since attained finality. Further there is no reference of decision dated 30/9/2004 passed by CAT Patna Bench in OA No.961/2004 in decision of Civil Appeal No.10862-67 of 2014, the said judgment cannot be effective and valid cover to legalise impugned orders, and thus using said judgment to reduce the pay scale of applicant and that too without any notice to the applicant cannot be said to be proper or legally sustainable.



24. In view of legal and factual scenario, discussed above the order impugned in the OA {Order dated 26.02.2020 (Annexure-A/8) & Order dated 17/18.03.2020 (Annexure A/11)} as well order dated 23/6/20, Annexure P/1 of the MA No.101/2020 are hereby quashed. If alleged overpaid amount has already been recovered in full or in part or has been adjusted against retiral dues of the applicant, the amount recovered/adjusted against retiral dues be refunded by the respondents to the applicants within thirty days of this order.

25. To the extent of observation and direction made herein above, OA is allowed. Pending MA also stand disposed of accordingly. No order as to cost.

Sd/-

[ Sunil Kumar Sinha ]M[A]

Sd/-

[ M.C.Verma ]M[J]

Mps/-