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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NOs.416 & 417 of 2011

Cuttack this the 2nd. day of August, 2013

CORAM

HON'BLE SHRI R.C.MISRA, MEMBER(A)

IN O.A.No.416/2011

Pratap Kumar Swain, aged about 33 years, S/o.late Alekha Ch.Swain, At/PO-Dhinkia, PS-Kujang, Dist-Jagatsinghpur – presently working as Asst.Archaeological Chemist, O/o. The Superintending Archaeological Chemist, Archaeological Survey of India, Bhubaneswar Circle, Toshali Apartment, Satya Nagar, Bhubaneswar-751 007

...Applicant

By the Advocate(s)-Ms.R.Bahal
Ms.A.Mohanty

-VERSUS-

Union of India represented by

1. The Secretary, Ministry of Culture, Government of India, Shastri Bhawan, New Delhi-110 001
2. The Director General, Archaeological Survey of India, Janapath, New Delhi-110 011
3. The Director (Science), Archaeological Survey of India, 29th New Cantt. Road, Dehradun
4. The Director (Administration), Archaeological Survey of India, Janpath, New Delhi-110 011
5. The Superintending Archaeological Chemist, Archaeological Survey of India, Toshali Apartments, Block-VI, 4th Floor, Satya Nagar, Bhubaneswar-7

...Respondents

By the Advocate(s) –Mr.U.B.Mohapatra



IN O.A.No.417/2011

Siva Sankar Panda, aged about 33 years, S/o. Sri Udayanath Panda, At/PO-
Panigrahi Nagar, Berhampur, Dist-Ganjam – presently working as s
Asst.Archaeological Chemist, O/o. The Superintending Archaeological Chemist,
Archaeological Survey of India, Bhubaneswar Circle, ToshaliApartment, Satya
Nagar, Bhubaneswar-751 007

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Toshali Apartments, Block-VI, 4th Floor, Satya Nagar, Bhubaneswar-7

...Respondents

By the Advocate(s)-Mr.D.K.Behera

ORDER

HON'BLE SHRI R.C.MISRA, MEMBER(A)

The subject matter of O.A.Nos. 416 & 417 of 2011 being the same and

similar, both the OAs are disposed through this common order.

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2. Applicants in both the OAs are presently working as Assistant Archaeological Chemists in the Office of Superintending Archaeological Chemist, Archaeological Survey of India (Science Branch) at Bhubaneswar. They have approached this Tribunal with a prayer that the Office Order dated 8.4.2011 issued by the Director (Administration) of Archaeological Survey of India, New Delhi as well as the orders dated 25.5.2011 and dated 13.3.2011 issued by the Superintending Archaeological Chemist, by virtue of which their Grade Pay of Rs.4600/- has been reduced to Rs.4200/- with effect from 01.01.2006 should be quashed.

3. Brief facts of the matters are that the applicants had joined in the post of Assistant Archaeological Chemist in the pay scale of Rs.5500-175-9000/- in the year 2004. By virtue of the notification dated 29.8.2008 of the Ministry of Finance, Government of India, which has notified the Central Civil Services (Revised Pay) Rules, 2008 (in short Rules, 2008), the pre-revised pay scales of Rs.5000-8000/-, Rs.5500-9000/- and Rs.6500-10,500/- were merged, thus bringing the feeder and promotional cadre posts in the identical grade. Accordingly, the Assistant Superintendent in Science cadre and the Assistant Archaeological Chemist in the Archaeological Survey of India under the Ministry of Culture were placed in the pay scale of Rs.7450-11,5000/- corresponding to Pay Band – 2 (in short PB) carrying the PB Rs.9300-34,800/- with Grade Pay (in short GP) Rs.4600/- with effect from 01.01.2006 onwards. After their pay fixation was made as per the Rules, 2008, vide Office Order dated 25.5.2011, the

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Superintending Archaeological Chemist issued an Office Order wherein the pay and allowances of the applicants were re-fixed by placing them in PB Rs.9300-34,800/- carrying the GP Rs.4200/-. This order is placed at Annexure-A/4 of the O.A. This Office Order was passed based upon the Office Order issued by the Director (Administration) of Archaeological Survey of India on 8.4.2011. For the sake of clarity, Office Order dated 8.4.2011 is extracted hereunder.

“Pursuant to Gazette Notification dated 08.03.2011 vide GSR No.194(E) issued by the Ministry of Finance, Department of Expenditure E-III(B) for deleting entry of placement of the post of Assistant Archaeologist Chemist in the Grade Pay of Rs.4600/- and amending the name of the Assistant Superintending in Science cadre as Assistant Superintending Archaeological Chemist in Part-C, Section-II of the Ministry of Finance, Department of Expenditure’s notification dated 29.8.2008, the post of Assistant Archaeological Chemist in the Archaeological Survey of India is placed in the Pay Band 2 Rs.9300-34,800 with Grade Pay of Rs.4200/- with effect from 01.01.2006.

This issues with the approval of Ministry of Finance, Department of Expenditure vide their UO 9(6)/2010-E.III(B) dated 24.03.2011”.

4. In pursuance of this notification of the Ministry of Finance, the post of Assistant Archaeological Chemist in the Archaeological Survey of India is placed in PB-2 (Rs.9300-34,800/-) with GP Rs.4200/- with effect from 01.01.2006. Respondent No. 5, who is the Superintending Archaeological Chemist in the



Science Branch office at Bhubaneswar, after issuing Office Order dated 25.5.2011 passed an Office Order on 13.6.2011 (Annexure-7), which reads as under.

"In pursuance to the communication vide Office Order No.4-2/2010-Plg. Dated 8th April, 2011 of the Director General, Archaeological Survey of India, New Delhi and Office Order No.3/10-AC/2011-12-104, dated 25.5.2011 of this office re-fixing their pay, the recovery of excess Pay and allowances for Rs.33,374.00 (Rupees thirty three thousand three hundred seventy four only) each in respect of the following Assistant Archaeological Chemists will be made from their salary in nine (8 + 1) monthly installments @ Rs.4,000/- each with last installment of Rs.1,374/- only effective from the salary bill of June, 2011".

5. The applicants have submitted that the order dated 8.4.2011 of the Director(Administration) Archaeological Survey of India is not in consonance with the Gazette Notification published on 8.3.2011 in respect of scale of pay of Assistant Archaeological Chemist and therefore, such order is liable to be quashed. They have also prayed that no recovery should be effected from their salary.

6. The Respondents have filed their counter affidavit in which they have submitted that in pursuance of Gazette Notification dated 8.3.2011 issued by the Ministry of Finance, Department of Expenditure for deleting the entry of placement of the post of Assistant Archaeological Chemist in the GP Rs.4600/- and amending the name of the post of Assistant Superintending in Science cadre as Assistant Superintending Archaeological Chemist under Part-C Section-II of the

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Ministry of Finance, the Department of Expenditure's Notification dated 29.8.2008, the post of Assistant Archaeological Chemist in the Archaeological Survey of India is placed in PB-II Rs.9300-34,800/- with GP Rs.4200/- with effect from 01.01.2006. This had been done with the due approval of the Ministry of Finance, Department of Expenditure in their U.O. 9(6)/2010-E.III(B) dated 24.3.2011. It has been urged that GP of the applicants were wrongly fixed for which it was corrected later and the excess paid was required to be recovered. The applicants had given an undertaking at the time of pay fixation to refund any excess payment made due to incorrect fixation of pay. Hence the order of recovery of excess amount is justified. It has been further pointed out in the counter affidavit that as per the Notification dated 29.8.2008, notifying the Central Services (Revised Pay) Rules, 2008, the pre-revised pay scales of Rs.5500-8000/- Rs.5500-9000 and Rs.6500-10,500/- have been merged and placed in PB-2 with GP Rs.4200/- (sic). Thus the feeder post, i.e., Assistant Archaeological Chemist and promotional post, i.e., Assistant Superintending Chemist lied in the identical cadre. Therefore, the promotional post now has been upgraded to the next higher grade, i.e, GP Rs.4600/-. The further submission of the Respondents is that the Ministry of Finance, Department of Expenditure has decided for deleting the entry of placement of Assistant Archaeological Chemist in the GP Rs.4600/- and amending the name of the Assistant Superintending in Science cadre as mentioned in the CCS(Revised Pay) Rules, 2008, as Assistant Superintending Archaeological Chemist. On these grounds, it has been submitted by the

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Respondents that the Department was perfectly justified in recovering excess amount paid to the applicants.

7. The learned counsel for the applicants has filed a written notes of argument. It has been submitted therein that the Gazette Notification dated 8.3.2011 clearly envisages that two posts, viz., Assistant Superintending Archaeologist in Science cadre and Assistant Archaeological Chemist, Archaeological Survey of India in PB-2 with GP Rs.4600/- may be read as the post - Assistant Superintending Archaeological Chemist, ASI in PB-2 with GP Rs.4600/-. Therefore, the reduction of GP of the applicants from Rs.4600 to Rs.4200 is without any basis and is only an arbitrary action of the Respondents. It has been further submitted that in Para-4 of Part-C of the Gazette Notification it is stated that the posts of Scientific staff in the scale of Rs.6500-10,500 carrying the minimum qualification of Engineering Degree or Post Graduate Degree should also be upgraded and placed in the scale of Rs.7400-11,500/- corresponding to PB-2 (Rs.9300-34,800) with GP Rs.4600/-. The applicants having the required qualifications, reduction of GP from Rs.4600 to Rs.4200 is illegal and unjustified. It is further submitted that the Ministry of Finance has correctly fixed the pay and emoluments of the applicants, but the Respondents have misinterpreted the directives of the Ministry of Finance. The feeder post of Assistant Archaeological Chemist and promotional post ^{of R} Assistant Superintending Archaeologist in Science cadre becomes ^R identical in GP Rs.4600/- as per the notification of the Government of India. It has been further submitted that the Gazette Notification

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dated 08.03.2011 and order of Respondent No.3 dated 08.04.2011 are self-contradictory. According to learned counsel for the applicant the clarification issued by the Director, ASI, New Delhi without a corrigendum of Gazette Notification being issued, the action of the Director is far stretching.

8. I have heard the learned counsel for the respective parties and given my anxious consideration to the arguments put forward.

9. From the pleadings of the parties the entire issue rests upon the Gazette Notification dated 8.3.2011 issued by the Ministry of Finance (Department of Expenditure), New Delhi., which is extracted hereunder.

“G.S.R. 194(E)-In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the following Corrigenda to Central Civil Services (Revised Pay) Rules, 2008 is hereby issued :-

The following entry under the Part-C, Section II of the First Schedule to the CC(Revised Pay) Rules, 2008, pertaining to Ministry of Culture:

(in Rupees)*

| Sl. No. | Post | Present Scale* | Revised Pay Scale* | Corresponding Pay Band and Grade Pay | | Para No of the rep |
|---------|-----------|----------------|--------------------|--------------------------------------|------|--------------------|
| | | | | Pay Band Grade Pay* | | |
| 1. | 2. | 3. | 4. | 5. | 6. | 7. |
| 3. | Assistant | 6500-10500 | 7450-11500 | PB-2 | 4600 | 7.9.5. |

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Superintendent
In Science Cadre,
Assistant Archaeological
Chemist, ASI

May be read as :

(in Rupees)*

| Sl. No. | Post | Present Scale* | Revised Pay Scale* | Corresponding Pay Band and Grade Pay | | Para No. of the report |
|---------|---|----------------|--------------------|--------------------------------------|------|------------------------|
| | | | | Pay Band Grade Pay* | | |
| 1. | 2. | 3. | 4. | 5. | 6. | 7. |
| 3. | Assistant Superintending Archaeological Chemist,ASI | 6500-10500 | 7450-11500 | PB-2 | 4600 | 7.9.5. |

10. It may be noted that in the notification dated 29.8.2008 pertaining to Central Civil Services (Revised Pay) Rules, 2008, the revised pay structure for the various posts in the Ministries of Government of India have been notified. Under the Ministry of Culture, at Sl.No.3, the Assistant Superintendent in Science cadre and the Assistant Archaeological Chemist, ASI were put in the revised PB-2 (Rs.7450-11,500/-) with GP Rs.4600/-. The Respondents have produced a letter addressed from the Director (Administration), ASI to the Superintending Archaeological Chemist at Bhubaneswar dated 1.9.2011, in which the subsequent developments have been mentioned. The facts as collected from Annexure-R/5 are that the ASI granted the PB of Rs.9300-34800/- with GP Rs.4600/- to Assistant Superintending Archaeological Chemist and Assistant Archaeological Chemist on account of the merger of the pay scales by the 6th Central Pay Commission, even though the Assistant Archaeological Chemist is a feeder post for promotion to the

post of Assistant Superintending Archaeological Chemist. Therefore, the Archaeological Survey of India sought clarification from the Ministry of Finance, Department of Expenditure as to whether the GP Rs.4600 or GP Rs.4200 in PB-2 would be allowed to Assistant Archaeological Chemist. The Ministry of Finance, Department of Expenditure informed that as per CCS (RP) Rules, 2008, the replacement pay scale of the posts in the pre-revised pay scale of Rs.5500-9000/- is in PB-2 with GP of Rs.4200/-. Accordingly, the post of Assistant Archaeological Chemist is to be placed in PB-2 with GP Rs.4200 as per the CCS (Revised Pay) Rules, 2008. Thereafter, the necessary notification dated 8.3.2011 vide GSR 194€ for deleting entry of placement of the post of Assistant Archaeological Chemist in GP Rs.4600/- and amending the name of the post of Assistant Superintendent in Science cadre as Assistant Superintending Archaeological Chemist under Part C Section II pertaining to Ministry of Culture has been issued by the Ministry of Finance, Department of expenditure rectifying their earlier notification dated 29.8.2008. This notification dated 8.3.2011 has been quoted (supra) at Paragraph-9.

11. The Respondents have also produced the copy of the internal note of the Ministry of Finance, Department of Expenditure dated 24.3.2011 addressed to AS & FA(Culture). A perusal of this internal note reveals that the 6th CPC in Paragraph-7.9.5 has upgraded the post of Assistant Archaeological Chemist to GP Rs.4600 corresponding to Rs.74500-11,500/- on the premises^l that the pre-revised pay scale of the post is Rs.6500-10500/- whereas, now it has been brought to the

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notice of the Department of Expenditure that the pre-revised pay scale of the post of Assistant Archaeological Chemist was Rs.5500-9000/-. At Paragraph-3, it has also been noted that since as per the CCS(RP)Rules, 2008, the scale of the post was shown as Rs.6500-10500/- and this was not factually correct, the Department of Culture has been told that they should have brought this aspect to the notice of the Ministry of Finance before granting GP Rs.4600/- to the post of Assistant Archaeological Chemist. It is further mentioned that as per CCS(RP) Rules, 2008, the replacement pay scale of the posts in the pre-revised scale Rs.5500-9000/- ^Pwhich is in PB-2 with GP Rs.4200/-. The Ministry of Finance, accordingly advised that the post of Assistant Archaeological Chemist is to be placed in PB-2 with GP Rs.4200/- as per the CCS(RP)Rules, 2008. At the same time, necessary notification dated 8.3.2011 was brought out by the Ministry of Finance, Department of Expenditure for deleting the entry of the placement of Assistant Archaeological Chemist with GP Rs.4600/- and amending ^Pin the name of the post of Assistant Superintendent in science cadre as Assistant Superintending Archaeological Chemist under Part-C Section II pertaining to Ministry of Culture in the notification dated 29.8.2008. This note clearly brings out that on the basis of the pre-revised pay scales and in accordance with CCS(RP) Rules, 2008, the Ministry of Finance has placed the Assistant Archaeological Chemist in PB – 2 with GP Rs.4200/-. In order to correct the earlier mistake that had crept in they have brought out the corrigendum vide GSR-194€ dated 8.3.2011. It is clear from the documents that the Respondents have produced that their action in

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correcting the GP vide their Office Order dated 8.4.2011 is based upon the corrigendum notification issued by the Ministry of Finance dated 8.3.2011. A perusal of the advice of the Ministry of Finance clearly indicates the basis on which the corrigendum has been issued. The correction of the GP of the Assistant Archaeological Chemist and bringing it down from Rs.4600 to Rs.4200 is based upon the pre-revised scale of pay as well as the CCS(RP) Rules, 2008. It is evident, therefore, that this action of the Respondents cannot be termed as arbitrary.

12. With regard to recovery of the excess payment from the applicants' pay, which has been challenged in this O.A., it is an action which will necessarily follow once it is found that the payment in excess of the entitlement was made to the applicants. Since the fixation of GP earlier was a mistake which the competent authorities have rectified, the action of recovery which is as a measure of follow up action ^{and} ~~and thus~~, cannot be termed as arbitrary or illegal. The authorities are always justified to make recovery of excess payment once it has been decided and established that the payment has been made in excess of the entitlement. In this regard it is pertinent to mention here the decision of the Hon'ble Supreme Court in Civil Appeal No.5899 of 2012 (Chandi Prasad Unniyal ^{vs.} State of Uttrakhand & Ors (**AIR 2012 SC 2951**), in which the Hon'ble Apex Court has observed as follows.

"Any payment paid/received without authority of law can always be recovered barring a few exceptions of extreme hardships, but not as a matter of right; in such situation law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment".



13. In view of the decision of the Hon'ble Apex Court, since the reduction of the GP in respect of the applicants has been made on valid and cogent grounds, the order of recovery of excess payment also is sustainable in the eyes of law.

For the discussions held in foregoing paragraphs, both the OAs being devoid of merit are dismissed, leaving the parties to bear their respective costs.


(R.C.MISRA)
MEMBER(A)

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