

24

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.864 of 2012

Cuttack this the 9th day of May, 2016

Umesh Chandra Mishra...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? Yes
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? Yes


(R.C. MISRA)
MEMBER(A)


(A.K. PATNAIK)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

O.A.No.864 of 2012

Cuttack this the 9th day of May, 2016

CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

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

Umesh Chandra Mishra

Aged about 52 years

S/o. Sri Baidhar Mishra

Working as Accountant cum Office Superintendent(Accounts)
Institute of Hotel Management Catering Technology & Applied
Nutrition

Bhubaneswar-751 007

...Applicant

By the Advocate(s)-M/s.A.K.Mohanty

D.K.Mohanty

P.K.Kar

-VERSUS-

Union of India through:

1. The Secretary
Ministry of Tourism
Government of India
Transport Bhawan
Sansad Marg
New Delhi-110 001
2. The Chairman
Board of Governors
Institute of Hotel Management & Catering Technology &
Applied Nutrition
Bhubaneswar-7
3. The Principal
Institute of Hotel Management Catering Technology &
Applied Nutrition
Bhubaneswar-751 007

...Respondents

By the Advocate(s)-Mr.S.Behera



ORDER

R.C.MISRA, MEMBER(A):

The applicant who is working as Accountant-cum-Office Superintendent (Accounts) in the Institute of Hotel Management, Catering & Applied Nutrition at Bhubaneswar has approached the Tribunal praying for the following relief.

- i) To quash the order dated 18.1.2012 of the respondent no.1 as at Annexure-A/15 rejecting the representation of the applicant dated 12.3.2010 and consequently to quash the order dated 6.9.2010 as per Annexure-A/10 and order dated 9.3.2010 as per Annexure-A/11 for being illegal, irregular, arbitrary and contrary to the provisions of the service regulations at the IHM, Bhubaneswar.
- ii) To order that the pay fixation of the applicant made w.e.f. 11.5.93/1.1.96 onwards was in accordance with the provision of the rules on the subject, and no recovery should be made from the pay of the applicant towards excess payment of pay and allowances even if made to the applicant during the period 11.5.1993 onwards.
- iii) To issue any other order or orders, direction or directions as it deems fit and proper in the interest of justice, equity and fair play for the benefit of the applicant.

2. The following paragraph sums up the facts of this O.A.

3. The applicant was appointed as Stenographer, Gr.III in the Institute of Hotel Management, Catering Technology and Applied Nutrition at Bhubaneswar by an office order dated 2.7.1984. He was promoted to the post of P.A. to Principal in the pay scale of Rs.1400-2300/- with effect from 11.5.1993. The Government of India, Ministry of Finance revised the pay of Stenographers, Gr.II from Rs.1400-2300/- to Rs.1400-2600/- with retrospective effect from 1.1.1986 by an O.M. dated



4.5.1990. Based upon recommendations of the 5th Pay Commission, this scale was revised to Rs.5000-8000/- with effect from 1.1.1996. As per the submission of applicant, the pay of PAs to Principals of the Institutes at Delhi, Jaipur, Hyderabad and Bangalore was revised from Rs.1400-2300 to Rs.1400-2600 with effect from 1.1.1986, which was revised to Rs.5000-80000 from 1.1.1996 onwards on the basis of recommendations of the 5th Pay Commission. According to the general conditions of service of employees of the Institute, all the orders of Government of India on pay and allowances are applicable mutatis mutandis to the employees of the Institute. Incidentally, the Ministry of Tourism, Government of India, in their letter dated 6.8.1997 addressed to Principal, IHM, Bhubaneswar intimated that the PA to Principal who was placed in the pay scale of Rs.425-700 (pre-revised) can now be placed in the revised pay scale of Rs.1400-2600/- with effect from 1.1.1986.

4. Consequently, the Principal of IHM, Bhubaneswar issued orders on 27.8.1997 revising the pay of the applicant to Rs.1400-2600, with effect from 11.5.1993, i.e., the date of promotion of the applicant. This revision was recommended by the Screening Committee meeting on 30.12.1997 and was approved by the Board of Governors of the Institute. Subsequently, on the recommendations of 5th Pay Commission, the scale of pay was revised to Rs.5000-8000 with effect from



1.1.1996. A new development, however took place. The DDG, HMC Division of the Ministry of Tourism in his letter dated 6.9.2000 addressed to Principal, IHM, Bhubaneswar intimated that the matter of pay scale of PA to Principal was examined in consultation with Integrated Finance which opined that there was an erroneous fixation of pay in the pre-revised scale at Rs.1400-2600, whereas it should have been Rs.1400-2300. There was a direction to fix the revised scale at Rs.4500-7000 as per 5th Pay Commission report. However, the applicant continued to be placed in the scale of Rs.5000 - 8000 till 2.7.2008, when he was placed in the scale of Rs.5500-9000, on being granted the ACP benefit. Then he was promoted to the post of Accountant cum Office Superintendent(Accounts) with effect from 10.3.2010. However, respondent no.3 issued an office order dated 9.3.2010, reducing the pay of the applicant from 1.1.1996 onwards bringing him to the scale of Rs.4500-7000 from Rs.5000-8000/-. Protesting against this, the applicant made a representation dated 12.3.2010 to respondent no.1. Applicant then approached the Tribunal by filing O.A.No.131 of 2010 which was disposed of on 26.3.2010 with a direction to respondents to dispose of the representation and also stayed the operation of order dated 9.3.2010 with a further direction not to make any recovery. Before consideration of representation, respondents reduced the pay of the applicant for the month of March, 2010. The applicant therefore,

approached the Tribunal by filing M.A.No.184 of 2010, in consideration of which the Tribunal directed for restoration of the scale of pay until disposal of the representation. Finally, however, in obedience to the orders of the Tribunal in O.A.No.131 of 2010 passed on 26.3.2010, the respondents disposed of the applicant's representation by an order dated 18.10.2012 in which the representation has been rejected. After issue of rejection order, the respondent no.3 has passed oral orders to the section to reduce the pay of the applicant from 11.5.1993 onwards and to recover the excess amount paid since that date. Against the background of above facts, the applicant has approached the Tribunal challenging the order dated 18.10.2012, as well as the proposed recovery of excess payment by the respondents.

5. Responding to the plea made by the applicant, the respondents in their counter-affidavit have submitted that applicant was promoted as PA to Principal in the scale of Rs.1400-2300. Knowing fully well that orders of Finance Ministry will not apply directly to him, he being an employee of the autonomous body and not of the Central Government, he made misrepresentations several times to be placed in the scale of Rs.1400-2600. Vide letter dated 22.3.2004, the Ministry of Tourism had communicated that any revision of pay and allowances made by the Ministry of Finance shall not ipso facto apply to the IHMs. Specific orders of the Ministry of Tourism



29

are required before any financial upgradations/benefits are extended to the employees of these Institutions. However, based upon the representations of the applicant, which respondents have described as misrepresentations, the Ministry of Tourism by letter dated 6.8.1997 placed the applicant in the scale of Rs.1400-2600 with effect from 1.1.1986. Subsequently, Ministry of Tourism considered this decision as erroneous, and after consultation with Integrated Finance, communicated that the applicant's pay may be fixed in the scale of Rs.1400-2300, with a further direction that as per recommendations of the 5th Pay commission this pay scale may be revised to Rs.4500-7000. This communication is dated 6th September, 2000. Further, in pursuance of this order applicant was again placed in the pay scale of Rs.1400-2300 by an office order dated 9.3.2010. At first glance at the counter, it becomes evident that the order dated 9.3.2010 refixing the pay of the applicant was in pursuance of orders of Ministry of Tourism dated 6.9.2000. It is exasperating to note that the office order by respondent no.3 was issued after more than nine years of the order of respondent no.1. There is an unconscionable delay. We would call it an unbelievable amount of delay, and a reflection of a ^{malaise} ~~malice~~ in the administration of the Institute. The applicant then represented to the Ministry of Tourism about his grievance and also approached the Tribunal in filing O.A.No.131 of 2010. The Tribunal directed the respondent no.1 to dispose

D.

of applicant's representation and also stayed the recovery of excess payment. Thereafter, the Ministry of Tourism by letter dated 18.10.2012 disposed of the representation and rejected the same. This letter dated 18.10.2012 is the impugned order in the present O.A.

6. The respondents further submit that the applicant was appointed as Stenographer, and not as Stenographer, Gr.III. He was promoted as P.A. to Principal in the scale of Rs.1400-2300. Neither the Ministry of Tourism nor the Institute considered the post of PA to Principal as equivalent to Stenographer, Gr.II. Applicant had submitted before the Tribunal that three IHM's in Delhi, Jaipur and Bangalore have allowed PA to Principal the scale of Rs.1400-2600/- . He has presented selective information to suit his purpose. The fact is that eight other IHMs have not adopted the higher scale of pay. Therefore, the Institute at Bhubaneswar cannot adopt as a reference point the implementation of scale of pay by only three Institutes. The revision of pay scale of Grade-II Stenographers in the subordinate offices of Government of India as per Finance Ministry order dated 4.5.1990 is not applicable to the Institute as Ministry of Tourism has categorically denied the same and recommended the scale of pay of Rs.1400-2300. The decision of Ministry of Tourism wherever received, is binding for implementations on the Institute, after formal approval of the Board of Governors which is a routine practice. About the



32

unusual delay in implementation of the order dated 6.9.2000 of the Ministry of Tourism, the respondents submit that they were busy collecting clarifications from other IHMs and Ministry of Tourism, and delay was caused thereby. Finally, after withdrawal of the higher scale of pay, the applicant's pay was revised to Rs.4500-7000 as per recommendation of the 5th Pay Commission. Thereafter, financial upgradation under ACP Scheme was allowed to applicant in the scale of pay Rs.5500-9000 on completion of 24 years of service. This was the second financial upgradation under the ACP Scheme.

7. It is also the submission of respondents that excess amount paid to the applicant was not recovered, and his pay scale has been restored as per interim orders of the Tribunal. However, they strongly contest his claim to the higher scale of pay in view of the specific order of the Ministry of tourism and also the fact that the pay was fixed in the higher scale earlier in an erroneous manner on the basis of misrepresentation of the applicant. The order dated 6.9.2000 of the Ministry of Tourism was absolutely correct as it was according to the pay scales specifically recommended in its letters dated 14.4.1987 and 29.10.1997 while implementing recommendations of 4th Pay Commission and 5th Pay Commission respectively for employees of the Institute. The decision of the Principal Bench of the Tribunal in OA.No.85 of 2000 cannot be applied in the



present case, since correct information was not provided to the Tribunal in that matter.

8. With regard to the matter of recovery of the excess payment made, respondents cite the case of **Col. B.J. Akkara (retired) vs. Government of India & Ors. [2007(1)SCC (L&S) 529]**, in which the Hon'ble Supreme Court has held that recovery of excess amount cannot be done if the excess amount was not paid due to misrepresentation or fraud on the part of the employee. The applicant in this case has pressurized the administration through frequent misrepresentations, even though he was aware that as an employee of the Society he was not entitled to pay scales of the Central Government employees. Since because of this misrepresentation, the higher pay scale was granted, the excess payment made to him is required to be recovered. The respondents further have admitted that there was unconscionable delay in correctly fixing the pay of the applicant as per direction of Ministry of Tourism, and that this is attributable to a long process of consultation with other IHMs and Ministry of Tourism. During this prolonged consultation, applicant continued to enjoy the benefit of higher scale of pay erroneously granted to him.

9. In the rejoinder, the applicant has denied having made any misrepresentation. He submits that the orders of the Ministry of Finance regarding pay scales are binding on the Institute also. Implementation by this Institute and non-

implementation by another cannot be the basis of adjudication.

The Principal Bench of the Tribunal in O.A.No.85 of 2000 has decided that Rs.1400-2600 pay scale is applicable to a similarly placed person and this also is to be revised to Rs.5000-8000. Further, though the Ministry of Tourism passed orders on 6.9.2000 for reduction of the pay scale, this order was not implemented by respondent no.3 for about ten years, till 10.3.2010, resulting in a situation where applicant continued to enjoy the benefit of higher scale of pay, till 01.07.2008. On completion of 24 years of service he was placed in the next higher scale of Rs.5500-9000 with effect from 2.7.2008. He has been promoted as Accountant cum Office Superintendent(Accounts) with effect from 10.03.2010 onwards, but there was no change in the pay since he had got financial upgradation to the next higher scale with effect from 02.07.2008. The applicant further alleges that in O.A.No.131 of 2010, this Tribunal passed orders on 26.3.2010 directing respondents to dispose of the representation of the applicant within a period of sixty days. However, respondents disposed of the representation by an order dated 18.10.2012, after a period of two and half years. Applicant has alleged that respondents have passed orders after a long delay, without application of mind. Another point raised by the applicant is that every IHM is an autonomous body and benefits that this body has already granted to the applicant cannot be withdrawn by them,



according to the Doctrine of Estoppel. Applicant has filed an affidavit, in addition to the rejoinder stating that Delhi, Jaipur, Hyderabad and Bangalore IHMs are paying the scale of Rs.1400-2600 to the PA to Principal. No order of reduction in pay scale has been made in the case of similarly placed employees in those Institutes as per the documents enclosed by the applicant.

10. Having perused the records, we have heard the learned counsels for both sides, and given our anxious consideration to their submissions. We have also gone through the written notes of submissions.

11. For the sake of clarity, we would recapitulate the main ingredients of the facts of the case. The applicant was appointed as Stenographer in the Respondents' organization by an order dated 2.7.1984. He was promoted to the post of PA to Principal by an order dated 11.5.1993 in the pay scale of Rs.1400-2300/-. The Ministry of Tourism in their letter dated 6.8.1997 addressed to respondent no.3 informed that PA to Principal would be placed in the revised pay scale of Rs.1400-2600 with effect from 1.1.1986. Respondent no.3 vide order dated 27.8.1997 revised the pay to Rs.1400-26000 with effect from 11.5.1993 in case of the applicant. This was approved by the Board of Governors of the Institute. As per 5th Pay Commission recommendations, pay scale was revised to Rs.5000-8000 with effect from 1.1.1996. Ministry of Tourism by letter dated

6.9.2000 reversed their "erroneous" decision and directed that Rs.1400-2300 being the correct pay scale, revised pay scale may be fixed at Rs.4500-7000/-. This order was not implemented. Applicant continued to enjoy scale of Rs.5000-8000, till 2.7.2008, when he was given the scale of Rs.5500-9000, on getting his ACP benefit. Respondents issued order on 9.3.2010, reducing the pay of the applicant from 1.1.1996 onwards, bringing him on the pay scale of Rs.4500-7000/-.

12. The first issue to be decided is whether order dated 9.3.2010 of respondent no.3 refixing the pay scales of the applicant suffers from any legal lacunae. The applicant is an employee of the IHM, Bhubaneswar which is an autonomous organization under the aegis of the Ministry of Tourism. He is not a Central Government employee, and therefore, orders of pay revision issued by the Ministry of Finance will not automatically apply in his case, unless there is a specific order of Ministry of Tourism, adopted by the competent authority of the autonomous body for implementation. The applicant was promoted in the pay scale of Rs.1400-2300 in the year 1993. In the year 1997, the Ministry directed that he be placed in the pay scale of Rs.1400-2600. This was implemented by respondents after approval of Board of Governors. If it is due to 'misrepresentations' made by the applicant, as made out by respondents, it only shows the respondents in a poor light. How could they be pressurized into doing that when they were the



higher authorities ? Be that as it may, the Ministry of Tourism by letter dated 6.9.2000 reversed this 'erroneous' decision and directed that applicant may be placed in the lower scale. This was not implemented till the year 2010. However, the respondents can rectify their mistake, if the integrated finance detected an error, and the applicant cannot claim the right to enjoy the benefit of a particular scale of pay. The status of the same matter as prevalent in various IHMs across the country appears to be at variance with each other, and no specific referral point can be identified. Even though there is a decision of the Principal Bench with regard to case of a Stenographer, Gr.C of the National Council of Hotel Management and Catering Technology, to our mind, it is an order in personem. The present case has to be examined on the ^{avail} ~~avail~~ ^l of the factual position that the applicant herein is an employee of IHM, Bhubaneswar, with its own structure of decision-making, like the Board of Governors. In the present case, on the other hand, we find inexplicable delays in decision making. It is intriguing how supposedly 'erroneous' orders were passed, and thereafter rectified. Even after rectification also, the revised orders were not implemented. Because of inept handling of the case, the issues turned ⁱⁿ ~~cant~~ ^{dangerous} ~~dangerous~~. If simple matters of pay fixation are not resolved promptly, the issue will gather moss over time and become slippery. This also raises one point against the cause of the applicant, who was holding the post of PA to Principal. It



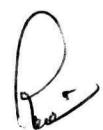
was a crucial position, since the Principal of the Institute, respondent no.3 is his administrative authority to decide the matter. He was in the personal staff of the Principal. How is it that the order of the Ministry of Tourism was not implemented for about ten years ? Was it not in the knowledge of the applicant ? We desist from going further on this angle, since there is no pleading in this regard. The suspicion however lingers that there was some hidden pressure somewhere, and the respondent no.3 did not display administrative objectivity and promptitude in the matter. On principle, however, we do not find anything objectionable in the pay fixation order dated 9.3.2010, since it was done under the orders of the Ministry of Tourism. The order dated 18.10.2012 of the respondent no.1 which disposes of the applicant's representation contains a specific ground of rejection, i.e., the pay of PA to Principal, that is Rs.4500-7000 which was revised to Rs.5200-20200 corresponds to the earlier pay scale of Rs.1400-2300. This order placed at A/15 which has been challenged in the O.A. appears to be sustainable. Therefore, we do not find any valid reason to interfere with these orders.

13. The other important issue is about the recovery of excess payments. Whether the respondents are now entitled to recover the excess payments made to the applicant under the respondent's order which the authorities were well aware of. Whether we should believe the respondents when they say that



39

higher benefits were extracted by applicant through his so called misrepresentations, or whether we should accept the plea of the applicant that respondents granted benefits with full knowledge that they are passing on a legitimate entitlement, and he himself did not commit any misrepresentation or fraud. The applicant was initially promoted in the scale of Rs.1400-2300 with effect from 11.5. 1993. By the letter of the Ministry of Tourism dated 6.8.1997, he was given the higher scale of Rs.1400-2600. We cannot hold that applicant obtained these orders by way of any misrepresentation. If we hold that it will amount to calling the respondent-authorities ignorant. The pay fixation order dated 9.3.2010 is by way of implementing the orders of the Ministry of Tourism dated 6.9.2000. There is no order of recovery of excess payment passed by respondent no.3. The applicant made an appeal to respondent no.1 on 12.3.2010. Thereafter, applicant filed O.A.No.131 of 2010 by disposing of which the Tribunal directed respondent no.1 to dispose of the appeal, and as interim measure, ordered that no recovery should be made till the disposal of the representation. After disposal of O.A.No.131 of 2010, M.A.No.175 of 2010 was filed which was disposed of by directing the respondents not to make any reduction in the pay scale of the applicant which he was enjoying in February and March, 2010. The applicant has continued in the higher pay scale by the interim orders of the



40

Tribunal. In fact the pay fixation orders of the date 9.3.2010 were never given effect to.

14. In the matter of recovery of excess payment the Hon'ble Apex Court in ***Chandi Prasad Uniyal vs. State of Uttarakhand & Ors. (AIR 2012 SC 2951)*** has observed that excess payment of public money or tax payers money has to be recovered even though such payment was made due to a bona fide mistake. The direction of the Hon'ble Apex Court reads as under.

"Any amount paid/recovered 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 pay the money, otherwise it would amount to unjust enrichment".

15. Hon'ble Supreme Court in a judgment dated 18.12.2014 in the case of ***State of Punjab & Ors. vs. Rafiq Massiah (C.A.No.1527 of 2014)*** in supersession of all earlier judgments on recovery of excess payments, have decided five situations wherein the recoveries of excess payments ordered by the employer would be impermissible in law. The following situations have been laid down by the Hon'ble Apex Court.

- i) Recovery from employees belonging to Class-III and Class-IV service or Group-C and Group-D service.
- ii) Recovery from retired employees, or employees who are due to retire within one year of the order of recovery.
- iii) Recovery from employees when the excess payment has been made for a period in excess of five years before the order of recovery is issued.



iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightly been required to work against an inferior post.

iv) In any other case, where the Court arrives at the conclusion that recovery if made from the employee would be iniquitous or harsh or arbitrary to such an extent as would far outweigh the equitable balance of the employer's right to recover.

16. The learned counsel for the applicant has harped upon the situation(i) in which the Hon'ble Apex Court has directed that recovery is not to be made from employee of Group C and Group-D.

17. In the present case, no order of recovery was ever issued. The respondents should have assessed the amount of excess payment and passed an order of recovery, along with the order of pay fixation dated 9.3.2010. However, subsequently, under interim directions of the Tribunal, no reduction of pay was effected and no recovery was made. The learned Senior Central Government Standing Counsel has submitted that applicant was frequently pressurizing the respondents by making 'misrepresentation'. Therefore, excess payment obtained by fraud and misrepresentation should be recovered from him as per the ratio decided by the Hon'ble Apex Court in the case of

Col.B.J.Akkara (Retd.) vs. Government of India & Ors.
[2007(1) SCC(L&S) 529]. If the higher authorities were pressurized into taking an erroneous decision, it does not speak



42

well of them. The authorities are expected to take the correct decision based upon the facts and rules applicable, and not to be pressurized by applicant whose case they were examining. We do not find this plea of respondents to be tenable, and therefore, we do not agree with them that this was a case of fraud or misrepresentation by the applicant. However, as already observed, that the order of respondent no.1 in the year 2000 was actually implemented after a gap of almost 10 years, by issuance of an office order is a rather disturbing phenomenon, which should have been avoided. We do not believe that a period of 10 years was taken for getting information from other IHMs and Ministry of Tourism. It could be inferred that the applicant was given passive support for continuing in his higher scale of pay. As PA to Principal, the applicant was also privy to all information.

18. However, the Ministry of Tourism vide letter dated 6.8.1997 put the applicant in the higher scale and by order dated 27.8.1997, respondent no.3 allowed him this pay from the date of his promotion i.e., 11.5.1993. The higher scale was withdrawn by the Ministry of Tourism vide letter dated 6.9.2000, i.e., after a period of three years. The applicant enjoyed the benefit of higher scale under approval of proper authority. Since order dated 9.3.2010 was issued after a period of almost 10 years, applicant continued during this long period to get this higher benefit. This has apparently happened due to

the laxity of the respondents, but the fact remains that applicant got the benefit under valid orders of the authorities, which they have found to be erroneous, after consultation with the Integrated Finance and Accounts Wing. We then have to consider the situations delineated by the Hon'ble Apex Court in the matter of ***State of Punjab & Ors. vs. Rafiq Massiah*** (supra) in which recovery of excess amount already paid will be iniquitous, unfair or harsh. In the facts of the present case, we find the ratio to be applicable. It will be harsh to direct that excess payment made to the applicant from the date of promotion as PA to Principal should be recovered, since this cannot be attributed to any fraud or misrepresentation.

19. In conclusion, therefore, we do not find any merit in the prayer in so far as fixation of his pay is concerned, and therefore, refuse to interfere with the impugned orders issued by the respondents. However, in the facts of the situation, excess payment already made to the applicant shall not be recovered.

20. The O.A. is thus, partly allowed with no order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

BKS