

12.04.2007
OA 248/2006

Present : Mr. R.P. Sharma, proxy counsel for
Mr. Anil Kumar Garg, counsel for applicant.
Mr. Gaurav Jain, counsel for respondents.

This case has been listed before the Deputy Registrar due
to non-availability of Division Bench. Be listed before the Hon'ble
Bench on 29.05.2007.

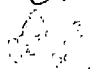

(GURMIT SINGH)
DEPUTY REGISTRAR

akv

29.5.07
Mr. Anil Kumar Garg counsel for applicant
Mr. Gaurav Jain counsel for respondents

Arguments heard

Order reserved


(Tarsem Lal)
Administrative Member


(Kuldeep Singh)
Vice Chairman

30/5/07

order pronounced in open court today
by this Bench



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH,

JAIPUR, this the 30th day of May, 2007

ORIGINAL APPLICATION No.248/2006

CORAM:

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER

Hari Prasad Gupta
s/o Shri Bhudev Prasad Gupta,
aged 58 years,
r/o 1/141, S.F.S., Agarwai Farm,
Mansarovar, Jaipur
at present working as Accounts Officer
in the office of the Accountant General (A&E),
Rajasthan, Jaipur

.. Applicant

By Advocate: Shri Atul Kumar Garg)

versus

1. Union of India through the Comptroller and Auditor General of India, New Delhi.
2. Accountant General (A&E), Rajasthan, Jaipur

.. Respondents

(By Advocate: Shri Gaurav Jain)

O R D E R

Per Kuldip Singh, VC

The applicant has assailed the order dated 8th July, 2004 vide which his pay has been ordered to be fixed in



accordance with office circular dated 7th June, 2000 as it supersedes the earlier order dated 27th May, 1985 under which the pay of the applicant was fixed. Consequently, pay of the applicant was reduced from the pay already fixed and recovery was ordered to be effected.

2. The case of the applicant, in brief, is that he was initially appointed as Auditor on 18.01.1974 under respondent No.2. The applicant appeared in SOG Examination which was conducted in the year 1996 and qualified the same and as a result he was promoted as Section Officer on 28.05.1987. Subsequent to that, he was also promoted as Assistant Accounts Officer vide order dated 1.1.1991 from which post he was further promoted as Accounts Officer on 1.10.2002.

However, in terms of Headquarter letter dated 17th August, 1987, 80:20 scheme was introduced vide letter dated 17.8.87 vide which functional grade of Senior Accountant was also created w.e.f. 1.4.1987. The post of Senior Accountant is lower than the post of Section Officer. So the applicant was granted promotion to the functional grade of Senior Accountant with retrospective effect whereas he had already got promotion in the higher grade and cadre of the post of Section Officer by virtue of passing the requisite departmental examination.

It is further stated that the applicant on account of his promotion exercised his option for fixation of pay in time. However, respondent No.2 vide letter dated 6.7.88



sought certain clarifications from respondent No.1 in the matter of revised options to be given after implementation of 80:20 scheme in the event of quick successive promotions given to Shri H.R.Gupta, one of the colleagues of the applicant. Respondent No.1 vide their letter dated 29.08.88 made a clarification, according to which, if the official has been promoted to the functional grade of Senior Accountant with retrospective effect from 1.4.87, the date being much earlier to 28th May, 1987 which is the date of promotion as Section Officer so there could be no objection to acceptance of the option exercised by him in terms of OM dated 26.9.81 for re-fixation of pay in the higher promoted post of Section Office with reference to his pay in the functional grade of Senior Accountant as on 28th May, 1987 and 1.7.1987. This clarification was given in the case of one Shri H.R.Gupta, a colleague of the applicant. It is further submitted that based on such clarification from respondent No.1, options for pay fixation exercised by the applicant were accepted and pay of the applicant as Senior Accountant was fixed accordingly at Rs. 1560+30 Q.P. on 1.4.87 and on 28.5.87 at Rs. 1650+30 Q.P. + 40 special pay. The pay of the applicant as Section Officer was fixed at Rs. 1820/- with DNI 1.1.1989 (Ann.A5). The applicant was paid salary accordingly for some time. However, on the basis of a letter dated 7th June, 2000, the pay of the applicant was reduced by way of re-fixation and



total amount of recovery has been deducted out of salary of the applicant on the basis of Ann.A6.

It is further submitted that in the light of the Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training letter dated 25.2.2003 permitting revised option for pay fixation in case of change of rules/orders, the applicant submitted to respondent No.1 fresh option for pay fixation on the post of Senior Accountant w.e.f. 1.4.1987 and on the post of Section Officer in terms of saving clause below FR 22(I) (a) (1) with DNI on 1.4.88 and with subsequent fixations accordingly on the post of AAO and AO w.e.f. 1.4.91 and 1.4.03 respectively. The fresh option (Ann.A7) were duly forwarded with reference to Govt. of India, Ministry of Personnel, Public Grievances and Pensions letter dated 25.2.2003. This was done on 16.4.2003. Since this letter was not replied by the respondent, so the applicant made further representation on 20.5.2004. On his representation, respondent No.2 made out a case in favour of the applicant and sent recommendation vide Ann.A8. However, contrary to the recommendations made vide Ann.A8 dated 11.6.2004, respondent No.1 reversed the earlier office circular dated 27.5.85 and directed respondent No.2 to refix the pay of the applicant again in accordance with office circular letter dated 7.6.2000 i.e. Ann.A6. It is submitted that this decision is an outcome of the pressures of seniors for stepping up of pay with



reference to their juniors in the office of AG (A&E)II, Madhya Pradesh as is clear from letter dated 6.5.2002 (Ann.A9). So it is now letter dated 30.9.04 vide which recovery of Rs. 1850/- has been effected by deducting salary of the applicant and representation made by the applicant has not been replied to by the respondents.

In the ground to challenge, it is submitted that decision of respondent No.1 reversing their own earlier circular in the matter of the applicant appears to have been taken under pressure tactics and not on valid reasons and as such the impugned orders deserve to be set aside. Besides that, it is also pleaded that the applicant had been receiving salary without any misrepresentation on his part, so the benefit given to him cannot be withdrawn.

2. The respondents, contesting the OA, have submitted that since the applicant was promoted as Section Officer on 28.5.1987 directly from Accountant Cadre and he opted for pay fixation from 1.1.1988, the date of annual increment in Accountant Cadre in terms of proviso to Rule 22 I(A) (1) but in September, 1987 a new cadre of Sr. Accountant was created retrospectively w.e.f. 1.4.1987 after implementation of 80:20 scheme, so the applicant had given an option of pay fixation as Senior Accountant cadre again from 1.1.1988 in accordance with FR 22 I (a) (1). Though the options were approved but subsequently, another



official Shri Hem Raj Gupta sought stepping up of his pay with the applicant and his case was referred to the Headquarter and the Headquarter observes that the benefit of FR 22 I(a) 1 was not admissible in case of two successive promotions and accordingly pay of the applicant was revised. The applicant again represented but pay fixation of the applicant was revised as per direction of Headquarter office letter dated 15th March, 1999 and 5th August, 2003. It is also submitted that the Headquarter office in another communication dated 8.7.2004 has stated inter-alia that pay of the applicant is to be fixed in accordance with the instructions contained in Headquarter letter dated 7.6.2000 i.e. Ann.A6 and not in accordance with orders of circular dated 27.5.1985 which already stand superseded. So accordingly, pay of the applicant was fixed and recovery has been effected.

3. We have heard the learned counsel for the parties and gone through the record.

4. Admittedly, there are two circulars for fixation of pay, dated 29.8.1988 and 7.6.2000, which supersede letter dated 27.5.1985. We may mention at this stage that the applicant has not challenged vires of circular dated 7.6.2000 and since validity of circular dated 7.6.2000 has not been challenged and ^{is not in issue} ~~has not~~, so we deem it to be valid.

Jh

The fact that the applicant was first given promotion in accordance with rules after passing the SOG examination as Section Officer and ^M_A introduction of 80:20 scheme subsequent to his promotion as Section Officer goes to show that the applicant had been given retrospective promotion to the functional grade of Senior Accountant, though before introduction of the scheme he had already been promoted as Section Officer. Thus, it is a case of two successive promotions. The circular dated 7.6.2000 which prescribes about regulation of pay in case of involving two promotion in quick succession reads as under:-

“...In this office circular No.964-N-I/43-84 I dated 27.5.85 manner regarding regulation of pay in cases involving two promotions in quick succession was prescribed. However this matter had been reconsidered carefully in consultation with Ministry of Finance and Department of Personnel and Training who have now held that pay of a Government servant, who in the event of first promotion has opted to get his pay fixed in terms of savings clause but before the re-fixation of pay from the date of increment in lower post, get another promotion, will be fixed with reference to the pay admissible on the date of second promotion. This means that he is not entitled to re-fixation of pay for the first promotion from the date of next increment....”

Perusal of this above quoted portion of the letter goes to show that it is in accordance with the proviso of FR 22 I (a) and according to this, an official is not entitled for re-fixation of his pay for the first promotion from the date of next increment. So we find that pay of the applicant has been rightly fixed and no inference is called for.



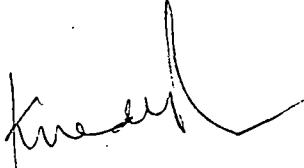
However, as regards the recovery part of excess payment already made to the applicant is concerned, we may mention that in case of Shyam Babu Verma and ors. Vs. Union of India, SLJ 1994 (2) 99, which we have also referred in similar cases in the case of Hem Raj Gupta (OA No.104/2006 decided on 23.8.2006) and by applying the same, we also hold that the applicant has no right to claim higher pay on the basis of wrong fixation of pay, but the Department can rectify the mistake and can reduce the pay. However, no recovery can be made from the applicant, for the amount already received by the applicant and if any amount already recovered, that will be refunded to the applicant.

5. The OA is disposed of accordingly with no order as to costs.


Tarsem Lal

(TARSEM LAL)

ADM. MEMBER



(KULDIP SINGH)

VICE CHAIRMAN

R/