

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

21.07.2008

OA 395/2007

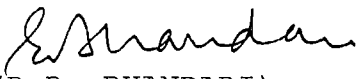
None presnet for applicant.
Mr.V.S.Gurjar, counsel for respondents.


Rejoinder not filed. Let the same be filed within two weeks, being last opportunity.

Let the matter be listed for final hearing on 19.8.2008.

IR to continue till the next date.

Rejoinder
not filed


(R.R. BHANDARI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

vk

19.8.2008


Mr. R.K. Sharma, Counsel for applicant
Mr. Hawa Singh, Proxy Counsel for
Mr. V.S. Gurjar, Counsel for respondents

Heard learned Counsel for the parties.

For the reasons dictated separately, the

OA is allowed.


(B.L. KHATRI)
M(A)


(M.L. CHAUHAN)
M(J)

original
Judgement
AWO A
208/2008
3/2008/68

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 19th day of August, 2008

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

ORIGIANL APPLICATION No. 203/2008

Smt. Santok Harizan
w/o Shri Mohan Lal,
r/o D-11, Indira Nagar,
Jhalana Doongari,
permanent resident of
C/o Shri Bikki Jawa, Gurunanak Colony,
Harizan Basti, Bundi,
working as Clas IV (Safai Karamchari)
in Kendriya Vidyalaya No.3, Jaipur

.. Applicant

(By Advocate: Shri Rakesh Kumar Sharma)

Versus

1. Union of India
through Commissioner,
Kendriya Vidyalaya Sangathan (Headquarter),
18- Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
2. Assistant Commissioner,
Kendriya Vidyalaya Sangthan,
Regional Office,
92, Gandhi Nagar Marg,
Bajaj Nagar, Jaipur
3. Principal,
Kendriya Vidyalaya No.3,
Jhalana Doongari,
Jaipur

... Respondents

(By Advocate: Shri Hawa Singh, proxy counsel for Mr.
V.S.Gurjar)

ORIGINAL APPLICATION No. 395/2007

Mangal Ram
 s/o Shri Jagannath Ji,
 r/o Q.No.D, Kendriya Vidhyalaya-I,
 permanent resident of village Kukas,
 Tehsil, Amer, Distt. Jaipur,
 presently working as Class-IV servant in
 Kendriya vidyalaya No.1, Jaipur

.. Applicant

Versus

1. Union of India
 through Commissioner,
 Kendriya Vidyalaya Sangathan (Headquarter),
 18- Institutional Area,
 Shaheed Jeet Singh Marg,
 New Delhi.
2. Assistant Commissioner,
 Kendriya Vidyalaya Sangthan,
 Regional Office,
 92, Gandhi Nagar Marg,
 Bajaj Nagar, Jaipur
3. Principal,
 Kendriya Vidyalaya No.1,
 Tonk Phatak,
 Jaipur

... Respondents

(By Advocate: Shri Hawa Singh, proxy counsel for Mr.
 V.S.Gurjar)

ORIGINAL APPLICATION No. 440/2007

B.M.Narwal
 s/o Shri G.N.Narwal,
 r/o Kendriya Vidyalaya No.1,
 D-2, Staff Quarter,
 Bajaj Nagar, Jaipur,
 working as Group-D employee in
 Kendriya Vidyalaya No.6,
 Jaipur

.. Applicant

Versus

1. Union of India
through Commissioner,
Kendriya Vidyalaya Sangathan (Headquarter),
18-Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
2. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office,
92, Gandhi Nagar Marg,
Bajaj Nagar,
Jaipur
3. Principal,
Kendriya Vidyalaya No.6,
Pratap Nagar, Sanganer,
Jaipur

... Respondents

(By Advocate: Shri Hawa Singh, proxy counsel for Mr. V.S.Gurjar)

O R D E R (ORAL)

By this common order, we propose to dispose of the aforesaid Original Applications as common question of facts and law is involved in these cases.

2. Briefly stated, facts of the case are that the applicants, who are Group-D employees were granted financial upgradation by the respondents on different dates after completion of requisite year of service and subsequently the said benefit was withdrawn vide impugned order 9.3.2007 (Ann.A1) on the ground that applicants are not having requisite educational qualification i.e. minimum 8th class pass. The said order was passed after issuing show-cause notices. It is these orders which are under challenge in these OAs

and the applicants have prayed that the impugned order dated 9.3.2007 (Ann.A1) be quashed and set-aside. Besides this, the applicant in OA No. 440/2007 i.e. B.M.Narwal and applicant in OA No.395/2007 i.e. Mangal Ram have prayed for quashing the order dated 13.11.07 and 7.12.2007 (Ann.A2 and A3 in OA No.440/07) and order dated 18.7.07 and 18.9.07 (Ann.A3 and A4 in OA No.395/07). Orders dated 7.12.2007 and 18.7.2007 are the orders which have been passed by the Assistant Commissioner whereby pursuant to impugned order Ann.A1 pay of the applicant has been refixed and order dated 7.12.2007 and order dated September 18, 2007 are the orders which have been issued by the Principal pursuant to the order passed by the Assistant Commissioner refixing the pay. Vide these orders the Principal has directed the applicants to inform about the instalments on the basis of which the recovery as calculated is to be recovered from their pay. However, in the case of the applicant in OA No.203/08, no such order regarding refixation of pay and recovery has been made. The applicant has stated that even in the absence of these orders, the respondents are effecting recovery of excess payment made from pay of the applicant.

3. Notices of these applications were given to the respondents. The respondents have filed reply thereby opposing claim of the applicants.

4. We have heard the learned counsel for the parties and perused the material placed on record.

5. Before examining the matter in issue, it will be useful to quota certain facts which are not in dispute and will be useful for disposal of these cases. As already stated above, the applicants are Group-D employees working with the respondent Department i.e. Kendriya Vidyalaya Sangathan (KVS, for short). The respondents decided to implement the Assured Career Progression (ACP, for short) scheme for non-teaching employees of KVS w.e.f. 12th October, 2000. For that purpose, guidelines issued by the Department of Personnel and Training vide OM No. 35034/1/97-Estt.(D) dated 9.8.1999 were adopted and made applicable mutatis mutandis by superseding the earlier Scheme of Career Advancement of Group-C and D Employees as circulated vide OM No.6-10/96-KVS (Adm.I) dated 18th August, 1999. Pursuant to the said decision, the respondent Department on the basis of recommendation of the Screening Committee held on 13.10.2003, granted benefit of ACP scheme to various Group-C and D employees including the applicants who fulfill the conditions as laid down in Annexure-I of the DOPT OM dated 9.8.1999. Subsequently, clarification was received from the KVS Headquarter, New Delhi vide its letter dated 25.10.2006 addressed to all Regional Offices thereby stating that the benefit of ACP Scheme

may be withdrawn in respect of those Group-D employees whose qualification is less than 8th class pass, by issuing show-cause notice to them. Accordingly, show-cause notices were issued to the applicants and after considering the cases of the applicants, the respondents have withdrawn the benefit of ACP scheme granted to the applicants vide impugned order dated 9.3.2007 with immediate effect.

At this stage, it may be stated that the impugned order Ann.A1 has been passed by the Assistant Commissioner whereby the benefit of ACP has withdrawn with immediate effect. Pursuant to said order, re-fixation orders of the applicant B.M.Narwal and applicant Mangal Ram were also issued by the Assistant Commissioner but surprisingly, the Principal who was required to implement the orders issued by the Assistant Commissioner has directed the aforesaid applicants to deposit the excess amount which has been paid to them on account of grant of benefit under the ACP scheme w.e.f. 12.10.2000.

According to us, such a course was not permissible to the Principal on the face of order Ann.A1 whereby the benefit of ACP was withdrawn with immediate effect and not w.e.f. 12.10.2000, the date when the said benefit was extended to the applicants. Thus, according to us, the action of the respondents in making recovery from the applicants on account of

excess payment made due to benefit of ACP scheme w.e.f. 12.10.2000 was not permissible.

6. That apart, the matter on this point is no-longer res-integra. At this stage, it will be useful to quote decision of the Apex Court in the case of Col. B.J.Akkara (Retd.) vs. Government of India and ors., (2007) 1 SCC (L&S) 529 whereby the Apex Court has considered the earlier decisions rendered by the Court in the case of Sahib Ram vs. State of Haryana, 1995 SCC (L&S) 248, Shyam Babu Verma vs. Union of India, 1994 SCC (L&S) 683, Union of India vs. M.Bhaskar, 1996 SCC (L&S) 967 and V.Gangaram vs. Regional Jt. Director, 1997 SCC (L&S) 1652, ^{and} in para 27 had held that this Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled:- (a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee and (b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. The Apex Court further held that it will not be equitable to recover the excess payment if a person had received such payment for a long period and had spent it genuinely believing that

he is entitled to it, as according to the Apex Court, action to recover the excess amount will cause undue hardship to him thereby entitling him for grant of relief. It is only in those circumstances where the employee had knowledge that the payment received was in excess of what was due or wrongly paid that recovery can be effected. The Apex Court has also explained and distinguished the decision in the case of Union of India vs. Sujatha Vedachalam, 2000 SCC (L&S) 882 on which reliance has been placed by the respondents that the order of recovery of excess payment can be withdrawn in easy instalments and has held that the said decision does not lay down a principle that relief from recovery should not be granted in regard to emoluments wrongly paid in excess or that only relief in such case is grant of instalments.

Thus, in view of the law laid down by the Apex Court as noticed above, we are of the view that it was not permissible for the respondents to effect recovery, on this score also, as the applicants are Group-D employees belonging to lowest rung of service who had spent the money they received for the up keep of their family and recovery of excess payment at this stage will definitely cause undue hardship to them. As such, the applicants are entitled to this part of relief.

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7. The next question which requires our consideration is regarding the action of the respondents to refix the pay and not to extend the benefit of financial upgradation under the ACP scheme on the ground that the applicants did not possess the educational qualification as required for promotion to the next high grade. Law on this point is also no longer res-integra. The Jodhpur Bench has decided a similar controversy in the case of Rajendra Kumar vs. Union of India, OA No.73/2007 decided on 2.4.2007 alongwith similar matters. At this stage, it will be useful to quote para 6, 7, 8 and 9 of the judgment which thus reads:-

"6. Learned counsel for the applicants submits that the Scheme itself was evolved to mitigate the hardship of such employees who could not be promoted. It is further submitted that by giving the financial upgradation what is made available is only a financial benefits and not an elevation in status. For all intends and purpose applicants continue to be a Group 'D' employees performing the same duties as before but enjoying only a higher pay scale after rendered service for a specific period without any promotion chance, as such the condition of fulfilling the minimum qualification of the post of which the pay scale is being granted is not warranted and in any case the educational qualifications insisted upon by the respondents is discriminatory and contrary to the A.C.P. Scheme.

7. On the other hand, submission made by the learned counsel for the respondents is that as per para 6 of the Scheme, a person must fulfill normal promotion norms before granting financial up-gradation. For that purpose, learned counsel for the respondents has also placed reliance upon the clarification No.53 issued by the Department in terms of para 6 of Annexure I of DOPT Office Memorandum dated 09.08.2009, whereby it is stated that various stipulations and conditions specified in the recruitment rules for promotion

to the next higher grade, including the higher/additional educational qualification, if prescribed, would need to be met even for consideration under ACP Scheme. Thus, according to the learned counsel for the respondents before granting A.C.P. benefit to a person, he must fulfill the norms of promotion including the educational qualification.

8. According to us, the matter on this point is no longer res-integra. The Full Bench of the Tribunal at Chandigarh in the case of Shri Krishna Kumar and Ors. vs. Union of India and Ors., 2006 (1) A.T.J. 91, has considered this matter in depth thereby relying upon the decision of the Apex Court as well as the contrary view taken by the Ernakulam Bench of the Tribunal in the matter of V.E.Chandran and Ors. v. Union of India & Others [2002 (2) ATJ (CAT) 47], has answered the question posed before the Bench, as under:-

"40.... A person for grant of financial upgradation under the ACP Scheme dated 9.8.1999 to the next higher grade/scale is required to possess the educational qualifications required for appointment/promotion to the next higher post carrying same scale...."

9. Thus, in view of the decision rendered by the Full Bench in the case of Shri Krishna Kumar and Ors. (supra), we are of the view that the applicants are not entitled to any relief and we see no infirmity in the impugned order (s) dated 09.03.2007 (Annexure A/1) whereby the A.C.P. granted to the applicants were withdrawn with immediate effect. Since the impugned order (s) is prospective in nature, as such the prayer of the applicants that the respondents may be restrained from making any recovery pursuant to impugned order (s) dated 09.03.2007 (Annexure A/1) is wholly misconceived."

The findings recorded by the Jodhpur Bench in the case of Rajendra Kumar (supra), as reproduced above, are squarely applicable in the facts and circumstances of these cases.

8. Accordingly, these OAs are partly allowed. The action of the respondents so far it relates to

effecting recovery of excess amount from pay of the applicants on account of their refixation of pay pursuant to Ann.A1 is illegal and the respondents are restrained from making such recovery from pay of the applicants.

9. With these observations, the aforesaid OAs are disposed of with no order as to costs.

B.L.
(B.L.KHATRI)
Admv. Member

M.L.
(M.L.CHAUHAN)
Judl.Member

R/