

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 531/2012

DATE OF ORDER: ¹⁴10 December, 2013

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

HON'BLE MR. A. J. ROHEE, JUDICIAL MEMBER

1. Assistant Audit Officers Association, Rajasthan, Jaipur through Jagdish Prasad Panchal, General Secretary, Office of the Principal Accountant General (Civil Audit), Rajasthan, Jaipur.
2. Jagdish Prasad Panchal S/o Shri Girraj Prasad, aged about 56 years, R/o 170/147, "RHJ", Pratap Nagar, Jaipur, presently working as Assistant Audit Officer, Office of the Principal Accountant General (Civil Audit), Rajasthan, Jaipur and General Secretary of the Association.
3. Rajneesh Mehta S/o Shri Moti Ram, aged about 55 years, R/o 160, Jagannath Puri, Kalwar Road, Jhotwara, Jaipur, presently working as Assistant Audit Officer of the Principal Accountant General (Civil Audit), Rajasthan, Jaipur and one of the Member of the association.

...Applicants

Mr. C.B. Sharma, counsel for applicants.

VERSUS

1. The Union of India through the Secretary, Department of Expenditure, Ministry of Finance, North Block, New Delhi.
2. The Comptroller & Auditor General of India, 9 Deendayal Upadhyaya Marg, New Delhi - 110124.
3. The Principal Accountant General (Civil Audit), Rajasthan, Near Secretariat, Jaipur - 302005.

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

ORDER

(PER MR. ANIL KUMAR, ADMINISTRATIVE MEMBER)

The applicants have filed this Original Application praying for the following reliefs: -

- "8.(i) That the respondents be directed to hold good the benefits of promotion to the cadre of Assistant Audit Officer allowed after 01/01/2006 by quashing order dated 26/04/2012 (Annexure-A/1) with the

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clarification dated 01/10/2008 (Annexure-A/14) and with the orders dated 15/10/2008 (Annexure-A/15 & A/16) with all consequential benefits.

- (ii) That the respondents be further directed to give effect merger of posts of Section Officer and Assistant Audit Officer w.e.f. 27/05/2009 instead of 01/01/2006, as post re-designated vide order dated 27/05/2009 and 03/07/2009 (Annexure-A/17 & A/18) with all consequential benefits.
- (iii) That the respondents be further directed to refund the amount recovered from the applicants after re-fixation of pay vide Annexure-A/15 & A/16 along with interest at market rate.
- (iv) That the respondents be further directed to extend benefits of exercising of option under Rule 5 of CCS (Revised Pay) Rules, 2008 for drawing pre-revised scale till the next increment / promotion and to further extend the benefits of the same with all consequential benefits.
- (v) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.
- (vi) That the costs of this application may be awarded."

2. The facts of the Original Application in brief, as stated by the learned counsel for the applicants, are that in Indian Audit & Accounts Department, there were two supervisory cadres, viz. Section Officer (lower post), classified as non-gazetted Group-B carrying pay scale of Rs. 6500-10500 and Assistant Audit Officer (promotional post / higher post), classified as gazetted Group-B post in the pay scale of Rs. 7400-11500.

3. Learned counsel for the applicants further submitted that the applicant nos. 2 & 3 were promoted from the cadre of Section Officer to the post of Assistant Audit Officer vide order dated 27.04.2007 and 24.03.2006, respectively. Both the applicants were allowed due fixation of pay vide order dated

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23.05.2007. The pay of the applicant No. 2 was fixed at Rs. 9025/- and the pay of the applicant no. 3 was fixed at Rs. 8800/- by allowing benefits of provisions of FR-22 (1)(a)(i) (old FR-22-C).

4. Learned counsel for the applicants also submitted that other members of the Association i.e. 76 all were allowed promotion to the cadre of Assistant Audit Officer from the cadre of Section Officer on different dates between the period from 01.01.2006 to 30.09.2008 and allowed similar benefits of due fixation of pay.

5. Learned counsel for the applicants submitted that the 6th Pay Commission nowhere recommended to the merger of the post of Section Officer and Assistant Audit Officer but Government of India vide resolution dated 29th August, 2008 (Annexure A/10) provided as follows: -

"c). In the IA&AD and all organized accounts cadres, posts of Section Officers and Assistant Audit / Accounts Officers will be merged and placed in PB-2 with grade pay of Rs. 4800 as recommended by the Commission. In modification of Sixth CPS's recommendations, Audit/Accounts Officers (AOs) will be placed in PB-2 with grade pay of Rs. 5400 and Senior AOs will be placed in PB-3 with grade pay of Rs. 5400;"

6. Learned counsel for the applicants further submitted that the respondent no. 2 vide letter dated 01.10.2008 (Annexure A/14) clarified certain points in connection with implementation of 6th Central Pay Commission's recommendation in which point of doubt was 'How the promotion from SO to AAO is to be

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treated on/and after 01.01.2006?' This point was clarified – 'As the cadres of AAO and SO have been merged and upgraded in PB-2 (Rs. 9300-34800) with grade pay of Rs. 4800 w.e.f. 01.01.2006, promotion from SO to AAO on / after 01.01.2006 are to be treated as null and void.'

According to the applicants, this clarification was issued without taking note of the recommendations of the Central Pay Commission and Recruitment Rules and without procedure and also against the principles of natural justice.

7. Learned counsel for the applicants argued that on the basis of this clarification, respondent no. 3 issued orders dated 15.10.2008 and declared promotions allowed to the members of the association along with applicant nos. 2 & 3 as null and void from the date of promotion and also re-fixed the pay and taken away the benefits of promotion without extending any chance of hearing as well as against procedure.

8. Learned counsel for the applicants also argued that the applicant nos. 2 & 3 were allowed pay of Rs. 18000/- on 01.07.2008 (vide Annexure A/12 & A/13) but vide orders dated 15.10.2008, pay was lowered down to Rs. 17330/-. Similar orders were passed in respect of the other members of the association. Their pay was also reduced.

9. Being aggrieved by such decision of the respondents, the applicant nos. 2 & 3 and other members of the association represented before the respondent no. 3 on 12.08.2009

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(Annexure A/20) and further on 27.08.2009 (Annexure A/21) before the respondent no. 2 stating therein that treating the promotions as null and void and reducing the pay of the applicants are against the Recruitment Rules and such decision cannot be given effect retrospectively. Therefore, the members of the association are entitled for the benefits as extended from time to time.

10. Learned counsel for the applicants submitted that when no decision was taken by the respondent no. 2, the applicants filed O.A. No. 436/2010 before this Bench of the Tribunal, which was decided vide order dated 15.03.2012 (Annexure A/3). This Tribunal vide order dated 15.03.2012 came to the conclusion that the Tribunal cannot interfere with the resolution dated 29.08.2008 taken by the Ministry of Finance. The Tribunal directed the respondents to consider the representation dated 12.08.2009 and 27.08.2009 and pass a fresh speaking order.

11. Learned counsel for the applicants further submitted that the applicants are also not disputing the orders passed by the Government of India in connection with the higher scale as well as merger of the cadre and the only dispute is with regard to the orders passed by the respondents for nullifying promotions earned by the applicants as per cadre rules and the benefits extended to them after due fixation of pay as per provisions of FR-22.

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12. Learned counsel for the applicants also submitted that the respondent no. 2 without due consideration rejected the claim of the applicants vide order dated 26.04.2012. The orders of the rejection of the representation have been passed by the Assistant Comptroller and Auditor General (N). He was not a party in the O.A. before the Tribunal. The directions were issued by the Tribunal to the respondent nos. 2 & 3.

13. Learned counsel for the applicants further argued that the orders issued by the respondents for the withdrawal of the promotion are arbitrary and, therefore, the same should be declared as null and void and the pay of the applicant be fixed on the post of Assistant Audit Officer as per FR 22(1)(a)(i) and thereafter they can switch to the revised pay structure. Promotions once allowed cannot be taken away without review DPC.

14. Learned counsel for the applicants argued that the respondents have allowed higher seniority to the applicants on the basis of promotions and now on the other hand declared their promotion as null and void, therefore, he submitted that the Original Application be allowed and the order dated 26.04.2012 (Annexure A/1) be quashed and set aside.

15. On the other hand, learned counsel for the respondents submitted that prior to the implementation of 6th Central Pay Commission in the Indian Audit & Accounts Department, Section Officers were placed in the pay scale of Rs. 6500-200-10500.

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The post of Section Officer was classified as Group 'B' Non-Gazetted. The Section Officers, who fulfilled the minimum qualifying service of three years, were promoted to the post of Assistant Accounts / Audit Officer in the pay scale of Rs. 7450-225-11500 subject to availability of vacancies. The post of Assistant Audit / Accounts Officer was classified as Group 'B' Gazetted. There was no change in responsibilities and in work while promoting S.O. to the post of AAO.

16. Learned counsel for the respondents further submitted that the Government of India after carefully considering the recommendations of the Sixth Central Pay Commission, accepted the recommendations subject to some modifications and issued resolution dated 29.08.2008 (Annexure A/10), whereby in the IA&AD and all organized accounts cadres, post of Section Officers and Assistant Audit / Accounts Officer were merged and placed in PB-2 with grade pay of Rs. 4800 and Audit / Account Officers (AOs) were placed in PB-2 with the grade pay of Rs. 5400 and Senior Audit / Accounts Officers (Sr. AOs) were placed in PB-3 with the same grade pay of Rs. 5400.

17. Learned counsel for the respondents also submitted that the Office of the Comptroller and Auditor General of India vide letter dated 01.10.2008 (Annexure A/14) clarified that as the cadre of AAO and SO have been merged and upgraded in PB-2 (Rs. 9300-34800) with grade pay of Rs. 4800 w.e.f. 01.01.2006, promotion from SO to AAO on/after 01.01.2006 are to be treated as null and void. Accordingly, the fixation made under FR

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22(1)(a)(1) while promoting to the post of AAO from SO on/after 01.01.2006 was also nullified, therefore, recovery to this effect were made.

18. Learned counsel for the respondents argued that in compliance of Hon'ble Tribunal's judgment dated 15.03.2012 (Annexure A/3) passed in the previously filed OA No. 436/2010 by the applicants, representation dated 12.08.2009 and 27.08.2009 were duly considered and a reasoned and speaking order dated 26.04.2012 (Annexure A/1) has been passed. Thus, the applicants have no reason / ground to file the present Original Application, therefore, the same deserves to be dismissed.

19. Learned counsel for the respondents further argued that consequent upon the implementation of 6th CPC, the posts of Section Officers and Assistant Audit / Accounts Officer were merged, upgraded and placed in common pay band PB-2 with Grade Pay Rs. 4800 and the pay commission was implemented w.e.f. 01.01.2006, therefore, the promotion from SO to AAO on/after 01.01.2006 was not effective, hence, declared null and void. The action of the respondents was just and proper and as per the instructions and rules of the Government of India.

20. Learned counsel for the respondents further submitted that those Section Officers who were promoted as AAO between the period from 01.01.2006 to 29.08.2008 had the option to opt for the revised pay structure after being promoted as AAO in the

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pre-revised scales and in that case, the benefit of fixation of pay on promotion as AAO is admissible as per FR 22(1)(a)(i). Rule-5 of CCS (Revised Pay) Rules, 2008 provides that a person can elect to continue to draw pay in the existing scale until the date on which he earns his next / promotion. The affected SOs in IA&AD have exercised this option and have availed the benefit of fixation of pay as per FR 22(1)(a)(i) on their promotion as AAO, thereafter they have switched over to the revised pay structure. Hence, there is no controversy regarding the benefit of fixation of pay as per FR 22 (1) (a) (i) to the SO promoted as AAO during the period between 01.01.2006 to 29.08.2008 in the pre-revised scale as the same is available for the affected persons in terms of Rule 5 of the CCS (Revised Pay) Rules, 2008.

21. Learned counsel for the respondents argued that the representation of the applicants has been considered as per the directions of the Tribunal issued vide order dated 15.03.2012 and a speaking order dated 26.04.2012 (Annexure A/1) has been passed. Thus, the action of the respondents is legal and justified. Therefore, he prayed that the Original Application has no merit and it should be dismissed with costs.

22. Heard the learned counsel for the parties and perused the documents available on record.

23. With regard to the controversy about the validity of the resolution dated 29.08.2008 pursuant to the recommendations of the Sixth Central Pay Commission, this Tribunal vide order

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dated 15th March, 2012 (Annexure A/3) in O.A. No. 436/2010 has already held that the Tribunal does not want to interfere with the said resolution. In O.A. No. 436/2010 filed by the applicants, more or less similar reliefs were prayed for by the applicants. After considering the rival submissions of the parties, this Tribunal in para 13 has stated that in view of the fact that the amount, which has already been paid on the basis of the order being bonafide and undoubtedly the same has been recovered from the members of the Association, therefore, the respondents were directed to consider the representation dated 12.08.2009 and 27.08.2009. Therefore, in the present OA, we are dealing only with the relief as claimed in para 8(iii) and para 8(iv).

24. The respondents as per the directions of the Tribunal have considered the representation of the applicants dated 12.08.2009 and 27.08.2009 and passed a speaking and reasoned order dated 26.04.2012 (Annexure A/1). We have carefully perused the order dated 26.04.2012 (Annexure A/1) passed by the respondents. Para 3,4 & 6 of the order dated 26.04.2012 (Annexure A/1) are relevant and reproduced as follows: -

"3. The Finance Ministry's Notification implementing the recommendations of the Sixth Pay Commission vide GSR 622 (E) dated 29/08/2008 under its First Schedule, Part-B, Section II, Sub-head XX has up-graded the posts of SO and AAO to the pre-revised scale of Rs. 7500-250-12000 with Grade Pay of Rs. 4800/- in the revised pay structure. The Grade pay in the revised pay scale is the fixed amount which has been prescribed for the pre-revised scales. Since both posts have been up-graded and placed in common Grade Pay, the posts of SO and AAO stands merged in the revised pay structure w.e.f. 01/01/2006. Hence, the assumption of the Association

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that the post of SO and AAO should be merged after the issuance of the clarification vide Headquarters Circular No. 1350-6CPC/GE-II/135-2008 dated 01/10/2008 is hypothetical and is untenable.

4. Further, the Rule 5 of the CCS (Revised Pay) provides that a person can elect to continue to draw pay in the existing scale until the date on which he earns his next increment/promotion. Accordingly, a SO who has been promoted as AAO between the period from 01/01/2006 and 29/08/2008 had the option to opt for the revised pay structure after being promoted as AAO in the pre-revised scales and in that case the benefit of fixation of pay on promotion as AAO is admissible as per FR 22 (1) (a)(i). The affected SOs in IA & AD have exercised this option and have availed the benefit of fixation of pay as per FR 22(1)(a)(i) on their promotion as AAO, thereafter they have switched over to the revised pay structure.

5. Hence, there is no controversy regarding extending the benefit of fixation pay as per FR 22(1)(a)(i) to the SO promoted as AAO during the period between 01/01/2006 to 29/08/2008 in the pre-revised scale as the same is available for the affected persons in terms of Rule 5 of the CCS (Revised Pay) Rules, 2008."

25. The respondents in para 3 of order dated 26.04.2012 (Annexure A/1) have clearly mentioned that since both the posts have been upgraded and placed in the common Grade Pay, the posts of SO and AAO stand merged in the revised pay structure w.e.f. 01.01.2006. Hence, the assumption of the Association that the post of SO and AAO should be merged after the issuance of the clarification vide Headquarters Circular No. 1350-6CPC/GE-II/135-2008 dated 01.10.2008 is hypothetical and is untenable.

26. Further, in para 5 of order dated 26.04.2012 (Annexure A/1), the respondents have categorically stated that there is no controversy regarding extending the benefit of fixation of pay as per FR 22(1)(a)(i) to the SO promoted as AAO during the period between 01/01/2006 to 29/08/2008 in the pre-revised scale as

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the same is available for the affected persons in terms of Rule 5 of the CCS (Revised Pay) Rules, 2008.

27. We find no infirmity in the order dated 26.04.2012 (Annexure A/1) because this order has been passed by the respondents according to the instructions issued from time to time by the Government of India.

28. Learned counsel for the applicants submitted that no recovery be made from the applicants since they were bonafidely promoted by the respondents and subsequently that promotion order was nullified by the respondents. Thus, there is no misrepresentation by the applicants and, therefore, they are not responsible for the payment of higher salary to them.

29. On the contrary, learned counsel for the respondents submitted that even though there is no misrepresentation by the applicants but the recovery made by the respondents is according to the provisions of law and the law laid down by the Hon'ble Apex Court in the case of **Chandi Prasad Uniyal & Ors. vs. State of Uttarakhand & Ors.** reported in JT 2012 (7) SC 460.

30. It is admitted that applicants have not misrepresented for getting the higher salary. They were bonafidely promoted by the respondents but subsequently due to the merger of the grade of SO with the Gr. of AAO w.e.f. 01.01.2006, their promotions were nullified by the respondents. However, we are inclined to agree

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with the averments made by the learned counsel for the respondents that still recovery can be made from the applicants. The Hon'ble Apex Court in the case of **Chandi Prasad Uniyal & Ors. vs. State of Uttarakhand & Ors.** (supra), has held that any Government employee who has received an amount, which is not legally due to him can always be recovered. Otherwise, it will amount to unjust enrichment. Therefore, we are of the opinion that applicants are not entitled for any relief with regard to the recovery.

31. Learned counsel for the applicants also argued that as per the relief claimed in clause 8(iv) at least the applicant may be given one more chance to exercise their option as per the provisions of Rule 5 of CCS (Revised Pay) Rules, 2008. Learned counsel for the respondents submitted that according to the Rule 6 of CCS (Revised Pay) Rules, 2008, applicants were required to submit their options within three months of the date of the publication of these rules. The option once exercised shall be final. Therefore, the applicants are not entitled for any relief.


32. Having heard the rival submissions of the parties, we are of the opinion that in the interest of justice and in view of the fact that the applicants were promoted earlier on the post of AAO and their pay was accordingly fixed but subsequently their promotion orders were nullified by the respondent-department and their pay was reduced and recovery was made from them and also looking to the fact that they have agitated the matter before the Tribunal, therefore, looking into the hardship of the

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applicants, the respondents are directed to give the applicants one more chance of exercising the option under Rule 5 of CCS (Revised Pay) Rules, 2008 for drawing pre-revised pay scale till the next increment / promotion with all consequential benefits. The respondents are also directed to give three months' time to the applicants from the date of this order to give their option as stated above.

33. With these observations and directions, the Original Application stands disposed of with no order as to costs.


(A. J. ROHEE)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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