

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.3446/2016

Order reserved on 10th October 2017

Order pronounced on 8th November 2017

Hon'ble Mr. K.N. Shrivastava, Member (A)

Swarup Nandkeolyar (Age 60 years)
s/o late Shiva Mohan Nandkeolyar
r/o C-2/35, Tilak Lane
New Delhi – 110 001

..Applicant

(Mr. Deepak Anand, Advocate)

Versus

Union of India & others

1. Ministry of Power
(through its Secretary)
Shram Shakti Bhawan, Rafi Marg
New Delhi – 110 041
2. Comptroller & Auditor General of India
Pocket 9, Deen Dayal Upadhyaya Marg
New Delhi – 110 012
3. Ministry of Heavy Industries & Public Enterprises
(through its Secretary)
Department of Public Enterprises
Public Enterprises Bhawan
Block No.14, CGO Complex
Lodi Road, New Delhi – 110 003

..Respondents

(Mr. Piyush Gaur, Advocate for respondent Nos. 1 & 3 and
Mr. Hanu Bhasker and Mr. Ramjan Khan, Advocates for respondent No.2)

O R D E R

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

“a) to quash/ set aside the impugned order of recovery dated 08.09.2016 and 26.09.2016; and/or

b). to direct the respondent no.2 to not to deduct any alleged amount in terms of recovery/ refund from the full and final terminal benefits/ superannuation benefits i.e. Provident Fund, Gratuity, Leave salary, monthly pension etc.”

2. The factual matrix of the case is as under:-

2.1 The applicant belongs to 1982 batch of Indian Audit & Accounts Service (IA&AS), whose cadre controlling authority is respondent No.2. He was on deputation to Power Grid Corporation of India Limited (PGCIL) as Chief Vigilance Officer (CVO) in the grade of Executive Director from 19.07.2005 to 30.11.2009. His deputation to PGCIL was in accordance with the order dated 13.07.2005 (Annexure A-4) issued by the Ministry of Power (respondent No.1), who is the administrative Ministry for PGCIL. The Annexure A-4 order states that the deputation of applicant to PGCIL was initially for a period of three years extendable by another two years.

2.2 The terms of deputation of the applicant to PGCIL has been spelt out in Annexure A-5 letter dated 21.11.2005 of respondent No.1 addressed to the Chairman & Managing Director, PGCIL. These terms are; period of deputation, pay, dearness allowance, city compensatory allowance & house rent allowance, transfer T.A./joining time, Conduct, Discipline & Appeal Rules, T.A. & D.A. for journey on duty, leave & pension, provident fund, medical facilities, transport facilities, leave travel concession, disability leave, leave salary/pension contribution, group insurance, leased accommodation, etc. The letter also states that residuary matters relating to

conditions of service and benefits/facilities and perks in PGCIL are not covered by this letter. It, however, stipulates that all such residuary matters shall be governed by the rules and regulations and orders applicable to a member of Central Civil Services, serving in connection with the affairs of the Union.

2.3 The PGCIL has implemented Industrial Dearness Allowance (IDA) pay scales for its employees. The applicant, however, during his period of deputation to PGCIL, was continuing with the Central Dearness Allowance (CDA) pay scale that he had been drawing in his parent cadre.

2.4 The PGCIL introduced Performance Linked Incentive Scheme (PLIS) replacing the Transmission System Incentive Scheme (TSIS) and Productivity Linked Scheme (PLS) vide Annexure A-6 Corporate HR Circular No.214/2007 dated 03.04.2007. The applicant has been getting benefits of PLIS. The PLIS was subsequently classified as PLIS (Monthly & Annual). The details of the newly introduced PLIS are at pp. 53 to 65 of the paper book.

2.5 The Department of Public Enterprises (DPE) – respondent No.3, vide its Annexure A-7 O.M. dated 26.11.2008, on the subject of “Board level and below Board level Executives and non Unionised Supervisors in Central Public Sector Enterprises (CPSEs)”, revised the pay scales w.e.f. 01.01.2007. Paragraph 3 (iv) of this O.M. reads as under:-

“iv) Pay etc. of Government officers on deputation to CPSEs: The government officers, who are on deputation to the CPSE, will continue to draw the salary as per their entitlement in the parent

Department. Only those, who come on permanent absorption basis, will get the CPSE scales, perks and benefits.”

2.6 The DPE issued another O.M. dated 08.09.2009 (Annexure A-8) clarifying that all those Executives, getting CDA pay scales, will continue to get benefits, perks and allowances applicable to CDA scales, and Executives, who are getting IDA pay scales, will get perks and allowances applicable to IDA scales. Relevant portion of this O.M. is extracted below:-

“(c) It may be emphasized that the pay revision of the executives is a total package and the scales, perks and allowances should not be mixed. Accordingly the executives getting the CDA pay scales will continue to get benefits, perks and allowances applicable to CDA scales and executives who are getting IDA pay scales will get perks and allowances applicable to IDA scales.”

2.7 The PGCIL, vide its Annexure A-9 circular No.266/2010 dated 16.03.2010, decided to replace the existing PLIS (Monthly & Annual) with Performance Related Pay (PRP) Scheme for Board level and below Board level Executives w.e.f. 01.04.2007. The PRP Scheme is at pp. 74 to 88 of the paper book.

2.8 The Department of Personnel & Training (DoPT), vide its Annexure A-10 O.M. dated 12.10.2010, has issued certain clarifications regarding “allowing vigilance functionaries on deputation to CPSEs the option to draw pay either in the scale of pay of the CPSE concerned or pay in the parent cadre plus deputation (duty) allowance thereon plus personal pay, if any”. This O.M. was issued on the basis of a decision of the Union Cabinet. Paragraph 3 (ii) of the said O.M., dealing with perks, benefits and perquisites, is extracted below:-

“(ii) The CVOs and other officers on deputation to the Vigilance Departments in CPSEs may also be allowed all the perks, benefits & perquisites applicable to equivalent level of officers in concerned CPSEs.”

2.9 The DPE, vide its Annexure A-11 O.M. dated 03.12.2010, on the issue of pay of the vigilance functionaries on deputation to CPSEs, has clarified as under:-

“3. It is clarified that in view of DPE O.M. dated 26.11.2008 read with DoPT O.M. dated 12.10.2010, effective date of above provisions in respect of CVOs and other officers on deputation to the vigilance Department of CPSEs would be 01.01.2007. However, provisions as contained in DPE O.Ms. dated 26.11.2008 and 08.06.2009 will be relevant in respect of all Government Officers who come on deputation to CPSEs in posts other than CVOs and other officers on deputation to the Vigilance Department of CPSEs.”

Thus, the DPE made it very clear that its O.Ms. dated 26.11.2008 and 08.06.2009 are not applicable to CVOs on deputation to Vigilance Department of CPSEs.

2.10 On the issue of allowing the benefits of PRP Scheme to CVOs and other officers on deputation to Vigilance Department of CPSEs, the Ministry of Power (respondent No.1) referred the matter to DPE (respondent No.3), who, vide its Annexure A-12 U.O. Note dated 22.09.2011, has clarified as under:-

“4. In view of above, Ministry of Power may be informed that the PRP will be allowed only to CVO's and other officers on deputation to the Vigilance Department to CPSEs, in terms of DoPT O.M. dated 12.10.2010. Other Central/State Government employees who were/are on deputation to PGCIL will be regulated as per the provisions contained in DPE O.Ms. dated 26.11.2008 and 08.06.2009.”

2.11 Based on the *ibid* U.O. Note of DPE, Ministry of Power (respondent No.1) vide Annexure A-13 letter dated 03.11.2011, on the issue of applicability of PRP to CVOs and other officers on deputation to Vigilance Department in CPSEs, issued the following clarifications to PGCIL:-

“I am directed to refer to your letter No.C:HR:IE:08/10109 dated 14.11.2011 on the above subject and to enclose a copy of Note received from DPE under UO No.2(51)11-DPE (WC) dated 22.9.2011 wherein it has been clarified that the PRP will be allowed only to the Chief Vigilance Officers and other Officers on deputation to the Vigilance Department in CPSEs.”

2.12 The PGCIL, vide its Annexure A-14 letter dated 19.12.2011, sought clarification from respondent No.1 in regard to payment of PRP to the applicant, who, by the time, had already been reverted from PGCIL back to his parent cadre. The relevant portion of this letter is extracted below:-

“In accordance with DPE OM No.15(7)/2002-DPE(GM)GL-50 dated 15.12.2003, CVO's in schedule 'A' companies who are in the level of Jt Secretary to the Govt. of India and above may be given the status equivalent to that of a Functional Director without allowing the scale of pay (of Functional Director) in the PSU. Further in accordance with para 3(ii) of DOPT Office Memorandum No.372/21/2009-AVD-III dated 12th October 2010, the CVO's and other Officers on deputation to the Vigilance Departments in the CPSE's may also be allowed all the perks, benefits & perquisites applicable to equivalent level Officers in concerned CPSE's.

In terms of above stipulations Shri Nandkeolyar becomes entitled to the status, perks, benefits & perquisites of Functional Director w.e.f. 23.05.2009 but not the scale of pay.

Above guidelines are however not very clear about the treatment to PRP i.e.

- (i) whether above officer is to be paid PRP equivalent to that admissible to functional Director (max 150% of basic pay) for the period 23.05.2009 to 30.11.2009?

- (ii) whether the quantum of PRP will be a percentage of the basic pay being drawn by the Officer on CDA pattern in parent cadre (Govt.) or will be a percentage equivalent to the basic pay had he opted for scale of pay in IDA pattern in the PSU.”

2.13 Respondent No.1, vide Annexure A-17 letter dated 20.06.2013, in response to Annexure A-16 letter of PGCIL, clarified as under:-

“2. DPE has informed that the quantum of PRP and other benefits, perks and allowances is a percentage of the basic pay of the IDA pay scales of the concerned CPSE, in case the incumbent opts for the same. There is no concept of hybrid system i.e. DA, HRA, perks & allowances, PRP and other benefits attached with the basic pay of CDA pattern of pay scales in accordance with DPE’s OM dated 08.06.2009. They have further informed that Shri Nandkeolyar, Ex. CVO, PGCIL from 19.07.2005 to 30.11.2009 had opted for parent cadre pay scale. He cannot be paid PRP as he had drawn CDA pay scale (parent cadre pay).”

2.14 In accordance with the clarification issued by respondent No.1 through its Annexure A-17 letter dated 20.06.2013, the PGCIL, vide impugned Annexure A-18 letter dated 23.08.2013, informed the applicant that he is not entitled for payment of PRP and hence the amount paid to the applicant towards PRP is required to be refunded by him to the PGCIL. The relevant portion of Annexure A-18 letter reads thus:-

“..... The clarifications received from MOP are quoted below in verbatim:

“DPE has informed that the quantum of PRP and other benefits, perks and allowances is a percentage of the basic pay of the IDA pay scales of the concerned CPSE, in case the incumbent opts for the same. There is no concept of hybrid system i.e. DA, HRA, perks & allowances, PRP and other benefits attached with the basic pay of CDA pattern of pay scales in accordance with DPE’s OM dated 08.06.2009. They have further informed that Shri Nandkeolyar, Ex. CVO, PGCIL from 19.07.2005 to 30.11.2009 had opted for parent cadre pay scale. He cannot be paid PRP as he had drawn CDA pay scale (parent cadre pay).”

As regard applicability of DOPT's O.M. dated 12.10.2010 and 12.7.2012, the clarifications received are as under in verbatim:

“DoPT have informed that the OM dated 12.10.2012 was issued after Shri Nandkeolyar relinquished the charge of the post of CVO in PGCIL, hence the benefit of OM dated 12.10.2010, cannot be extended to him under the present circumstances. They have further intimated that the OM dated 12.07.2012 has been given effect from 12.07.2.12 and therefore this OM is also not applicable to Shri Nandkeolyar.”

In view of the above clarifications, we are constrained to request you for refund of the amount paid to you towards PRP. We are getting the same calculated and shall inform you shortly.”

2.15 The applicant wrote Annexure A-19 letter dated 08.10.2013 in response to the letter of PGCIL dated 23.08.2013, explaining as to why he is entitled for PRP and refund sought by the PGCIL from him was not in order.

2.16 The PGCIL, vide its Annexure A-21 letter dated 01.09.2016, has informed the applicant that he is required to refund of Rs.13,23,073/- paid to him towards PRP, for which he was not entitled.

2.17 Respondent No.1, vide Annexure A-1 (colly.) letter dated 08.09.2016 addressed to the Chairman & Managing Director, PGCIL, has informed that the applicant is due to retire on 31.10.2016 and thus wanted to know whether the PRP amount paid to the applicant has been recovered by the PGCIL or not.

2.18 Respondent No.2, vide letter dated 26.09.2016 (Annexure A-1 (colly.)), has also informed the applicant that he is to refund an amount of Rs.13,23,073/- paid towards PRP to the PGCIL at the earliest.

Aggrieved by the Annexure A-1 letters of respondent Nos.1 & 2, the applicant has filed the present O.A. praying for the reliefs, as indicated in paragraph (1) above.

3. The applicant has urged the following grounds in support of the reliefs claimed in the O.A.:

3.1 The applicant's case is fully covered by the DoPT O.M. dated 02.03.2016 (Annexure A-20) and hence no recovery can be ordered from him. This O.M. of DoPT is based on the judgment of Hon'ble Supreme Court in the case of **State of Punjab & others v. Rafiq Masih (White Washer) & others** (2015) 4 SCC 334.

3.2 The DPE, vide its Annexure A-12 U.O. Note dated 22.09.2011, has clearly directed that the PRP will be allowed only to CVOs and other officers on deputation to the Vigilance Department in CPSEs, in terms of DoPT O.M. dated 12.10.2010.

3.3 As there was some ambiguity in the DPE O.M. dated 26.11.2008, the O.M. dated 12.10.2010 was issued by the DoPT clarifying the earlier O.M. This does not mean that the O.M. dated 12.10.2010 will operate only prospectively.

3.4 It is nowhere stated that payment of PRP to CVO is dependent upon the kind of pay scales, i.e., CDA or IDA pay scales.

3.5 The appropriate authority, who is to decide whether the applicant was entitled to PRP, is PGCIL and not respondent No.1.

3.6 The predecessor of the applicant Mr. RRPN Sahi, IPS was paid PLIS (now known as PRP) and hence on the ground of parity, he is also entitled for PRP.

3.7 The U.O. Note dated 22.09.2011 of DPE has specifically allowed PRP to CVO in terms of DoPT O.M. dated 12.10.2010 without making any distinction between CDA and IDA pay scales applicability for PRP.

4. Pursuant to the notice issued, only respondent No.1 has filed the counter reply, in which following significant averments have been made:-

4.1 The applicant was on deputation with PGCIL as CVO from 19.07.2005 to 30.11.2009. The PGCIL, vide its letter dated 02.12.2010, sought clarification regarding DoPT O.M. dated 12.10.2010 in respect to allowing vigilance functionaries on deputation to CPSEs to draw CPSE pay scales or pay scales in parent cadre, as also regarding the applicability of CPSE perks, benefits and perquisites of equivalent level.

4.2 A communication dated 03.11.2011 was sent by respondent No.1 conveying the advice of DPE (respondent No.3) that PRP will be allowed only to the CVOs and other officers on deputation to the Vigilance Department of CPSEs. Accordingly, an amount of Rs.13,23,073/- was paid by the PGCIL towards PRP for the years 2007-08, 2008-09 and for a period from April to November 2009.

4.3 The PGCIL, vide its letter dated 19.12.2011, sought clarification as to whether the PRP equivalent to the functional Director should be paid to the applicant and whether the quantum of PRP will be a percentage of the basic pay being drawn by the officer on CDA pattern in parent cadre or will be a percentage equivalent to the basic pay had he opted for scale of pay in IDA.

4.4 After consulting the DPE and DoPT in the matter, vide letter dated 20.06.2013, the PGCIL has been informed that the applicant is not eligible for PRP, as he has been drawing CDA pay scale and PRP is payable only to those officers, who are in the IDA pay scales.

4.5 In terms of the clarification issued, the PGCIL has sought a refund of Rs.13,23,073/- paid towards PRP to the applicant vide its letter dated 01.09.2016. The applicant has chosen not to refund the said amount and much belatedly after three years, as an afterthought, has filed the instant O.A. in the year 2016.

4.6 The Hon'ble Supreme Court in the case of **State of Karnataka & others v. S M Kotrayya & others** (1996) 6 SCC 267 has held as under:-

“.....it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-sections (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievance before the expiry of

the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay.”

4.7 The O.A. is liable to be dismissed on the ground of limitation itself in terms of decision of Hon’ble Apex Court in **Union of India & another v. M K Sarkar** (2010) 2 SCC 59 wherein it has been held that a stale or dead issue / dispute cannot be considered by furnishing a fresh case of action.

4.8 The recovery has been sought from the applicant by the PGCIL and PGCIL does not come under the jurisdiction of this Tribunal and hence, this O.A. cannot be adjudicated by this Tribunal on the ground of jurisdiction itself.

4.9 The PGCIL has not been made a party in this O.A. Since the recovery has been ordered by the PGCIL, it was a necessary party in the O.A. Hence, on the ground of non-joinder of a necessary party, this O.A. is liable to be dismissed.

5. The applicant has filed a rejoinder to the reply filed on behalf of respondent No.1, in which, by and large, he has reiterated his averments made in the O.A.

6. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 10.10.2017. Arguments of Mr. Deepak Anand, learned counsel for applicant and that of Mr. Piyush Gaur, learned counsel for respondent Nos. 1 & 3 and Mr. Hanu Bhasker, learned counsel for respondent No.2 were heard.

7. I have considered the arguments of learned counsel for the parties as also the rival pleadings of the parties.

8. Admittedly, at the time when the applicant joined PGCIL, the PLIS was *in vogue*. Benefits of PLIS were extended to him by the PGCIL. Such benefits had also been extended to the predecessor of the applicant. The DoPT O.M. dated 12.10.2010 makes it absolutely clear that the CVOs and other officers on deputation to the Vigilance Departments in CPSEs may also be allowed all the perks, benefits & perquisites applicable to equivalent level of officers in concerned CPSEs. Since the applicant was in the grade of Executive Director in PGCIL, he was entitled for payment of perks and perquisites, as applicable to an Executive Director. Accordingly, he has been paid PLIS. Furthermore, the DPE (respondent No.3), vide Annexure A-12 U.O. Note dated 22.09.2011, has clarified that the PRP should be allowed only to CVOs and other officers on deputation to the Vigilance Department in CPSEs, in terms of DoPT O.M. dated 12.10.2010. The confusion has started only after the PGCIL, vide Annexure A-14 letter dated 19.12.2011, sought certain clarifications in regard to payment of PRP to the applicant. Even from this letter, it is quite evident that the PGCIL had not questioned the eligibility of applicant to receive PRP. It had only asked a clarification as to whether the applicant should be paid PRP equivalent to a functional Director (max 15% of basic pay) or whether the quantum of PRP will be a percentage of the basic pay being drawn by the officer on CDA pattern in parent cadre or will be a percentage equivalent to the basic pay

had he opted for scale of pay in IDA pattern in the Public Sector Undertaking (PSU).

9. It is astonishing to note that a settled position with regard to payment of PRP to CVO & other staff on deputation to Vigilance Department in terms of DoPT O.M. dated 12.10.2010 and Annexure A-12 U.O. Note dated 22.09.2011 of DPE (respondent No.3) has been unsettled. The DoPT has now clarified that since the applicant has relinquished the post of CVO in PGCIL prior to issuance of O.M. dated 12.10.2010, its benefits cannot be extended to him. The DPE, on its part, has now clarified that the quantum of PRP and other benefits, perks and allowances is a percentage of the basic pay of the IDA pay scales of the concerned CPSE, in case the incumbent opts for the same, and that there is no concept of hybrid system, whereby some financial benefits could be paid to a deputationist in terms of IDA pay scales and some other in terms of CDA pay scales. The DPE has thus disentitled that the applicant for PRP, as he has been drawing CDA pay scales.

10. The clarifications issued by the DoPT and DPE in regard to eligibility of the applicant for PRP are indeed bizarre. The PRP is to be paid across PGCIL to all the eligible employees irrespective of the pay scales in which they are. The DoPT O.M. dated 12.10.2010 has clearly indicated that all perks and perquisites are also to be paid to CVOs and all deputationists in the Vigilance Department of CPSEs. This O.M. is effective from 01.01.2007. Therefore, the applicant as well as all deputationists in the Vigilance Department of PGCIL are entitled for the benefits of DoPT O.M. dated

12.10.2010. The pattern of pay scale, in which a deputationist is, cannot be a deciding factor in regard to his eligibility to get PRP or otherwise. The PLIS, by whatever nomenclature it has been called in PGCIL, at different points of time, is to be paid to the applicant as well as also all deputationists in its Vigilance Department. Clarifications issued through U.O. Notes of the DoPT and DPE cannot take away the substantial entitlement of the applicant to the benefits of DoPT O.M. dated 12.10.2010. Since this O.M. has been made effective from 01.01.2007, it would thus cover the period of deputation of the applicant in PGCIL. The PRP benefits cannot be denied to him, simply on the ground that he had completed his deputation tenure prior to the issuance of this O.M.

11. As regards the jurisdiction of this Tribunal to adjudicate the matter, suffice it to mention that the applicant was on deputation to PGCIL on the basis of an order dated 13.07.2005 issued by respondent No.1. PGCIL did not have any role to play with regard to the deputation of the applicant to it as CVO. It is respondent No.1, who was the relevant authority for the applicant in this matter. Hence, I am of the firm view that this Tribunal has jurisdiction to adjudicate the present O.A.

12. Insofar as the objection in regard to limitation is concerned, from the perusal of the records, it is quite apparent that the applicant had represented to the concerned authorities against the recovery of PRP from him. The applicant has adequately explained the delay that has occurred in filing the present O.A. I am fully convinced that the O.A. does not suffer with the constraints of limitation. Since the recovery of PRP from the

applicant has been triggered by an action of respondent No.1, the PGCIL is not considered to be a necessary party.

13. In the conspectus of discussions in the foregoing paragraphs, this O.A. is allowed. Impugned letter dated 08.09.2016 of respondent No.1 to PGCIL and impugned order dated 26.09.2016 of respondent No.2 are quashed and set aside.

No order as to costs.

(K.N. Shrivastava)
Member (A)

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