

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.3321/2014

Order Reserved on: 04.08.2015
Order pronounced on 17.09.2015

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

B.C.Srivastava
(Dy. Controller of Accounts CAT PB N.D.) Group-A)
Age 58 years
S/o H C Srivastava
408, Laxmi Bai Nagar
New Delhi – 110 023. Applicant

(By Advocate: Sh. C. Hari Shanker with Shri C.M.Jayakumar)

Versus

1. Union of India
(Through Secretary)
Department of Expenditure
Ministry of Finance
North Block
New Delhi-110 011.
2. Ministry of Personnel, Public Grievances & Pension,
(Through Secretary)
Department of Personnel & Training
North Block
New Delhi – 110 011.
3. Principal Registrar
Central Administrative Tribunal
Principal Bench
New Delhi. Respondents

(By Advocate: Shri Rajinder Nischal)

ORDER**By V. Ajay Kumar, Member (J):**

The Applicant, who is working as Deputy Controller of Accounts in the 3rd Respondent, Central Administrative Tribunal, filed the OA, seeking the following reliefs:

- (i) To direct the respondents to grant to the applicant the approved re-fixation of his pay at par that granted with Shri Kuldeep Singh alongwith all consequential benefits.
- (ii) To grant costs of this OA to the applicant herein, and
- (iii) To pass such other order or orders as may be deemed fit and proper in the interests of justice.

2. The brief facts of the case, as narrated by the applicant, are that the applicant, who was working as Senior Accountant in the Postal Department, joined the Lucknow Bench of the 3rd Respondent-Tribunal as Junior Accounts Officer (JAO) in the grade of Rs.1640-2900, w.e.f. 28.01.1992. He was subsequently, absorbed as JAO w.e.f. 18.05.1995.

3. The 2nd Respondent, Ministry of Finance and Company Affairs vide Annexure A1, Office Memorandum dated 28.02.2003, granted upgraded pay scales to the posts mentioned therein and to their equivalent posts in the organised accounts cadres existing in various Ministries/Departments of the Government of India on notional basis, w.e.f. 01.01.1996 with actual payments being made from 19.02.2003,

i.e., the date on which the said decision was approved by the Government.

4. The applicant, earlier filed OA No.271/2003 seeking a direction to the respondents to re-fix his salary in the pay scale of Rs.6500-10500 w.e.f. 01.01.1996, which is payable against the post of Junior Accounts Officer in accordance with the aforementioned OM dated 28.02.2003 and for other consequential relief(s). This Tribunal by its Order dated 13.10.2004, disposed of the said OA by directing the applicant to file a fresh representation and that the 3rd Respondent may take a proper decision thereon as early as possible.

5. The 3rd Respondent vide Annexure A9, dated 20/22, December, 2006, forwarded the representation of the applicant to the 2nd Respondent to resolve the disparity in pay scale of the accounts cadre of CAT and other organized accounts cadres. In the said letter, it was also informed that one Shri V. Unni Menon, Accounts Officer of the Bangalore Bench had filed OA No.15/1999 praying for the benefit of restructuring of Accounts cadre of Organized Accounts Service and that the said OA was allowed. However, the Government went in appeal against the said decision and that the Hon'ble High Court Karnataka set aside the judgement in OA No.15/1999 and held that all the orders of Central Government will not apply to CAT as it is not a Central Government organization but is an autonomous body. The SLP filed by Shri V. Unni Menon is pending in the form of Civil Appeal before the Hon'ble Supreme Court. Since the issue of benefit of restructuring of

Accounts cadre raised by the applicant and Shri V. Unni Menon is identical, no action has been taken on the request of the applicant as the matter is sub judice.

6. While things stood thus, one Shri Kuldip Singh, who is also similarly placed like the applicant and working as Junior Accounts Officer in Central Administrative Tribunal, New Delhi, filed OA No.2951/2003, seeking identical relief. This Tribunal by its Order dated 21.04.2010, while noting the pendency of the SLP in Shri Unni Menon's case (supra) in Supreme Court, by following the decision of the Hon'ble Apex Court in **State of Mizoram & Anr. V. Mizoram Engineering Service Association & Anr.** (2004) 6 SCC 218 and a Coordinate Bench decision of this Tribunal in SOs/PSs of CAT in **S.R.Dheer & Others v. Union of India & Others**, in OA 164/2009, decided on 19.02.2009, allowed the OA No.2951/2003 filed by Shri Kuldip Singh.

7. The WP (C) No.6343/2010, filed against the decision in OA No.2951/2003 was dismissed by the Hon'ble High Court of Delhi by its Order dated 20.09.2010. However, the Hon'ble High Court while dismissing the WP, by noting that the SLP filed in Unni Menon's case is pending before the Hon'ble Apex Court, observed as under:

"13. Before us, the only additional submission which has been made by counsel appearing for the petitioner is that once the Tribunal earlier adjourned the matter awaiting the orders in the SLP filed in the Unni Menon's case (supra) and in view of the decision of the co-ordinate Bench of the Tribunal in S.R.Dheer's case (supra), it was not proper on the part of the Tribunal to have reviewed its own decision. However, we find that

the order of the Tribunal is based upon the judgment of the Apex Court and subsequent judgment of the Tribunal passed in the case of **S.R.Dheer's** case (supra) which is with respect to SOs/PSs in the Tribunal itself. The order passed by the Tribunal does not call for any interference at our end except to modify it by clarifying that the implementation thereof would be subject to orders which may be passed by the Apex Court in the SLP against the decision in **Unni Menon's** case. Accordingly, the writ petition is dismissed with no orders as to costs at this stage itself."

8. The respondent-CAT granted the benefits arising out of the order of this Tribunal dated 21.04.2010 in OA No.2951/2003 to the said Kuldip Singh vide its order dated 12.08.2010.

9. Thereafter, the Civil Appeal No.7113/2005 filed by Shri Unni Menon against the decision of the High Court of Karnataka in WP (C) No.33496/2000 was dismissed by Order dated 07.01.2011.

10. Keeping in view the observations made by the Hon'ble High Court in WP(C) No.6343/2010 dated 20.09.2010 in Kuldip Singh's case (supra) to the effect that the orders passed by the Tribunal in OA No.2951/2003 on 21.04.2010, are subject to the orders passed by the Hon'ble Apex Court in SLP against the decision in Unni Menon's case (supra), and in view of the dismissal of Unni Menon's SLP on 07.01.2011, the respondent-CAT have issued orders dated 21.07.2011 by re-fixing the pay of the said Kuldip Singh with retrospective effect from 01.01.1996 in supersession of their earlier order dated 12.08.2010. Aggrieved by the same, Shri Kuldip Singh filed OA No.4607/2011 and this Tribunal by its order dated 16.10.2012, allowed the said OA as under:

"30. In our considered view, the Respondent in the case has issued the impugned Office Order dated 21.07.2011 without application of mind. Just because the Hon'ble High Court has made an observation in its order dated 20.09.2010 that the implementation of the order of this Tribunal dated 21.04.2010 would be subject to the orders which may be passed by the Apex Court in the SLP against the decision in Unni Menon's case, and the Apex Court has later on dismissed the said SLP on 07.01.2011, the Respondent could not have, in a mechanical manner, passed the impugned Office Order without giving any reason on merit for refixing the pay of the applicant as the aforesaid observation made by the High Court was not on considering the merit of the case in Unni Menon's case but only on the additional submission made by the counsel appearing for the petitioner that this Tribunal had adjourned the matter awaiting the orders in the SLP filed in the Unni Menon's case (supra). In conclusion, we hold that claim of Shri Unni Menon in his case before the Bangalore Bench of CAT, High Court of Karnataka and the Supreme Court was that even after he got absorbed in CAT Bangalore, he should be given promotion in CAT Bangalore at par with his erstwhile colleagues in his parent office in the Audit and Accounts Department in terms of the M/o Finance OM dated 22.09.1992 regarding promotional grade for Audit/Accounts Officers of Organized Accounts Cadres which was rejected by both the High Court of Karnataka and the Apex Court. On the other hand, the claim of the Applicant before both this Tribunal and the High Court of Delhi is that he should have been given the benefit of the OM dated 28.02.2003 issued by the Govt. of India, Department of Expenditure, regarding "Pay Scales for the Staff belonging to the organized Accounts Department" on the ground that the pay scales of the Accounts Staff of the CAT has always been having the parity with the corresponding officers belonging to Group 'A', Group 'B' and Group 'C' and 'D' in the Government of India as per the service conditions statutorily fixed in terms of the CAT Staff (Conditions of Service) Rules, 1985 and the CAT (Accounts Personnel Posts) Recruitment Rules, 1990 enacted on the basis of the former rules. Therefore, the earlier order of this Tribunal dated 21.04.2010 in OA 2951/2003 (supra) as upheld by the High Court of Delhi, vide its order dated 20.09.2010 in CWP No. 6343/2010 (supra), does not get effaced by the judgment of the Supreme Court in Unni Menon's case dated 07.01.2011.

31. In view of the above facts and circumstances of this case, we allow this OA. Consequently, we quash and set aside the impugned Office Order dated 21.07.2011 by which the applicant's pay has been re-

fixed. We also quash and set aside the decision of the Respondents to effect recovery from his salary on the basis of the aforesaid office order. Consequently, we restore the fixation of his pay made earlier vide order dated 12.08.2010 and direct the Respondent No. 2 to refund the amount already recovered from his pay from August, 2011 and to pass appropriate orders immediately, but in any case within a period of one month from the date of receipt of a copy of this order. There shall be no order as to costs."

11. When the said order was not complied, the said Kuldip Singh filed CP No.852/2012 in OA No.4607/2011. The said CP was closed on 29.01.2013, after the respondent-CAT implemented the orders in the OA by making it provisional subject to the outcome of the proposed appeal to be filed by the DoPT in consultation with the Department of Legal Affairs in the Hon'ble High Court of Delhi.

12. The WP(C) No.7744/2013, filed by the respondent-CAT in OA No.4607/2011, is pending before the Hon'ble High Court of Delhi.

13. In the present case, the applicant submits that he is similarly placed like Shri Kuldip Singh and hence, he is also entitled for the benefits granted to him. When his representations seeking re-fixation of his pay on par with Shri Kuldip Singh along with all the consequential benefits were not answered, he filed the present OA.

14. Heard Shri C. Hari Shanker, learned senior counsel with Sh. C.M.Jayakumar, the learned counsel for the applicant and Shri Rajender Nischal, the learned counsel for the respondents, and have perused the pleadings on record.

15. The learned senior counsel Shri Hari Shanker appearing for the applicant, by drawing the attention of this Tribunal to all the aforesaid orders of this Court and of the Hon'ble High Court and Hon'ble Apex Court, submits that the applicant is identically placed like Shri Kuldip Singh and hence, his pay also should be refixed on par with the said Kuldip Singh with all consequential benefits, however, if necessary, subject to the result of the WP(C) No.7744/2013 filed in the said Kuldip Singh's OA No.4607/2011 pending in the Hon'ble High Court of Delhi.

16. Shri Rajender Nischal, the learned counsel appearing for the respondents, while not disputing the aforesaid fact situation and that the applicant is similarly placed like the aforesaid Kuldip Singh, however, submits that the basic issue, whether the Accounts Cadre of the respondent-CAT is an 'organized' accounts cadre or not, is pending before the Hon'ble High Court of Delhi in WP(C) No.7744/2013, submits that the present OA may be dismissed with liberty to file a fresh OA after disposal of the said WP or adjourned the OA sine-die till the disposal of the said WP.

17. In view of the fact that the applicant is similarly placed like Shri Kuldip Singh and that the orders of the CAT, Principal Bench in his OA No.4607/2011 have already been implemented, though subject to the result of the WP (C) No.7744/2013, and that no stay has been granted by the Hon'ble High Court against the orders of CAT, Principal Bench, in the said Kuldip Singh's case, we are not inclined to accept the

contentions of the learned counsel for the respondents. Hence, the OA is liable to be allowed for parity of reasons, however, subject to the result of the WP(C) No.7744/2013.

18. It is also relevant to observe that in the similar circumstances, a Coordinate Bench of this Tribunal at Hyderabad in OA No.021/01188/2014, by its Order dated 16.06.2015 granted identical relief to the applicant therein.

19. In the circumstances and for the aforesaid reasons, the OA is allowed, and the respondents are directed to re-fix the pay of the applicant on par with the applicant in OA No.4607/2011, i.e., Sh. Kuldip Singh, with all consequential benefits, within 90 days from the date of receipt of a copy of this order. However, the same is subject to the final outcome of the WP(C) No.7744/2013, pending before the Hon'ble High Court of Delhi. No Costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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