

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA No.3901/2014

Order Reserved on: 22.09.2016.

Pronounced on: 07.10.2016.

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

D.K. Shami,
S/o Shri Karan Singh,
R/o H.No.1161, Type-4 (Special),
R.K. Puram, New Delhi-110022.

- Applicant

(By Advocate Shri Umesh Singh)

Versus

1. Union of India through
Union Home Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. Director General
(FS HG & CD),
East Block, VII, Level-7,
New Delhi-110066.

-Respondents

(By Advocate Shri Gyanendra Singh)

ORDER

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

This Original Application (OA) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, praying for the following main relief in the OA:

“a. Quash the Impugned orders no.F.No.I-45011/77/2006-AD(CD)(Pt) 424 dated 3rd July, 2014 passed by Ministry of Home Affairs (DM Division), and the order no.20/G/2/2003-DGSD (Estt.) Director General (FSHG & CD), East Block, VII, Level 7, R.K. Puram, New Delhi, Dated 21st Oct. 2014 for recovery of the amount already paid to him w.e.f. 1.2.2006 and till date, thereby have re-fixed/reduced his pay from Rs.14300-18300 to 10,000-15200 with G.P. from 8700 to 6600 without giving any opportunity of hearing or notice, in violation of the principle of natural justice, illegally and without any basis.”

2. The brief facts of this case are as under:

2.1 The applicant was appointed as a Deputy Fire Adviser under respondent no.2 on 02.02.1994 vide Annexure A-1 notification dated 15.02.1994 of respondent no.1. The respondent no.2 works under Ministry of Home Affairs (MHA), respondent no.1. The applicant was granted first financial upgradation under the then existing Assured Career Progression (ACP) Scheme on 26.09.2006 on completion of 12 years of regular service.

2.2 With the implementation of VI Central Pay Commission (CPC) recommendations, Modified Assured Career Progression (MACP) Scheme came into existence.

2.3 Respondent no.1 vide Annexure A-2 notification dated 16.11.1990 modified the Recruitment Rules (RRs) for the post of Deputy Fire Adviser, which now stipulate that the mode of recruitment for the said post would be “By transfer on deputation (including short term contract) failing which by direct recruitment”. It is further stated therein that officers of

the fire brigade of the Central/State Government/Municipal Corporation/Public Sector Undertakings, holding analogous posts on regular basis for certain prescribed years of service and possessing the qualifications/ experience prescribed for direct recruitment for the post would be eligible for appointment on transfer/deputation basis.

2.4 The ACP upgradation to the applicant on 26.09.2006 was done on the consideration that the post of Deputy Fire Adviser held by the applicant is an isolated post having no feeder grade or promotional grade. The Department of Personnel & Training (DoP&T), however, vide their OM dated 09.08.1989 on the subject had clarified that an isolated post is a standalone post having neither feeder grade nor promotional grade. As such, a post having no promotional grade but having a feeder grade and vice versa shall not be termed as an isolated post for the purpose of ACP.

2.5 When the applicant's case for 2nd financial upgradation under the MACP Scheme to be granted w.e.f. 01.02.2014, i.e., after completion of 20 years of service was sent with due recommendation of the Screening Committee, vide Annexure AA letter dated 03.07.2014, respondent no.1 informed respondent no.2 that the applicant was not entitled for 2nd financial upgradation under the MACP Scheme. It was also mentioned

therein that the post of Deputy Fire Adviser held by the applicant is not an isolated post as clarified by the DoP&T vide their OM dated 09.08.1989 vis-a-vis Annexure R-2 RRs. Annexure AA further states that the ACP upgradation granted to the applicant in the year 2007 w.e.f. 01.02.2006 vide order dated 26.09.2006 was illegal and, therefore, any additional payment made to the applicant on account of it should be recovered from him.

2.6 Aggrieved by the impugned Annexure AA communication of respondent no.1, the applicant has filed the instant OA.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicant thereafter filed his rejoinder. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 22.09.2016. Shri Umesh Singh, learned counsel for the applicant and Shri Gyanendra Singh, learned counsel for the respondents argued the case.

4. The learned counsel for the applicant stated that the impugned Annexure AA order has been issued without even issuing any Show Cause Notice (SCN) to the applicant. He stated that the Hon'ble Supreme Court in the case of **Bhagwan Shukla v. Union of India and others**, [JT 1994 (5) SC 253] on this issue has held as under:

“The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not, even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25.7.1991. which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside.”

4.1 He further stated that the Annexure A-4 representation of the applicant dated 11.07.2014 against the impugned Annexure AA communication has also not been disposed of by the respondents.

4.2 The learned counsel further submitted that in terms of the ratio of law laid down by the Hon'ble Supreme Court in the case of **State of Punjab & Others v. Rafiq Masih (White Washer)**, [Special Leave Petition (C) No.11684 of 2012, decided on 08.07.2014] no recovery can be made from the applicant.

4.3 Concluding his arguments, Shri Umesh Singh, pleaded for grant of the relief prayed for in the OA.

5. Per contra, Shri Gyanendra Singh, learned counsel for the respondents submitted that by misrepresentation of the facts, the applicant had secured financial upgradation under the ACP Scheme vide order dated 26.09.2006. He said that the Annexure A-2 RRs for the post of Deputy Fire Adviser, and as clarified by the DoP&T vide OM dated 09.08.1989 make it

abundantly clear that the said post is not an isolated post. As such, the applicant was not entitled for financial upgradation under the ACP Scheme and he is also not entitled for any financial upgradation benefits under the MACP Scheme either.

5.1 Shri Gyanendra Singh further argued that the benefit of law laid down by the Hon'ble Supreme Court in **Rafiq Masih** (supra) would also not accrue to him in view of the fact he is a class A officer.

5.2 Concluding his arguments, he submitted that the OA deserves to be dismissed having no substance.

6. We have given our thoughtful consideration to the arguments put-forth by the learned counsel for the parties and have also gone through the pleadings and the documents annexed thereto. Admittedly, the applicant was appointed to the post of Deputy Fire Adviser vide Annexure A-1 notification dated 15.02.1994 and in terms of the then existing RRs, 1971 for the said post. The said rules came to be modified vide Annexure A-2 notification dated 16.11.1990. Annexure A-2 notification read with DoP&T OM dated 09.08.1989 makes it absolutely clear that the post of Deputy Fire Adviser is not an isolated post. But then one has to keep it in mind that recruitment of the applicant to the said post was done in terms of the RRs of 1971 and not under the Annexure A-2 RRs, 1990.

The respondents have granted financial upgradation under the ACP Scheme to the applicant on completion of 12 years of service vide order dated 26.09.2006. It is not clear from the records as to whether it was done on the basis of any misrepresentation made by the applicant or a conscious decision was taken by the competent authority considering the factum of the applicant's recruitment to the post of Deputy Fire Adviser under the RRs of 1971. As such, we are not inclined to go along with the contention of the learned counsel for the respondents that the ACP benefit was given to the applicant due to any misrepresentation on his part.

7. The Hon'ble Apex Court in **Bhagwan Shukla** (supra) has clearly held that "Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice." In the instant case, admittedly no SCN was given to the applicant before Annexure BB order dated 21.10.2014 was issued by respondent no.2 whereby, on the basis of a communication received from respondent No.1 vide Annexure AA, the pay of the applicant has been reduced and direction has also been issued to recover the excess payment made with effect from 01.02.2006 on account of such reduction. Indisputably, the principles of natural justice have been violated. We also take note of the fact that Annexure A-4

representation of the applicant dated 11.07.2014 against the impugned Annexure AA and Annexure BB has also not yet been disposed of by respondent No.2.

8. In view of the discussions in the foregoing paras, we dispose of this OA with the following directions to the respondents:

a) The respondent no.2 shall consider the Annexure A-4 representation of the applicant dated 11.07.2014 and pass a reasoned and speaking order within a period of 03 months from the date of receipt of a certified copy of this order.

b) While considering the Annexure A-4 representation of the applicant, the respondent no.2 shall also bear in mind the RRs of 1971 under which the applicant was appointed to the post of Deputy Fire Adviser as to the said post being an isolated post or otherwise.

c) Till such a decision is taken by the respondent no.2 on the Annexure A-4 representation of the applicant, no recovery shall be effected from him by respondent no.2.

9. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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