

**Central Administrative Tribunal
Principal Bench**

OA No. 4208/2016

Order Reserved on: 01.02.2018
Order Pronounced on: 06.02.2018

Hon'ble Mr.V.Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)

Ved Prakash Gupta, 72 years,
S/o Sh. Kunj Lal Gupta,
C-770, J.V.T.S. Garden,
Chhatterpur Extn.,
New Delhi-110074.

... Applicant

(Applicant in person)

Versus

1. Union of India through
Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi-110011.
2. Secretary,
Ministry of Personnel, Grievances
& Pension,
(Division of Retaining and Redeployment),
New Delhi.
3. The Director General of Works, CPWD,
Nirman Bhawan, New Delhi-110011.
4. The Accounts Officer,
M/s Urban Development,
Internal Audit Wing, 507-C,
Nirman Bhawan, New Delhi-110011.
5. The Executive Engineer (Elec.), CPWD,
E.C.D.-5, Pushpa Bhawan,
New Delhi-110062.

... Respondents

(By Advocate: Sh. U.Srivastava)

ORDER

By Hon'ble Ms. Nita Chowdhury, Member (A)

This is a second round of litigation. The applicant had earlier filed an OA No.593/2007 which was disposed of by this Tribunal on 21.11.2013 with a direction to the respondents to fix the applicant's pay in the pay scale of Rs.2000-3500 with effect from 01.01.1986 with all subsequent upward revision of scales on 01.01.1996 and 09.08.1999 with consequential benefits in terms of payment of arrears of pay and allowances and pensionary benefits.

2. It is the contention of the applicant that respondents have passed an order dated 15.07.2015 which is not actually in terms of the order passed in the earlier OA and he has, in the present OA filed now, sought the following reliefs:

“i) To quash and set aside the impugned order dated 12.03.2015, 15.07.2015 and 01.03.2016.

ii) To issue order(s) or direction(s) to the respondents to fix the applicant's pay with second financial upgradation of Rs.14,300-18,300 with effect from 09.08.1999 with reference to the pay scale of Rs.2000-3500 w.e.f. 1.01.1986 under ACP Scheme with all the consequential benefits of arrears of pay and allowances and pensionary benefits.

iii) To issue order or direction to the respondents to pay the pending differential arrears of pay and allowances from January, 1986 to Dec., 2004 as stated in paragraph 17.

iv) To issue appropriate direction to the respondents declaring the applicant is entitled to interest @18% on the entire arrears of payment to which the applicant becomes entitled after the expiry period of three months for the compliance of order dated 21-11-2013 by the Learned Tribunal i.e. from 27th February, 2014 till date of actual payment.

v) To impose a part of applicant's suffering as a cost penalty on the concerned official/officers.

vi) To pass such other or further order(s) that this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the instant case and in the interest of equity and justice."

3. The respondents have contradicted the claim made by the applicant in this OA and stated that the Tribunal's directions have been implemented and the applicant was granted pay scale of Rs.2000-3500/- w.e.f. 01.01.1986, Assistant Engineer's pay scale of Rs.6500-10500/- w.e.f. 01.01.1996, Executive Engineer's pay scale of Rs.10000-15200/- w.e.f. 09.08.1999 and arrear of Rs.1,09,014/- was also paid to him by cheque. The pay fixation was verified by the Principal Accounts Office, Ministry of Urban Development, New Delhi. They further informed that the applicant was a surplus employee who was deployed in CPWD through surplus cell w.e.f. 15.04.1985 as per the terms and conditions stipulated in the offer of appointment. It is specified in condition no.2 of the appointment letter dated 22.03.1985 that his appointment will be considered from actual date of joining in CPWD and previous seniority will not be accepted/counted. The Government of India has given the

benefits as per entitlement in accordance with the relevant rules and instructions on the subject.

4. The applicant was placed on probation for a period of two years i.e. upto 23.04.1987, as per condition no.23 of appointment letter. His appointment was fresh and 1st ACP was granted on 09.08.1999 after completion of 12 years. The applicant did not complete 24 years of service till the date of his retirement, therefore, he was not entitled to 2nd ACP. Vide Writ Petition (C) no.8943/14 before the Hon'ble High Court of Delhi the present applicant was given the liberty to file an OA regarding 2nd ACP within one month but it is revealed from face of records that the instant OA has been filed on 19.12.2016 after one month period has expired and hence this OA is not tenable.

5. We have heard both the parties and perused the material on record. We have examined the DOPT OM dated 27.02.1985 regarding re-deployment of surplus staff of Beas Construction Project and also the appointment letter given to the applicant. We find that the appointment letter is passed according to the terms and conditions issued by the Government. The posting of surplus staff will be effective from the date they join the work. Their past seniority will not be accepted in the new job and they will be first placed on probation and only after confirmation on satisfactory

completion of probation they will get future service benefits of the new job they have joined.

6. In fact, this particular clause no.23 in appointment order makes it clear that after deployment from the surplus cell the applicant was treated on probation for two years with the further proviso to extend the probation by the appointing authority and if the probation is not satisfactorily completed as per the satisfaction of the competent authority, the concerned officer can be removed from service. Hence, the stand of the respondents that they have given the 1st ACP to the applicant after completion of 12 years of service and that he was not entitled for 2nd ACP as he retired on 31.12.2004 before the completion of 24 years of service which is the requirement for award of 2nd ACP, is found to be correct application and interpretation of the said rules. In the circumstances, we do not find any merit in this OA and the same is dismissed. No order as to costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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