

OA.No.170/00782/2016/CAT/Bangalore Bench
 CENTRAL ADMINISTRATIVE TRIBUNAL
 BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00782/2016

DATED THIS THE 15th DAY OF SEPTEMBER, 2017

HON'BLE JUSTICE SHRI HARUN UL RASHID, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

J.Jayakumar
 S/o.James, aged 62 years
 Retired as Scientific Officer
 National Institute of Miners' Health
 Marikuppam Post, K.G.F.-563 119.
 Residing at D.No.105/3
 Married Quarters
 Champion Reefs Post
 Kolar Gold Fields-563 117.

.....Applicant

(By Advocate Shri A.R.Holla)

Vs.

1. Union of India
 By Secretary
 Ministry of Mines
 No.A-320, 3rd Floor
 Shastri Bhavan
 Rajendra Prasad Road
 New Delhi-110 001.
2. The Director
 National Institute of Miners' Health
 JNARDDC Campus
 Opp:Wadi Police Station
 Amravati Road
 Wadi, Nagpur-440 023.
Respondents

(By Advocates Sri.S.Prakash Shetty for R1 and Ms.Nisha Shrivastav for R2)

O R D E R (ORAL)

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

"To quash the Order No.NIMH/AO-190/2016-17/542 dated 14.06.2016 issued by the respondent No.2, Annexure-A9.

2. According to the applicant, he was initially appointed as Foreman Trainee in

the Research and Development unit of Bharat Gold Mines Limited in 1981 and got promoted as Junior Scientific Assistant in the year 1987. Subsequently, two independent societies namely, National Institute of Rock Mechanics and National Institute of Miners' Health(NIMH) were formed to which the persons in the research and development wing of BGML were transferred. The applicant was also transferred to National Institute of Miner's Health. There were litigations regarding absorption issue and subsequently pursuant to the Hon'ble High Court's order, the applicant was absorbed in NIMH with designation as Scientific Assistant w.e.f. 21.2.1990. He was promoted as Senior Scientific Assistant w.e.f. 1.3.2000 and as Scientific Officer on 1.3.2010 by the governing body of NIMH in its meeting held on 3.11.2010(Annexure-A7). The applicant retired from service on 31.5.2013 on attaining the age of superannuation. Following his retirement, an order was issued on 14.6.2016 reverting him to the post of Scientific Assistant and re-fixing his pay at Rs.16,590/- + grade pay Rs.4600 in place of grade pay of Rs.5400 sanctioned earlier and recovery of Rs.3,52,424/- was also ordered(Annexure-A9).

3. According to the respondents, the applicant was placed in a higher post erroneously and was also granted the benefit under ACP/MACP wrongly. As per the provisions of the ACP scheme, the financial upgradation should be given after 12 years of service. Hence the applicant should have got 1st financial upgradation only in the year 2002 but the same was granted w.e.f. 2000. Further he was eligible for 2nd financial upgradation in the year 2012 under MACP to the next higher grade pay but he was granted upgradation to next scale which is not permissible under MACP. Therefore, due to wrong fixation, the applicant was paid excess amount.
4. During the hearing the Learned Counsel for the applicant mentioned that the

OA.No.170/00782/2016/CAT/Bangalore Bench case of the applicant is exactly similar to that of Sri.G.S.Ravindra who was employed along with the applicant. Annexure-A8 communication dated 2.6.2016 also refers to reversion of both Sri G.S.Ravindra and Sri J.Jayakumar(applicant) and recovery of pay from them. Sri G.S.Ravindra had separately filed OA.No.759/2016 and the Tribunal vide order dated 20.2.2017 directed for disposal of representation by the Secretary, Government of India, Ministry of Mines. He produced a copy of the order passed by the Secretary, Ministry of Mines vide dated 19.5.2015 in case of Sri G.S.Ravindra pursuant to order of the Tribunal. The said order observed as follows:

“AND WHEREAS Shri Ravindra was absorbed on the post of Research Officer w.e.f. 21.02.1990 in the Pay Scale of Rs.2200-75-2800-100-4000+CDA in 4th CPC. It has emerged that the first financial upgradation was erroneously extended to him in 2000, instead of 2002 in accordance with provisions of ACPS. However, he had to be given only financial upgradation as per ACPS w.e.f.21.02.2002 in the Pay Scale of Rs.10000-325-15,200+CDA in 5th CPC at the post of Research Officer. Further, he had to be given financial upgradation only as per MACPS w.e.f. 21.02.2010 in the Pay Scale of Rs.15,600-39,100 with grade pay Rs.7600 under 6th CPC at the post of Research Officer.

AND WHEREAS, first financial upgradation given in 2000 has affected the entire due-drawn salary statement in respect of Shri G.S.Ravindra till 30.06.2016 i.e. the date of superannuation of Shri G.S.Ravindra.

AND WHEREAS, it is concluded that the amount that is recoverable from Shri G.S.Ravindra where payments have mistakenly been made by the Employer (NIMH) in excess of his entitlements, has to be re-calculated. Further, the proposal regarding waiving of the recovery amount may have to be sent to Department of Expenditure to consider waiving off the same as per provisions of DoPT's OM No.18/03/2015-Estt. Pay.I dated 02.03.2016.

AND THEREFORE, NIMH is directed to re-calculate the amount which is recoverable from Shri G.S.Ravindra in light of the above observations and intimate the Ministry of Mines.”

He prayed that the respondents should also consider the case of the applicant on similar lines.

5. The Learned Counsels for the respondent No.1 and 2 corroborated the facts submitted by the Ld.Counsel for the applicant and stated that the applicant has not submitted any representation to the authority for consideration. In case the applicant submits any representation like Sri G.S.Ravindra, the same

can be considered by the authority on similar line. The Ld.Counsel for the applicant agreed that the applicant shall file a detailed representation to the respondent authorities within 15 days.

6. After hearing the submissions made by the Ld.Counsels for the applicant and respondents No.1 & 2, we are of the view that it would be appropriate if the applicant is permitted to file a detailed representation to the respondents against the order dated 14.6.2016 directing recovery of excess amount paid to him. He may do so within three(3) weeks from the date of receipt of a copy of this order. In case the applicant submits a representation, then the respondents shall consider it on the same principles followed by them in the case of Sri G.S.Ravindra and decide the matter accordingly within a period of three(3) months thereafter.
7. The OA is disposed of in terms of the aforesaid direction. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(JUSICE HARUN UL RASHID)
MEMBER (J)

/ps/

Annexures referred to by the applicant in the OA.170/00782/2016

Annexure-A1: Copy of the order 29.05.2008 in WP.No.43718 of 2001

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Annexure-A2: Copy of the order dated 26.02.2009 in W.A.No.1314 of 2008

Annexure-A3: Copy of applicant's representation dated 21.04.2009

Annexure-A4: Copy of the order dtd:16.02.2010

Annexure-A5: Copy of the OM dated 31.03.2010

Annexure-A6: Copy of the order dated 31.03.2010

Annexure-A7: Copy of the resolution of the Governing Body of NIMH dated 03.11.2010

Annexure-A8: Copy of the letter dated 02.06.2016

Annexure-A9: Copy of the order dated 14.06.2016

Annexures with reply statement:

-NIL-

Documents supplied by the applicant:

Document No.1: Copy of the order dtd.20.02.2017 in OA.No.759/2016 of CAT, Bangalore Bench

Document No.2: Copy of the order dtd:19.05.2017 of Ministry of Mines

Annexures filed by the respondent No.2:

Annexure-A10: Copy of the Whistle Blower complain under PIDPI from Deputy Secretary of Govt. of India (Vigilance Dept.) to the Director NIMH

Annexure-A11: Copy of the Fact Finding Report dtd:21.12.2015

Annexure-A12: Copy of decision of Ministry, Govt. of India on Fact Finding Report of Whistle Blower complaint under PIDPI dated 02.06.2016

Annexure-A13: Copy of undertaking of applicant dated 15.04.2010
