

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

Pronounced on : 10.10.2018
Reserved on : 01.10.2018

CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)

OA No. 060/00076/2015

R.K. Bedi S/o Sh. J.N. Bedi, age 62, (Retd) Assistant Librarian, r/o
House No. 5/4, Deol Nagar, Nakodar Road, Jalandhar, Punjab.

...Applicant

BY ADVOCATE: Sh. Dhiraj Chawla

Versus

1. Union of India through its Additional Secretary & Development Commissioner, Ministry of Micro, Small and Medium Enterprises-cum-Chairman, Central Institute of Hand Tools, 7th Floor, Nirman Bhavan, New Delhi.
2. Central Institute of Hand Tools, G.T. Road Bye-Pass, Jalandhar through its Principal Director.

...Respondents

BY ADVOCATE: Ms. Upasana Dhawan

ORDER

BY MRS. P. GOPINATH, MEMBER(A):-

Applicant was appointed as Assistant Librarian on 01.10.1985 in scale of pay of Rs. 330-560. On 01.01.1986, the pay scale of Assistant Librarian was revised by the Fourth CPC to Rs. 1200-2040 which according to the applicant was upgraded to Rs. 1400-2600. The 5th CPC upgraded pay scale of Rs. 1400-2600 to

Rs. 5500-9000 on 01.01.1996. The next higher scale of Rs. 1400-2600, was Rs. 4000-6000 which was to be granted to the applicant as first ACP on completion of 12 years of service on 09.08.1999. However, a Screening Committee constituted by the respondents on 11.10.2001 to implement the ACP, recommended grant of first ACP in scale of Rs. 5500-9000 on completion of 12 years of service. The respondents gave this pay scale to the applicant subject to clearance by audit as stated in its letter dated 08.02.2002. On the recommendation of the Sixth CPC, pay scale of Rs. 5500-9000 was revised to Rs. 9300-34800 w.e.f. 01.01.2006.

2. With five months to retire, the applicant submits that on 30.11.2013, an anonymous complaint was received by the respondent institute that the applicant was drawing higher pay scale under the ACP Scheme. The respondent institute constituted a Committee to look into the veracity of allegations. The Committee submitted that the applicant was only entitled to scale of Rs. 4500-7000 on grant of ACP and not Rs. 5500-9000. Applicant was issued a notice on the reduction of pay scale allowed to him on grant of ACP. On receipt of applicant's reply, applicant's pay was refixed on 22.11.2013 as Rs. 4500-7000 as the appropriate pay on grant of first ACP. Applicant superannuated on 30.11.2013. On retirement, a sum of Rs. 5,52,519 was deducted from retiral dues on account of excess salary and allowances due to wrong fixation of pay.

3. The prayer of the applicant is to refund this amount of Rs. 5,52,519 and to direct the respondents to restore the pay scale of Rs. 5500-9000 w.e.f. 09.08.1999 and pay scale of Rs. 9300-34800 w.e.f. 01.01.2006 with all consequential benefits and to further grant 2nd ACP w.e.f. 09.08.2009 and re-calculate the retiral dues accordingly and to release arrears of salary and other dues alongwith interest @ 18%.

4. The 2nd respondent is a Government of India Society and an Autonomous Body. In the reply statement 2nd respondent submits that the applicant was the only person working in the administrative branch. Respondent submits that the applicant took this opportunity to mis-represent the facts before the ACP Screening Committee for recommending ACP in scale of pay of Rs. 5500-9000 to himself thereby misusing his official position in the Administration.

5. It is further stated that the applicant did not have the educational qualification of Bachelor Degree in Library Science and hence, could not be promoted to the post of Librarian. The applicant, in addition to his duty as Assistant Librarian, was also required to deal with personal files and service books of permanent staff, all kind of Earned Leave, Sick Leave, Casual Leave, absentee statement, increments and confidential reports. The applicant was only required to do library work between 2.00 p.m. to 3.00 p.m for one hour only.

6. The ACP Scheme granted two financial upgradations on completion of 12 & 24 years and envisages placement of applicant in the next higher pay scale on completion of the prescribed period. The applicant was working as Librarian cum Information Assistant in the pre-revised scale of Rs. 1400-2600 which was revised to Rs. 4000-6000. Thus, under the ACP Scheme, the upgradation should have been to the scale of pay of Rs. 4500-7000 and not Rs. 5500-9000. The respondent department in Annexure A-4 also confirms the fact that the applicant was working as Librarian Cum Information Assistant in the scale of pay of Rs. 1400-2600. The applicant did not possess a Bachelor's Degree in Library Science.

7. Based on an anonymous complaint, the ACP granted to the applicant was re-examined by a Committee of three members and the Annexure A-12 report was submitted by the Committee. The Committee in para 6 states that the applicant was working in the scale of pay of Rs. 4000-6000 and was given the higher pay scale of Rs. 5500-9000 w.e.f. 09.08.1999 under the ACP Scheme. As per ACP Scheme, the Committee observed that the applicant was eligible for higher pay scale of Rs. 4500-7000 only.

8. The findings of the Committee were communicated to the applicant on 08.11.2013 and the applicant was requested to offer his comments. The applicant in his reply submits that the scale of Rs. 5500-9000 granted by the Screening Committee would be the appropriate pay scale applicable to him under the ACP Scheme without giving any reasons justifying the appropriateness of

the pay scale. The applicant's pay was therefore revised vide office order dated 22.11.2013 to pay scale of Rs. 4500-7000. Hence, there is no doubt that as per the ACP Scheme and the report of the Committee, the applicant was entitled to the higher pay scale of Rs. 4500-7000 only and any attempt by the applicant to give himself or justify the higher pay scale of Rs. 5500-9000 would be a double promotion which was not envisaged as the first ACP on completion of 12 years under the ACP Scheme.

9. Applicant was appointed as Assistant Librarian in scale of pay of Rs. 330-560 which was revised by the Fourth CPC to Rs. 1200-2040 which was further revised by the Fifth CPC to Rs. 4000-6000. Respondents argue that the applicant was the only dealing person in the Administration Branch and being the person in charge of Administration, he mis-represented the facts before the Committee and persuaded the Committee to grant pay scale of Rs. 5500-9000. We are not in agreement with this justification given by the respondents. The idea of constituting ACP Committee is that the Committee should look independently into the ACP case of every entitled person and apply their mind and grant the ACP in the next higher pay scale. Hence, for such a Committee to say that they were misled to grant an undue pay scale is not acceptable. The idea of having a Committee is that they should independently and individually exercise their mind as per provisions of the ACP Scheme and grant the benefit. It is not expected of the Committee to be guided by any criteria other than the criteria fixed for

implementation of the Scheme. Since the inquiry into the anonymous complaint led to the discovery of grant of wrong ACP in a higher pay scale, the anonymous complaint should not be grudged. It actually helped to correct a wrong which should not have been allowed at all as per the provisions of the scheme.

10. A wrong committed is a wrong irrespective of how it came to be noticed or which member of the Committee noticed that a wrong fixation of pay has been made. The ACP Scheme cannot be made to operate differently for the applicant than what was envisaged. The ACP Scheme should be applied uniformly for all, including the applicant. Neither the ACP Committee nor the applicant should have given an interpretation to the Scheme other than what was intended. Hence, applicant's argument that the person who issued the notice of wrong fixation was also a member of the Committee constituted to look into the wrong fixation would not hold water. The Apex Court in **BSNL Vs. Ajet K. Kar, (2008)11 SCC 591** had held that it is well settled that a bona fide mistake does not confer any right on any party and it can be corrected.

11. The applicant through arguments submits that no recovery should be made from him in view of Apex Court judgement in **State of Punjab & Ors. Vs. Rafiq Masih and Others, SCT 2015(1) 195** wherein it was held that there will be no recovery from Group 'C' employees. We would like to distinguish the applicant's case from Rafiq Masih (supra) in so far as the applicant had a role in not correcting the ACP Committee recommendation in giving him

the higher ACP benefit and he actually allowed a double promotion for himself. Further, the directions of the Apex Court as far as non-recovery is concerned, was not intended for such misrepresentation, intentionally made. The Apex Court in **Col. B.J. Akkara (Retd.) Vs. GOI (2006) 11 SCC 709** had examined the matter of whether relief should be granted against excess payments on account of wrong interpretation/understanding of Government orders. The court had held that relief of non-recovery can be given if the following conditions are fulfilled:-

- The excess payment was not made on account of any misrepresentation or fraud on the part of the employee
- Such excess payment was made by employer by applying a wrong principle for calculating the pay allowance or a wrong interpretation of a rule/order which is subsequently found to be erroneous.

We find the OA under consideration is covered by above conditions. This legal position was upheld in the judgement of **Cooperative Societies Vs. Israil Khan (2010) SCC 44**.

12. Another Apex Court judgement favouring the stand of the Bench is **Chandi Prasad Uniyal and Ors. Vs. State of Uttarakhand and Ors., 2012 (8) SCC 417** wherein it had been held as follows:-

“15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the

recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.

16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected overpayment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."

13. The applicant was the only person working in the administration branch and had knowledge of the scheme and the grant of benefits thereon. Therefore, the excess payment wrongly made should have been brought to the knowledge of the ACP Committee immediately so that the wrong could be corrected within a short time of wrong payment and the court could have also considered a relief against a small overpayment. However, applicant chose to remain silent on the wrong and excess ACP granted and availed the benefit till the wrong was pointed out by a third party. In view of the facts and circumstances, we are not inclined to grant relief against recovery.

Hence, the recovery ordered and the refixation of pay as per provisions of the ACP Scheme are upheld. OA is held to be devoid of merits and the same is dismissed. No costs.

**(P. GOPINATH)
MEMBER (A)**

**(SANJEEV KAUSHIK)
MEMBER (J)**

Dated:
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