

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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**ORIGINAL APPLICATION NO. 060/00732/2017 &
M.A. No. 60/975/2017**

Chandigarh, this the 3rd day of April, 2018

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CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

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Ashu Kumar, PIS No.123201, Aged 49 years S/O Late. Sh. Ridhi Parshad, P.A. (Retired) O/O Director Intelligence Bureau, New Delhi, R/O House No. 93-A, Street No. 9, Gurunanak Nagar, Patiala. (Group 'B').

....APPLICANT

(Argued by: Shri Sandeep Siwatch, Advocate)

VERSUS

1. Union of India, through the Secretary to Government of India, Ministry of Home Affairs, North Block, Central Secretariat, New Delhi -110001.
2. Director, Intelligence Bureau, Ministry of Home Affairs, Government of India, North Block, Central Secretariat, New Delhi -110001.
3. Assistant Director (E), Subsidiary Intelligence Bureau, Ministry of Home Affairs, Government of India, Lucknow.
4. Assistant Director, Bureau of Immigration, Ministry of Home Affairs, Lucknow.

....RESPONDENTS

(By Advocate: Shri Sanjay Goyal)

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J)

By means of this Original Application (O.A.), the applicant has assailed order dated 31.07.2015 (Annexure A-1) whereby the respondents have ordered recovery of Rs. 76,355/- paid to him on account of deputation allowance on the plea that he was not

entitled for the same, and the order dated 22.12.2015 (Annexure A-2), rejecting his request for withdrawing the order dated 31.7.2015.

2. Facts which led to filing of present O.A. are that the applicant commenced his service as Stenographer with the respondent department w.e.f. 29.8.1991. He was granted 1st financial upgradation on introduction of ACP Scheme vide order dated 9.8.1999 by placing him in the pay scale of Rs. 5500-9000 which was subsequently revised to PB-2 Rs. 9300-34800 with grade pay of Rs. 4600/- on implementation of 6th Central Pay Commission (CPC) recommendations. Subsequently, he was granted 2nd financial upgradation under MACP Scheme w.e.f. 29.08.2011 by placing him in PB-2 Rs. 9300-34800 with GP of Rs. 4800 vide order dated 15.3.2011. While the applicant was working with the respondent department, he was sent on deputation vide order dated 27.12.2012. He was allowed deputation allowance in the same pay scale which the applicant was getting in his parent department. Subsequently, vide impugned order 31.7.2015 (Annexure A-1), the respondents have ordered recovery of deputation allowance which they were paying to him while he was on deputation and have recovered a sum of Rs. 76,355/-. Against their decision applicant preferred representation, which has been turned down vide order dated 22.12.2015 (Annexure A-2). Hence this O.A.

3. Learned counsel for applicant in support of above plea argued that once he was sent on deputation by allowing him to avail deputation allowance, then the respondents later on cannot be

allowed to take U-turn and to argue that he was not entitled for the same. He argued that the applicant was allowed to get benefit of deputation allowance in terms of O.M. dated 17.6.2010, wherein as per clause IV, the applicant had given his option before sending him on deputation that he will continue to get pay which he has been getting in his parent department. While accepting his request, the applicant was allowed 10% deputation allowance vide order dated 29.1.2013. Therefore, he submitted that the view taken by the respondents is erroneous and contrary to OM dated 17.6.2010 (Annexure A-9). Accordingly, he prayed that the impugned orders be quashed and set aside with a direction to refund the recovered amount.

4. Respondents while resisting the claim of applicant have taken a plea that the applicant cannot be allowed the benefit of deputation allowance in terms of order dated 9.9.2010 (Annexure A-5).

5. Mr. Goyal, learned counsel for respondents argued on the same line as pleaded in the written statement.

6. Having completed all the codal formalities, having heard the learned counsel for the parties, having gone through the record and legal provisions with the able assistance for the learned counsel for the parties.

7. The moot question that arises for consideration is whether the applicant who was sent on deputation is entitled for deputation allowance or not?.

8. As per clause 4 of O.M. dated 17.6.2010 issued by the DoPT under the heading of Exercise of Option, an employee appointed on deputation has to give option, that whether he will draw the same pay which he is getting in his parent department or he will get the basic scale which is attached to foreign post. It is not in dispute that that the applicant has given his option to get the salary on the same pay scale, which he was getting in his parent department.

Para 4 of said O.M. is reproduced below for ready reference:-

“4.1 An employee appointed on deputation/foreign service, may elect to draw either the pay in the scale of pay of deputation/foreign service post or his/her basic pay in the parent cadre plus deputation (duty) allowance thereon plus personal pay, if any. However, in case of Government employees on deputation/foreign service to CPSEs, this option will not be allowed and their pay will be governed in terms of the orders issued by Department of Public Enterprises vide OM dated 26.11.2008 and clarifications issued thereafter.”

9. It is borne out from the pleadings that there was no request by the applicant to send him on deputation. Rather while accepting deputation, he has exercised his option in term of clause 4 of O.M. dated 17.6.2010 that he will continue to get pay at the rate which he is getting in his parent department. While accepting his request/option respondents have also allowed him 10% deputation allowance vide order dated 29.1.2013.

10. Therefore, the impugned orders are bad in law and contrary to clear instructions as noted above, therefore, the same are quashed and set aside. The respondents are directed to release a sum of Rs. 76355/- being illegally recovered from the applicant.

The O.A. is disposed of accordingly. M.A. 60/975/2017 also stands disposed of.

11. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 03.04.2018

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