

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.46 of 2015

Cuttack this the 13th day of April, 2018

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Pradeep Kumar Subudhi, aged about 47 years, S/o. PrahalladSubudhi, a permanent resident of near Indradumna Tank, MohantySahi – presently serving as Assistant, KendriyaVidyalaya No.1 (1st shift), Bhubaneswar-751 001.

...Applicant

By the Advocate(s)-M/s.N.R.Routray
T.K.Choudhury
Smt.J.Pradhan
S.K.Mohanty

-VERSUS-

Union of India represented through:

1. The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, SaheedJeet Singh Marg, New Delhi-110 602.
2. Joint Commissioner (Personnel), Kendriya Vidyalaya Sangathan, 18, Institutional Area, SaheedJeet Singh Marg, New Delhi-110 602.
3. Deputy Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Hyderabad, Picket Secunderabad-500 009.
4. Deputy Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Bhubaneswar, Pragati Vihar, Mancheswar Railway Colony, Bhubaneswar-751 017.
5. Principal, Kendriya Vidyalaya No.1, Bhubaneswar-751 022.

...Respondents

By the Advocate(s)-Mr.H.K.Tripathy

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant who was working as Assistant in KendriyaVidyalaya No.1 at Bhubaneswar at the time of filing of the O.A. in January, 2015, has prayed for the following reliefs:

- i) To quash the order dated 10.05.13 passed by the respondent no.2 in reducing the grade pay of the applicant from Rs.4600 to Rs.4200 as well as the order passed by the respondent no.3 dated 05.06.13 in reviewing/re-fixing the grade pay to Rs.4600 (Annexure-A/11).
- ii) Consequentially be further pleased to quash the order of rejection passed by the respondent no.3 on 07.08.13(Annexure-A/13) as well as the consequential order passed by respondent No.4 on 14.01.15(Annexure-A/14).
- iii) Be pleased to hold that the applicant is entitled to get his pay in the pay band-2 i.e., Rs.9300-34800 with grade pay of Rs.4600 as his 2nd financial upgradation.
- iv) To direct the respondents, more particularly, the respondent no.2 to allow the applicant to draw his pay in the Pay Band-2 with grade pay of Rs.4600/- as was fixed by the respondent no.3 in order dated 16.05.11(Annexure-A/10).
- iv) To allow the application with costs.

2. The brief facts of the case are as follows:

The applicant was recruited as an Upper Division Clerk (UDC) in the scale of Rs.1200-30-1560-EB-60-2040/- on 6.1.1990. On 9.8.1999, ACP Scheme was introduced and the applicant was granted the 1st financial upgradation under the ACP Scheme on completion of 12 years of service with effect from 6.01.2002 in the scale of Rs.4500-7000/-. Subsequently, the post of Assistant/Audit Assistant/Head Clerk in the pay scale of Rs.5500-9000/- /Rs.5000-8000/4500-7000/- were merged in the new cadre of Assistant Superintendent in the scale of Rs.4500-7000/-. On 28.03.2003, the applicant after clearing the LDCE was appointed to the post of Assistant Superintendent in the scale of Rs.4500-7000/-. On 26.7.2008, the post of Assistant Superintendent in the scale of Rs.5500-9000/- and Rs.4500-7000 were re-designated as Assistant and placed in the scale of Rs.5500-9000/-. Consequent upon this re-designation, the pay of the applicant which was Rs.5875/- was fixed at Rs.6025/- in the scale of Rs.5500-9000/- with effect from 1.8.1008. On

5.11.2008, a letter was issued by the Kendriya Vidyalaya Sangathan conveying the approval of the competent authority for adoption of Central Civil Services (Revised Pay) Rules, 2008 for Group-A, B, C & D posts in KVS. As per this letter, those Assistant Superintendents who were in the scale of Rs.5500-9000/- as on 1.1.2006 were given pay fixation in PB-2 (Rs.9300-34800) with Grade Pay of Rs.4200 with effect from 1.1.2006. Those Assistant Superintendents who were in the pay scale of Rs.4500-7000 as on 1.1.2006 were allowed pay fixation in PB-1 (Rs.5200-20200) with Grade Pay of Rs.2800/- with effect from 1.1.2006. The applicant claims that as on 5.11.2008 his previous post of Assistant Superintendent had already been redesignated as Assistant and he was already enjoying the pay scale of Rs.5500-9000/-. Following the KVS letter dated 5.11.2008, the pay of the applicant was fixed in PB-1 (Rs.5200-20200) with Grade Pay of Rs.2800/- with effect from 1.1.2006. However, with effect from 1.8.2008, when the post of Assistant Superintendent were redesignated as Assistant, applicant's pay was fixed in PB-2 (Rs.9300-34800) with Grade Pay of Rs.4200/-. After the introduction of the MACP Scheme, the applicant was granted the 2nd financial upgradation by granting him Grade Pay of Rs.4600/- from the date he completed 20 years of service since he had got only one promotion in the span of 20 years. However, on 5.6.2013, the Regional Office, Hyderabad Region issued a letter withdrawing the 2nd financial upgradation granted to the applicant vide Office Order dated 16.5.2011 and instead of Rs.4600/-, the applicant was given the 2nd financial upgradation with Grade Pay of Rs.4200/- with effect from 6.1.2010, the date on which he had completed 20 years of service. On 21.6.2013, the applicant made a representation to the Joint Commissioner (Personnel) praying for his 2nd financial upgradation in the next higher Grade

Pay of Rs.4600 instead of Rs.4200/-. On 7.8.2013, the Deputy Commissioner, Hyderabad Region rejected the representation of the applicant and on 14.1.2015, the Deputy Commissioner, Bhubaneswar Region issued an order re-fixing and reducing the Grade Pay of the applicant from Rs.4600 to Rs.4200/-. Orders were also issued to recover the excess amount already paid to him due to the grant of 2nd MACP with Grade Pay of Rs.4600/-. Aggrieved by this, the applicant has filed the present O.A. praying for the reliefs as mentioned in Paragraph-1 above.

3. The applicant has based his prayer mainly on the ground that he had already been granted the Grade Pay of Rs.4200/- from the date on which the post of Assistant Superintendent had been redesignated as Assistant and therefore, he should have been given the next higher Grade Pay of Rs.4600/- at the time of 2nd financial upgradation under the MACP Scheme. Moreover, the recovery ordered by the respondents is unjust and unfair since no excess amount has been paid to the applicant nor the applicant has committed misrepresentation or fraud to get any undue advantage.

4. The respondents in their counter filed on 15.3.2016 have contested the claim of the applicant. They have submitted that the pay of the applicant had been fixed in the scale of Rs.5200-20200 (PB-1) with Grade Pay of Rs.2800/- based on the pay drawn by him as on 31.12.2005. As per KVS(HQs.) letter dated 10.9.2008, posts of the Assistant Superintendent appointed in the pay scale of Rs.4500-7000/- have been redesignated as Assistant with effect from 1.8.2008 in the scale of Rs.5500-175-9000/-. Accordingly, the pay of the applicant was fixed at Rs.9300-34800/- with Grade Pay of Rs.4200/-. The case of the applicant was referred to the KVS(HQs.) for clarification whether the applicant was eligible for Grade Pay of Rs.4600/- on completion of 20 years of

service as on 6.1.2010. The Deputy Commissioner, KVS, Regional Office, Hyderabad dealing with the issue had clarified that the applicant is eligible for Grade Pay of Rs.4200/- with effect from 6.1.2010. On the basis of the recommendations of the Review Departmental Screening Committee Meeting held on 4.6.2013, the financial upgradation granted under the MACP Scheme to the applicant was withdrawn by the competent authority, i.e., Deputy Commissioner, KVS, RO, Hyderabad and his Grade Pay was fixed at Rs.4200/- with effect from 6.1.2010. The excess amount paid to him has been ordered to be recovered and there is no illegality in the order. In the counter filed by the respondents they have cited the judgments of the Hon'ble Supreme Court in Union of India vs. P.V.Hariharan [1997(2) LBESR 684 (SC), State of U.P. vs. U.P.Sales Tax Officers, Grade-II Association [AIR 2003 SC 2305], Supreme Court Employees Welfare Association vs. Union of India [1989 (4) SCC 187], State of U.P. vs. J.P.Chaurasia [1989 (1) SCC 121], Chandi Prasad Uniyal vs. State of Uttarakhand [AIR 2012 (SC) 2921] and State Bank of India vs. K.P.Subhaiah [2003 (11) SCC 646] to argue that the matter of pay fixation is not within the domain of the Tribunal or Court of Law and it is for the executive Government to carryout fixation of pay and related issues. Relying on the decision in Chandi Prasad Uniyal (supra), the Respondents have submitted that any excess amount paid to the Government servant is liable to be recovered.

5. In the rejoinder filed by the applicant on 15.9.2017, he has reiterated that he has already drawn Grade Pay of Rs.4200 as on 1.8.2008 due to the redesignation of the post of Assistant Superintendent to that of Assistant and therefore, he is entitled to Grade Pay of Rs.4600/- on account of grant of financial upgradation under the MACP Scheme. The applicant submits that the

Respondents' contention that he was promoted to the post of Assistant Superintendent is not correct because it was only a redesignation and not a promotion. The applicant had been granted one financial upgradation under the MACP Scheme on completion of 10 years of service on 6.1.2000 and subsequently, his post was redesignated due to which his pay scale was revised as per the existing orders. He had got only one promotion from UDC to Assistant Superintendent on account of his passing the LDCE on 28.3.2003. He was therefore, entitled to 2nd financial upgradation under the MACP Scheme as on 6.1.2010 and his fixation of pay at Grade Pay of Rs.4600. The applicant has cited the example of one N.C.Das who was junior to the applicant being at Sl.No.2 of the panel whereas the applicant was at Sl.No.1 at the time of recruitment and the said N.C.Das is enjoying the Grade Pay of Rs.4600 on account of financial upgradation under MACP Scheme. The applicant has not given any undertaking for refund of any excess amount for recovery and therefore, for no fault of his, he should not be penalized for recovery of the amount already paid to him. The applicant has also submitted that all the persons who were appointed along with him as UDC are all getting 2nd MACP with Grade Pay of Rs.4600 and some of them who had joined earlier than him have started getting 3rd MACP with Grade Pay of Rs.4800/-.

6. The Respondents filed a reply to the rejoinder on 4.12.2017 in which they have reiterated the points raised in the counter. It is their contention that the promotion on the basis of LDCE is treated as promotion, and not direct recruitment. The applicant's Grade Pay was correctly fixed at Rs.2800 as on 1.1.2006. Only those who were appointed in the post of Assistant on direct recruitment basis, their Grade Pay was fixed at Rs.4200/-. The post of Assistant Superintendent holding the pay scale of Rs.5500-175-9000 and

Rs.4500-125-7000 were redesignated as Assistant in the scale of Rs.5500-175-9000 with effect from 1.8.2008 consequent upon amendment in the KVS (Appointment, Promotion & Seniority) Rules, 1971 as approved by the Board of Governors (BOG) in its 80th meeting held on 26.07.2008, without any financial benefits. Hence the request of the applicant for giving incremental benefit is against the above mentioned order of the KGS (HQ) dated 10.9.2008. As per the hierarchy of pay of MACP Rules, the initial appointment as UDC in the Grade Pay of Rs.2400/-, the 1st MACP will be at Grade Pay of Rs.2800 after completion of 10 years and Rs.4200 after completion of 20 years of service from the initial joining in the post on direct recruitment basis. Hence, the Grade Pay of Rs.4600 being asked for by the applicant is not legally valid.

7. The Respondents have cited the judgment of the Hon'ble Supreme Court in **U.T.Chandigarh & ors. vs. Guru Charan Singh & Another [2014 (2) SLJ (SC) 301]** to argue that a mistake can always be corrected by the authorities and overpayment made by mistake can be recovered and an error on the part of the authority cannot vest any indefeasible legal right on the applicant. In **M.S.Patil vs. Gulbarga University & Ors. [AIR 2010 SC 3783]** the Hon'ble Supreme Court held that in service law, there is no plea for concept of adverse possession or holding over and if the appellant was wrongly appointed against the reserved post, he cannot continue in the said post. According to the Respondents, in **Union of India vs. P.V.Hariharan [1997(2) LBESR 684 (SC)]**, the Hon'ble Supreme Court observed that fixation of pay is not the function of the Tribunal.

8. We have heard the arguments of the learned counsels from both the sides and perused the documents submitted by them. The issue to be decided in the present O.A. is whether the applicant is entitled to PB-II(9300-34800)

with Grade Pay of Rs.4600 towards 2nd financial upgradation under the MACP Scheme.

9. The applicant had been granted 2nd financial upgradation under the MACP Scheme in PB-II with Grade Pay of Rs.4600/- with effect from 6.1.2010 vide order dated 16.5.2011(A/10). In the said order, his initial appointment as UDC is mentioned as dated 6.1.1990 and Assistant as dated 29.04.2003. Subsequently, vide order dated 4.8.2011, the Audit & Accounts Officer, KVS, Regional Office has fixed the Grade Pay of the applicant at Rs.4600/- with effect from 6.1.2010 taking into account his pray drawn as Assistant in PB-II(Rs.9300-34800) with of Rs.4200/- as his existing Grade Pay. In the said order, applicant's pay has been fixed at Rs.13,200 with Grade Pay of Rs.4600/- on the basis of the date of normal increment as per the option exercised by him. However, vide office order dated 5.6.2013(A/11), the 2nd financial upgradation under MACP Scheme with Grade Pay of Rs.4600 with effect from 6.1.2010 has been withdrawn on the basis of review and recommendations made by the Review Departmental Screening Committee. The Respondents in their counter reply have made an attempt to justify this ground that on implementation of the 6th CPC with effect from 1.1.2006, the pay of the applicant was fixed in PB-I (Rs.5200-20200) with Grade Pay Rs.2800 and subsequently, as per KVS Headquarters' order dated 10.9.2008, the post of Assistant Superintendent was re-designated as Assistant with effect from 1.8.2008 in the scale of Rs.5500-9000/-(Pre-revised) which corresponds to Grade Pay of Rs.4200/- (6th CPC). His pay scale in the re-designated post of Assistant was Rs.5500-275-9000/- as per the 5th CPC which was revised to Pay Band in PB-II(Rs.9300-34800) with Grade Pay Rs.4200/- as per the 6th CPC. On completion of 20 years of service, the applicant was eligible for 2nd

financial upgradation under the MACP Scheme with effect from 6.1.2010. Accordingly, he was granted 2nd financial upgradation under the MACP Scheme in Grade Pay of Rs.4600/- with effect from 6.1.2010. However, at the Review Departmental Screening Committee meeting held on 4.6.2013, the 2nd financial upgradation granted to the applicant under the MACP Scheme was reviewed and withdrawn by the competent authority, i.e., Deputy Commissioner, KVS, RO, Hyderabad. The Respondents have taken the ground that as per the hierarchy of pay in the MACP Rules, the initial pay of UDC is in PB-I(Rs.5200-20200) with Grade Pay of Rs.2400. The first financial upgradation on completion of 10 years service under the MACP Scheme will be at Grade Pay of Rs.2800 and Grade Pay of Rs.4200 on completion of 20 years of service from the initial date of joining the post on direct recruitment. Hence the financial upgradation of pay in the Grade Pay of Rs.4600 on completion of 20 years of service is as against the MACP Rules. According to respondents, the applicant got promotion to the post of Assistant under LDCE which he claims as his direct recruitment whereas it is a promotion.

10. As per the order No.F.11081-4/2008-KVS HQ.(Admn.I) dated 5.11.2008 regarding revision of pay scales of teaching and non-teaching staff of KVS, the Table at Annexure of the order giving the list of pay scales of officers and other staff mentions that the Assistant Superintendent in the pay scale of Rs.4500-45-7000 will be placed at the PB-I (Rs.5200-20200) with Grade Pay of Rs.2800 whereas the Assistant Superintendent in the pay scale of Rs.5000-150-8000 will be placed in PB-I (Rs.9300-34800) with Grade Pay of Rs.4200. The Fitment Table was to be made operational with effect from 1.1.2006. However, a note at the end of the Fitment Table marked as \$\$ states as follows:

“Those Assistants (earlier known as Assistant Superintendent) who were in the scale of pay of Rs.4500-125-700 on 01.01.2006 will be placed in the Pay Band PB-I of Rs.5200-20200 with Grade Pay of Rs.2800. Thereafter, w.e.f. 01.08.2008 they will be placed in the pay band PB-2 i.e., Rs.9300-34800 with Grade Pay of Rs.4200, consequent upon the change in the Recruitment Rules as notified vide OM No.F.11019(1)/2008-KVS/HQ/RPS dated 10.09.2008”.

11. As per this, the applicant was placed in the Pay Band in PB-II (Rs .9300-34800) with Grade Pay Rs.4200/- with effect from 1.8.2008. The position at the time of grant of 2nd financial upgradation under the MACP Scheme in favour of the applicant with effect from 6.1.2010 on completion of 20 years of service was that he was drawing Grade Pay of Rs.4200 sanctioned to him as per the order dated F.No.11081-4/2008-KVSHQ(Admn.I) dated 05.11.2008(A/7). That being the position, the 2nd financial upgradation under the MACP entitles the applicant to a Grade Pay Rs.4600 as per the extant rules governing Scheme. The Respondents have taken the plea that the decision to withdraw Grade Pay of Rs.4600 was taken by the Review Departmental Screening Committee. However, the chronology of the scales of pay granted to the applicant from time to time makes it abundantly clear that there was nothing wrong in the order granting Grade Pay of Rs.4600 towards 2nd financial upgradation under the MACP Scheme.

12. The Respondents have cited a number of judgments to plead that an erroneous pay fixation does not give any indefeasible right to the employee. In the present case since the pay fixation was not erroneous, the case laws cited by the respondents have no applicability. We have carefully gone through the judgments cited by the respondents. In the background of the facts of the present case, we hold that the judgments are not relevant in the present case.

13. Based on the facts of the case and the points of law involved, we are of the view that the order dated 10.5.2013 (A/11) passed by Respondent No.2 in

reducing Grade Pay of the applicant from Rs.4600 to Rs.4200 as well as the order passed by Respondent No.3 dated 5.6.2013(A/11) in reviewing/refixing the Grade Pay of Rs.4200/- are illegal. Accordingly, they are quashed and set aside. Similarly, the order of rejection of the applicant's representation dated 7.8.2013 passed by Respondent No.3 is also quashed and set aside. The Respondents are directed to pass necessary and appropriate orders restoring Grade Pay of Rs.4600 in favour of the applicant with effect from 6.1.2010 within a period of eight weeks from the date of receipt of this order. It is further directed that excess amount, if any, recovered from the salary of the applicant on account of reduction of Grade Pay from Rs.4600 to Rs.4200/- be refunded to him.

14. In the result, the O.A. is allowed as above, with no order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

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