

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/1607/2015

Date of CAV : 10.08.2018
Date of Order : 26-09-2018

Between :

P. Sambasiva Prasad S/o P.V.Krishna Rao,
Aged about : 68 Yrs, Occ: Stenographer Gde.I, IIS & M (Retd.),
R/o H.No.3-133, Opposite to Uppal Bus Depot,
Mallikarjuna Nagar, Pheerzadiguda,
R.R.District, Hyderabad, TG state.Applicant

AND

1. The Union Government of India,
Repd by its Secretary,
Department of Science & Technology,
New Mehrauli Road, New Delhi.
2. The Surveyor General of India,
Surveyor General's Office, Survey of India,
P.B. No.37, Dehra Dun, Uttarakhand.
3. The Additional Surveyor General,
Indian Institute of Surveying & Mapping,
Survey of India, Uppal, Hyderabad,
TG StateRespondents

Counsel for the Applicant: Mrs. C. Rakee Sridharan

Counsel for the Respondents : Mr. V. Vinod Kumar, Sr. CGSC

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunal's Act, 1985, seeking the following relief : -

“In view of the facts and circumstances stated above, the applicant herein prays that this Hon'ble Tribunal may be pleased to declare the inaction of the respondents for not considering the representation dated 30.07.2010, 06.01.2011 and request of the applicant for the restoration of his basic pay prior to recovery of the excess amount dated 31.07.2010 and also other benefits like gratuity, E.L., commutation pension on account of rise in his basic pay from the present pay of Rs.24,030 to 24,440/- with interest there on, as arbitrary, illegal & violative of Articles 14, 16 & 21 of the constitution of India and consequently direct the respondents to return / refund the amounts what they have recovered from the applicant with immediate effect with interest there on as per rules and pass such other order or orders as this Hon'ble court may deem fit and proper in the circumstances of the case and in the interest of justice.”

2. The brief facts of the case are that the applicant was appointed as Stenographer (Junior) on 08.07.1974 and promoted to Stenographer (Grade.II) on 07.09.1991 and accepted the said promotion without exercising option from the date of accrual of next increment i.e., from 01.07.1992. Based on the gradation list of Stenographers, issued by Surveyor General of India applicant noticed a difference of basic pay between his junior and him, who is drawing more pay than applicant four months in advance and further requested respondent No.3 to step up his increment month from July, 1986 to March, 1986 and equalize his basic pay

with that of his junior. Stepping of increment is permissible only when both the posts are identical and the junior was drawing more pay than senior.

3. The applicant immediately submitted a representation on 23.03.95 addressed to the Addl. Surveyor General i.e., Respondent No.3, requesting him to look into the matter, as applicant did not hear anything from respondent No.3, he submitted another representation on 10.02.98 requesting the respondent No.3 to take up the matter with R.P & A.O for his advice, but there was no reply from respondent No.3 and continued paying the additional increment granted to the applicant.

4. The applicant further submits that he got upgradation through assured career progression scheme vide S.G.'s letter No.C-2198/1902 (A.C.P.), dated 08.06.2000 and in the scale of Rs.5,500-175-9,000 amongst others and moreover the applicant got his regular promotion in the same scale as Stenographer grade I in the year 2003. It is further submitted that, the Regional Pay and Accounts Officer vide his letter No. PAO-IV/U-1/2010/3765, dated 21.07.2010 returned applicant's pension papers to the 3rd Respondent stating that there was a mistake in the pay fixation of the applicant on account of stepping up of increment and requested him to resubmit the papers after necessary corrections.

5. The applicant further submits that, on 30.07.2010 just before applicant's retirement, he submitted a representation to the 3rd respondent requesting him to do justice in his pay fixation as his service book was being revised. But the 3rd Respondent recovered a sum of Rs.63,150/- from

applicant's gratuity without considering his request and also without any information in this regard.

6. The 3rd Respondent further stated that the pay fixation made on promotion to the post of Stenographer Grade-II vide office order No. 51, dated 16.10.1992 seems to be wrong. It should have been notionally fixed at Rs.1,700/- and re-fixed at Rs.1,800/- in the pay scale of Rs.1,400-40-1600-50-2300-EB-60-2600 if the applicant submitted his option within the stipulate time.

7. The applicant further submits that, on 31-07-2010, he retired from service. All his pensionary benefits were paid to him in the month of December, 2010, after recovery of the excess amount of Rs.63,150/-, without paying any interest for the belated payment of his pensionary benefits after a gap of six months and his pension started being paid to him from 01.04.2011 without any interest i.e., a gap of nearly 10 months. At last applicant felt delighted that his basic pay was equalized with that of his junior Smt. Susheela Devi as requested by him. During his course of discussion with his junior in the month of April, 2014, when she was retiring from service, it came to light that her basic pay was Rs.24,440/- as on 01.07.2010 whereas applicant's basic pay was Rs.24,030/- as on 01.07.2010 i.e., a difference of Rs.410/- she was drawing more than the applicant. Now, it clearly indicates that the department did not consider applicant's request for equalizing his basic pay with that of his junior despite his repeated requests. Hence this application.

8. Respondents have filed reply statement stating that the applicant was appointed as Steno Grade III on 08.07.1974 in the scale of Rs.330-10-380-EB-12-500-EB-15-560. The increment date of the applicant was shifted to 1st March, 1986 (to that of his junior, Smt. Susheela Devi) under the provision of Rule 8 of CCS (RP) Rules, 1986, from 01.07.1986 to 01.03.1986 vide STI office order dated 07-10-1992. Thereafter the applicant was promoted as Stenographer Grade II on 09.09.1991 in the pay scale of Rs.1400-40-1600-50-2300-EB-60-2600. His date of next increment in the lower post was 01-07-1991. He did not exercise option on promotion to fix his pay from his date of next increment in lower post ie 01.07.1992, therefore, his pay fixed on promotion with effect from 09-09-1991. The pay of incumbent fixed on promotion to the post of Steno Gr. II @ Rs.1800/- on 09-09-1991 with date of next increment 01-09-1992 vide STI Office Order No.51 dated 16-10-1992.

9. The Respondents further state that the applicant was due for superannuation with effect from 31-07-2010 (AN). His superannuation pension was forwarded to Regional Pay & Accounts Office, Hyderabad vide communication dated 03.06.2010. The Regional Pay and Accounts Officer, SOI, Hyderabad vide letter dated 21.07.2010 observed that “fixation of pay of the individual on account of re-fixation due to stepping up is incorrect and the pension papers along with service book were returned to re-submit after necessary corrections.”

10. The Respondents further state that, as per RP & AO's above

observation the pay of applicant was fixed @ 1680/- in the pay scale of Rs.1200-30-1560-EB-40-2040 with effect from 09-09-1991 and @ 1750/- in the pay scale of Rs.1400/--40-1600-50-2300-EB-60-2600 with effect from 01-09-1992 vide IISM Office Order No.107/37-G-10, dated 13-10-2010. Due to the above correction overdrawn amount of pay and allowances of Rs.63,150/- was recovered on account of erroneous fixation of pay for the period from 09-09-1991 to 31-07-2010 from his DCRG bill. The incorrect pay fixation was pointed out by the pension sanctioning authority before sanctioning his pension, therefore, his pay was corrected and the overpaid amount was recovered from his DCRG.

11. The Respondents further submit that pay of applicant and his junior was same on 01-01-1986 ie Rs.1470/- on the implementation of IV CPC. The difference in their pay occurred due to accrual of their increment in different months i e March and July. The applicant's date of increment was 1st July, 1986 and his junior was 1st March, 1986. But the pay of applicant and his junior was fixed correctly on 01-01-1986 according to IV CPC. The recovery of Rs.63,150/- was made on the directions of Pay and Accounts office vide letter dated 21-07-2010. With these submissions, the Respondents pray for dismissal of the OA.

12. Applicant has filed rejoinder reiterating the contentions pleaded in the OA.

13. We have heard Mrs.C.Rakee Sridharan, learned counsel for the

applicant and Mr.V.VinodKumar, learned Sr Central Govt., Standing Counsel for Respondents, perused the material on record.

14. Learned counsel for the applicant relied upon the decision of the Hon'ble Apex Court in the case of State of Punjab & Ors etc., Vs. Rafiq Masih (White Easher) etc., [CA No.11527 of 2014 arising out of SLP (C) No.11684/2012] wherein the following situations were summarised, basing on which recoveries shall not be affected :

“(i) Recovery from employees belonging to Class-III and Class-IV service (or Group ‘C’ and Group ‘D’ service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

15. In the present case, admittedly the recovery has been made only after retirement of the applicant. It has been mentioned in paras 3 & 4 of the reply of the Respondents as follows : -

“3. The applicant was due for superannuation with effect from 31-07-2010 (A/N). His superannuation pension case was forwarded to Regional Pay & Accounts office, Hyderabad vide communication No.B-4197/18-A-5-P/Budget/IISM dated 03-06-2010. The Regional Pay & Accounts officer, SOI, Hyderabad vide his letter No.PAO-IV/U-I/2010/3765 dated 21-07-2010 observed that : “fixation of pay of the individual on account of re-fixation due to stepping up is incorrect and the pension papers along with service book were

returned to re-submit after necessary corrections.”

4. As per RP&AO's above observation the pay of applicant was fixed @ Rs.1680/- in the pay scale of Rs.1200-30-1560-EB-40-2-4- with effect from 09-09-1991 and @ Rs.1750/- in the pay scale of Rs.1400/-40-1600-50-2300-EB-60-2600 with effect from 01-09-1992 vide IISM Office order No.107/37-G-10 dated 13-10-2010. Due to the above correction overdrawn amount of pay and allowances of Rs.63,150/- was recovered on account of erroneous fixation of pay for the period from 09-09-1991 to 31-07-2010 (statement enclosed) from his DCRG bill.”

16. Thus only after being detected about the incorrect stepping up of pay at the office of RP & AO, SOI, Hyderabad has mentioned in their letter dated 21-07-2010, steps for recovery of the amount in question were started by the Respondents. The applicant retired on 31-07-2010. The applicant has not exercised any option for accepting his promotion from the date of accrual of next increment. His representations dated 23-3-1995 and 30-07-2010 to the Respondents in this connection were not given any importance and were not duly considered by the Respondents. Neither enquiry nor show cause notice was issued to the applicant before taking steps for recovery.

17. This Tribunal finds that the applicant cannot take advantage of the incorrect pay fixation made by the authorities which was subsequently detected by the Pension Sanctioning Authority before sanctioning his pension but the manner in which the recovery was made cannot be justified.

18. The recovery of the excess amount paid to the applicant from 09-09-1991 to 31-07-2010 as per the recovery statement, is not permissible

in the circumstances and background of this case and in view of the well settled legal position by the Hon'ble Apex Court in the above referred case. In these circumstances, this Tribunal finds that the steps taken by the Respondents for recovery of Rs.63,150/- (Rupees sixty three thousand one hundred and fifty only) from the gratuity of the applicant is also against principles of natural justice. Accordingly the Respondents are directed to refund the above said amount to the applicant within a period of three months from the date of receipt of a copy of this order failing which the Respondents are to pay the 8% interest per annum till the entire amount is refunded to the applicant. However, in the circumstances of this case, this Tribunal finds that there is no anomaly or irregularity in pay fixation of the applicant as corrected by the authority after it was detected by the pension sanctioning authority. Therefore the applicant is not entitled for refixation of the pay as prayed for by him in this case.

19. Accordingly the OA is partly allowed to the extent indicated above.
No order as to costs.

(SWARUP KUMAR MISHRA) (B.V.SUDHAKAR)
JUDICIAL MEMBER ADMINISTRATIVE MEMBER

Dated : 26th September, 2018.

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