

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

**OA No.290/00393/2014 with
MA No.290/00002/2017**

**Pronounced on : 10.10.2018
(Reserved on : 27.09.2018)**

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)

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Smt. Chandra Rathore, W/o late Sh. Fateh Singh Rathore, Aged 60 years,
R/o 3CH9 Madhuban Colony, Basni Jodhpur (presently posted as UDC with
Kendriya Vidyalaya, Banar).

...APPLICANT

BY ADVOCATE : Mr. K.K. Shah.

VERSUS

1. Kendriya Vidyalaya Sangthan through Commissioner, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi-110016.
2. Dy. Commissioner, Kendriya Vidyalaya Sangthan (Regional Office), 92 Gandhi nagar, Marg, Bajaj Nagar, Jaipur-302015.
3. The Principal, Kendriya Vidyalaya, Banar, Jodhpur.

RESPONDENTS

BY ADVOCATE: Mr. Avinash Acharya, for R1 to R3.

ORDER

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HON'BLE SMT. HINA P. SHAH, MEMBER (J):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunal's Act, 1985, wherein the applicant is seeking a direction from this Tribunal that the impugned orders dated 29.09.2014 (Annexure A1) and dated 16.08.2014 (Annexure A2) may be quashed and set aside. It is further prayed that the respondents may also be directed to carry out the re-fixation of pay of the applicant in view of the pronouncements of Tribunal as well as Hon'ble High Courts.

2. The brief facts of the present case as narrated by the applicant are that the applicant is working as UDC with respondent no.3 i.e. The Principal, Kendriya Vidyalaya, Banar, Jodhpur and she is retiring on attaining the age of superannuation on 31.12.2014. She was granted 2nd ACP with effect from 24.08.2008 vide letter dated 20.07.2009. The applicant states that vide letter dated 22.04.2010 respondent no.2 fixed the pay of the applicant as per the option of pay submitted by her from the date of grant of ACP i.e. 24.08.2008 (Annexure A3). The fixation of pay from January, 2006 to August, 2008 reveals that in August, 2008 the applicant was given pay of Rs.9800/- as revised pay with Grade Pay of Rs.2400/- and hence the total net pay in August, 2008 was Rs.12,200/-. It is clear from Annexure A3 that the applicant had opted for fixation from 24.08.2008. In spite of the option given by the applicant, respondent no.2 issued a letter dated 08.11.2013 that the pay fixation of the applicant has been done with effect from 24.08.2008 without getting option form as per rules and hence asked respondent no.3 to get the option form from the applicant (Annexure A4). Thereafter, on 31.03.2014, the applicant again submitted the option form and the same was forwarded by respondent no.3 to respondent no.2. As there was some shortcoming in the form, a fresh option form was resubmitted by the applicant on 03.04.2014 (Annexure A6). As per office order dated 03.07.2014, re-fixation of pay of the applicant was done by respondent no.2 (Annexure A7). It is clear from Annexure A7 that new fixation was done and recovery was sought to be effected. After perusal of the said Annexure, it clearly reveals that the pay of the applicant was fixed at Rs.10230/- with Grade Pay of Rs.4200/-. It is clear that the Grade Pay of Rs.4200/- was due to upgradation by granting ACP whereas the applicant's pay was fixed at Rs.9800/- in August, 2008.

3. The applicant further states that it is unclear on his part as to how the new fixation will entail recovery rather it appears that the fixation has been lowered in the pay and only Grade Pay has been increased due to ACP. Therefore, there is no question of any excess payment been made to the applicant. Thereafter, the applicant made a representation to respondent no.2 for reconsideration of her fixation of pay and she had submitted the details of her pay scale (Annexure A8). The said representation was forwarded on 15.09.2014 by respondent no.3 to respondent no.2 mentioning that early consideration as the applicant was retiring on 31.12.2014 (Annexure A9). As per Annexure A10, the applicant came in possession of letter dated 20.07.2009 whereby her pay fixation was done with effect from 24.08.2008 which was Rs.5500-175-9000. Hence, the applicant states that the impugned orders dated 29.09.2014 and 16.08.2014 be quashed and set aside and the re-fixation of pay of the applicant be carried out as per several pronouncements of judgments of the Tribunal as well as Hon'ble High Courts.

4. After issuance of notice, the respondents had filed their reply on 21.12.2016. The respondents stated that the applicant was granted 2nd ACP with effect from 24.08.2008 and she opted for fixation of pay from 24.08.2008 which was done by the answering respondents vide order dated 20.04.2010. It is in the year 2014, it came to the knowledge of the respondents that fixation has been done erroneously, and therefore, a new fixation was done vide order dated 03.07.2014, and therefore, recovery of the arrears already paid to the applicant cannot be said to be illegal and unwarranted in the eyes of law.

5. The respondents further stated that the pay fixation in respect of the applicant was done consequent upon grant of 2nd ACP to her with effect from 24.08.2008 vide KVS (RO) Jaipur, vide letter dated 20.07.2009 and

letter dated 22.04.2010 as per the existing rules available at that time and as per the option exercised by the applicant. Therefore, the pay of the applicant was fixed with effect from 24.08.2008 for Rs.10,170/- + Grade Pay of Rs.4200/-. It was further stated that as per clarification at point no.2 of DoP&T vide OM dated 09.09.2010 it is clear that the new Modified Assured Career Progression Scheme (MACPS) has come into existence with effect from 01.09.2008 only. However, the pay structure has been changed with effect from 01.01.2006. Therefore, the previous ACPS would be applicable as per the new pay structure adopted with effect from 01.01.2006. It was pointed out that the Government servant has to give his option under CCS (Revised Pay) Rules, 2008 to have their pay fixed in the revised pay structure giving two options either (a) with effect from 01.01.2006 with respect to their pre-revised scale on 01.01.2006 or (b) with effect from the date of their financial upgradation under ACP with respect to the pre-revised scale granted under ACP. It was clear that in case of option (b), they shall be entitled to draw their arrears of pay only from the date of their option i.e the date of grant of financial upgradation under ACP (Annexure R1). Accordingly, the pay of the applicant after obtaining option has been re-fixed vide order dated 03.07.2014 with effect from 24.08.2008 for Rs.10,230/- Pay Band + Rs.4200/- Grade Pay as per the option exercised by the applicant vide Option Form dated 03.04.2014 and 04.04.2014. It is also stated that the applicant had elected option 'B' and the arrears of her 6th CPC from the date of grant of 2nd ACP i.e. 24.08.2008 with an undertaking that any excess payment made as a result of incorrect fixation of pay or detected in the light of discrepancies noticed subsequently will be refunded by the applicant to the KVS. Therefore, the applicant is not entitled for payment of arrears of pay and allowances of 6th CPC with effect from 01.01.2006 to 23.08.2008 as she has opted option 'B' i.e. 6th CPC fixation from the date of grant of 2nd ACP

with effect from 24.08.2008. Therefore, the respondents state that because the applicant has chosen option 'B', the excess inadmissible amount of Rs.93,234/- and the arrears of pay and allowances of 6th CPC for the period from 01.01.2006 to 23.08.2008 made to the applicant is required to be recovered from the applicant in the light of instructions / clarifications of DoP&T OM dated 09.09.2010 and letter dated 03/10.10.2011 (Annexure R1). The said recovery of excess pay and allowances to the applicant were Rs.93,234/- in excess, and therefore, the same was intimated to the applicant vide letter dated 29.09.2014. Thus, the action of the applicant is justified and sustainable in the eyes of law.

6. Heard Shri K.K. Shah, learned counsel for the applicant and Shri Avinash Acharya, learned counsel for respondents no.1 to 3 and perused the material available on record.

7. It is the case of the applicant that the applicant had opted for pay fixation from 24.08.2008 and accordingly as seen from Annexure A3, her pay was fixed at Rs.9800/- plus Grade Pay of Rs.2400/- and pre-revised scale of pay of Rs.10,170/- Plus Grade Pay of Rs.4200/- i.e. 14370/-. Therefore, the 2nd ACP has been granted to the applicant as per her option for fixation of pay from the date of grant of ACP i.e. 24.08.2008. As per letter dated 08.11.2013 (Annexure A4), pay fixation of the applicant under ACP / MACP is as under:-

"In the case of ACP upgradations granted between 01.01.2006 and 31.08.2008 the Govt. servant has the option under the Rule-2008 to have his/her pay fixed in the revised pay structure either (a) w.e.f. 01.01.2006 with reference to his/her pre-revised scale as on 01.01.2006 or w.e.f. the date of his/her financial upgradation under ACP with reference to the pre-revised scale granted under ACP. In case of option (b), she shall be entitled to draw her arrears of pay only from the date of her option i.e. the date of financial upgradation under ACP."

As the option of the applicant was not available, the applicant was asked to submit her option as per the said letter.

8. It is also clear that the applicant has given an undertaking to the respondents, which was very clear that any excess payment or detected in the light of discrepancies noticed subsequently will be refunded by the applicant to the respondents either by adjustment against future payments due to the applicant or otherwise. The applicant further states that as per the pay fixation carried out vide letter dated 03.07.2014, it is clear that the applicant is getting lesser pay, which can be seen from Annexure A3 as on 24.08.2008 scale of ACP of Rs.10170+4200=14370/-. It is the claim of the applicant that if the pay fixation was done then the applicant should have been paid more rather than she is getting lesser pay after choosing option 'B'. It is the submission of the applicant that as per the option, there is no question of any excess payment being made, and therefore, there is no question of any recovery.

9. The applicant relies on the judgment in the case of Rafiq Masih stating that the applicant is UDC, who is Class-III employee and the recovery cannot be done from Class-III or Class-IV employee. Also, as per the impugned orders seeking recovery of excess payment being made vide letter dated 29.09.2014 (Annexure A1) and 16.08.2014 (Annexure A2) and as the applicant was about to retire on 31.12.2014 she is covered by Rafiq Masih judgment. Therefore, no recovery could have been done within the said span of 2-3 months time from the date of recovery as she was about to retire. Therefore, there is no question of any recovery and also there is no question of excess payment being made to the applicant.

10. The respondents states that as per the clarification at point no.2 of the DoP&T OM dated 09.09.2010, the pay structure with the new MACP has come into existence with effect from 01.09.2008 only. However, the pay structure has been changed with effect from 01.01.2006. Therefore, as per the new pay structure, the Govt. servant has to give their option

under CCA (RP) Rules, 2008, who have the pay in the revised structure either with effect from 01.01.2006 with respect to the pre-revised scale on 01.01.2006 or (b) with effect from the date of their financial upgradation under ACP with respect to the pre-revised scale granted under ACP. Accordingly, in the light of the above clarification/instructions, the pay of the applicant has been refixed with effect from 24.08.2008 for Pay Band of Rs.10,170/- + Grade Pay of Rs.4200/- as per the option exercised by the applicant vide option form dated 03.04.2014 and 04.04.2014. It is also clear that the applicant has given an undertaking for excess payment and in the light of the same, the excess payment is sought to be recovered from the applicant.

11. I have considered the rival contentions of both the learned counsels.

12. It is admitted fact that the applicant is UDC, who is Class-III employee. The applicant has retired on attaining the age of superannuation on 31.12.2014. The applicant was granted 2nd ACP with effect from 24.08.2008 vide letter dated 20.07.2009. As per the letter dated 22.04.2010, the pay of the applicant was fixed as per the option of pay submitted by her from the date of grant of ACP i.e. 24.08.2008. In spite of option given by the applicant, respondents issued an order dated 18.11.2013 that the pay fixation of the applicant has been done with effect from 24.08.2008 without getting any option from the applicant. Thereafter, the applicant again submitted the option on 31.03.2014. As per the office order dated 03.07.2014, refixation of pay of the applicant was done by the respondents as per the new fixation done at Annexure A7, the pay of the applicant was fixed at Rs.10,230/- with Grade Pay of Rs.4200/-. It is also clear that Grade Pay of Rs.4200/- was due to upgradation by granting ACP and the applicant's pay was fixed at Rs.9800/- in August, 2008. It is only in the year 2014, that the

respondents realized that fixation of pay of the applicant has wrongly been done, and therefore, new fixation was undergone vide order dated 03.07.2014, and accordingly, recovery of the arrears was ordered from the pay of the applicant as per Annexure A1 and A2 dated 16.08.2014 and 29.09.2014. The pay of the applicant was refixed after obtaining option (b) from the applicant, vide order dated 03.07.2014 with effect from 24.08.2008 for Rs.10,230/- + Grade Pay of Rs.4200/-. It is also noted that the applicant had given an undertaking for excess payment made as a result of incorrect fixation of pay or detected in the light of discrepancies noticed subsequently to be refunded by the applicant to the authorities. It is also clear that the applicant opted for pay fixation from 24.08.2008, and accordingly, as per Annexure A3, her pay was fixed at Rs.9300/- + GP of Rs.4200/- and pre-revised scale of pay of Rs.10170/- + GP of Rs.4200/- i.e. 14370/-. Therefore, 2nd ACP has been granted to the applicant as per her option for fixation of pay from the date of grant of ACP i.e. 24.08.2008. The impugned orders towards recovery were passed on 16.08.2014 and 29.09.2014 and the applicant was due to retire on 31.12.2014, therefore, relying on Rafiq Masih's case, it is clear that the applicant being a Class-III employee and a person, who is about to retire within one year, no recovery order could have been effected but the respondents have ordered for recovery of excess payment vide the impugned orders dated 16.08.2014 and 29.09.2014. Therefore, I am of the considered view that no recovery could have been made from the applicant towards excess payment made to her.

13. Therefore, in view of the observations made above, the impugned orders dated 16.08.2014 and 29.09.2014 deserves to be quashed and set aside and I, accordingly, order the same.

14. The O.A. is accordingly disposed of as stated above. MA No.290/00002/2017 for vacation of ex-party stay order dated 05.11.2014 also stands disposed of. No order as to costs.

(HINA P. SHAH)
MEMBER (J)

Dated: 10.10.2018
Place: Jodhpur

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