

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. OA 350/388/2017

Date of order : 24.3.2017

Present: Hon'ble Mr.A.K.Patnaik, Judicial Member

AMIT KUMAR DUTTA

S/o Late Shib Chandra Dutta,
Aged about 61 years,
Worked for gain as Upper Division Clerk
Under Zoological Survey of India,
New Alipore, Kolkata - 53,
Since retired on superannuation
R/o 13A/2 Raja Manindra Road,
Paikpara, Ground Floor,
Kolkata - 700037.

...APPLICANT

VERSUS

1. Union of India, through
The Secretary,
Govt. of India,
Ministry of Environment & Forests,
Paryavaran Bhavan,
CGO Complex,
Lodhi Road,
New Delhi - 110003.
2. The Director,
Zoological Survey of India,
Govt. of India,
Ministry of Environment,
Forest & Climate Change,
Prani Vigyan Bhavan,
535 'M' Block,
New Alipore,
Kolkata - 700053.
3. The Administrative Officer (P-I),
Ministry of Defence,
Office of JS (Training)
& CAO, C-II,
Hutment, DHO,
New Delhi - 110011.
4. The Head of Office,
Zoological Survey of India,
Govt. of India,
Ministry of Environment,
Forest & Climate Change,
Prani Vigyan Bhavan,
535 'M' Block,
New Alipore,
Kolkata - 700053.

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5. The Pay & Accounts Officer
(BSI/ZSI),
234/4 AJC Bose Road,
Nizam Palace,
2nd MSO Building,
Kolkata - 700020.

...RESPONDENTS.

For the applicant : Mr.P.C.Das, counsel

For the respondents: None

O R D E R

Mr.A.K.Patnaik, J.M.

Heard Mr.P.C.Das, Id. Counsel appearing for the applicant. None appeared for the respondents.

2. Shorn of the unnecessary details of the case Mr.Das submitted as follows

The Government of India, Ministry of Defence, office of the Chief Administrative Officer, New Delhi vide office order dated 28.8.1981 granted compassionate appointment in favour of the applicant due to sudden demise of his father and it was communicated to the mother of the applicant that the said authority has agreed to grant compassionate appointment in favour of the applicant. After the said order, the applicant vide office order dated 16.6.1989 was appointed on regular basis to the post of Lower Division Clerk in the office of JS (Training) & CA), C-II, Hutment, DJO, New Delhi - 110011 under Directorate General of Military Intelligence, Army Headquarters. The applicant joined as a regular post of Lower Division Clerk in the said department w.e.f. 26.2.1982.

During discharging service to the post of Lower Division Clerk, the case of the applicant was recommended for further promotion to the post of Assistant Examiner by the concerned department, vide office letter dated 16.6.1989 and subsequently the applicant got the ad hoc promotion to the post of Assistant Examiner. Thereafter due to sudden illness of his mother, the applicant has tried to shift from New Delhi to any office of Government of India

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at Kolkata and he has approached before the Ministry of Defence to issue a No Objection certificate to join duty in any Central Government office located in West Bengal.

After such approach, the Administrative Officer, CAO/Personnel-I vide letter dated 5.9.991 issued a No Objection Certificate in favour of the applicant to join duty in any office of the Central Government located in the state of West Bengal. After receipt of such No Objection Certificate, the applicant approached before the Director, Zoological Survey of India, Kolkata in the year 1994 and as per his qualification and experience in the other Central Government department, the Director of Zoological Survey of India accepted the request of the applicant and offered an appointment in the year 1994 to the post of Lower Division Clerk on regular basis and the applicant joined in the Headquarters Office of the Zoological Survey of India, Kolkata under the Ministry of Environment & Forests on 4/5th May, 1994.

On 6.6.1995 the Headquarters office of the Zoological Survey of India, Kolkata wrote a letter to the Administrative Officer (P-I), Ministry of Defence, New Delhi for bringing the service book of the applicant. Thereafter on 11.9.2000 the Headquarters Office of the Zoological Survey of India, Kolkata requested the Chief Administrative Officer, Ministry of Defence for necessary correction in the Last Pay Certificate of the present applicant but since then the Ministry of Defence did not give reply to that letter. Subsequently vide office order No. 4/2006 dated 2.1.2006 the applicant was granted a benefit of ACP by which his pay scale was upgraded from 4000-6000 to 5000-8000 and subsequently, thereafter the applicant's pay was also revised.

On 23/24.5.2011 vide office order No. 137/2011 the applicant was granted promotion to the post of Upper Division Clerk in the pay scale of Rs.5200-20200 with Grade Pay of Rs.2400. Since the applicant was enjoying the promotional benefit and other benefits in accordance with the rules, all on a sudden on 21.2.2012 without giving any opportunity of hearing to the applicant, the Senior Administrative Officer, Zoological Survey of India, Kolkata vide office order dated 21.2.2012 sought clarification of Service Book of the

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applicant if any from the Ministry of Defence, the applicant's earlier employer that the applicant was erroneously allowed annual increment during the service period which is absolutely wrong and unjustified. Whatever pay fixation has been made by the Ministry of Defence when the applicant joined duty firstly, all are in accordance with the rules. The chart which was given by the Headquarters Office of Zoological Survey of India, Kolkata is absolutely erroneous, therefore on justified ground, the Administrative Officer (P-I), Ministry of Defence did not clarify as per the letter sought by the Zoological Survey of India, Kolkata dated 21.2.2012. Only the applicant's present department where the applicant joined first would say and during the service of the present applicant whatever fixation order has been made by them is at all right or wrong but the Audit Department of the Zoological Survey of India, Kolkata raised an objection without waiting the reply from the Administrative Officer (P-I), Ministry of Defence that whether the applicant's pay and allowance was rightly fixed by the department or not and raised an objection that the fixation order of the earlier department was wrong, that they cannot say.

Vide office order No. 338/1999 dated 16.5.1999 the applicant's pay was also upgraded from 3000-5000 to 4000-6000. From the office memo dated 31.1.2014 it is apparent that the applicant has already been superannuated w.e.f. 31.1.2016 that there is no outstanding from the applicant's side was there at the time of retirement but the respondent authority illegally and arbitrarily withheld the gratuity and other pensionary benefits of the applicant because of clarification from the first department where the applicant joined service. Without waiting for such clarification vide impugned office order No. 23/2017 dated 28.2.2017 issued by the Headquarters Office of Zoological Survey of India, Kolkata by which an order of recovery has been made without issuing any show cause notice to the present applicant and without giving any opportunity of hearing to the applicant and without waiting the reply of the clarification sought from the Administrative Officer (P-I), Ministry of Defence, Office of JS (Training) & CAO, C-II, Hutment, DHO, New Delhi - 110011, they

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issued the impugned order dated 28.2.2017 without waiting the reply of the clarification sought by them from the erstwhile employer of the applicant. This impugned order dated 28.2.2017 is absolutely bad in law and illegal which may be liable to be quashed and set aside in the eyes of law since the applicant has already retired from service and during the service tenure, the department did not issue any show cause notice to the present applicant and before issuing the impugned order, no show cause notice was issued by the respondents against the applicant. The respondents straightway issued the order of recovery without waiting for the clarification from the Ministry of Defence where the applicant firstly joined duty. This order of recovery is illegal per se.

Against such office order No.23/2017 dated 28.2.2017 the applicant has submitted a representation on 17.3.2017 before the Director, Zoological Survey of India, Kolkata to withdraw such order of recovery and not to give any effect to such order of recovery and not to deduct any amount from the pensionary benefit of the applicant without obtaining the clarification from the Administrative Officer (P-I), Ministry of Defence, Office of JS (Training) & CAO, C-II, Hutment, DHO, New Delhi - 110011 in terms of their letter dated 21.2.2012 but the respondent authority failed to consider such representation till date and at any point of time they can start recovering the money from the pension of the applicant.

3. Thus being highly aggrieved and for the urgency in the matter the applicant has filed the present OA seeking the following reliefs :

- a) To quash and/or set aside the impugned office order No. 23/2017 dated 28.2.2017 by which the impugned order of recovery has been made by the head of office of Zoological Survey of India, Kolkata without giving any opportunity of hearing to the present applicant and without waiting their reply of their own letter dated 21.2.2012 from the Administrative Officer (P-I), Ministry of Defence, where your applicant first joined in the said department being Annexure A/11 of this original application.
- b) To declare that the impugned order of recovery dated 28.2.2017 after retirement from service of the applicant issued by the Zoological Survey of India, Kolkata is absolutely bad in law and illegal which is also violates the principle of natural justice, equity and fair play and which is utter violation of the order of the Hon'ble Supreme Court in the catena of decisions rendered by the Hon'ble Apex Court in this respect and further direct the respondent

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authority to refund the amount if any recovered from the pension of the applicant by the department concerned along with interest.

4. Mr.Das submitted that the applicant is a retired person and after his retirement suddenly an office order No. 23/2017 dated 28.2.2017 under Annexure A/11 was passed in which a recovery order has been made stating erroneous payment as one of the grounds. The applicant after receipt of the said order has immediately preferred a representation to the respondent No.2 on 17.3.2017 and Mr. Das submitted that till date no response has been received from the respondent No.2.

5. On being questioned regarding the maintainability of this OA as because the representation was preferred only on 17.3.2017 and today is 24.3.2017 i.e. hardly 7 days has elapsed after submission of the representation, Mr. Das fairly submitted that as the applicant is a retired person and recovery order has been passed which will be recovered from his meagre pension amount from the month of March, 2017 onwards, the applicant has rushed to this Tribunal. Mr.Das further submitted that the grievance of the applicant can be more or less satisfied if a specific time frame can be fixed and a direction be issued to respondent No.2 to consider the representation as per the rules and regulations in force and till such time the respondents may be restrained from taking any coercive action against the applicant.

6. I am satisfied with the arguments and submissions advanced by Mr.Das and as the applicant has already retired and since prima facie I am satisfied that no opportunity of hearing/no previous show cause has been issued before issuance of the purported order under Annexure A/11, I dispose of this OA without awaiting for any reply by directing respondent No.2 that if any representation has been preferred by the applicant on 17.3.2017 under Annexure A/12 against the order of recovery under Annexure A/11, then the same may be considered as per rules and regulations governing the field and be disposed of by way of a well reasoned order and the same be communicated to the applicant within a period of 3 months from the date of receipt of this order. I also made it clear that till the representation stated to have been made on

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17.3.2017 is considered and disposed of, no recovery from the pensionary benefits of the applicant will be made by the respondents as ordered under Annexure A/11, No. 23/2017 dated 28.2.2017.

7. With the aforesaid observation and direction the OA is disposed of.

8. As prayed for by Mr.Das, a copy of this order along with the paper book of this OA be transmitted to respondent No.2 & 5 by Speed Post for which he undertakes to file the postal requisites with the Registry by today.

(A.K.PATNAIK)
MEMBER (J)

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