

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00450/13**

Reserved on: 26.03.2018

Pronounced on: 06.04.2018

C O R A M

**HON'BLE MR. A.K. UPADHYAY, ADMINISTRATIVE MEMBER
HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER**

Shri Vinod Kumar Singh, S/o Late Shri Ram Prasad Singh, MES No. 486201, Safaiwala, a resident of MES Quarter No. 13/122 Airforce Station, Bihta, Dist.- Patna working at A.G.I. (I) Bihta.

..... Applicant.

- By Advocate: - Mr. P.R. Singh

-Versus-

1. The Union of India represented through the Engineer-in-Chief, Army HQ, PO-DHQ, Kashmir House, New Delhi-110011.
2. Controller of Defence Accounts, Rajendra Path, Patna-800019.
3. Commander Works Engineers, Dipatoli, Ranchi, Jharkhand.
4. A.G.E (I), Air Force Station, Bihta P.O. & P.S.: Bihta, Dist. Patna.
5. Station Head Quarter, Binaguri, Distt.- Jalpaiguri, West Bengal, Pincode – 735232.
6. The Chief Engineer, H.Q. Central Command, Lucknow, U.P., PIN- 900450/56 APO.

..... Respondents.

- By Advocate(s): - Mr. H.P. Singh, Sr. Standing Counsel

ORDER

Per A.K. Upadhyay, A.M.:- This OA has been filed by the applicant seeking the following reliefs:-

“(i) To give him due increment from the date of his appointment on 13 Feb. 1981.

(ii) To fix his seniority with date of appointment and pay arrears with interest as due and admissible.

(iii) To rectify the tempered date of 1st increment.

(iv) To pay the cost of litigation.”

2. The case of the applicant is that he was appointed as a Conservancy Safaiwala on 13.02.1981 against regular vacancy by the Station Headquarter, Binaguri, West Bengal. The applicant has submitted a photocopy of the pay details of February 1981 to December, 1983 (Annexure A/3) which he claims to have obtained through RTI. The said appointment letter is not placed on record and the statement of the pay details does not bear any reference to any RTI application nor does it bear any official signature. The applicant further contends that he was regular status on 30.06.1982 vide DO Pt. II No. 92/ta/62 dated 04.11.1982 in the pay scale of Rs. 196-3-220-EB-232. Photocopy of the extracts from Service Book is placed at Annexure A/4. The applicant represented his case to the Station Headquarters, Binaguri on 16.12.1991 (Annexure A/5) for giving him his due increment from the date of his appointment. After completion of one year of service the applicant was given increment since 01.06.1993. His pay was Rs. 205/- on 01.06.1985 which was revised @ Rs. 898/- per month w.e.f. 01.01.1986 (pursuant to 4th CPC).

3. The applicant further gives details of his financial upgradation pursuant to 1st ACP scheme introduced from 09.08.1999. The CDA, Patna fixed the applicant's pay w.e.f. 09.08.1999 at Rs. 3300/- per month on grant of 1st ACP w.e.f.

09.08.1999 with Date of Next Increment (DNI in short) as 01.08.2000 in the pay scale of Rs. 2650-4000/-. The applicant's grievance is that the authorities have wrongly shown the pay scale given to the applicant as Rs. 2650-4000. His contention is that after completion of 24 years of service as on 01.06.2005 the applicant's pay should be revised @ 3050/- but the same was given to him from June, 2006.

4. The applicant further submits that pursuant to the 2nd ACP his pay has been fixed at Rs. 7740/- per month w.e.f. 01.07.2006 by order dated 24.04.2009 (Annexure A/9). However, by another dated 21.11.2011 his second ACP has been fixed as Rs. 7640/- w.e.f. 01.07.2006 without any notice.

5. The applicant's further submission is that after completion of 30 years of service the benefit of MACP has not yet been given to him.

6. The applicant has represented to the authorities giving details of the pay given to the similarly placed employees.

7. The applicant earlier approached the Tribunal in OA No. 865/2012 which was disposed of vide order dated 12.10.2012 without expressing any view on the merit of the case with the direction to the authorities to consider the case of the applicant.

8. The Tribunal also observed that since the applicant did not challenge the alleged wrong fixation of 1982 within a reasonable

time, it was not passing any order on arrears the basis of such re-fixation. The respondents authorities have passed the impugned reasoned order dated 08.01.2013 which the applicant has not challenged in the relief portion of the OA.

9. The respondent authorities have filed a detailed written statement in which they have stated that the applicant was appointed as Conservancy Safaiwala on casual basis on 01.07.1981 and not on 13.02.1981. It has also been stated that the pay of the applicant was revised @ Rs. 798/- w.e.f. 01.01.1986 and not Rs. 898/- as mentioned in the OA. The authorities have submitted an extract of statement of service where this has been recorded.

10. In reply to Para 4.9 regarding ACP, the authorities have stated that the applicant's existing pay was Rs. 3140/- which was revised to Rs. 3300/- w.e.f. 09.08.1999, i.e. the date of introduction of the ACP scheme. It is stated that since the applicant had not given any option for taking the benefit of 1st ACP w.e.f. June, 2000, he was given the benefit w.e.f. the date of introduction of the scheme, i.e. 09.08.1999.

11. The respondents have clarified that in Annexure A/6 it has been clearly mentioned that the applicant's existing scale of pay was Rs. 2610-60-2910-65-3300-70-4000/-, which was revised to Rs. 2650-65-3300-70-4000/-.

12. It has been further stated in the written statement that he was initially appointed on casual basis and he was brought on regular status w.e.f. 30.06.1982, hence after completion of 24 years of service as on 01.07.2006, he was granted the second ACP from this date.

13. The authorities have enclosed statement of pay fixation dated July 7, 2011 giving detailed calculation by which it has been stated that the applicant's pay on financial upgradation w.e.f. 30.06.2006 should be Rs. 7460/- with Grade Pay of Rs. 1900/-, but it was wrongly fixed earlier as Rs. 7740/-. Therefore, re-fixation has been done.

14. In the speaking order of the respondents it has been stated that the service rendered by the applicant from 01.07. 1981 to 29.06.1982 was not on regular status and the applicant never produced any authentic document of appointment letter on regular basis from 01.07.1981. It has also been stated that claim for fixing seniority from the date of appointment is also not justified because he was transferred in January/February, 1992 on his own request. As per policy published vide CPRO 73 of 1973, if any Group 'C' or 'D' employee gets transferred from one controlling area to another area or from one department to another on his own request, he would have to forego his seniority. It has been stated that his pay has been correctly fixed as Rs. 7460/- under 2nd financial upgradation.

15. Heard the parties and perused the documents.

16. As we have already observed the applicant has not submitted any appointment letter claiming his appointment from February, 1981. The statement placed at Annexure A/3 does not bear any official signature nor there is any correspondence relating to RTI as claimed by the applicant. The applicant has not challenged the speaking order passed by the authorities dated 08.01.2013 in pursuance of the Tribunal's order dated 12.10.2012 in OA 865/2012. Therefore, it has to be assumed that the facts stated by the authorities in the speaking order are not disputed by the applicant.

17. We have gone through the calculation of fixing the pay at Rs. 7460/- + GP Rs. 1900/- pursuant to the 2nd ACP w.e.f. 30.06.2006. We do not find any error in this computation. The applicant's claim of Rs. 7740/- is based on some observation in a statement, but there is no supporting calculation how that figure had been arrived.

18. As far as 1st ACP is concerned, the applicant seems to have been confused between the existing scale of pay (pre-upgradation) and the scale of higher post to which he was being upgraded. As per this calculation at Annexure A/6 he was earlier drawing a pay of Rs. 3140 (as on 01.08.1999) in the scale of pay of Rs. 2610-60-2910-65-3300-70-4000/- which was fixed at Rs. 3300/- in the higher pay scale of Rs. 3650-65-3300-70-4000/-.

19. The authorities have satisfactorily explained that the applicant has to take seniority w.e.f. February, 1992, i.e. from the date of joining in the department on transfer at his own request. Therefore, his comparison with other employees is not tenable. In conclusion, we find that there is no merit in the OA. Hence, dismissed. No order as to costs.

[Jayesh V. Bhairavia]
Judicial Member

[A.K Upadhyay]
Adminsitratve Member

Srk.