

**Central Administrative Tribunal
Chandigarh Bench
Chandigarh**

**OA No.62/9/2018 &
MA No.62/220/2018**

Decided on : 17.09.2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. P. Gopinath, Member (A)

Syed Meirajul Yasin, aged 47 years, S/o Syed Mohammad Yasin, R/o Namlabal, Pampore 192121, at present Naseem Bagh, Habak, Hazratbal, Srinagar.

... Applicant

(By Mr. Bilal Ahmed Malla, Advocate)

Versus

1. Union of India through Secretary AYUSH, Ministry of Health, Govt. of India, AYUSH Bhawan B-Block, GPO Complex INA, New Delhi 110023.
2. Director General, Central Council for Research in Unani Medicine Jawahar Lal Nehru AYUSH Anusandhan Bhawan, 61-65 Institutional Area, Opp. D-Block, Janakpuri, New Delhi 110058.
3. Assistant Director (Administration), Central Council for Research in Unani Medicine Jawahar Lal Nehru AYUSH Anusandhan Bhawan, 61-65 Institutional Area, Opp. D-Block, Janakpuri, New Delhi 110058.
4. Assistant Director, I/c Regional Research Institute of Unani Medicine University of Kashmir, Naseembagh, Habak Hazratbal, Srinagar 190006.

... Respondents

(By Mr. Nasir A. Bhat, Advocate)

ORDER (ORAL)

P. Gopinath, Member (A)

The facts leading to filing of the instant Original Application (OA), are that the applicant initially was appointed as General Duty Assistant in the year 1987. He was promoted as Junior Stenographer vide order dated 9.6.1992. He was granted 1st financial up gradation under Assured Progression Scheme (ACP) w.e.f. 1.6.2004 and then 2nd financial up gradation vide order dated 10.7.2012, in the pay band of Rs.9300-24800 with grade pay of Rs.4600/-. However, the respondents have withdrawn the first financial up gradation vide order dated 12.10.2017 on the premise that it was granted due to an administrative error and consequential recovery has also been ordered. This order is challenged in this O.A. on the ground that it is in sheer violation of principles of natural justice.

2. The respondents have opposed the O.A. by filing a reply. They submit that the applicant was appointed initially as GDA and then promoted as Stenographer vide officer order dated 9.6.1992. Thus, he could not be granted benefit of financial upgradation under the ACP Scheme, as it could be allowed

only if an employee had not got any promotion during 12 years of service. Thus, the impugned order has rightly been passed by the respondents and recovery can be made from the applicant.

3. We have heard the learned counsel for the parties and perused the material on the file. ‘

4. The short question that arises for our consideration is as to whether the appointment of the applicant as Stenographer was direct recruitment or promotion?

5. The pleadings on record would show that the applicant was initially appointed as GDA in pay scale of Rs.950-1500 vide order dated 26.10.1988 (Annexure B). The applicant came to be promoted to the post of Junior Stenographer, vide order dated 9.6.1992 (Annexure C), in the pay scale of Rs.1200-2040. This order clearly indicates that the applicant had been promoted as Stenographer. However, under an assumption, that applicant has not got any promotion, he was granted ACP in the pay scale of Rs.5000-8000 and his pay was fixed vide order dated 16.7.2004. He was then granted 2nd financial upgradation in pay band of Rs.9300-34800 with GP of Rs.4200/-. The post of Jr. Stenographer was re-designated as UDC. The applicant was assigned administrative duties from time to time. However,

the respondents issued seniority list of UDCs, in which Junior Stenographers, re-designated as UDCs, were shown below the existing UDCs. This was resisted by the applicant by submission of representations from time to time.

6. The impugned order dated 12.10.2017 (Annexure Q), indicates that the applicant has been shown as having been promoted as Junior Stenographer w.e.f. 1.6.1992. Thus, grant of 1st financial upgradation was on the premise that the applicant had not got any promotion. That was not according to record as such when it came to notice of the respondents that an administrative error had taken place, they withdrew that and re-fixed the pay of the applicant. Considering the facts and matter on record, we are of the view that the respondents have not committed any error. The applicant has been shown to have been promoted since 1992 itself but it never challenged those orders which showed his position as having been promoted as Stenographer. In any case, the post was merged with UDC and now the applicant is in the cadre of UDC. Thus, he cannot be granted any benefits. Law is well settled that an administrative error can always be corrected by the authorities. In the case of **RAM AWADH PRASAD V. UNION OF INDIA**, 1987 (3) CAT 48, it was held that it is well accepted maxim of law that an

administrative error can always be corrected. This can be done without giving opportunity to show cause notice, if the order has been carried out or it has not resulted in accruing any legal right. In so far as natural justice is concerned, in **S.K. KAPOOR V. JAG MOHAN**, AIR 1981 SC 136, it has been held by Hon'ble Apex Court, that where on admitted or undisputed fact, only one conclusion is possible and under the law, the court may not issue the writ to compel the observance of the principles of natural justice as it would amount to issuing a futile writ. Thus, we uphold the re-fixation of pay of the applicant on withdrawal of the benefit of ACP, and impugned order is upheld in that relevant connection.

7. However, if any amount has been paid in excess to the applicant, in pursuance of the grant of financial up gradations under the ACP Scheme, it is directed that the same shall not be recovered from him, as he is admittedly a Group C employee and there was no mis-representation on his part nor was any fraud attributed to him. In such like cases, the recovery of excess amount paid to an employee is not permissible, in view of law laid down by the Hon'ble Apex Court in the case of **STATE OF PUNJAB VS. RAFIQ MASIH (WHITE WASHER)**, (2014) 8 SCC 883.

8. In so far as grievance of the applicant qua incorrect fixation of seniority as UDC or benefit, on the basis of his promotion as Junior Stenographer, is concerned, it would be open for him to agitate these issues by way of separate appropriate proceedings, as per rules and law. Pending M.A. for stay also stands disposed of.

9. The O.A. stands partly allowed upholding the re-fixation of pay but restraining the respondents from making any recovery, in the above terms.

10. The parties are, however, left to bear their own costs.

(P. Gopinath)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

HC*