

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 916 of 2016

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Dr. Nilamani Das, aged about 58 years, S/o Late Jagannath Das, resident of Qrs. No. 322, IMMT colony, Acharya Vihar, PO RRL, Bhubaneswar – 751013, Dist. = Khurda at present working as Senior Stenographer, CSIR - Institute of Minerals & Materials Technology (CSIR – IMMT), Po RRL, Acharya Vihar, Bhubaneswar – 751013, Dist. – Khurda, Odisha.

.....Applicant

VERSUS

1. Council of Scientific & Industrial Research represented through Director General, Council of Scientific & Industrial Research, 2 Rafi Marg, Anusandhan Bhawan, New Delhi – 110001.
2. Joint Secretary (Admn), Council of Scientific & Industrial Research, 2 Rafi Marg, Anusandhan Bhawan, New Delhi – 110001.
3. Director, CSIR-Institute of Minerals & Materials Technology, PO – RRL, Bhubaneswar – 751013, Dist. – Khurda, Odisha.

.....Respondents.

For the applicant : Mr.K.C.Kanungo, counsel

For the respondents: Mr.B.K.Mohapatra, counsel
Mr.A.Pradhan, counsel

Heard & reserved on : 26.3.2019

Order on : 15.4.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant is aggrieved by the action of the respondents denying the benefit of two advance increments from 9.8.1999 till 31.12.2005 by the impugned order dated 10.11.2016 (Annexure-A/19). It is stated in the OA that the respondents have not allowed the benefit as claimed although it is in accordance with the orders at Annexure A/11, A/12, A/13 and A/14 and that many other similarly situated staffs have been allowed such benefit in Central Institute of Medicinal & Aromatic Plants, Lucknow (in short CIMP) which is one of the laboratory under the CSIR. As per the information received by the applicant, one Smt. P. Sabitha Junior Stenographer working in CIMP was allowed two advance increments as special allowance vide order dated

29.7.2016 at Annexure-A/20. The OA has been filed by the applicant after his representation was rejected, seeking following reliefs:-

"In view of the submissions set forth in para 4 above, the applicant humbly prays that your lordship will be graciously pleased to quash Annexure A/10, A/17 and A/19 for the ends of justice.

AND

Be further pleased to hold that the applicant is entitled to two advance increments w.e.f. 9.8.1999 in terms of Annexure A/11, A/12, A/13 and A/14 for the ends of justice.

AND

Be further pleased to direct the respondents to modify the order under Annexure A/6 by including two advance increments as special allowance amounting to Rs.200 w.e.f. 9.8.99 till 31.12.2005 for the ends of justice.

AND

Be further pleased to direct the respondents to take two advance increments for fixation of pay w.e.f. 1.1.2006 for the ends of justice.

AND

Be further pleased to direct the respondents to calculate the arrear differential amount above pay fixation w.e.f. 9.8.1999 till date with arrears with penal interest at the rate of 14% per annum thereon for the ends of justice.

AND

Any other/further order/direction as deemed fit and proper in the circumstance of the case may kindly be extended to the applicant.

AND

For such kind acts, the applicant, as is duty bound, shall ever pray."

2. The respondents have opposed the OA in their Counter stating that the claim of the applicant is barred by limitation under the section 21 of the Administrative Tribunals Act, 1985 since he raised the claim after lapse of 18 years after the decision was taken first w.e.f. 9.8.1999. It is stated in the Counter that the benefit of advance increments earned by him has been accounted for while fixing his pay under the FR-22(1)(a)(1) in the scale of Rs. 5500-9000 after grant of ACP benefit w.e.f. 9.8.1999. Before ACP, his pay was Rs. 5000 plus Rs. 200/- towards the advance increments. After grant of the ACP benefit, his pay was fixed at the level of Rs. 5500/- w.e.f. 9.8.1999 after taking into consideration the advance increments. The respondent no.1 had examined the case of the applicant and the decision was communicated vide order dated 10.11.2016 (Annexure-A/19). Regarding the case of Smt. P. Sabitha, it is stated that the respondent No.3 was not aware of the circumstances under which she was granted the special allowance as claimed by the applicant.

3. The applicant has filed Rejoinder denying the averment that the case is barred by limitation since his claim should have been examined suo motu in the light of the circular dated 6.12.2012 (Annexure-A/14) by which two advance increments were taken into consideration while fixing pay w.e.f. 1.1.2006 and it was stated in the said circular that the advance increments should be treated as separate element in addition to basic pay till such advance increments merged with the pay w.e.f. 1.1.2006. The impugned order at A/19 did not discuss the implications of the circular dated 6.12.2012 (A/14) for which fresh cause of action arises after passing of the order dated 10.11.2016 (A/19). It is also stated that when his pay was fixed after 5th Pay Commission report, the advance increments of Rs. 200/- should have been shown separately w.e.f. 1.1.1996 and also from 9.8.1999 after grant of ACP benefit in accordance with the OM dated 14.8.1989 (Annexure-A/23) which stated that the advance increments are to be treated as separate element and will be additional increments over and above the basic pay.

4. We heard learned counsels for the parties. Applicant's counsel in addition to the pleadings on record, also cited the judgment of Hon'ble Apex Court in the case of M.R. Gupta vs. Union of India and Ors. AIR 1996 SC 669 to argue that the applicant's cause of action related to fixation of pay and hence, it is a continuing cause of action. Learned counsel for the respondents specifically drew our attention to para 8 and 10 of the Counter to resist the claim advanced by the applicant.

5. Before proceeding further the issue of limitation raised by the respondents needs to be considered. The applicant in his rejoinder has submitted that his representation dated 17.8.2016 (Annexure A/18) to Chairman, Local Grievance Committee of CSIR-IMMT has been rejected by order dated 10.11.2016 (Annexure A/19) and in the said order dated 10.11.2016, nothing was mentioned about the circular dated 6.12.2012 (Annexure A/14). It is submitted that for this reason the order dated

10.11.2016 is a fresh cause of action and hence, the OA is not barred by limitation.

6. Learned counsel for the applicant at the time of argument also submitted that the case of the applicant related to the pay fixation and hence, it is a continuing cause of action in terms of the judgment of Hon'ble Apex Court in the case of M.R.Gupta (supra). We are unable to agree with the contentions of the learned counsel for the applicant in this regard. Admittedly the applicant's grievance is for his pay fixation from 1.1.2006 by virtue of the circular dated 6.12.2012. Hence, from the date of circular dated 6.12.2012, he has no grievance with regard to inclusion of advance increments in his pay since these advance increments got merged with the pay structure by virtue of the circular dated 6.12.2012 with effect from 1.1.2006. It is clear that his claim relates to the arrear pay from 9.8.1999 to 31.12.2005 for which he is claiming the benefit of two advance increments which were merged at the time of fixation of pay after grant of ACP benefit to the applicant w.e.f. 9.8.1999. Therefore, the applicant's claim is for arrear pay for the period from 9.8.1999 to 31.12.2005 and he does not have any grievance regarding the current year.

7. We are therefore, of the view that it is not a recurring cause of action. It is also seen that after grant of ACP benefit from 9.8.1999, no action was taken by the applicant to raise his grievance till he submitted his claim vide representation dated 21.7.2010 to the respondents (Annexure A/15), which was forwarded to the higher authorities vide letter dated 24.9.2010 (Annexure A/16). On that representation, the order dated 26.7.2012 (Annexure A/17) was issued not accepting the applicant's claim regarding his pay fixed under the ACP w.e.f. 9.8.1999. Copy of this order dated 26.7.2012 is annexed at Annexure A/17 of the OA which is also challenged in this OA. Taking the impugned order dated 26.7.2012 into consideration, the OA is also barred by limitation as there is no application for condonation of delay for challenging the order dated 26.7.2012 (Annexure A/17). In view of above discussions the OA is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985 since it is not a continuing cause of action and the cause of action has

arisen from the date when respondents fixed the pay of the applicant after ACP benefit w.e.f. 9.8.1999.

8. Regarding the merit of the OA, it is noted that the applicant has stated in the OA that similar benefit as claimed by him was allowed to one Smt. Ms.P.Sabitha as per the order at Annexure A/21. It is seen that the advance increments have been treated as special allowance in case of Smt. P.Sabitha. But no other example of the employee of IMMT has been furnished in the OA. It is explained by the respondents that additional increments allowed to the applicant have been taken into account while fixing the pay after grant of ACP benefit. It is a different matter that even after taking into account the increments the pay of the applicant was fixed at the minimum of the pay scale at Rs.5500/- as stated in para 10 of the counter, which has not been denied by the applicant. The applicant's claim that by virtue of the OM dated 4.10.1975 (Annexure A/22) and 14.8.1981 (Annexure A/23) and the OM dated 6.12.2014 (Annexure A/14), the advance increments should have been treated separately from basic pay is not very convincing, since the applicant had accepted the pay fixation by the authorities after his upgradation under ACP w.e.f. 9.8.1999. Further, no instance of another employee who is similarly placed in IMMT as the applicant and who has been granted same benefit as claimed in the OA has been furnished by the applicant. Smt. P.Sabitha is an employee of another institution of CSIR.

9. In view of the above, we are of the considered view that the OA is barred by limitation and also lacks merit. Therefore the OA is dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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