

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA No. 676/2012

Date of Reserve: 29.01.2019

Date of Order: 25.02.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Shri Kashinath Sahoo, IAS(Retd..), aged about 61 years, S/o. Late Daitary Sahoo – at present residing at Plot No.1468, Bhimatangi, Kapil Prasad, Bhubaneswar-751 002, Dist-Khurda, Odisha.

...Applicant

By the Advocate(s)-M/s.K.C.Kanungo
R.C.Behera
Ms.C.Padhi

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Personnel, Public Grievance and Pension, Deptt. Of Personnel & Training, North Block, New Delhi-110 001.
2. State of Odisha represented through the Chief Secretary to Govt. Of Odisha, Odisha Secretariat, Bhubaneswar-751 001, Dist-Khurda, Odisha.
3. Special Secretary to Govt. Of Odisha, General Administrative Department, Odisha Secretariat, Bhubaneswar-751 001, Dist-Khurda, Odisha.

...Respondents

By the Advocate(s)-Mr.J.Pal

ORDER

PER MR.GOKUL CHANDRA PATI, MEMBER(A)

This OA has been filed seeking the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

i)...to quash Annexure-A/11 to the extent it contains, "since he has been given the benefit of fixation of pay in the Selection Grade of Pay I.A.S. before his actual appointment to the grade, he is not entitled to have his pay re-fixed on his actual appointment to this grade subsequently" for the ends of justice.

ii)...to quash Annexure-A/12 for the ends of justice.

iii)...to direct Respondent No.1 suitably amend/modify Rule-5(c) of Indian Administrative Service (Pay)Second Amendment Rules, 2008, to the extent it contains 'by adding two additional increments @ 3% of the sum of the pay in the Pay Band-3 and grade pay of Rs.7600/- computed and rounded off to the next multiple of 10 and added successively to the existing pay in the Pay Band-3 plus the grade pay of Rs.7600/- to bring the claim of the applicant under its ambit or in the alternate treat the case of

the applicant as an anomaly to be sorted out by extending the benefit of promotion(granting two additional increments) in the grade of JAG for the ends of justice.

iv)...to direct Respondent No.1 suitably amend/modify Rule-5(d) of Indian Administrative Service (Pay)Second Amendment Rules, 2008 to the extent it contains, 'to be computed on the minimum of pay band plus grade pay of Rs.8700/-' to bring the claim of the applicant under its ambit or in the alternate treat the case of the applicant as an anomaly to be sorted out by extending the benefit of promotion (granting two additional increments) in the grade of 'Selection Grade' for the ends of justice.

v)...to direct the Respondent No.2 to pass appropriate order for refund of Rs.1,85,711/- along with the interest till the actual refund is made.

vi)...to direct the Respondent No.2 to revise, refix the pay of the applicant and corresponding grade pay from time to time with other entitlements as detailed vide Annexure-A/13 and pay the differential amounts with interest for the ends of justice.

vii)...to direct the Respondent to revise and re-fix the pension and determine the consequential revision of retirement benefit such as commutation, gratuity and leave salary accordingly and direct the payment of differential amount with interest till the actual payment is made in the interest of justice.

viii)...to allow the cost".

2. The case of the applicant is that he was promoted from Orissa Administrative (in short OAS) to Indian Administrative Service on 17.11.2006 and he was appointed in the next higher grade i.e. Junior Administrative Grade (in short JAG) w.e.f. 17.11.2006 and then promoted to the Selection Grade w.e.f. 1.1.2007. The pay of the applicant in these three grades were revised vide order dated 15.1.2009 (Annexure-A/6). Then he was promoted to super Time Scale and then vide order dated 17.11.2011 (Annexure-A/12), that is after retirement of the applicant on superannuation on 31.12.2010, the respondent no. 3 on instructions from the respondent no. 1, re-fixed the pay of the applicant from the date of appointment to IAS and the excess payment (Rs. 1,85,711/-) made to the applicant was ordered to be recovered.

3. The applicant has filed this OA being aggrieved by the order dated 14.1.2011 (A/11) and 17.11.2011 (A-12) as well as the rule 5(c) and 5(d) of the IAS (Pay) Second Amendment Rules, 2008 (in short Pay Rules) and has advanced the following main grounds in the OA in favour of his case:-

(i) No opportunity was given to the applicant for hearing before reducing his pay at par with Sri A.K. Sahu.

(ii) The applicant was getting the pay scale of Rs. 37000-67000/- with grade pay (in short GP) of Rs. 8700/- when he was in OAS before promotion to IAS. Hence, on promotion to IAS, as per the IAS Pay Rules (Amendment), 2009 the applicant was entitled to get his pay fixed by adding one increment in the pay scale which he was getting prior to promotion. But he was not allowed the benefit of this rule because of the rule 5(c) of the Pay Rules, by which it was stipulated that the pay of an IAS officer on promotion from JAG to Senior Administrative Grade (in short SAG) will be fixed in Pay Band 3 with GP of Rs. 7600/-, which was less than the pay and GP being received by the applicant prior to his promotion to IAS.

(iii) Since the applicant was not allowed the benefit of pay fixation on promotion to get his pay fixed with GP of Rs. 8700/- because of the rule 5(c) supra, which is bad in law. Similarly, the rule 5(d) of the Pay Rules, 2008 specifies that on promotion from JAG to Selection Grade, two additional increments will be granted in the Pay Band 4 and GP of Rs. 8700/-. The applicant alleges that he was deprived of the benefit of two increments over the existing pay which was in selection grade itself, after he was promoted to the Selection Grade in IAS. The case of the applicant was not considered while framing the rules 5(c) and 5(d) of the Rule, while the direct recruits were getting the benefit if increment and pay scale on promotion.

(iv) On his promotion to super time scale w.e.f. 12.4.2010, he was entitled for pay fixation by adding one increment equalling 3% of the pay. Since he was entitled for the benefit of increment for promotion to senior scale, JAG and selection grade and for which he was entitled for re-fixation of his pay.

4. The respondents have filed counter opposing the OA. It is stated that due to representation by another officer, who was similarly placed as the applicant, the matter was referred to the DOPT, Government of India which gave a clarification regarding pay fixation of the OAS officers on promotion to IAS stating that "Since he has been given the benefit of fixation of pay in the Selection Grade of IAS before his actual appointment to the grade, he is not entitled to have his pay re-fixed on his actual appointment to this grade subsequently"; vide letter dated 4.1.2011 (Annexure-A/11). It is stated that as per the order dated 15.4.2009 (Annexure-A/10), the applicant after revision of State pay scale to PB-4 after 1.1.2006, he was entitled for pay fixation in the PB-4 with addition of one increment. Thus the applicant's pay was fixed in the selection grade i.e. PB-4 even before his actual promotion to selection grade. It is stated in the counter that as per the instructions of the DOPT, the applicant will not be entitled for another fixation of pay after his actual promotion/appointment to the Selection Grade in IAS. The revised pay fixation of the

applicant has been worked out as per the order dated 17.6.2011 (Annexure-A/12), which is in accordance with the DOPT letter dated 14.1.2011 (A/11).

5. We have heard learned counsels for both the sides. Learned counsel for the applicant argued that no opportunity of hearing was allowed before taking the decision to reduce the pay of the applicant after the retirement of the applicant. He also submitted that there is no reason for the respondents for not allowing the applicant the benefit of pay fixation on promotion to the post of JAG and selection Grade and the instructions of the DOPT vide order dated 14.1.2011 (A/11).

6. Learned counsel for the respondents submitted that the decision of the respondents in respect of the applicant's pay and that in similar case, Sr Ashok Kumar Sahu vs. Union of India (OA No. 458/2012), similar claim of the applicant was not allowed. A copy of the order dated 22.06.2017 of the Tribunal passed in the OA No. 458/2012 was filed by the respondents' counsel.

7. On perusal of the order dated 22.6.2017 of the Tribunal, it is seen that the case of the applicant in OA No. 458/2012 is similar to the applicant in the present OA. In fact in both the OAs, the prayer for relief and the grounds taken by were similar in both the OAs. In the OA No. 458/2012, it was held by the Tribunal as under:-

"12. The applicant has failed to bring out cogent reasons why he thinks that the clarification is defective. The interpretation of IAS (Pay) Rules is in the area of competence of the Respondent No.1. The State Govt. On his promotion to IAS, fixed his pay in various grades which the applicant challenged by making a representation. Respondent Nos. 2 and 3 sought clarification from Respondent No.1 on the difficulty faced by them in fixing pay of SCS officers on promotion to IAS and also sent the representation of the applicant for a decision. The decision as communicated by Respondent No.1, as discussed above, was implemented, as a result of which his pay was refixed, and resultantly there was a recovery. What Respondent No.1 has decided in the case of applicant is that since applicant was enjoying the benefit of Selection Grade, before his actual promotion, fixation of pay at Selection Grade was no more required. Who will get what pay is a prerogative of the employer to decide. If the employee challenges the same, it has to be on specific, cogent grounds. In the case at hand, applicant has given no such reason why the clarification of Respondent No.1 is to be considered faulty or defective. Applicant has also not made out a case of discrimination meted out to him. The question pertinent to the subject is that several offices of State Civil Service have got promoted to IAS. The applicant has not cited the case of a similarly placed officer in whose case pay fixation was handled differently, and thus there was palpable discrimination against the applicant. That would have been a different scenario requiring judicial intervention. As such, however, we do not find anything irregular in the refixation of pay on the basis of clarification of the Respondent No.1.

13. Coming to the question of recovery, it is only a consequence of the final decision of the Respondents. Recovery is to be made, if any wrong is detected in pay fixation of an employee, even if the payment has been made to him. The Respondents have cited the decision of the Hon'ble Apex Court in the case of Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors. (2012) 8 SCC 417, the relevant part of which is quoted below:

"Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right; in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment".

It is not that only in case of fraud or misrepresentation excess paid has to be recovered. Even if excess payment has been made by way of a bona fide mistake, recovery is to be made. Since refixation of pay was done after clarification of Respondent No.1, the Respondents have been justified in making recovery as per the law laid down in the judgment of the Hon'ble Apex Court.

14. In view of the discussions made above, we are of the opinion that the applicant has failed to substantiate the prayer made in this O.A. with valid grounds and cogent reasons. In our view, no interference is called for with the decision of the Respondent-authorities.

Thus, the O.A. being devoid of merit is dismissed with no costs to the parties".

8. It is seen from the Tribunal's order dated 22.6.2917 in OA No. 458/2012 that the applicant in OA no. 458/2012 was also promoted to IAS on 17.11.2006 along with the applicant in the present OA and he had his pay fixed like the present applicant. Reference to the DOPT was made by the State Government on the basis of the representation of the applicant in OA No. 458/2012, on which the DOPT issued the instructions vide letter dated 14.1.2011 (Annexure-A/11) on the basis of which the pay of both the applicants was re-fixed resulting in recovery from the applicant. That decision in the case of the applicant in OA No. 458/2012 was challenged before the Tribunal and the OA No. 458/2012 was dismissed vide the order dated 22.6.2017 as extracted above. The case of the applicant in the present OA before us is squarely covered by the order dated 22.6.2017 of the Tribunal in OA No. 458/2012, since the decision of the respondents in both the OAs was identical.

9. In the present OA, the sub-rules 5(c) and 5(d) of the IAS (Pay) Rules as amended from time till 15.4.2009, has been impugned in this OA mainly on the ground that it deprived the applicant from availing the benefit of the increment at the time of promotion to JAG and Selection Grade in IAS. Perusal of these sub-rules shows that there is no provision in these sub-rules to discriminate

the applicant or deny the increment in specific cases, which depends on the manner in which the rules are implemented in specific cases. It has not been demonstrated in the OA if the impugned provisions of the rules contradict any other provisions of law. Therefore, we are not convinced by the grounds mentioned in the OA to challenge these provisions of the rules. Hence, the reliefs sought on that account are not tenable.

10. Since the order dated 22.6.2017 of this Tribunal in OA No. 458/2012 covers the case of the applicant based on the materials produced before us, we respectfully agree with the findings of the Tribunal in the aforesaid order in the OA No. 458/2012 and apply the same for the present OA before us. Accordingly, the OA is dismissed with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS

Pre-delivery order in O.A.NO.676 of 2012 is placed below for kind perusal and concurrence.

MEMBER(A)

HON'BLE MEMBER(J)