

Central Administrative Tribunal
Jaipur Bench, Jaipur
O.A. No. 673/2012

Reserved on: 22.10.2018
Pronounced on: 14.11.2018

Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A.Mukhopadhyaya, Member (A)

Gur Dayal Khatri son of Late Shri H.R.Khatri aged 60, resident of 94/57, Gokhle Marg, Agarwal Farm, Mansarover, Jaipur (Retired from service).

Applicant.

(By Advocate: Shri Nitin Jain)

Versus

1. Commissioner, Kendriya Vidhyala Sangathan, (Headquarters) 18, Industrial Area, Shaheed Jeet Singh Marg, New Delhi-1100126.
2. Joint Commissioner, (Administration), Kendriya Vidyalaya Sangathan, (Headquarters) New Delhi-110016.
3. Dy. Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur-302015.
4. Principal, Kendriya Vidyalaya No.5, Ist Shift, Mansarover, Jaipur.

...Respondents.

(By Advocate: Shri Hawa Singh)

ORDER

Per Suresh Kumar Monga, Member (J):

The pleaded case of the applicant herein is that he was initially appointed as Upper Division Clerk (UDC) on 24.02.1983 in the pay scale of Rs.330-10-380-EB-12-500-EB15-560 and he

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joined as such on the said post on 28.02.1983. His services were confirmed with effect from 28.02.1985 vide order dated 20.06.2001. He was given the benefit of 1st financial upgradation with effect from 01.10.2000 under the Assured Career Progression Scheme vide order dated 20.03.2002. It has further been pleaded that he was granted the benefit of 2nd financial upgradation in the pay scale of Rs.5500-9000 with effect from 28.02.2007 and pursuant thereto, his pay was fixed at Rs.6500/- vide order dated 25.06.2008. It has been averred that the applicant was promoted to the post of Assistant Superintendent in the year 2002 but he refused to avail the said promotion on medical grounds. On his refusal, he was debarred from promotion for a period of five years with effect from 10.09.2002. Again, he was promoted to the post of Assistant on 25.09.2009 and he refused to avail the same on medical grounds. He was again debarred from promotion for further period of one year with effect from 20.10.2009. The benefit of 2nd financial upgradation was withdrawn by the Assistant Commissioner, Regional Office, Jaipur vide order dated 04.08.2011. Aggrieved by the said order, the applicant preferred an Original Application No.392/2011 before this Tribunal. The said Original Application came to be disposed of by this Tribunal on 30.08.2011 with a direction to applicant to file a representation before the respondents raising all sorts of objections. Accordingly, the applicant submitted a representation before the respondents on 12.09.2011. The said

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representation was rejected by the respondents vide order dated 13.10.2011. Pursuant to order dated 13.10.2011, an order of recovery was also passed on 17.10.2011 by the respondents in order to affect the recovery of Rs.1,28,096/-. The applicant attained the age of superannuation on 29.02.2012 and stood retired from service on the said date. Aggrieved by the orders dated 04.08.2011, 13.10.2011 and 17.10.2011, the applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The respondents by way of their joint reply have joined the defence and opposed the claim of the applicant. It has been averred that pursuant to order dated 30.08.2011 passed by this Tribunal, a well reasoned and speaking order dated 13.10.2011 has been passed by the Deputy Commissioner, Regional Office, Jaipur. The 2nd financial upgradation granted to the applicant vide order dated 05.06.2008 has been withdrawn on 04.08.2011 in view of a clarification issued by the Kendriya Vidyalaya Sangathan (Headquarters), New Delhi vide their letter dated 21/26.07.2011, to the effect that the employees who have refused vacancy based promotion are not entitled for financial upgradation under the ACP Scheme. It has further been averred that the applicant, who was working as UDC at Kendriya Vidyalaya Number-5 (1st Shift), Jaipur, was offered promotion to the post of Assistant Superintendent at Kendriya Vidyalaya

Number 2, AFS, Pune vide office memorandum dated 27.08.2002, but he did not avail the said promotion. Therefore, the offer of promotion was withdrawn and he was debarred/declared ineligible for grant of financial upgradation under the ACP Scheme. With these pleadings, the orders impugned herein are sought to be justified by the respondents.

3. Heard learned counsels for the parties.

4. Learned counsel for the applicant submitted that the 2nd financial upgradation already granted to the applicant could not have been withdrawn by the respondents simply because of his refusal to promotion. He further submitted that the applicant retired from services after attaining the age of superannuation on 29.02.2012 and, therefore, in view of the principles laid down by the Hon'ble Supreme Court in the case of **State of Punjab & Others vs. Rafiq Masih (White Washer) etc.** (2014) 8SCC 883, no recovery could be affected from him.

5. *Per contra*, learned counsel for the respondents argued that the Assured Career Progression Scheme was implemented in the Kendriya Vidyalaya Sangathan with effect from 12.10.2000. The applicant, who was offered promotion as Assistant Superintendent on 27.08.2002, refused to avail the same on medical grounds. He further submitted that the benefit of 2nd financial upgradation granted inadvertently to the applicant with

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effect from 28.02.2007 vide order dated 05.06.2008 was rightly withdrawn in view of the clarification received from the Kendriya Vidyalaya Sangathan (Headquarters), New Delhi as the applicant refused to avail the vacancy based promotion. He thus submitted that the respondents are within their right to affect the recovery of an amount of Rs.1,28,096/- which was paid in excess because of an order passed by them inadvertently.

6. Considered the rival contentions of learned counsels for the parties and perused the record.

7. There is no dispute with regard to the fact that the Assured Career Progression Scheme was adopted and implemented by the Kendriya Vidyalaya Sangathan with effect from 12.10.2000. It has come up on record that after implementation of the said Scheme, the applicant refused to avail the vacancy based promotion which was offered to him by the respondents on 27.08.2002. On his refusal to avail the said promotion, he was debarred from promotion for a period of five years. The applicant was even again offered promotion on 25.05.2009, but he still failed to avail the same because of his health reasons. He was again debarred from promotion for a further period of one year with effect from 20.10.2009. In this view of the matter, we do not find any infirmity in the order dated 04.08.2011 withdrawing the benefit of 2nd financial upgradation from the applicant as he failed to avail the vacancy based promotion. Here it is not a case

where the employee has refused the promotion prior to the date of implementation of the Assured Career Progression Scheme. Thus, the respondents have rightly declined the representation of the applicant by passing the order dated 13.10.2011.

8. However, we find substance in the argument of learned counsel for the applicant that no recovery can be affected from the applicant in view of the principles laid down by the Hon'ble Supreme Court in the case of Rafiq Masih (*supra*). Admittedly, the applicant was due to retire on 29.02.2012 after attaining the age of superannuation. The order of recovery against the applicant was passed on 17.10.2011. In view of the principles laid down by the Hon'ble Supreme Court in the case of Rafiq Masih (*supra*), recovery from the retired employees or employees who are due to retire within one year cannot be affected. Thus, the order of recovery passed against the applicant on 17.10.2011 cannot be sustained. Learned counsel for the respondents, however, made strenuous efforts to support the order of recovery by referring a judgement of the Ahmedabad Bench of this Tribunal in the case of **Shri Arvind Pratapsingh Tomar vs. Union of India & Amp Ors** OA No.112/2013 decided on 17.01.2014. The said judgment cited by learned counsel for the respondents is of no avail to the respondents as in the said case, the applicant had more than two years of service before retirement when the order of recovery was passed.

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9. In the conspectus of discussions made in the foregoing paragraphs, the instant OA is partly allowed. The order dated 17.10.2011 (Annexure A/2) for recovery of Rs.1,28,096/- passed by the respondents is hereby quashed. The respondents are directed to refund the amount of Rs.1,28,096/- with interest at the rate of 6% per annum within a period three months from the date of receipt of a certified copy of this order. However, there shall be no order as to costs.

(A.Mukhopadhyaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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