

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

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Chandigarh, this the 17th day of December, 2018

1. ORIGINAL APPLICATION NO. 063/00094/2016

T.K. Majumdar son of late Sh. H.P. Majumdar, aged 67 years, Ex-Senior Private Secretary, Indian Institute of Advance Study, Rashtrapati Niwas, Shimla-171005 (Group 'B' Service)

....APPLICANT

(By Advocate: Shri V.K. Sharma)

VERSUS

1. Union of India through the Secretary, Government of India, Ministry of Human Resource Development, New Delhi.
2. Indian Institute of Advanced Study, Rashtrapati Niwas Shimla through its Director.
3. Accountant General, Himachal Pradesh, Shimla-3.

....RESPONDENTS

(By Advocate: Shri Sanjay Goyal for respondents 1&2)
Shri Barjesh Mittal, for respondent no. 3

2. ORIGINAL APPLICATION NO. 063/00095/2016

T.K. Majumdar son of late Sh. H.P. Majumdar, aged 67 years, retired as Senior Private Secretary, Indian Institute of Advance Study, Rashtrapati Niwas, Shimla-171005 (Group 'B')

....APPLICANT

(By Advocate: Shri V.K. Sharma)

VERSUS

1. Union of India through the Secretary, Government of India, Ministry of Human Resource Development, New Delhi.
2. Indian Institute of Advanced Study, Rashtrapati Niwas Shimla through its Director.
3. Accountant General, Himachal Pradesh, Shimla-3. (deleted vide order dated 14.9.2018)

....RESPONDENTS

(By Advocate: Shri Sanjay Goyal for respondent no. 1&2)

Shri Barjesh Mittal, for respondent no. 3

ORDER (oral)

SANJEEV KAUSHIK, MEMBER (J)

As facts of the case and question of law involved in these two captioned cases are common and as such we propose to dispose of these Original Applications (O.A.) by a common order. For facility of reference the facts are being taken from O.A. No. 063/00094/2016- T.K. Majumdar vs. UOI & Ors.

2. The applicant herein has assailed order dated 9.9.2016 whereby his representation for grant of second financial upgradation under ACPs in the pay scale of Rs. 10,000-15,200 w.e.f. 19.10.2001 has been rejected. He has also impugned order dated 28.12.2006 vide which said pay scale of Rs. 10,000-15,200 has been withdrawn from him.

3. We have heard the learned counsel appearing for the parties, and gone through the record.

4. Earlier, the applicant had approached this Tribunal by filing O.A. No. 30-HP-2007 against the action of respondents in withdrawing the pay scale of Rs. 10,000-15,200, granted to him by way of 2nd ACP. That O.A. was dismissed by this Tribunal on 12.12.2008. The applicant feeling aggrieved against the order of this Tribunal, approached the jurisdictional High Court of Himachal Pradesh, Shimla by filing Writ Petition No. 963/2009 which was disposed of on 8.10.2015 with liberty to the applicant to

move a representation to the Competent Authority for redressal of his grievance. The recovery order passed by the respondents, however, was set aside based on the judicial pronouncement by the Apex Court in the case of **State of Punjab & Others etc. versus Rafiq Masih** (White washer) etc. reported in 2015 AIR SCW 501.

5. As liberty was granted by the Hon'ble High Court for redressal of his grievance for withdrawal of 2nd financial upgradation, applicant submitted representation on 5.1.2016 (Annexure A-14) which has been rejected by the respondents vide impugned order dated 9.9.2016 (Annexure A-1).

6. Shri V.K. Sharma, learned counsel for the applicant vehemently argued that the impugned order is not speaking order as it does not disclose the application of mind by the respondents because the applicant submitted a detailed representation for redressal of his grievance, but the respondents have not considered the grounds taken in his representation and claim of the applicant has been rejected without a speaking order. Therefore, he submitted that the impugned order be quashed and set aside by directing the respondents to reconsider the case of applicant by deciding his representation afresh.

7. After careful consideration of the matter, we are in agreement with the submission made at the hands of the applicant that the impugned order is non-speaking. Failure to give reasons amounts to denial of justice. The administrative authority that is discharging quasi judicial duty is required to give reasons while rejecting any claim. Because if the reasons are given then it will be easier for the applicant to

challenge the order effectively before the Court of law by concentrating only on those points which did not find favour to the authority. Even in respect of administrative orders Lord Denning M.R. in **Breen v. Amalgamated Engg. Union** (1971) 1 All ER 1148, observed: "The giving of reasons is one of the fundamentals of good administration". In *Alexander Machinery (Dudley) Ltd. V. Crabtree* 1974 ICR 120 (NIRC) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the minds of the decision-taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The law laid down by the lordships of Honourable Supreme Court in the case of **Raj Kishore Jha versus State of Bihar & Others**, 2003(11) CC 519 has again be reiterated in **Ram Phal Vs. State of Haryana**, 2009(3) SCC 258, decided on 6.2.2009 stating that "reason is the heartbeat of every conclusion. Without the same, it becomes lifeless". The Competent Authority has to take into consideration all the grounds while deciding his representation and give reasons for rejecting the request of the applicant. Since, the applicant has taken various grounds for invalidation of the view for withdrawing the 2nd ACP which have not been considered and dealt with by the respondents, while passing the impugned order, therefore, we are of the considered view that the impugned order cannot be sustained and is quashed. The matter is remanded back to the Competent Authority to pass a fresh order, after considering each and every points raised by the applicant in his representation. Let the above exercise be carried out by the Competent Authority within a period of 2 months from the date of receipt of a certified copy of this order. The disposal of

the O.A. will not be construed as an opinion on the merit of the case.

(P.GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 17.12.2018

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