

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.2449/2014

Thursday, this the 17th day of October 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

1. Mahilla Pillai, age 46 years
Grade-II, Stenographer
w/o Shri S Balagenesh Pillai
A-3, Type III, SJH Staff Quarters
West Kidwai Nagar, New Delhi – 110 023
2. Harminder Jeet Singh, age 47 years
Grade-II, Stenographer
s/o Shri Rajinder Singh
L-1/32-B, DDA Flats, Kalkaji
New Delhi- 110 019
3. Sandeep Bajaj, Age 43 years
s/o Shri S K Bajaj
Grade-II, Stenographer
C-22, Pocket 7, KV II
Sector 82, Noida
Uttar Pradesh
4. Seema Singh, age 43 years
Grade-II, Stenographer
w/o Shri Ravinder Pal
r/o 541, Laxmi Bai Nagar
New Delhi – 110 023
5. Rajani Wasdev, age 43 years
Grade-II, Stenographer
Shri Yash Wasdev
r/o Flat No.91, 1st Floor, Pocket 1
Sector 23, Dwarka, New Delhi – 110 075

..Applicants

(Mr. C Rajaram, Advocate)

Versus

1. The Medical Superintendent
Safdarjung Hospital,
Through Ministry of Health & Family Welfare

5th Floor, M S Office, New OPD Building
Safdarjung Hospital, New Delhi – 110 029

2. Smt. Anjana Sareen
Grade-II, Stenographer
Through the Medical Superintendent
Safdarjung Hospital, New Delhi – 110 029
3. Smt. Saroj Bala
Grade-II, Stenographer
Through the Medical Superintendent
Safdarjung Hospital, New Delhi – 110 029
4. Smt. Neelam Singh
Grade-II, Stenographer
Through the Medical Superintendent
Safdarjung Hospital, New Delhi – 110 029

..Respondents

(Mr. Satish Kumar, Advocate)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicants are working as the Stenographers in the Safdarjung Hospital. The respondents extended the benefit of first Assured Career Progression (ACP) to the applicants w.e.f. 01.07.2004 uniformly. However, it was found that the applicants did not complete 12 years of service by that time and they fell short by few months. On noticing this, the respondents issued the order dated 02.05.2014 re-fixing the date from which the applicants are entitled for the first ACP, namely, 12 years from the date of joining service. As a consequence thereof, order dated 05.07.2014 was issued proposing to recover the amount paid, for the differential period. This O.A. is filed challenging the order dated 05.07.2014.

2. The applicants contend that at no point of time, they have represented to the respondents that they are entitled to any benefit much before they completed the service of 12 years and if any error has crept in the process, they cannot be penalized for that.

3. The respondents have filed counter affidavit opposing the O.A. It is stated that though the first ACP was granted to the applicants w.e.f. 01.07.2004, it ultimately emerged that they did not complete 12 years of service by that date and steps were initiated for recovering the amount.

4. We heard Mr. C Rajaram, learned counsel for applicant and Mr. Satish Kumar, learned counsel for respondents, at length.

5. The order, through which the applicants were extended the benefit of first ACP, is not made part of the record. However, it is not in dispute that all the applicants were extended that benefit w.e.f. 01.07.2004.

6. An employee is entitled to be extended the first ACP, if only he did not earn promotion in a span of 12 years. In case of the applicants, 12 years expired on 30.09.2004, 17.09.2004, 24.03.2005, 17.10.2004 and 15.10.2004, respectively. For some reason or the other, the first ACP was extended to them uniformly from 01.07.2004 onwards. Even now the applicants

do not claim that the first ACP may be extended to them w.e.f. 01.07.2004. The whole controversy is as to whether the benefit of first ACP for few months extended to the applicants is liable to be recovered.

7. Had it been a case where the applicants got the benefit by making misrepresentation, the recovery could have certainly been effected. The respondents extended the benefit on their own accord. There was no role, attributed to the applicants, in the entire episode. Further, the difference is not much and it ranges from 1 and half to 5 months. We are of the view that the amount paid to the applicants cannot be recovered, under these circumstances.

8. We, therefore, allow the O.A. Impugned order dated 05.07.2014 is set aside, only to the extent it proposes to recover the amount from these applicants. The date of first ACP since corrected shall, however, remain. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

October 17, 2019
/sunil/