

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/1022/2014

Date of Reserve:12.07.2019

Date of Order:04.09.2019

CORAM:

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

Susmita Panigrahi, aged about 39 years, S/o. Pradeep Kumar Panigrahi, at present working as Technical Officer -B (TO-B) in Defence Research & Development Organization, Proof & Experimental Establishment, Ministry of Defence, Chandipur-756 025, Dist-Balasore.

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak
-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Defence, South Block, New Delhi-110 011.
2. Department of Defence Research & Development, Ministry of Defence, represented through its Secretary-cum-Director General, DRDO & Scientific Advisor to Rakshya Mantry, DRDO Bhawan, Rajaji Marg, New Delhi-110 105.
3. Director, Centre for Personnel Talent Management (CEPTAM), DRDO, Ministry of Defence, Metcalfe House, New Delhi-110 054.
4. Director, Directorate of Human Resource & Development, DRDO, DRDO Bhawan, Rajaji Marg, New Delhi-110 105.
5. Director, Proof & Experimental Establishment, Ministry of Defence, Chandipur-756 025, Dist-Balasore.

...Respondents

By the Advocate(s)-Mr.L.Jena
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Consequent upon promotion as Technical Officer-A (TO-A)

under the respondents-organization, the pay of the applicant was fixed in PB-2 (Rs.9300-34,800) with Grade Pay Rs.4800/- with

effect from 01.09.2009 under CDS(RP) Rules, 2008 vide A/8 dated 01.06.2010. The Grade Pay of Rs.4800/- having been withdrawn and replaced by Grade Pay of Rs.4600/- in pursuance of DRDO Hqs. New Delhi letter dated 13.5.2013, the pay of the applicant stood revised by granting her Grade Pay of Rs.4600/- with effect from 01.09.2009 vide A/9 dated 12.06.2013 and resultantly, recovery was ordered to be effected from the salary of the applicant. Aggrieved with this, the applicant submitted a representation to the Director General, R&D, DRDO (Res.No.4) on 10.11.2014.

2. In the meantime, vide order dated 30.06.2014 (A/11), the applicant is stated to have been promoted as Technical Officer-B(TO-B) with effect from 01.09.2012. Therefore, according to her, the recovery of excess amount drawn on account of grant of Grade Pay Rs.4800/- relates to the period from 01.09.2009 to 31.08.2012. It is the case of the applicant that since her representation was not considered, she has invoked the jurisdiction of this Tribunal in the present O.A.

3. During the course of hearing on 28.06.2019, learned counsel for the applicant confines the relief sought for in the O.A. to the extent of recovery of excess amount only and he did not press the rest of the reliefs.

4. Respondents have filed their counter opposing the prayer of the applicant and they have submitted that in view of settled position of law on the point of recovery of excess salary drawn on account of erroneous fixation of pay, this Tribunal should not

interfere in the matter and accordingly, the O.A. deserves to be dismissed.

5. We have heard the learned counsels for both the sides and perused the records. Learned counsel for the applicant has brought to our notice the common order dated 15.02.2019 passed by this Tribunal in O.A.Nos.292 of 2014 and 928 of 2013 and submitted that since the applicant is a similarly situated person as that of the applicants in the common order dated 15.02.2019, this Tribunal may pass the similar order. On the other hand, respondents have relied on the order dated 21.03.2014 of the CAT, Principal Bench in O.A.No.3593 of 2013 (DRDO Technical Officers Association through its General Secretary vs. Union of India & Ors) (R/6) on the self same point which needs determination in the present O.A. Respondents have also annexed to the counter at R/7 order dated 03.07.2014 of CAT, Chandigarh Bench in O.A.No.846/CH/2013 & O.A.No.060/00014/2014 which has decided the similar issue following the ratio as decided by the CAT, Principal Bench (supra) and dismissed both the OAs. Based on the above decisions, the respondents have submitted that since the CAT, Principal Bench has dismissed the O.A. and following the same, CAT, Chandigarh Bench has also dismissed the OAs on the self-same point, this Tribunal should dismiss the O.A. as filed by the applicant.

6. In Paragraph-10 of the common order dated 30.1.2019, this Tribunal has held as follows:

"10. Hence, following the judgment dated 27.1.2015 of Hyderabad Bench of the Tribunal, we hold that the applicants' case in the OA No.928/2013 is squarely covered by the paragraph 12(iii) of the judgment in

the case of Rafiq Masih (supra) and the applicants are entitled for protection from any recovery of excess amount paid to the applicants towards payment of higher Grade Pay of rs.4800/- per month w.e.f. 1.1.2006. However, in case any of the applicants had given an undertaking to the respondents to the effect that in case their placement in the grade pay of Rs.4800/- w.e.f. 1.1.2006 vide order dated 5.6.2009 would be found to be defective, then they will be liable to refund the excess amount if any paid to them, then for such applicants, who had furnished the undertaking in 2009, this direction for not recovering the excess amount, paid as above will not be applicable".

7. On a reference being made to Paragraphs-22, 23 & 23 of the order dated 24.03.2014, CAT, Principal Bench has held as follows:

"22. In the instant case, as already noted, the posts of TA C and STA C and TO and TO A were merged and re-designated as TO and TO A and were placed in the PB-2/Grade Pay of Rs.4600/- and the Grade Pay of Rs.4800/- was withdrawn w.e.f. 1.1.2006, vide orders dated 10.5.2012, 12.5.2013 and 30.5.2013 (ibid) which have been issued in accordance with the First Schedule, Part-A, Section (and First Schedule, Part C, section I of the CCS(RP) Rules, 2008. Instead of merging the post of TA C with the post of TO in Category A and STA C with TO A in Category B and placing them in PB-2/Grade Pay of Rs.4600/- in accordance with First Schedule, Part C, section (and First Schedule, Part C, Section I of the CCS(RP) Rules, 2008, the respondent nos. 1 and 2 had erroneously placed TA C and STA C in PB-2/Grade Pay of Rs.4600/- and TO and TO A in PB-2/Grade Pay of Rs.4800/- and treated the posts of TA C and STA C as feeder posts for promotion to TO and TO A. This mistake was rectified by the respondent nos. 1 and 2 by issuing orders dated 10.5.2013, 13.5.2012 and 30.5.2013 (ibid) whereby and whereunder the order dated 5.6.2009 (ibid) was cancelled/annulled, the posts of TA C and STA C were merged with TO and TO A and the re-designated TO and TO A were placed in PB-2/Grade Pay of Rs.4600/- with effect from 1.1.2006 and the excess payment was directed to be recovered from the applicants and other similarly placed officers. In the instant Original Application, the applicants have not challenged the legality and validity of the order withdrawing the Grade Pay of

Rs.4800/- which was earlier erroneously granted to the posts of TO and TO A by an invalid order. It is also found that the applicants were not entitled to the Grade Pay of Rs.4800/-. Thus, the Grade Pay of Rs.4800/- was paid to the applicants and others without any authority of law and payments have been received by the applicants also without any authority of law. In view of the decision of the Hon'ble Supreme Court in Chandi Prasad Uniyal and others (supra), such amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships. It is noted here that the applicants are holders of Group B Gazetted posts. It is also not their case that they will face extreme hardship in the event of recovery of the excess payment from them. Therefore, in our considered, view the ratio decidendi laid down by the Hon'ble Supreme Court in Chandi Prasad Uniyal and others (supra) is squarely applicable to the facts and circumstances of the present case. However, we order that the excess payment made be recovered from the applicants salary in twelve equal monthly instalments.

23. In the light of the above discussions, we hold that the Original Application is devoid of merit and liable to be dismissed.
24. Accordingly, the Original Application is dismissed. M.A.No.2725 of 2013 and MA No.3407 of 2013 are disposed of. No costs".

8. We have considered the decisions cited by the respective parties. In this connection, we would like to note that it is not known whether in the aforesaid two decisions as relied upon by both the sides, any undertaking had been obtained from the concerned Government employees at the time of fixation of their pay. Similarly, it is not known, if any undertaking has been obtained from the applicant in the present case while granting Grade Pay of Rs.4800/-. In the above circumstances, this Tribunal feels that it is necessary in the interest of justice to remand the matter so that the respondents shall consider the prayer made by

the applicant not to recover the excess amount in question in accordance with law along with the undertaking, if any, given by the applicant before the concerned authorities at the time of fixation of pay. The said decision shall be taken and communicated to the applicant within a period of ninety days from the date of receipt of this order.

9. With the above observation and direction, this O.A. stands disposed of, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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