

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00522/2016

Friday, this the 19th day of July, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

K. Sumandran, aged 67 years, S/o. Late K. Kesavan,
Stenographer ACP Gr.II (Retd.), N.S.S. Regional Centre,
CGO Complex, Block-D, 2nd Floor, Poonkulam, Trivandrum,
Residing at Sena Bhavan, (MERA-88), Kappil Road, Chalakuzhi,
Medical College PO, Thiruvananthapuram-695011. **Applicant**

(By Advocate : Mr. R.S. Kalkura)

V e r s u s

1. Union of India, represented by its Secretary,
Ministry of Youth Affairs and Sports, Shastri Bhavan,
New Delhi – 110 001.
2. The Secretary, Ministry of Finance, Department of Expenditure,
North Block, New Delhi – 110 001.
3. The Secretary, Ministry of Personnel, Public Grievances and
Pensions, Department of Personnel & Training, Lok Nayak Bhavan,
New Delhi -110 003. **Respondents**

(By Advocate : Mr. K.C. Muraleedharan, ACGSC)

This application having been heard on 15.07.2019, the Tribunal on
19.07.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant is as under:

- “i) Declare that the applicant is entitled to have pay scale fixed at rs. 6,500-10,500/- with Grade Pay of Rs. 4,200/- with effect from 1.1.2006 onwards on which date Annexure A7 was implemented to the All India Radio and Doordarshan, subordinate offices of the Information and Broad Casting Ministry with 2 notional increments of bunching benefits i.e. Rs.

$6,500 \times 1.86 = \text{Rs. } 12090 + 2 \text{ bunching increments @ } 3\% \text{ Rs. } 370 + \text{Rs. } 380 + \text{Grade Pay of Rs. } 4200/- \text{ (Total Rs. } 12090 + 370 + 380 + 4200 = \text{Rs. } 17040/-) \text{ with effect from 1.1.2006.}$

ii) Permit the applicant to submit his 2nd option as per Annexure A3.

iii) Declare that the applicant is entitled to have his pension fixed as if he was drawing his salary in the merged scale of Rs.6500 – 10500/- with Grade Pay of Rs. 4200/- with effect from 1.1.2006.

iv) Direct the respondents to pay interest to the applicant on the enhanced payments due to the applicant from the date the same became due till the date of realization.

v) Grant such other reliefs as may be prayed for and the court may deem fit to grant.

And

vi) Grant the cost of this Original Application.”

2. The brief facts of the case are that the applicant was working as Stenographer Grade-III in the National Service Scheme, Regional Centre, Trivandrum a subordinate office of respondent No. 1. While fixing the pay of the applicant as per VIth pay commission, the applicant was entitled for two notional increments of bunching benefits with effect from 1.6.2006 which has not been granted to him. The applicant retired from service w.e.f. 1.4.2009. The applicant was granted 2nd ACP w.e.f. 3.10.2001. Vide Annexure A7 the pay scale of Rs. 4,500-7,000/- and Rs. 5,000-8,000/- were upgraded to the pay scale of Rs. 6,500-10,500/-. Accordingly, the applicant requested the 1st respondent to fix his pay in the upgraded pay scale of Rs. 6,500-10,500/- with two bunching benefits of notional increments with effect from 1.1.2006. However, the respondents rejected the request of the applicant for grant of upgraded scale of Rs. 6,500-10,500/- w.e.f. 1.1.2006. Aggrieved the applicant has filed the present OA.

3. Notices were issued to the respondents. Respondents entered appearance through Shri K.C. Muraleedharan, ACGSC who filed a detailed reply statement contending that the applicant was not promoted as a regular Stenographer Grade-II but was granted only financial upgradation which was equivalent to the pay scale of Stenographer Grade-II under the ACP scheme. The pay of the applicant was calculated in accordance with the provisions of Rule 7(1)(A)(i) of CCS (Revised Pay) Rules, 2008. Moreover, in the case of the applicant a clarification was sought from the Department of Expenditure wherein it was clarified that the upgradation is only admissible to Stenographer Grade-II in the subordinate offices of Government of India and not to the Stenographer Grade-III. The applicant was granted only the scale of pay of Stenographer Grade-II on account of ACP w.e.f. 3.10.2001 as the ACP scheme envisages merely placement in higher pay scale to the Government servant on personal basis which neither amounts to functional/regular promotion nor would require creation of new posts. The respondents further contend that the applicant had earlier filed OA No. 1009 of 2010 which was dismissed by this Tribunal vide its order dated 7.8.2012. Respondents pray for dismissing the OA.

4. Heard Shri R.S. Kalkura, learned counsel appearing for the applicant and Shri K.C. Muraleedharan, ACGSC learned counsel appearing for the respondents. Perused the record.

5. The relief claimed by the applicant in OA No. 1009 of 2010 is as follows:

“(i) Declare that the applicant is entitled to enhanced pay scale of Rs. 5500-9000 at parity with CSSS cadre with effect from 03.10.2001.

(ii) Declare that the applicant is entitled to have pay scale fixed at Rs. 6500-10500 with grade pay of Rs. 4600/- w.e.f. 15.09.2006 onwards when Annexure A-5 was implemented;

(iii) Permit the applicant to submit his 2nd option as per Exhibit A16;

(iv) Declare that the applicant is entitled to have his pension fixed as if he was drawing his salary in parity with those drawing in the CSSS cadre i.e. in the scale of Rs. 6500-10500 with grade pay of Rs. 4600/-;

(v) Direct the respondents to pay interest to the applicant on the enhanced payments due to the applicant from the date the same became due till the date of realization;

(vi) Grant such other reliefs as may be prayed for and the Court may deem fit to grant together with cost of this OA.”

This Tribunal after hearing the learned counsel appearing for the parties, dismissed the OA vide its order dated 7th August, 2012 holding as under:

“5. The applicant claims that he is a Stenographer Grade-II on the basis of his pay scale of Rs. 5000-8000. From the facts of the case, it is quite clear that he was given the pay scale of Rs. 5000-8000 with effect from 03.10.2001 upon granting him financial upgradation under the ACP Scheme. Although he got the pay scale of Grade-II under the ACP Scheme, it will not amount to regular promotion as Steno Grade-II. He was never promoted as Stenographer Grade-II. There is no documentary evidence to show that he was ever promoted as Steno Grade-II. Not being eligible for want of provision in the existing rules, his representation for fixation of his pay in the scale of Rs. 6500-10500 (now in PB-2 Rs.9300-34800 with GP of Rs. 4600/-) with effect from 01.01.2006 was rejected. We do not find any violation of Articles of Constitution of India in the said rejection. He has already been extended all the benefits he is entitled to as per provision of the existing rules.”

6. We find that the applicant has very conveniently not mentioned about the filing of OA No. 1009 of 2010 in the present OA. However, the respondents have pointed out this fact in their reply statement. The applicant had filed a rejoinder to the reply statement wherein he pointed out that OA No. 1009 of 2010 was filed by the applicant for parity of pay scale at par with the Assistants and Stenographers Grade C of Central Secretariat

Stenographers' Service. The applicant has suppressed the fact of filing OA No. 1009 of 2010 in the present OA. The relief claimed by the applicant in the present OA are more about same to the relief claimed in OA No. 1009 of 2010 and this Tribunal had already considered and decided the issue against the applicant by dismissing the OA. Therefore, now the applicant by way of the present O.A cannot try to re-litigate the same issue by merely modifying the relief in a different fashion which had already been considered and decided by this Tribunal in OA No. 1009 of 2010. Hence, the O.A. is hit by the doctrine of *res judicata* [see ***R.C. Tiwari v. M.P. State Cooperative Marketing Federation Ltd. & Ors.*** - (1997) 5 SCC 125].

7. In view of the above the Original Application is dismissed as hit by the principle of *res judicata*. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

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APPLICANT'S ANNEXURES

- Annexure A1** – True copy of denial letter dated 6th April, 2016 sent by 1st respondent.
- Annexure A2** – True copy of the clarification dated 15.3.2016 given by the Department of Personnel and Training.
- Annexure A3** – True copy of the model/illustrative representation 4-A fixation of pay in accordance with DG-AIR order dated 3.10.2012.
- Annexure A4** – True copy of the Government of India Gazette Extra Ordinary, Part B, Section.
- Annexure A5** – True copy of the reply dated February 19, 2015 sent by the Ministry of Finance, Department of Expenditure.
- Annexure A6** – True copy of the letter dated 9th March, 2015.
- Annexure A7** – True copy of the order No. Misc-1/330/2012-PPC dated 18th June, 2015, granting pre-revised pay scale.
- Annexure A8** – True copy of the order No. PB-7(7)(1)/2014-Admn dated 7/8-7-2015 to implement the revised pay to the Sr. Accts Officers of All India Radio and Doordarshan.
- Annexure A9** – True copy of the request dated 26.5.2015 sent by the applicant to the 1st respondent.
- Annexure A10** – True copy of the letter dated 16.7.2015 issued by the 1st respondent to the applicant asking the applicant to forward all the copies of Annexure A3 to Annexure A8.
- Annexure A11** – Letter dated 24.7.2015 sent by the applicant to the 1st respondent in reply to the Annexure A10.
- Annexure A12** – Relieving order of the respondent in Office Order No. 68/2008-2009 dated 31.3.2009.
- Annexure A13** – The copy of Prasad Bharti Order No. 21 (Fixation) 2008 – S dated 23.7.2010.
- Annexure A14** – Copy of DOPT issued OM No. 22034/2/92-Estt(D) dated 6.8.1999 for restricting of the cadre of Stenographers in the ratio of 40:40:20.

Annexure A15 – Circular No. NC-JCM-2018/Fin.(Ano) dated April 23rd, 2018.

RESPONDENTS' ANNEXURES

Annexure R1 – Copy of rule 7(1)(A)(i) of CCS (RP) Rules, 2008.

Annexure R2 – Copy of Statement made by the Department of Expenditure.

Annexure R3 – Copy of clarification of department of expenditure.

Annexure R4 – Copy of office memorandum No. 35034/1/97-Estt(D) dated 9.8.1999 regarding guidelines of DOPT.

Annexure R5 – Copy of judgment of OA No. 1009/2010 dated 7.8.2012.

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