

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH: HYDERABAD

Original Application No.21/435/2018

Date of Order: 01.07.2019

Between:

A. Narsimlu, S/o Late A. Ramaiah
Aged about 59 years, Occ: Retd. Assistant Director
R/o Flat No.507, 5-5-13, KSR Towers
Sageeth Nagar, BJP Office East Kaman
Kukatpally, Hyderabad – 500 072. .. Applicant

AND

1. Union of India,
Rep. by its Secretary
Ministry of Labour, Shramshakthi Bhavan
New Delhi.
2. Director General
Employees State Insurance Corporation (ESIC)
Panchadeep Bhavan, CIG Marg, New Delhi – 110 001.
3. Additional Commissioner
Employees State Insurance Corporation (ESIC)
5-9-23, Hill Fort Road, Adarsh Nagar
Hyderabad – 500 063.
4. Joint Director
Employees State Insurance Corporation (ESIC)
Sub-Regional Office, ESI Hospital Complex
Sedam Road, Kalapuragi, Karnataka State – 585 101. ..
Respondents

Counsel for the Applicant ... Mr. K. Bheema Rao.
Counsel for the Respondents ... Mr.N. Srinivasa Rao, SC for ESIC.

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

2. The OA is filed questioning the recovery ordered for paying excess amount in the context of pay fixation.

3. Brief facts are that the applicant was promoted as Insurance Inspector/SSO on 24.12.2007 in the pay scale of Rs.7450-11500 and thereafter he was promoted as Assistant Director on 08.12.2016.

Respondents vide letter dated 16.3.2012 have fixed the pay in the revised pay scale of Rs.7450-11,500 with Grade Pay of Rs.4600 from the actual date of promotion to the post of SSO in respect of those promoted between 1.1.2006 to 31.8.2008. Applicant was promoted as SSO on 24.12.2007 and, hence, his pay was fixed in the cited scale accordingly Respondents vide Memorandum dated 21.3.2018 intimated that the ESI corporation has approved the fixation for SSO in the pay scale of Rs.6500-10,500 and higher fixation is invalid. Hence, recovery was ordered. Aggrieved, the OA has been filed.

4. The contentions of the applicant are that no notice was given before issuing orders for recovery. The order dated 21.3.2018 is against Section 17 (2) of ESI Act since prior approval of Government has not been taken. For Personal Assistant (PA), Grade Pay of Rs.4600 was granted in pre-revised scale of Rs.7450-11,500 despite there being no direct recruitment element in the cadre of PA in ESIC. Further CCS (Revised Pay) Rules, 2008 have been violated. The wrong fixation was done by the respondents some time back and for their mistake, penalizing the applicants is unfair. The Hon'ble Supreme Court's Judgement in **State of Punjab & Others etc. v. Rafiq Masih (White Washer) etc.,** (2015) 4 SCC 334 fully covers the case of the applicant as well as the DOPT's OM dated 2.3.2016. When similarly situated persons, filed OA, Respondents took the stand that the OM dated 16.11.2009 is applicable to officers promoted between 1.1.2006 to 31.8.2008. Respondents are taking a different stand in the impugned order. Hon'ble Ernakulam Bench of this Tribunal, in a similar case, has stayed the recovery ordered vide memo dated 21.3.2018. The pre-revised scale cited has the approval of the Ministry of Labour & Employment.

5. Respondents oppose the OA by stating that the applicant was only promoted to the scale of pay of Rs.6500-10,500. No memorandum was issued to fix pay in the pre revised scale of Rs.7450-11,500. Respondents have forwarded the OM dated 16.3.2012 which was a clarification in regard to pay fixation wherever applicable. DOPT has clarified in OM dated 3.1.2014 that the pay fixation as per Note 2A, below Rule 7 of CCS (RP) Rules, 2008 will be applicable only to those cases where posts have been upgraded. In ESIC, the post of SSO was not upgraded. DOPT has clarified that the Assistant in CSS has been granted upgraded post, their pay fixation is governed by Note 2A, below Rule 7 (1) of CCS (RP) Rules, 2008. In case of SSO pay has to be fixed as per Para 2 (ii) of MOF letter dated 30.8.2008. Besides, CAG has also pointed out the wrong fixation of pay for SSO. No notice is required before the recovery since it only involved interpretation of rules. Applicants are entitled for pay fixation in accordance with memo dated 28.9.2018 of Department of Expenditure (Ministry of Finance). The pay scale of the SSO was upgraded from Rs.5500-9000 to Rs.6500-10,500 and never to Rs.7450-11,500. The ESIC has accorded approval for making recruitment rules of stenographers on par with that of similar rank CSS staff. For the post of Personal Assistant grade pay of Rs.4600 was granted and not the pay scale of Rs.7450-11,500. The posts of Assistant, SSO and Assistant Director have not been merged to provide for the enhanced grade pay sought. The applicant is to be paid as per entitlement and any excess payment made from the public exchequer has to be refunded. The Hon'ble Principal Bench of this Tribunal in OA 2126 of 2018 has directed not to give effect to the respondents memo dated 21.3.2018 until further orders. Respondents have complied

with the direction by issuing memo dated 1.6.2018 and that the next date of hearing of the case is on 19.8.2019.

6. Heard both the counsel and perused the records.

7. I) Applicant claims that the wrong fixation has been done by the respondents. His claim is covered by Rafiq Masih case. Further, because of the mistake of the respondents he should not be penalized. Respondents state that the contentions of the applicant are misleading in the sense that he was promoted to the scale of Rs 6500-10,500 and never to Rs.7450-11,500. The post of SSO was not upgraded. Moreover, in regard to stenographers it was a conscious decision to place them on par with those of the CSS staff. Fixation of pay has been done strictly as per CCS (RP) Rules, 2008. Respondents have also informed that the matter is now under adjudication by the Hon'ble Principal Bench of this Tribunal and that the operation of memo dated 21.3.2018 has been stayed till further orders. Once the Hon'ble Principal is seized of the matter it may be proper and appropriate to await a decision on the matter.

II) Hence in view of the aforesaid circumstances, OA is disposed of directing the respondents to examine and dispose of the request of the applicant based on the verdict of the Hon'ble Principal Bench of this Tribunal in OA No.2126/2018, as and when it is delivered.

With the above direction the OA is disposed with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 1st day of July, 2019

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