

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

OA No.290/00031/2013

Pronounced on : 25.07.2019
(Reserved on : 11.07.2019

CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

P.M. Mathew S/o Late Shri Mathai, aged 60 years, presently C/o Shri Ram Ganga Niwas, C-98, Kamla Nehri Nagar, 2nd Extension, Jodhpur. Permanent Address: P.O. Kadumeni, District Kasaragod, State Kerala.

...APPLICANT

BY ADVOCATE : Mr. Rakesh Arora.

VERSUS

1. Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Principal Chief Controller of Accounts, (CBDT), 9th Floor, Loknayak Bhawan, Khan Market, New Delhi-110 003.
3. The Zonal Accounts Officer, (CBDT), Jalam Vilas, Paota B Road, Jodhpur.
4. The Dy. Commissioner of Income Tax (TDS)/DDO, Aaykar Bhawan, Paota C Road, Jodhpur.
5. The Income Tax Officer (TDS)-I/DDO Aaykar Bhawan, Paota C Road, Jodhpur.

RESPONDENTS

BY ADVOCATE: Mr. Sunil Bhandari for R1 to R5.

ORDER

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Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

"In view of the facts and grounds mentioned above, the applicant most respectfully prays that this application may kindly be allowed

and the impugned letters dated 16.07.2012, 20/24.07.2012 and order dated 25.07.2012 (Annexure A1 to A3) may kindly be quashed and set aside with all consequences and the respondents may be directed to make payment of Rs.88,533/- to the applicant with interest thereon @ 18% per annum and respondents may further be directed to make payment of pension to the applicant as if the impugned letters/orders were never passed."

2. The brief facts of the present case as narrated by the applicant are that the applicant was initially appointed on the post of Stenographer Grade-III in the year 1974. Thereafter, he was promoted to the post of Stenographer Grade-II in the pay scale of Rs.1400-2600/- with effect from 02.01.1995. While he was working as Stenographer Grade-II, vide order dated 04.08.1997, the applicant was given adhoc promotion on the post of Income Tax Inspector in the pay scale of Rs.1640-2900/- (Annexure A4). He joined as Inspector on 13.08.1997. Accordingly, his pay was fixed in the pay scale of Rs.5500-9000/- as per 5th Pay Commission on promotion as Inspector in adhoc basis as per Finance Rule 22(1)(a)(i) vide order dated 24.11.1997 (Annexure A5). Thereafter, the applicant was again promoted for further one year on the post of Inspector vide order dated 13.08.1999 (Annexure A7) (wrongly typed as 13.08.1998 on page No.1 of the order) on adhoc basis in the pay scale of Rs.5500-9000/-. It is further stated that between the period of 07.08.1999 and 13.08.1999, the applicant vide order dated 14.05.2003 was granted financial upgradation under ACP scheme with effect from 09.08.1999 and accordingly the pay of the applicant of Rs.5000-8000/- which he was getting as Stenographer Grade-II was upgraded to Rs.5500-9000/- with effect from 09.08.1999 vide order dated 14.05.2003 (Annexure A10). Accordingly, applicant's pay was fixed at Rs.8125/- as on 01.08.2002 but at Rs.7250/- as on 09.08.1999. The date i.e. 09.08.1999 is the date crucial for the controversy involved in the present applicant because on the said date the applicant was working as Stenographer Grade-II and accordingly he was rightly given benefit of ACP as Stenographer Grade-I. Further, the

promotion of the applicant on the post of Inspector was adhoc before and after the said date i.e. 09.08.1999 and hence, the benefit of ACP was granted to the applicant as he was working as Stenographer Grade-II on 09.08.1999. Thereafter, the applicant was given regular promotion to the post of Income Tax Inspector in the pay scale of Rs.5500-9000/- vide order dated 22.06.2001 (Annexure A12). It is further clearly stated that the order dated 22.06.2001 was passed that the applicant became Income Tax Inspector on regular basis and earlier promotions of the applicant as Income Tax Inspector, being adhoc, were of no concerned/benefit/relevance particularly in respect of grant of ACP. Vide order dated 19.08.2003, fixation of the applicant was made granting him the benefit of ACP w.e.f. 09.08.1999. In this order a note was appended stating that the applicant has not been allowed any fixational benefit on regular promotion to the grade of Stenographer Grade-I as he has been granted benefit under ACP Scheme. While passing the order dated 19.08.2003 giving effect from 09.08.1999, salary granted with effect from 13.08.1997 to 09.08.1999 as working for adhoc Inspector was ignored and pay was fixed from the pay of Stenographer Grade-II to Stenographer Grade-I under ACP. After fixing the pay under ACP in Stenographer Grade-I, pay was fixed for working as adhoc Inspector on the same day. Hence, it is abundantly clear from this note that the applicant was granted only one benefit of fixation and not the double. Besides the pay scale of the Inspector as well as Stenographer Grade-I is the same (Annexure A14). The applicant retired from the post of Income Tax Officer on his superannuation on 31.07.2012.

3. It is further added that after the superannuation of the applicant, vide letter dated 16.07.2012 certain defects were pointed out in the pension case of the applicant wherein it is stated that since the applicant was promoted to the post of Inspector before completion of 24 years

service and hence, he was not entitled for the ACP. It is also further stated that after granting ACP, when the applicant was again promoted as Inspector, he was again wrongly granted one increment on 09.08.1999 because his pay was already fixed on 13.08.1997 while granting one increment and again one increment at the time of ACP vide letter dated 16.07.2012 (Annexure A1). The objection of respondent no.3 was replied by respondent no.5 vide letter dated 19.07.2012 (Annexure A15). Thereafter, respondent no.3 vide letter dated 20/24.07.2012 (Annexure A2) again directed respondent no.5 that since the applicant was not entitled to fixation of pay on his adhoc promotion on 09.08.1999 and hence necessary correction in the service book of the applicant may be made. Respondent no.5 vide order dated 25.07.2012 (Annexure A3), revised the pay of the applicant. It is also stated that by this order dated 25.07.2012, deduction of Rs.88,533/- was also ordered to be made from the final gratuity payment. The benefit of ACP was granted on 09.08.1999 of the post of Stenographer Grade-I and that is why he was not granted any financial benefit on his regular promotion to the post of Stenographer Grade-I and also granted promotional benefits for working as adhoc Inspector and he was not granted benefit of regular promotion to the next higher post of Inspector on 25.06.2001. Aggrieved by the letters dated 16.07.2012 and 20/24.07.2012 and order dated 25.07.2012 (Annexure A1 to A3), he has no other alternative except to approach this Tribunal for redressal of his grievance. Hence this OA.

4. In the written statement filed on behalf of the respondents wherein it has been stated that objection was raised as the applicant was adhoc promoted as Income Tax Inspector and his pay was fixed accordingly on 13.08.1997. But while granting ACP the applicant was not reverted and applicant was drawing higher pay as Income Tax Inspector whereas the applicant should have been reverted and pay should accordingly refixed.

The applicant was promoted to the post of Income Tax Inspector on 04.08.1997 (Completely on adhoc basis) and his pay was fixed in the pay scale of Rs.5500-9000/-. Applicant was promoted on adhoc basis as Income Tax Inspector vide letter dated 07.08.1998 for one year. Again he was promoted on adhoc basis for another one year vide order dated 13.08.1999 and the applicant was joined against this order on 16.08.1999. It is important to say that no reversion order was passed and no pay was fixed as Stenographer Grade-II. It cannot be presumed that applicant was working as Stenographer Grade-II during the period from 07.08.1999 to 13.08.1999.

5. It is further stated that the ACP was granted to the applicant with effect from 09.08.1999 and he was not reverted or his pay was refixed. The applicant was given regular promotion as Income Tax Inspector with effect from 22.06.2001 in the pay scale of Rs. 5500-9000/-, but at the time of ACP the applicant was neither reverted nor his pay was refixed. The applicant was already in pay scale of Rs.5500-9000/- as adhoc Income Tax Inspector with effect from 13.08.1997 and he was allowed the fixation benefit without reversion and refixation of pay as Stenographer Grade-II. The applicant was entitled for ACP but as his reversion order or refixation of pay as Stenographer Grade-II was not taken place and already working on higher pay scale so no financial benefit to applicant. It is also stated in the reply that no delay was caused in finalizing the pension benefit. The deduction of Rs.88,533/- was correct as the applicant himself was DDO in the present case vide letter dated 26.07.2012 (Annexure R2). The applicant was promoted on adhoc basis since 13.08.1997 in the pay scale of Rs.5500-9000 as Income Tax Inspector, when ACP was granted without refixation or reversion in lower grade of Stenographer Grade-II in the pay scale of Rs.5000-9000 on 09.08.1999. Therefore, respondents pray that this OA may be dismissed with heavy costs.

6. In the rejoinder filed on behalf of the applicant wherein it has been stated that the respondents have tried to mislead this Tribunal while resorting the phrase 'adhoc appointment'. In the present case the applicant was given adhoc appointment for the first time with effect from 04.08.1997 (13.08.1997) to 04.08.1998 which is evident from the order dated 04.08.1997 (Annexure A4) against regular post of Inspector which was reserved for direct recruiting Inspectors. When he was promoted to the post of Stenographer Grade-I under ACP Scheme with effect from 09.08.1999 the fixation made on adhoc appointment as Inspector was ignored and his pay was fixed under FR22 from the post of Stenographer Grade-II to Stenographer Grade-I. It is further added that an adhoc appointment cannot be for more than a period of one year even if the regular post is there. Thus, it cannot be presumed that the applicant was working as Stenographer Grade-II during the period from 07.08.1999 to 13.08.1999. The period of one year of adhoc appointment of the applicant expired on 05.08.1999. The order dated 07.08.1999 was clear that it was upto 05.08.1999 only. It is clear that an adhoc appointment cannot be more than one year, so for giving benefits of ACP, no reversion is necessary. The ACP promotion was regularized vide order dated 31.12.1999. As per order dated 09.08.1999 (Annexure R1/1), the applicant was not reverted and pay was not refixed. In this case as on giving the benefit i.e. 09.08.1999, he was not holding any post of adhoc Inspector and pay was refixed from the post from which he was promoted i.e. Stenographer Grade-II to Grade-I. Vide letter dated 16.07.2012, the Zonal Accounts Officer raised objections. The objection was not accepted by the DDO. Since the DDO and the applicant was the same person, the applicant was not having any opportunity as the period left for retirement was very short and if the objection was not accepted by the DDO the pension papers could not have been finalized in time. The circumstances

created by the ZAO compelled the DDO to pass an order withdrawing the fixation benefits given to the applicant otherwise there occur an inordinate delay in granting the retirement benefits. The department issued these orders in view of the facts that an adhoc employee is entitled for promotion benefits of regular promotion of any other lower post. The ACP promotion is a paper promotion and how, one can be reverted. Here in this case, the fixation order itself was from the lower post i.e. from the reverted post and therefore, the objection raised by the ZAO is only with an intention to harass the applicant, and therefore, prayed that the OA may be allowed.

7. Arguments advanced by the learned counsel for both the parties were heard and perused the material available on record.

8. The case before us lie in the narrow compass and revolves round the grant of promotion and benefit of ACP to the applicant while he was working as Stenographer Grade-II. The controversy arose in view of the objection raised by respondent no.3-the Zonal Accounts Officer, (CBDT), Jodhpur, who stated that since the applicant was promoted to the post of Inspector before completion of 24 years of service hence he was not entitled for the benefits of ACP. Respondent no.3 further stated that the applicant was again promoted as Inspector and wrongly granted one increment on 09.08.1999 because his pay had already been fixed on 13.08.1997 while granting one increment and again one increment at the time of the ACP vide letter dated 16.07.2012. The objections were raised by respondent no.3 while reviewing the pension case upon the superannuation of the applicant.

9. These objections were replied to by respondent no.5 vide letter dated 19.07.2012 (Annexure A15). However, the Income Tax Officer (TDS)-I/DDO, Jodhpur, who in this case was happened to be the applicant

himself. However, respondent no.3 not being satisfied with the reply given by respondent no.5 vide their letter dated 20/24.07.2012 (Annexure A2). Again directed respondent no.5 that since the applicant was not entitled to fixation of pay on his adhoc promotion on 09.08.1999, hence, necessary correction in the service book of the applicant was required to be made. The respondent no.5 vide their letter dated 25.07.2012 (Annexure A3) revised the pay of the applicant and also ordered a deduction of recovery of Rs.88,533/- to be made from the final gratuity payment.

10. Aggrieved by the letters dated 16.07.2012, 20/24.07.2012 and the subsequent order dated 25.07.2012 (Annexure A1 to A3), the applicant has approached this Tribunal for redressal of his grievances.

11. The applicant vide the OA seeks the following reliefs that i) allowing the OA and quashing of the impugned letters dated 16.07.2012, 20/24.07.2012 and order dated 25.07.2012 (Annexure A1 to A3); He also seeks the directions of the Tribunal to the respondents to make the payment of Rs.88,553/- to the applicant with interest thereon @ 18% per annum and further to make the payment of pension to the applicant as the impugned orders / letters were never passed.

12. During the course of final hearing, the applicant also made a written submission summarizing the post and scale held by Shri P.M Mathew from 08.07.1994 to his date of retirement on 31.07.2012. These are reproduced below:-

Sr. No.	Post	Scale	From	Remarks
1.	Stenographer (O.G.) grade-III (ordinary Grade)	330-10-380-EB-12-500-EB-15-560 (Service Book page no.4&5)	08.07.1974 to 02.01.1995	
2.	Stenographer (Gr.II)	1400-40-1600-50-2300-E?B-2600 (Service Book Page No.64)	03.01.1995 to 12.08.1997 Fixation 01.07.1995	Revised scale as per 5 th CPC (5000-150-8000)

3.	Inspector (Adhoc Promoted)	5500-175-9000 (Service Book page no.74)	13.08.1997 (Order No. dated 04.08.1997)	Fixation as per FR 22(1) from 13.08.1997)
4.	Inspector (Adhoc Promoted)	Service Book Page No.76	07.08.1998	
5.	Inspector (Adhoc Promoted)	Service Book Page no.79	13.08.1999 (For six month) corrigendum 23.09.1999 for one year	
6.	Inspector (Adhoc Promoted)		Order dated 19.03.2001 commence from 01.08.2000	
ACP from Steno Gr.II to Gr.I (5500-175-9000) as on 09.08.1999				Vide order No.264 dated 19.08.2003 pay fixed on 01.08.2002 Rs.8125/- should be Rs.7775/-
7.	Inspector (Regular)	5500-175-9000 Page No.87	Order dated 22.06.2001 joined as Inspector regular on 25.06.2001	Revised new pay scale of Inspector in 2004 i.e. 6500-200-10500
8.	ITO (Promotion)	Order dated 19/26.12.2006 w.e.f. 11.12.2006 (Scale 7500-250-12000 old scale) Service Book Page No.89		Grade Pay Rs.4800/-
9.	ITO	Order dated 14.12.2010 non functional scale after four years.		Grade Pay of Rs.5400/-

13. Arguments advanced by the learned counsel for the respondents largely centers around the fact that the objection has rightly been raised as the applicant was adhoc promoted as Income Tax Inspector and his pay fixed accordingly on 13.08.1997. The respondents also states that while granting ACP, the applicant should have been reverted and the pay should have been refixed. The respondents reiterates that in the absence of any reversion order it cannot be presumed that applicant was working as Stenographer Gr-II during the period from 07.08.1999 to 13.08.1999 (a period of one week only).

14. During the arguments, the respondents drew the attention of the Tribunal to the scheme of ACP and which provides that benefit can be given if no promotion has already been availed off. They also reiterated that he should have been granted ACP only after reversion to

Stenographer Gr-II from his adhoc promotion post of Inspector (Annexure A10). This anomaly case occurred only on account of non-reversion of the pay scale of Rs.5000-8000 and the fact that he was already drawing the scale of Rs.5500-9000. The submission made by the respondents that error pointed out by the Zonal Accounts Officer upon the review of the service book and pension finalization was correct.

15. As per OM No.35034/1/97-Estt(D), dated 09.08.1999 issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) (Annexure A16) placed by the applicant, the details of the ACP Scheme for Central Government employees have been prescribed is as under:-

“5.1 Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and last-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP scheme. In case a prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him.”

16. The benefits granted to the applicant were correctly given as vide order dated 19.08.2003, pay was fixed from the cadre of Stenographer and then fixation on account of adhoc appointment was made w.e.f. 09.08.1999. This was informed to respondent no.3 vide Annexure A3 dated 25.07.2012 as well. However, as stated at Annexure A3, in view of the objections raised, the benefit granted w.e.f. 09.08.1999 under ACP was withdrawn and fixation made on 13.08.1997 on adhoc appointment is allowed to remain.

17. From the facts submitted to us in the pleadings and the subsequent tabulation provided and as written submissions by the applicant it appears

that the recovery of Rs.88533/- has been wrongfully made as excess payment to the applicant. As per Memo No.F.No.18/03/2015-Estt.(Pay-I), dated 02.03.2016 issued by Govt. of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, recovery of wrongful / excess payments made to Government servants in view of the law declared by the Courts, particularly, in the case of Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors., 2012 AIR SCW 4742, (2012) 8 SCC 417. Para 3(iv) of the OM inter-alia provides that recovery should be made in all cases of overpayment barring few exceptions of extreme hardships. The issue has subsequently come up for consideration before the Hon'ble Supreme Court in the case of State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc in CA No.11527 of 2014 (Arising out of SLP (C) No.11684 of 2012) wherein Hon'ble Court on 18.12.2014, decided a bunch of cases in which monetary benefits were given to employees in excess of their entitlement due to unintentional mistakes committed by the concerned competent authorities, in determining the emoluments payable to them, and the employees were not guilty of furnishing any incorrect information / misrepresentation / fraud, which had led the concerned competent authorities to commit the mistake of making the higher payment to the employees. The employees were as innocent as their employers in the wrongful determination of their inflated emoluments.

18. From the submissions made during the final hearing as also the documents placed on record, it is amply clear that the monetary benefits given to Shri P.M. Mathew in excess of his entitlement occurred due to non-intentional mistakes and Shri P.M. Mathew was not guilty of furnishing any incorrect information/mis-representation/fraud. An argument has been raised by the respondents that since Shri P.M. Mathew was himself as DDO, it cannot be said that there was no furnishing of incorrect

information. However, it is seen from the letter dated 19.07.2012 (Annexure A15) that after the objection was raised by the Zonal Accounts officer, Shri P.M. Mathew in this capacity as ITO (TDS)-I/DDO had clarified the entire scenario and sought advice from the Zonal Accounts Officer. It cannot therefore as stated that there was any fraud/mis-representation. Accordingly, the case comes within the ambit of the protection extended by the Hon'ble Supreme Court in the plethora of judgments referred to above.

19. In view of the factual matrix as above, the impugned letters dated 16.07.2012, 20/24.07.2012 and order dated 25.07.2012 (Annexure A1 to A3) are quashed and set aside. The department is also directed to make payment of Rs.88533/- recovered from the applicant as excess payment within a period of three months from the date of receipt of a copy of this order with prevalent rate of interest.

20. The OA is accordingly allowed. No order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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