

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
KOLKATA

OA No.350/00471/2015

Dated of order: 29.01.2016

Present:

THE HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, JUDICIAL MEMBER

THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

1. Rajesh Kr Verma, aged about 37 years working as Jr. Hindi Translator, under Respondent No.3, presently residing at House No. 1/3 Ram Krishna Pally, Benachity, Durgapur-700013.
2. Niraj Kumar aged about 40 years, working as Jr. Hindi Translator under Respondent No.3 presently residing at Type III/19, C/o.EPF Staff Quarter Bhavishya Nidhi Abasan Bidhan Nagar, Durgapur-713213.
3. Ajit Kumar, aged about 39 years, working as Social Security Assistant under Respondent No.3, Type III/21 EPF Staff Quarter Bhavishya Nidhi Abasan Bidhan Nagar, Durgapur-713213.
4. Rajesh Kumar, aged about 39 years working as Social Security Assistant under Respondent No.3, Type III/16 EPF Staff Quarter Bhavishya Nidhi Abasan Bidhan Nagar, Durgapur-713213.

.....Applicants

For the Applicant: Mr.G.C.Chakraborti, Counsel

-Versus-

1. Union of India service through the Secretary, Ministry of Labour and Employment Shram Shakti Bhawan, Rafi Marg, New Delhi-110001.



2. The Central Provident Fund Commissioner, Employees Provident Fund Organization, 14 Bhikaji Cama Place, New Delhi-110066.
  3. The Regional Provident Fund Commissioner, Employees' Provident Fund Organization, Regional Office, Kolkata DK Block, Sector-II, Salt Lake City, Kolkata-700091.
- .....Respondents

For the Respondents: Mr.K.Sarkar, Counsel.

### ORDER

JUSTICE VISHNU CHANDRA GUPTA, JM:

Heard the learned counsel for the parties.

2. Reply has been filed by the Respondents kept on record.

3. This OA has been filed by the Applicant seeking the following reliefs:

“(a) To grant leave to the applicants to join together to move the present original application on self same fact and cause of action having common interest in the matter for same relief as prayed for;

(b) Quash and set aside the impugned order dated 30.07.2014 (A/6) with a direction upon respondents (especially to Respondent 3) to extend same benefit allowed to the applicants in OA No. 904 of 2007 (A/4) to the similarly situated applicants of the present OA; and

(c) to direct the respondent (especially respondent No.3) to restore the pay of the applicants at the stage of Rs. 4500 with effect from respective dates of promotion to the post of Social Security Assistant in November, 2005; and



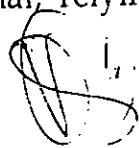
(d) Direct the Respondent authorities (especially respondent no.3) to make payment of arrear pay and allowances after restoration of the pay of the applicants forthwith along with amount of interest @ 18% per annum;

(e) Any other order/orders as your lordships would deem fit and proper for the ends of justice."

(Extracted as such)

4. The short controversy in this matter is whether the benefit of the decision given by the coordinate Bench of this Tribunal and implemented, the similarly situated employees can be denied the benefits of the order passed by the co ordinate Bench of this Tribunal.

5. The brief facts of this case are that the applicants are holding the post of Data Entry Operator on adhoc basis under the Respondents. On account of a decision taken by the competent authority, they were appointed as Social Security Assistant in the identical grade in which they were working as Data Entry Operator. When the Applicants were appointed as Social Security Assistant in the identical grade, the pay was reduced at the lowest of the grade. It is not in dispute that at the time of appointment as Social Security Assistant, they were getting more pay to the lowest of the grade as Data Entry Operator. Some of the employees approached this Tribunal by filing OA No. 904 of 2007. The Co-ordinate Bench of the Tribunal, relying upon a decision of the



Ernakulam Bench of the Tribunal, passed an order on 21.09.2010 giving the benefit of pay protection. The operative portion of the order dated 21.09.2010 in OA No. 904 of 2007 is extracted hereunder:

"3. We have heard the Ld. Counsel for both the parties. During the course of hearing the Ld. Counsel for the applicants has drawn our attention to a recent decision of this Tribunal in OA No. 799 of 2007 which was decided on 28.8.2009 (Shri Subrata Kumar Gayen & Anr Vs UOI & Ors). In that case the identical point was decided on the basis of a decision of the Ernakulam Bench in OA no. 295 of 2007. The relevant portion of the decision of the Ernakulam Bench is quoted below:

"14. In view of the above the OA succeeds. It is declared that pay protection is contained in order dated 19.04.2006 Annexure A-2 would be equally applicable to those who were promoted to the post of SSA who were on the date of promotion functioning as DEO on adhoc basis, even prior to the issue of the said order. Thus, the applicants are entitled to the same and consequently, respondents are directed to work out the pay admissible to them on their promotion to the post of SSA in accordance with the provisions of Order dated 19<sup>th</sup> April, 2006 and difference between the pay due and draw be paid to them. This drill shall be completed within a period of three months from the date of communication of this order."

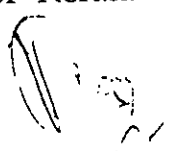
4. In view of the above we dispose of this OA with a direction to the respondents to decide the claim of the applicants in the light of our earlier order dated 28.8.2009 read with the Ernakulam Bench decision quoted above within a period of 4 months from the date of communication of this order. No costs."

6. It is not denied at the bar that the order passed by the Co ordinate Bench of the Tribunal has already been implemented



and the applicants in OA No. 904 of 2007 are getting the advantage of the pay protection.

7. So far as the facts are concerned, the case of the present applicants is identical to the case of the applicants in OA No. 904 of 2007. The learned Counsel for the Respondents submitted that the decision taken by the co ordinate Bench of this Tribunal was passed on a a judgment of the Ernakulam Bench which has already been reviewed and against the order of review Writ Petition is pending before the Hon'ble High Court of Kerala which is yet to be disposed of and therefore, similar benefits cannot be granted to the present applicants in view of the changed scenario. It is strange to note that at one hand it is the case of the Respondents that as the order of the Ernakulam Bench has already been reviewed the applicants are not entitled to the benefits claimed by them and on the other hand they did not make any efforts for getting the earlier order of this Tribunal reviewed. The order of this Tribunal passed in OA No. 904 of 2007 has already been implemented. Therefore, we are of the considered view that similar benefits, to the present applicants, should also be extended subject to the decision of the Writ Petition pending before the Hon'ble High Court of Kerala. It is also made clear that in case the Hon'ble High Court of Kerala decides the matter against the



interest of the present applicants they shall refund the amount which would be paid in excess. The above direction shall be complied with, subject to furnishing an undertaking by each of the applicants, before the competent authority, within a period of one month from the date of receipt of a copy of this order.

8. With the aforesaid observation and direction this OA stands disposed of. No costs.

(Jaya Das Gupta)  
Member (Admn.)

(Justice V.C.Gupta)  
Member (Judl.)

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