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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.574/2013

Date of Decision: 22nd November, 2019

CORAM: R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Jeewan Kumar
 Sr. Library and Information Assistant,
 O/o The Botanical Survey of India,
 Western Regional Centre, 7,
 Koregaon Road,
 Pune - 411 001.
 (R/at.:III/19-'K' Wing,
 General Pool Residential
 Accommodation, Sector - 26,
 Near Akurdi Rly. Station,
 Pradhikaran, Pune - 411 044. ... *Applicant*

(By Advocate Shri Zaid Qurashi, proxy counsel for Chaitany Nikte)

Versus

1. The Union of India, through
 The Secretary, Ministry of Environment
 and Forests, Paryavaran Bhawan,
 C.G.O. Complex, Lodhi Road,
 New Delhi - 110 003.
2. The Director
 Botanical Survey of India, C.G.O.
 Complex, 3rd M.S.O. Bldg,
 Block No.F 5, 6th Floor, DF Block,
 Sector - I, Salt Lake City,
 Kolkata - 700 064.
3. The Scientist - 'C'/Head of Office
 Botanical Survey of India,
 Western Regional Centre,
 7, Koregaon Road,
 Pune - 411 001. ... *Respondents*

*(By Advocate Shri R.R. Shetty alongwith Shri N.K. Rajpurohit
 and Shri P. Khosla)*

ORDER (ORAL)

Per : Shri R. Vijaykumar, Member (A)

This OA has been filed on 19.09.2013 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

*"8(a) to allow the Original Application,
(b) to direct the respondents to correctly fix applicant's pay in the pay scale of Rs.5500-9000/- w.e.f. 01.01.1996, and to grant him 1st ACP in pay scale of Rs.6500-10500/- on completion of 12 years of service.
(c) to direct the respondents to grant 2nd and 3rd financial upgradation benefits to applicant on completion of 24 yrs. Of service and 30 years of service under the MACP Scheme.
(d) to direct the respondents to prepare the due and drawn statement of the applicant after fixation of his pay as per the prayer clause 8(b) and 8(c) above, and pay the difference of amounts to the applicant,
(e) to direct the respondents to calculate the pension and retirement benefits after his pay is fixed in terms of para 8 (b) and 8(c) above, on his retirement w.e.f. 30.09.2013, and pay the same to the applicant.
(f) to grant all consequential benefits including arrears of pay and allowances to the applicant.
(g) to pass any other appropriate orders which are considered necessary in the facts and circumstances of the case.
(h) to award the cost of application.*

2. The applicant commenced service with the respondents in the year 1973 as LDC and on 27.01.1982, he was appointed as Library Assistant through the Staff Selection Commission based on his then qualification of Graduate degree and Certificate in

Library Science which accorded with the prevailing Recruitment Rules. In subsequent amendment to the Recruitment Rules, the previous posts of Cataloguer, Library Assistant and Assistant Library were merged as Library & Information Assistant with the higher pay scale of Rs.1400-2600 whereas he held the pay scale of Rs.1350-2200 in the previous assignment of Library Assistant. For this higher post, the qualifications required were a graduate degree in Library Science which was not possessed by the applicant. Therefore, the applicant's post essentially became an isolated post in the department wherein he could gain promotion only after he acquired such qualification but which he did not, even until his retirement in September, 2013. The applicant's pay scale was revised on 01.01.1996 under the 5th Pay Commission to Rs.4500-7000/- (6th CPC equivalent of PB-1 with G.P. Rs.2800), and he was granted first ACP on 09.08.1999 in the pay scale of Rs.5000-8000/- (6th CPC equivalent of PB-2 with G.P. Rs.4200). He was then regularly promoted as Library and Information

Assistant on 03.07.2003 in the same pay scale of Rs.5000-9000 which, the respondents contend was inadvertent as he was not qualified but that this was a functional promotion. Thereafter, he received in orders dated 21.04.2007, his second ACP on 27.01.2006 in the pay scale of Rs.5500-8000 equivalent to 6th CPC of PB 2 with G.P. Rs.4200, the same as before. After the pay scales given in 1st and 2nd ACP were merged, the applicant was then granted 1st MACP, evidently as a correction for merged scales in 6th CPC with PB-2 and Grade Pay of Rs.4600 from 01.09.2008. Then, by the same order, 2nd MACP was also granted from 01.09.2008 with G.P. Of Rs.4800, now withdrawn. Thereafter, the respondents granted him third MACP on 27.01.2012 in PB-3 pay scale with Grade Pay of Rs.5400/-.

3. The respondents contend that they committed an error by considering him as having been appointed in the 6th CPC equivalent pay scale of PB-2 with G.P. Of Rs.4200 and this has now been corrected and they have, therefore, ordered recovery which is stated to be amounting to Rs.94,519/- for

which due and drawn statement was made available during today's final hearing and which shows that this amount is on account of overpayment of pay and allowances ordered for recovery from 01.01.2006. The applicant has now challenged the orders of recovery for which no show cause notice had also not been issued to him previously and he also questions the basis on which the MACP orders have been withdrawn.

4. On the aspect of the need for a show cause notice, the requirement is unexceptionable but learned counsel for the respondents argues that this would be "useless formality" as held in Aligarh Muslim University and Others Vs. Mansoor Ali Khan, 2000 SCC(L&S) 965.

At this juncture, when this matter is considered six years after the applicant's retirement and in the peculiar circumstance of his entitlement, we are inclined to agree.

5. We have heard learned counsels and have discussed the claims of the applicant in regard to recovery and also in reference to the computation of his ACP and MACP benefits to which he becomes entitled by

virtue of the fact that he was actually in an isolated post for which he could never have obtained any promotion since he had not acquired the necessary qualifications.

6. In these circumstances, the applicant was only entitled to first ACP, second ACP and third MACP and which also raises questions about comparative pay scales he would be entitled for the purpose of grant of ACP and the relevant grade pay for the grant of MACP. It appears on careful assessment that the applicant would have, over the years in question, got even less than what he had obtained as recorded in the revised orders of the respondents in No.BSI-69/34/2013-Estt. Dated 22.05.2013 (Annexure R-3) wherein they have granted him the correct entitlement of third MACP of PB-II with Grade Pay of Rs.4800/- w.e.f. 27.01.2012 that would entitle him to retirement benefits as computed and granted to him as also clarified in impugned orders dated 14.06.2013.

7. In these circumstances, the pension of the applicant would need to be calculated accordingly and from the due and drawn

statement, it appears that the respondents have followed their own orders passed on 22.05.2013 and 14.06.2013, in determining his pension.

8. Further, in reference to the recovery ordered to him, it is noted that the applicant is a Group 'C' employee and recoveries have been ordered for a period far more than five years although respondents had revised queries on this matter from 2003 itself. Moreover, the recoveries have been ordered on the verge of the applicant's retirement and therefore, his case squarely falls within the provisions of the exceptions provided in the rulings of the Hon'ble Apex Court in State of Punjab and Ors. V/s. Rafiq Masih (White Washer) , (2014) 8 SCC 883

9. In the circumstances, the applicant's pay has evidently been correctly computed and revised. However, the respondents are directed not to effect any recoveries and to release the withheld amount which relates to overpayment within four weeks of receipt of a certified copy of this order.

10. In the aforesaid terms, this Original Application is partly allowed by directing the respondents to release the withheld amount while at the same time confirming the orders of the respondents for refixation of pay as communicated in the orders dated 22.05.2013 (Annexure R-3) and 14.06.2013 (Annexure A-1 impugned). No costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

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SD
26/11/19