**(2019) 10 CAT CK 0069**

**In the Central Administrative Tribunal**

**Case No :** Original Application No. 2534 Of 2019, Miscellaneous Application No. 3380 Of 2019

Jai Bhagwan APPELLANT

Vs

Union Of India And Ors RESPONDENT

**Date of Decision :** 25-10-2019

**Acts Referred:**

**Citation :** (2019) 10 CAT CK 0069

**Hon'ble Judges :** Pradeep Kumar, Member (A)

**Bench :** Single Bench

**Advocate :** M.K. Bhardwaj, Manish Kumar

**Final Decision :** Allowed

# Judgement

1. The applicant was appointed as Junior Engineer (Civil) [JE (Civil)] in CPWD on 07.02.1981. On completion of 15 years of service, he was granted financial upgradation to the scale of Rs.2000-2300-EB-3500 and the salary was revised to Rs.2375 w.e.f. 16.03.1996. Thereafter, the scheme of ACP came into being w.e.f. 09.08.1999 and applicant was granted second financial upgradation to the scale of Rs.10000-15200 w.e.f 04.08.2006. The corresponding scale in 6th CPC was Rs.15600-39100 plus GP Rs.6600. He was granted the third financial upgradation to the GP Rs.7600 with effect from the year 2011 under MACP scheme which was promulgated on 19.05.2009. He subsequently superannuated on 30.06.2019.

2. While the second financial upgradation to the scale of Rs.10000-15200 was already granted, the applicant was promoted as Assistant Engineer (AE) on ad hoc basis vide office order no.178 of 2006 dated 11.08.2006 to the pay scale of Rs.6500-10500. He was promoted as AE on regular basis to the pay scale of Rs.9300-34800 + GP Rs.4600 w.e.f. 26.05.2014 when promotion orders were issued for three panel years together, namely, 2007-08, 2008-09 and 2009-10. At the time of this promotion he was already in a higher pay scale of Rs.15600-39100 plus GP Rs.7600. Applicant"s name appears at Sl. No. 27 in 2009-10 list.

 

3. Certain departmental exams are to be cleared by the AEs to draw increments after second year of promotion. Accordingly, the applicant on being promoted on ad hoc basis on 11.08.2006, wrote the said exams in the year 2007.

However, he could pass paper-A and C only but could not clear the paper-B. However, the respondents continued to pay increments regularly.

The applicant made a representation to the respondents on 15.10.2018 for grant of exemption from passing the said departmental exams, as such, relaxations were permissible in certain conditions. The respondents considered the same and vide orders dated 26.11.2018 granted the exemption w.e.f. 04.09.2018. The said order reads as under:

"The undersigned is directed to refer to O/o CE(CSQ) Civil, CPWD, Nirman Bhawan, New Delhi letter No.8(4)/CSQ/E-2/147 dated 16.10.2018 forwarding therewith a representation dated 15.10.2018 from Shri Jai Bhagwan, AE(C) for grant of exemption from passing the departmental accounts exam. The matter has been re- considered by the Competent authority. Now in supersession of this Directorate O.M. of even number dated 15.10.2018, the undersigned is directed to convey the approval of the Competent Authority for granting exemption from passing the Department Accounts Examination prescribed for Assistant Engineers to Shri Jai Bhagwan, AE(C) [DOB: 07.06.1959] w.e.f. 04.09.2018.

2. All the withheld increments of the officer may be released w.e.f. date of exemption granted to him, but without any arrears for the period prior to the date of exemption, subject to the retention of normal annual date of increment as per the provisions contained in this Directorate O.M. dated 28.08.2017."

4. However, giving reference to a Vigilance Unit letter dated 06.09.2018, a notice was issued to three officers including the applicant on 15.11.2018. The said order reads as follows:

"On Examining your service manual in the context of the above subject, it was found that the entry of your Assistant Engineer to pass the audit is not in the service book, due to which your PIC of 01.07.2018 was stopped and as we have requested that you have to explain the reason for this, but till now you have not given any information in this regard.

Vigilance Unit Order No.1/46/Misc.-2/2015-VSI dated 06.09.2018. The Officers who have not passed the Departmental Account Exam and are still being paid periodical payment increment, it has been said that those officers should be re-fixed and the additional salary should be deducted.

Therefore, it is instructed that you should submit a copy of the order of passing Departmental Account Exam and get it entered in your service book. Otherwise, the additional amount will be charged to you in one lump sum promotion of your Assistant Engineer."

5. Since the entries for passing of the requisite departmental exam (Accounts)

 

was not there in the service book, the increment due on 01.07.2018 was stopped and clarification was sought from the applicant for submitting the details for having passed the said exam. It was also advised that unless the exam was passed, the amounts paid on account of increments after two years of promotion as AE, shall be recovered.

The applicant replied to this on 09.11.2018 as well as on 22.11.2018.The applicant relied upon the OM dated 02.03.2000 which reads as under:

"Subjects: Departmental Accounts Exam for AEs-release of increment-Clarification regarding.

The undersigned is directed to convey the approval of competent authority to the effect that those Promotee AEs whose pay has been fixed in the pre-revised scale of pay of Rs.2000-60-2300-EB-75-3200-100-3500 at the stage beyond the EB stage of Rs.2300/- will draw annual increments in his pay scale even if he has not passed the departmental accounts exam prescribed for AEs provided that he has passed the simple accounts exam prescribed for Junior Engineers."

6. It was pleaded that he had already crossed the efficiency bar of Rs.2300 in the pay sale of Rs.2000-2300-3500 on 16.03.1996 when his salary was fixed at Rs.2375/- on financial upgradation after 15 years of service (para 1 supra). It was also pleaded that he was already granted the still higher pay scale of Rs.10000-15200 (Having GP of Rs.6600/-as per 6th CPC) on account of second financial upgradation w.e.f. 04.08.2006 as well as the third financial upgradation to a still higher scale with GP of Rs.7600 w.e.f. 13.10.2012. Accordingly, passing of such efficiency bars in the much lower pay scale of AE were no more relevant. The OM dated 02.03.2016 had also granted relaxation for those above the efficiency bar of Rs.2375 from such exams. It was also pleaded that similar benefits have already been granted in other similar cases.

7. It was further pleaded that recoveries were not admissible in terms of judgment by Hon"ble Apex Court in State of Punjab and others etc. vs. Rafiq Masih (White Washer) and Ors., (2015) 4 SCC 334 for which DOP&T had also issued an OM dated 02.03.2016.

8. However, just before his superannuation, the respondents issued an order dated 15.05.2019 revising his pay. This order reads as under:

"For not passing the Departmental Accounts Exam within 2 years and implementing the Office Order of Directorate vide No. 23.08.2018/EC-III dated 26.11.2018 and providing exemption w.e.f. 04.09.2018 the revised pay fixation is done as detail below :-

S. No.

Particular

Existing Pay

 

Revised Pay

Remarks

1

वेतन ननर्धारण NFU के अनुसधर 01.07.2007

20790+6600

20790+6600

The promotion date of Shri Jai Bhagwan, Assistant Engineer (C) is 30.06.2006. His first periodical increments was released on 01.07.2007. As per CPWD Manual the benefit of 2nd increment was not to be given to him. Therefore now by giving imaginary periodical increment w.e.f. 01.07.2008 the financial benefit will not be given which will be payable w.e.f. 04.09.2018 vide office order as mentioned above

2

वेतन ननर्धारण NFU के अनुसधर 01.07.2008

21620+6600

20790+6600

3

वेतन ननर्धारण NFU के अनुसधर 01.07.2009

22470+6600

20790+6600

4

वेतन ननर्धारण NFU के अनुसधर 01.07.2010

23350+6600

20790+6600

5

वेतन ननर्धारण NFU के अनुसधर 01.03.2011

23350+7600

20790+7600

MACP w.e.f. 17.03.2011 vide no. 8(10)/CE/CSQ/Pay Fixed/2014/677 dt. 13.10.2014 (only grade pay difference is to be given due to non passing of Departmental Exam.)

6

 

वेतन ननर्धारण MACP के अनुसधर 01.07.2011

25180+7600

20790+7600

7

वेतन ननर्धारण MACP के अनुसधर 01.07.2012

26170+7600

20790+7600

8

वेतन ननर्धारण MACP के अनुसधर 01.07.2013

27190+7600

20790+7600

9

वेतन ननर्धारण MACP के अनुसधर 01.07.2014

28240+7600

20790+7600

10

वेतन ननर्धारण MACP के अनुसधर 01.07.2015

29320+7600

20790+7600

11

वेतन ननर्धारण 7th CPC के अनुसधर 01.01.2016 Level12 Cell-8

96900/-

*78800/- Pay Level-12 Cell-1

12

वेतन ननर्धारण 7th CPC के अनुसधर 01.07.2016 Level12 Cell-9

99800/-

78800/-

13

ेतन ननर्धारण 7th CPC के अनुसधर 01.07.2017 Level12 Cell-10

 

102800/-

78800/-

14

वेतन ननर्धारण 7th CPC के अनुसधर 01.07.2018 Level12 Cell-11

105900/-

78800/-

*Pay fixed as per 7th CPC on existing pay (20790+7600 = 78800/-) Due to non passing of Departmental Accounts Exam. Increment will be resorted from the date of exemption i.e. 04.09.2018

If any deficiency in above pay fixation or any type of excess payment is done, same will be deducted without any prior notice.

9. Accordingly, it was worked out that for the period from 01.07.2008 to 03.09.2018 an excess payment of Rs.17,93,954/- has taken place, which is to be recovered and for this recovery, an order was issued on 20.05.2019. The applicant is aggrieved with this reduction in salary and the recovery.

10. The applicant had earlier filed OA No.1704/2019 which was dismissed as withdrawn with liberty being granted to the applicant to file a better OA. Thereafter, the applicant made a representation dated 14.08.2019 to the respondents to grant him the similar relief as was granted earlier to one Sh. V.Anandham and not to make any recoveries. This representation has not been replied. Being aggrieved, the instant OA has been filed.

Applicant had sought relief in the form of quashing of order dated 15.05.2019 and 20.05.2019 with direction to the respondents to restore his pay to its original position for the period from 01.07.2008 to 03.09.2018 and not to recover any amount and to release his pensionary and retiral benefits accordingly.

11. The applicant brought out that one Sh. V.Anandham was also promoted along with him, vide orders dated 11.08.2006 and his name appears at Sl. No.9 for the year 2007-08 (para 2 supra). Similar reduction in pay was ordered against said Sh. V.Anandham also. Feeling aggrieved, he filed the OA No.853/2019. During pendency of the OA, the requested relief was granted to Sh. V.Anandham vide orders dated 18.04.2019. Accordingly, OA No.853/2019 was disposed of as nothing remained to be adjudicated.

In keeping with above, the applicant pleads that he cannot be discriminated against and in any case the said instructions for non-grant of increment was not applicable to him as he has already crossed the efficiency bar and as such pleaded that OA be allowed.

12. Per contra, the respondents opposed the OA. It was brought out that on promotion, the officers are required to discharge the duties as AE and they were

 

required to clear the departmental exams within two years of their promotion. In this context, it was pleaded that the OM dated 02.03.2000 was applicable in respect of those who were already promoted as AE. Even though applicant was granted the scale of AE, i.e., Rs.2000-2300-EB-3500, w.e.f. 16.03.1996 and his salary was fixed beyond the stage of efficiency bar at Rs.2375, yet he was JE only and accordingly, this circular was not applicable (para 5 supra). It was pleaded that it was the circular dated 05.01.2006 which is applicable in the case of the applicant as it was already in force while the applicant was promoted as AE on ad hoc basis on 11.08.2006. This circular reads as follows:

"Subject: Departmental Accounts Exam for AEs - release of increment clarification reg.

The undersigned is directed to convey the approval of competent authority to the effect that the promotee Assistant Engineers will; (i) Earn their first increment only if they have passed the simple accounts exam as Junior Engineer (or if they pass the Departmental Exam of Accounts for Assistant Engineers in that one year); (ii) Earn 2nd increment only if they clear the Departmental Exam for Asstt. Engineers."

13. It was pleaded that the applicant had appeared in the said departmental exam also but had not passed the same.

Accordingly, increments were not to be granted. The increments were paid by mistake and when the mistake came to light in the year 2018 the same was required to be rectified and accordingly, the salary is required to be corrected for the period 01.07.2008 to 03.09.2018.

14. On a representation by the applicant the department had considered the same and he was exempted from passing of the departmental exam but the said exemption was admissible w.e.f. 04.09.2018 only as is specified in the said OM dated 26.11.2019 (para 3 supra).

15. This has already been implemented as is clear from the pay fixation order dated 15.05.2019 (para 8 supra). In respect of Sh. V.Anandham, the respondents were directed by the Tribunal to bring all relevant records. The same were submitted with a copy being given to the applicant. The respondents brought out that the case of applicant and that of Sh. V.Anandham is identical and that Sh. V.Anandham was given the same very benefit, which has been sought by the applicant in the instant OA. However, Sh. V.Anandham worked in another administrative unit and any wrongful benefit given in one unit, cannot be repeated in another unit and accordingly benefit to the applicant was denied. Respondents pleaded that this OA needs to be dismissed.

16. Matter has been heard at length. Sh. M.K.Bhardwaj, learned counsel represented the applicant and Sh. Manish Kumar, learned counsel represented the respondents.

17. MA No.3380/2019 is filed by the respondents seeking to place certain

 

additional documents in respect of Sh. V.Anandham on record. MA is allowed. Documents are taken on record.

18. Facts of the case are not in doubt. Applicant was granted financial upgradation w.e.f. 16.03.1996 and was granted the scale of AE even though he continued to be JE. He was fixed at the pay scale at the salary level of Rs.2375 which is above the efficiency bar level of Rs.2300, which was the specified limit vide OM dated 02.03.2000 which exempted the candidates so fixed from said departmental exams. The circular dated 02.03.2000 came into being much later to the grant of financial upgradation to the pay scale of AE to the applicant.

19. The applicant was promoted as AE on ad hoc basis by order dated 11.08.2006. At that stage, he was already in a scale higher than that of AE. Accordingly, the increments in the scale of AE were no more relevant in respect of the applicant. Even though the applicant made efforts to pass the departmental exam but was not able to pass the paper-B. Despite this, the respondents continued to grant him all the increments. There has been no misrepresentation on the part of the applicant in this regard.

Accordingly, for effecting any recovery, the ratio of the judgment of Hon"ble Supreme Court in Rafiq Masih (supra) gets attracted in the instant case wherein it is held that such belated recoveries are not permissible.

20. Even otherwise, the circular dated 02.03.2000 makes it clear that such of the candidates who are in the pay scale of Rs.2000-3500 and are above the efficiency bar level of Rs.2300 are exempted from passing of departmental exams. The circular dated 05.01.2006 is only a clarification as is specified in this circular. It is noted that even while this clarification was issued, the earlier OM dated 02.03.2000 was not superseded. As already noted, when the applicant was promoted as ad hoc AE, he was already in a pay scale of that of XEN.

21. The applicant made representation on 15.10.2018 for exemption from passing of the said departmental exam. This was allowed by the respondents on 26.11.2018. On the ground of this administrative approval itself, there is no justification for recovery of past payments already made to the applicant, notwithstanding the date 04.09.2018 mentioned in this letter.

22. Even though the respondents have pleaded that the relief granted to Sh. V.Anandham was erroneous, however, the same is not borne out of the additional affidavit submitted by the respondents on 15.10.2019. The relevant para of the said memorandum in respect of Sh. V.Anandham reads as follows:

"16. In view of provision of OM dated 02.03.2000 (Para-1 above), it was recommended by this office to PAO (DGW) to review the decision conveyed vide their letter No.2728 dated 27.12.2018. Accordingly, the O/o PAO (DGW) vide letter No.79-80 dated 04.04.2019 (Gratuity) and No.155-57 Dated 11.04.2019 (Pension) and 158-59 (Commutation) agreed to our recommendations and released all retirement related benefits to Shri Anandham as per original submission. This office vide letter even No.499 dated 19.03.2019 refers in this regard."

It is seen that the administrative unit where Sh. V.Anandham was working, namely, RML Hospital has examined his case and recommended for grant of increments based on the OM dated 02.03.2000. Thereafter, it was examined by the headquarter office and approval was granted and the relief was also implemented even while OA No. 853/2019 was pending in the Tribunal. Accordingly, the plea that it was granted erroneously by another unit is not acceptable. In this context, denial of the same benefit to the applicant also amounts to discrimination and such discrimination cannot be accepted.

23. Further, the revised pay fixation issued on 15.05.2019 (para 8 supra), indicates that no increment was allowed from 01.07.2007 to 01.07.2018, and thereafter the existing salary at Rs.1,05,900/- was reduced to Rs.78,800/-. This will adversely affect pension. Therefore, this tantamounts to major punishment, and as per facts of this case without charge sheet and enquiry. Such a course is not permissible.

24. In view of the foregoing, the pleas of respondents are not acceptable, from any angle. The pleas put forth by the applicant are gaining acceptability. OA is allowed. The orders dated 15.05.2019 and 20.05.2019 stand quashed. The respondents are directed to restore the original pay in the period 01.07.2008 to 03.09.2018 and work out the pension and other retiral benefits as per original pay fixation.

Accordingly, all retiral dues shall be released within a period of 90 days from the date of receipt of certified copy of this order. In case these amounts are not released in this time, they will carry interest at GPF rate from the date of retirement till they are actually paid. No costs.