(2020) 01 CAT CK 0031

In the Central Administrative Tribunal

Case No : Original Application No. 3246 Of 2018

Rajendra Singh — APPELLANT

Vs

Union Of India And Ors — RESPONDENT

Date of Decision : 17-01-2020

Acts Referred:

Citation : (2020) 01 CAT CK 0031

Hon'ble Judges : Aradhana Johri, Member (A)

Bench : Single Bench

Advocate : B.S. Jarial, U. Srivastava

Final Decision : Partly Allowed

Judgement

1. The applicant was appointed as Section Officer (Horticulture) in CPWD on 17.07.1982. He was promoted as Assistant Director (Horticulture) CPWD on 18.12.2002. He was to clear the departmental Accounts Exam to be eligible for increment. However, though he appeared in the said examination in 2005, 2007 and 2012, he could not clear it completely, but was erroneously paid the increment. He was scheduled to retire on 31.12.2017 and applied on 06.07.2017 for exemption from passing departmental Accounts Exam with effect from 31.12.2014. The exemption was allowed on 30.08.2017 with effect from the date of his application i.e., 06.07.2017. The audit report had verified his accounts, subject to recovery due to non-passing of departmental exam from April, 2008 till date of exemption. On 10.08.2018 recovery for excess payment was ordered. In the meantime, the applicant had given representation on 18.09.2017 to modify the date of grant of exemption from passing departmental accounts exam from 06.07.2017 to 01.01.2015 i.e., with effect from the date of attaining the age of 57 years. This request was rejected vide DG, CPWD's order dated 28.12.2017. Hence this O.A.

2. The applicant has contended that as per Director General of Works, CPWD OM dated 04.04.2006, no recovery from any Assistant Engineer will be made for the

increments released in the past. He has also cited the case of State of Punjab & Ors. Vs. Rafiq Masih (White Washer) in Civil Appeal No. 11527/2014 decided on 18.12.2014, to claim that no recoveries can be made from him. It is also the case of the applicant that no show cause notice was issued. Therefore, this is against the principles of natural justice. He has also stated that he has received the recovery order after his retirement on 28.12.2017. He has also stated that in the fifth CPC for the pay scale of Assistant Engineers/Assistant Directors, there was no efficiency bar, therefore, he was under the impression that the competent authority has not stopped the increments. The applicant has prayed for the following reliefs :-

"Reliefs/Sought :

It is there, most respectfully prayed that this Hon'ble Court may graciously be pleased to :

i. To declare the orders of the respondents dated 28.12.2017 and 10.08.2018 for recovery from the applicant as ultra vires and null and void as the same are against the existing law and O.M. dated 02.03.2016 on the subject. Moreover no Show Cause Notice was issued to the applicant ever in this regard by the respondents.

ii. Direct the respondents not to proceed further in this regard in future against the applicant.

iii. To pass any such order/orders as may be deemed fit and proper by the Hon'ble Tribunal in the facts and circumstances of the case."

3. Respondents have contested the claim of the applicant. They have stated that this case is not covered by Rafiq Masih's judgment (supra) because he had given an undertaking while opting for revised pay scale and therefore, bound by the undertaking and if it is found that any payment is made in excess, it would be required to be refunded. In light of the law laid down by the Hon'ble Supreme Court in High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh (2016) 14 SCC 267, recovery can be affected from the applicant. They have also stated that the O.M. dated 04.04.2006 regarding no recovery from any AE for the increments released in the past, pertains to the additional two years allowed until 2008 to clear the departmental exam and the recovery from the applicant does not pertain to such a period.

4. Heard Mr. B. S. Jarial, learned counsel for applicant and Mr. U. Srivastava, learned counsel for respondents.

5. It is admitted that there has been excess payment on account of increments being paid for the period when the applicant had not passed the departmental accounts exam and for which exemption also had not been given. However, the circumstances of the case have to be read along with the relevant rules. There is a provision in CPWD OM dated 09.06.2015, for exemption from passing the departmental accounts exam, which reads as under :-

"No. 28/1/A/2011-EC.V DAted : 09.06.2015

Subject : Exemption from passing the Departmental Accounts Examination.

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The provision contained in Para 6.2 of CPWD Manual, Regular Establishment and Office Procedure (Edition 2013) on this subject are modified as under and shall be applicable with immediate effect :-

Existing Provision

(OM No. DG/RE/Manual/05/2014 dated 28/05/2014

Modified provision

The Executive Engineer/Assistant Engineer/Junior Engineer and equivalent are required to pass the departmental examination within 2 years from the date of promotion/joining the department for earning the 2nd increment. Exemption from passing the departmental examination will be considered on case to case basis. Exemption will be granted by Spl. DG(HQ), CPWD subject to the officers fulfilling the following conditions :

(i) The officer should have reached the age of 57 years.

(ii) He should have good records of service.

(iii) The officers who have not passed Departmental Account Exam will not be considered for the field posting.

(iv) The officers who are granted exemption from passing Departmental Account Exam will be eligible for next increment only with effect from the date from which exemption has been formally granted. However, the concerned officers will not be eligible for either notional or actual financial benefit from the back date on which they had attained the prescribed age of 57 years, if they do not apply in time.

The Executive Engineer /Assistant Engineer/Junior Engineer and equivalent are required to pass the Departmental Accounts Examination within 2 years from the date of promotion/joining the department for earning the 2nd increment. Exemption from passing the Departmental Accounts Examination will be considered on case to case basis. Exemption will be granted by Spl. DG(HQ), CPWD subject to the officers fulfilling the following conditions :-

(i) The officer should have reached the age of 57 years.

(ii) The officer should have good records of service.

(iii) The officer who has not passed Departmental Accounts Exam will not be considered for the field posting.

(iv) On such exemption being granted by the competent authority, all the withheld increments of the officer may be released w.e.f. date of such exemption, but withhold any arrears for the period prior to the date of exemption, subject to the retention of normal annual date of increment.

6. It is obvious from the above that exemption can be granted on case to case basis for which the essential condition is that the officer should have reached the age of 57 years, and should have good record of service. On such exemption being granted by the authority, the withheld increments of the officer may be relaxed with effect from the date of such exemption but, without any arrears for the period prior to the date of exemption, subject to the retention of normal date of increment. The exemption from passing the departmental accounts exam was sanctioned to the applicant on 30.08.2017 with effect from 06.07.2017 i.e., the date of his application. The applicant in his first exemption application and subsequent applications has requested for grant of exemption with effect from 31.12.2014, that is, when he attained the age of 57 years and was thus eligible for getting exemption. No reason has been assigned in any orders for not giving exemption with effect from the date when the applicant became eligible. It, therefore, does not appear to be an unreasonable expectation that if the applicant was found eligible, then, he could be granted the exemption from the date of his eligibility, unless there is some ruling or O.M to the contrary.

7. The DoP&T has issued a detailed O.M on 02.03.2016 which contains the instructions regarding recoveries to wrongful/excess payment made to Government servants. While referring to the judgment of Rafiq Masih (Supra), it states that wherever the waiver of recovery in the above mentioned situation is concerned, the same may be allowed with the express approval of Department of Expenditure in terms of O.M dated 06.02.2014.

8. As far as giving notice on recovery is concerned, no doubt, notice would be necessary but, the factum of excess payment was already in the knowledge of the applicant. The office order had already been issued after the audit objections regarding recovery on 04.07.2017 after which he gave exemption application on 06.07.2017. The provision of giving notice is on the ground of natural justice so that the person put on notice can know the reasons for recovery against him and can represent against the same. However, in this case, the reasons have already been communicated on 04.07.2017 after which the applicant took whatever remedial steps he could. Therefore, on account of non issuance of notice, there is no legal infirmity in the impugned order.

9. After considering all the aspects of the matter, I am of the view that when the competent authority has on 30.08.2017 granted exemption with effect from 06.07.2017, the date of his application for exemption, it is not clear as to why exemption could not be given from 31.12.2015, when the applicant became eligible for exemption as per the relevant O.M. It is, therefore, directed that the respondents may consider grant of exemption with effect from the date of eligibility of the applicant as requested by him, unless there is some rule or O.M.

specifically prohibiting the same, and pass reasoned and speaking order within three months from the date of receipt of a certified copy of this order.

10. No recovery shall be done on account of payments found to be duly made on the basis of exemption orders so passed. Orders dated 28.12.2017 and 10.08.2018 are partly set aside as far as recovery from the applicant is concerned. The respondents are, however, at liberty to proceed against erring officials.

11. With the above direction, the O.A is partly allowed. There shall be no order as to costs.