

GURBAX SINGH
2018.11.29 11:53

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 28005 of 2018 (O&M)
Date of decision: 31.10.2018**

Union of India and others

.....Petitioners

Vs.

Ashu Kumar and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. Namit Kumar Senior Panel Counsel for the petitioner.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226 and 227 of the Constitution of India is to set aside the order dated 03.04.2018, Annexure A.4, passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, (in short, "the Tribunal"), whereby the original application filed by respondent No.1-Ashu Kumar has been allowed with a direction to release the recovered amount of ₹ 76,355/- to him, being erroneous, perverse, against the facts on record and law on the subject. Further prayer has been made for staying the operation of the impugned order dated 03.04.2018, Annexure A.4, during the pendency of the present writ petition.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. Respondent No.1 was initially

appointed as Stenographer on 29.08.1991 in the petitioner-Department. He was posted at various places. He was granted Ist ACP in the pay scale of ₹ 5500-9000/- vide order dated 01.05.2006 in terms of policy dated 09.08.1999 which was subsequently revised to PB-2 Pay Band ₹ 9300-34800/- with grade pay of ₹ 4600/- on implementation of 6th Central Pay Commission. Thereafter, he was promoted as Personal Assistant vide order dated 20.09.2012. He was granted second MACP w.e.f. 29.08.2011 in PB-2 Pay Band ₹ 9300-34800/- with grade pay of ₹ 4800/- vide order dated 15.03.2011. Respondent No.1 was sent on deputation on 27.12.2012, Annexure A.3, to Bureau of Immigration, Lucknow. At the time of joining Bureau of Immigration, Lucknow, respondent No.1 had already been granted MACP w.e.f 29.08.2011 in PB-2 Pay Band ₹ 9300-34800/- with grade pay of ₹ 4800/-. As such, the Personal Assistant who was already MACP holder at the time of deputation was not eligible for Deputation Allowance but due to clerical mistake he was sanctioned the said allowance vide order No. 102/LKW/2013. The mistake was inadvertent which was rectified as soon as the facts came to notice. Memo dated 31.07.2015, Annexure A.1 was issued to respondent No.1 for recovery of over payment of deputation allowance which was inadvertently sanctioned to him vide order dated 29.01.2013, Annexure A.4. Respondent No.1 was drawing higher pay in PB-2 Pay Band ₹ 9300-34800/- with grade pay of ₹ 4800/--whereas the scale of pay of the Ex-cadre post was in PB-2 Pay Band ₹ 9300-34800/- with grade pay of ₹ 4600/-. Against the above recovery, respondent No.1 had submitted his representation, dated 03.08.2015, Annexure A.6. The position was explained to respondent No.1 vide communication dated 17.12.2015. Respondent No.1 filed original application No.732/17 before the Tribunal, challenging the order of recovery of ₹ 76,355/-. The petitioners filed a detailed written statement before the Tribunal. Respondent No.1 filed replication. Vide order dated 03.04.2018,

the original application filed by respondent No.1 was allowed and the impugned order of recovery was quashed. Direction was issued to release the recovered amount of ₹ 76,355/- to respondent No.1. Hence the instant writ petition by the petitioners before this Court.

3. We have heard learned counsel for the petitioners.

4. The issue was examined by the Tribunal after examining the relevant instructions. The question before the Tribunal was whether respondent No.1 who was sent on deputation was entitled for deputation allowance or not? As per clause 4 of Office Memorandum dated 17.06.2010 issued by the DOPT under the heading of Exercise of option, an employee appointed on deputation had to give an option that whether he will draw the same pay which he was getting in his parent department or he will get the basic scale in his parent department. It was not in dispute that respondent No.1 had given his option to get the salary on the same pay scale, which he was getting in his parent department. It has been categorically recorded by the Tribunal that there was no request by respondent No.1 to send him on deputation. Rather while accepting deputation, he had exercised his option in terms of clause 4 of office memorandum dated 17.06.2010 that he will continue to get pay at the rate which he was getting in his parent department. While accepting his request, the petitioners had allowed him 10% deputation allowance vide order dated 29.01.2013. Consequently, the impugned order of recovery was held to be bad in law and contrary to the relevant instructions and the same was set aside. Accordingly, direction was given to the petitioners to release a sum of ₹ 76,355/- recovered from respondent No.1. The relevant observations recorded by the Tribunal read thus:-

“7. The moot question that arises for consideration is whether the applicant who was sent on deputation is entitled for deputation allowance or not?

8. As per clause 4 of O.M. dated 17.6.2010 issued by the DoPT under the heading of Exercise of Option, an employee appointed on deputation has to give option, that whether he will draw the same pay which he is getting in his parent department or he will get the basic scale which is attached to foreign post. It is not in dispute that the applicant has given his option to get the salary on the same pay scale, which he was getting in his parent department. Para 4 of said O.M. is reproduced below for ready reference:-

“4.1 An employee appointed on deputation/foreign service, may elect to draw either the pay in the scale of pay of deputation/foreign service post or his/her basic pay in the parent cadre plus deputation (duty) allowance thereon plus personal pay, if any. However, in case of Government employees on deputation/foreign service to CPSEs, this option will not be allowed and their pay will be governed in terms of the orders issued by Department of Public Enterprises vide OM dated 26.11.2008 and clarifications issued thereafter.”

9. It is borne out from the pleadings that there was no request by the applicant to send him on deputation. Rather while accepting deputation, he has exercised his option in terms of clause 4 of O.M. dated 17.06.2010 that he will continue to get pay at the rate which he is getting in his parent department. While accepting his request/option respondents have also allowed him 10% deputation allowance vide order dated 29.1.2013.

10. Therefore, the impugned orders are bad in law and contrary to clear instructions as noted above, therefore, the same are quashed and set aside. The respondents are directed to release a sum of ₹ 76,355/- being illegally recovered from the applicant. The O.A. is disposed of accordingly. M.A. 60/975/2017 also stands disposed of.”

5. The findings recorded by the Tribunal have not been shown to be illegal or perverse by the learned counsel for the petitioners warranting

interference by this Court in writ jurisdiction under Articles 226/227 of the Constitution of India. Further, nothing has been shown by the learned counsel for the petitioners to substantiate their claim made in the writ petition. Consequently, finding no merit in the petition the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

October 31, 2018
‘gs’

(Manjari Nehru Kaul)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No