

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1378 of 2002

New Delhi, this the 25th day of July, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (JUDG.)

HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Shri K.K. Khanna

S/o Late Shri R.K. Khanna

R/o C-299, Vikas Puri,

New Delhi-110 018.

Director (Communications)

Director of Preventive Operations,

Customs and Central Excise,

Shopping Centre, 7th Street,

Shanti Niketan,

New Delhi-21.

.....Applicant

By Advocate: Shri S.C. Bhasin.

Versus

1. Union of India
Through Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.

2. Chairman,
Central Board of Excise and Customs,
North Block,
New Delhi.

3. Commissioner of Preventive Operations,
Directorate of Preventive Operations
Customs and Central Excise,
4th Floor, Lok Nayak Bhavan, Khan Market,
New Delhi-110 001. . Respondents

By Advocate: Shri R.R. Bharti.

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judg.)

In this OA the applicant has impugned an order dated 13.5.2002 vide which his pay has been reduced on the ground that the applicant had assumed charge of the post of Director, Communications on 30.7.99 though with reference to the Department of Revenue letter dated 29.7.99, but the said letter has been rescinded and the excess payment made to applicant consequent upon fixation



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2. of his pay in the higher pay scale of Rs.18400-500-22400 was ordered to be recovered from his pay and allowances.

2. The applicant has taken various grounds to challenge the same. However, one of the grounds argued before us was that the pay of the applicant has been reduced without granting any opportunity to show cause. Thus his pay has been reduced without following the principles of natural justice.

3. The facts leading to the grant of pay to the applicant are that the applicant was at the relevant time was working as Joint Director, Communication and after the recommendations of the 5th Pay Commission the post of Joint Director according to the applicant was redesignated as Director, Communications in the pay scale of Rs.18400-222400. The applicant has also annexed Annexure-D, a notification of the Ministry of Finance, Department of Revenue dated 15.9.99 which was issued to that effect. Consequent thereupon, the applicant had assumed the charge of the post of Director (Communications) and his pay was fixed in the pay scale of Rs.18400-22400 so the applicant alleges that his pay cannot be reduced at all.

4. As against this, the respondents who are contesting the OA submitted that the cadre of the Telecommunication Wing comes under the Customs and Central Excise Department in the Ministry of Finance was restructured and the post of Director (Communications) was created in the pay scale of Rs.18400-224000. Any

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apointment to the post of Director could be made only after holding of the DPC and as such the Joint Director could be promoted only after DPC was held and straightaway he could not have been allowed to assume the charge of the post of Director (Communications).

5. However, Shri Bharati appearing for the respondents conceded that before passing the impugned order of reduction of pay, no notice was served upon the applicant. Hence, before making any comments on the merits of the case whether DPC was required to fill up the post of Director, Communications or not and on going through the records we think that the OA can be allowed since no show cause notice has been served upon the applicant.

6. The applicant has also referred to a judgment reported in AIR 1994 SC 2480 entitled as Bhagwan Shukla Vs. U.O.I. & Others wherein it has been held as follows:-

" Constitution of India, Arts., 311, 14 - Government servant -Service conditions - Alteration - Validity - Basic pay reduced with retrospective effect - Employee not granted opportunity to show cause - There is flagrant violation of principles of natural justice - Order quashed.

Salary - Retrospective reduction of basic pay - Opportunity to show cause must be given".

7. On the same lines the applicant has also referred to another judgment reported in 1997 SCC (L&S) 1773 entitled as Narsingha Patra and Another Vs. State of Orissa and Others wherein it has been held as follows:-

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" Pay scale - Lowering of, after once enhancing - Principles of natural justice if applicable - III passed Matriculates, by order dated 11.6.1976, placed in the pay scale of Rs.300-410 - Subsequently by order dated 16.11.1977 the former order annulled and their original pay scale of Rs.240-315 restored - In such circumstance, representations submitted by such employees directed to be considered afresh after affording them an opportunity of being heard - Administrative Law - Natural justice - Hearing".

8. In this case also we find that the facts of the above referred cases are similar to the case of the applicant as the applicant having been posted to a higher post is being reduced to a lower rank and his pay is also reduced without issuing any show cause notice to him so the impugned order has to be quashed since it is violative of principles of natural justice.

9. Accordingly, we hereby quash the impugned order and direct the respondents that no recovery be made from the salary of the applicant. However, respondents should be at liberty to issue a fresh show cause notice and after affording him an opportunity, may pass a reasoned and speaking order. Thereafter, if any grievance survives, he will be at liberty to approach the Tribunal again, by filing fresh OA. No costs.

(S.A.T. RIZVI)
MEMBER (A)

(KULDIP SINGH)
MEMBER (JUD)

Rakesh