

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A.1379/2001

NEW DELHI THIS THE..16..DAY OF MAY 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Sh. J.L. Kaul, Grade - II (DASS)
(Voluntarily Retired)
R/o C-20 Model Town,
Delhi - 110009

.....Applicant

(By Shri Ashok Bhalla, Advocate)

VERSUS

1. Govt. of NCT Delhi
Through the Chief Secretary,
Indira Gandhi Indoor Stadium Complex,
Near ITO New Delhi
2. The Director of Education, Old Secretariat,
Delhi
3. Govt of India through its
Joint Secretary (UT)
Ministry of Home Affairs,
North Block, Delhi

.....Respondents

(By Shri George Paracken & R N Singh, Advocates)

O R D E R

Retrospective reduction in pension is assailed by the applicant in this O.A.

2. Heard S/Shri Ashok Bhalla and George Paracken and R N Singh for the applicant and the respondents respectively.

4. The applicant who had become Grade II (DASS) Head Clerk in the Directorate of Education, GNCT, Delhi, had on his promotion to the grade w.e.f. 30.5.97, in the scale of pay of Rs. 1400-2300/- fixed his pay at Rs.1760/- with the next increment to follow on 1.5.98. He was fixed in the pay scale of Rs. 5000-8000/- and drew his last pay in December

2000. He stood voluntarily retired w.e.f. 1.1.2001, and on 27.2.01, his LPC was issued showing his basic pay at Rs.5750/- and the total emoluments at Rs.10,233/-. However on 29.3.2001, he was informed that in terms of PAO's and Dy. Controller's letter 27.3.01 his pay was re-fixed on the scale of Rs. 4500-7000/- bringing down his basic pay on the date of his retirement to Rs.5625/-. His LPC was accordingly revised on 30.3.2001. Reduction of his pension after his retirement on the basis of the refixation was illegal and should not have been ordered. His retirement benefits should have been drawn on the basis of the last pay drawn by him in the scale of Rs. 5000-8000/- which was being drawn by similarly placed employees. Grounds raised in the OA are his entitlement to pension on the basis of last pay drawn in December 2000, impropriety in downward revision of the basic pay after retirement, illegality in respect of the order, delay in the sanction of the pension and the need to adhere to principles governing payment of pension. Dr. Uma Agarwal Vs State of UP & Anr. [1999 III AD (SC) 65] detailing a time frame for completing the procedure for timely release of pension is also relied upon by him.

4. The applicant's plea is hotly contested by the respondents. According to them the applicant had been fixed in the pay scale of Rs.5,000/- 8000/-, though his pre-revised scale stood at Rs.1400-2300 and the proper replacement scale for the same stood at Rs.4,500 - 7000/-. This had occurred as the 5th CPC had recommended the pay scale of Rs. 5,000 - 8,000/- to DASS Officers though in the relevant Govt's notification dated 30.9.99 no mention about these officiate was made. Hence, the direction in the letter dated 21.11.97 that the scale of Rs.5,000 - 8,000/- was being granted subject to an under-taking that

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overpayments if any, would have ^{to} be refunded. Therefore the applicant whose pay was fixed at Rs. ^{5,000} - 8,000/- was re-fixed at Rs. 4,500 - 7,000/- by order dated 29.3.2001. The applicant's pension was originally fixed, keeping his basic pay at Rs. 5,750/- , which he drew in December 2000, but with the re-fixation of his pay in lower scale of pay from Rs. 4,500 - 7,000/- his basic pay at the time of retirement got reduced , so did the retiral benefits. Naturally therefore, excess amount which was drawn, became a subject for recovery and the same cannot be assailed according to the respondent.

5. During the course of the proceeding, the applicant was permitted to amend the OA, by impleading the UOI also as a respondent, as fixation of pay fell in their domain. However, no counter affidavit was filed by the Union. Respondents 1 and 2, also ~~did~~ ^{had} not file their reply to the amended OA and ~~there~~ ^{had} forfeited the right for the same on account of their in-action.

6. During the oral submissions, Shri Ashok Bhalla, learned counsel appearing for the applicant, forcefully reiterated the points raised in the application. According to him the revised scale of pay of Rs. 5,000 - 8000/- granted to him, and the pension authorised in accordance with the same, should not have been reduced on a subsequent date and that too retrospectively. The applicant cannot be made to suffer on account of mistake committed by the respondent, he prays.

7. I have carefully considered the matter. ^{The} point for determination in this OA is the validity of the downward revision of the pay and consequently of pension of the

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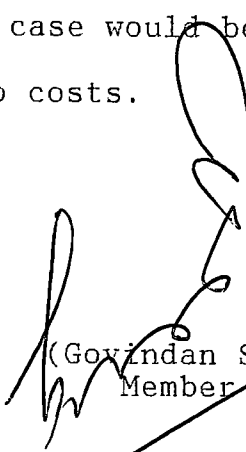
applicant, with retrospective effect promotion as Head Clerk in the pre-revised scale of Rs. 1400 - 2300/-, the normal replacement scale for Rs. 1400-2300/- on the adoption of the 5th CPC is Rs. 4,500/- - 7,000; he could only have been placed in that scale. However on account of some confusion which arose Grade II DASS had been recommended revised scale of Rs. 5,000 - 8,000/ and the post of Head Clerk was such a post, the said grade was allowed to the applicant. Only subsequently the Accounts branch observed that the pay scale of Rs.5000 - 8000/- does not find a place in Govt's notification dated 30.9.97. Steps were initiated to re-fix the scale in the correct replacement scale of Rs.4,500 - 7000/- . This exercise would have been avoided had the respondents been a bit more careful. The applicant having been placed in the higher pay scale of Rs.5,000/- - 8000/- and having been permitted to draw three increments in the said scale cannot be faulted in believing that the same was a correct scale. At the same time, the Govt. cannot afford to pay salary to any employee in a scale higher than the one which he is authorised to draw. Therefore the Govt's move to re-fix the pay and consequently the pensionary benefits will have to be upheld. At the same time the ~~recovery~~ of the amount already drawn by the employee in the higher scale cannot in fairness be ordered to recover. Thus while the re-fixation would have to be upheld, the recovery would have to be stopped.

8. In the above view of the matter, the OA fails in principle but gains marginally in effect. The impugned order of the respondent re-fixing the pay and pension of the applicant, placing him in the pay scale of Rs.4500 - 7000/- is upheld. The applicant would be entitled to draw his pension only in the revised scale of pay of Rs.4500 - 7000/-

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and at the stage of Rs.5,625/- . However, recovery of the differential, the amount of pay which he drew from 30.5.97 to 31.12.2000- is held as unauthorised. This benefit is being extended to the applicant only on account of fact that this extra amount has been drawn by him following the mistake committed by the respondents in which the applicant has no role to play and as the retrospective recovery in this case would be against the principles of natural justice. No costs.



(Govindan S. Tampi)
Member (A)

Patwal/