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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 762/2001

New Delhi, this 29th day of August, 2001

Hon'ble Shri M.P. Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

P.D. Sharma
1690, Delhi Administration Flats
Gulabi Bagh, Delhi-110 007 .. Applicant

(By Shri Milind P. Singh, Advocate)

versus

Govt. of NCT of Delhi, through
Registrar Cooperative Societies
Parliament Street, New Delhi .. Respondent

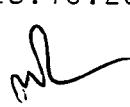
(By Shri Rajinder Pandita, Advocate)

ORDER

Shri M.P. Singh

The applicant is aggrieved by the order dated 5.3.2001 passed by the respondent whereby the pay of the applicant was refixed w.e.f. 2.4.1993.

2. The applicant who was working as Superintendent in the Sub-Regional Employment Office in the pay scale of Rs.1640-2900 was appointed to the ex-cadre post of FSO w.e.f. 14.09.1992 in the pay scale of Rs.2000-3200. Thereafter, he was appointed as Administrative Officer purely on ad hoc basis in G.B.Pant Hospital, New Delhi in the pay scale of Rs.2000-3500 on his promotion and he joined the post w.e.f. 2.4.93. He retired from service on superannuation on 31.12.2000. The grievance of the applicant is that without giving prior notice to him, the respondent recovered a sum of Rs.29492/- from his pay and allowances for the months of May, 2000 to December, 2000 on the ground of audit objection. Aggrieved by this, he made a representation against the deduction on 23.10.2000. Respondent rejected his

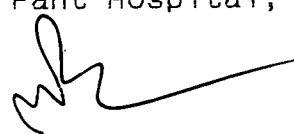


representation vide letter dated 30.11.2000.

Thereafter, applicant filed OA No.195/2001 which was disposed of at the admission stage on 25.01.2001 with the direction to the respondent "to review the matter and pass a speaking and reasoned order making a proper reference to the specific rule relied upon by them in reducing the pay of the applicant". In pursuance of these directions of the Tribunal, the respondent has passed the impugned order on 5.3.2001 rejecting the claim of the applicant.

3. The contention of the applicant is that recovery from his pay at such a belated stage, i.e. after seven years is not sustainable in law. For this, he has relied upon the law laid down in a catena of judgements. According to him, respondent has started making recovery which has put him in financial hardship during his service tenure and consequently after his superannuation without giving him an opportunity to advance his defence against such recovery and refixation of his pay. Respondent has thus violated the principle of natural justice. Aggrieved by this, he has filed this OA seeking relief by praying for direction to quash and set aside the impugned order dated 5.3.2001 and to restore the previous pay fixation order issued in April, 1993 and further direction to refund the amount already recovered from the pay and allowances of the applicant with 21% interest per annum thereon.

4. Respondent in his reply has stated that on his appointment as AO the pay of the applicant was fixed erroneously under FR 22(1)(a)(1) by the Deputy Medical Superintendent, GB Pant Hospital, taking into account



his pay as on 1.4.1993 of his ex-cadre post in the pay scale of Rs.2000-3200 and his pay was fixed at the stage of Rs.3050 in the pay scale of Rs.2000-3500, whereas it should have been fixed at the stage of Rs.2975 under FR 22(IV). This anomaly in the pay fixation was pointed out by the Audit Party No.10, Directorate of Audit, Govt. of NCT of Delhi during the audit of the department in December, 1999. The audit authorities directed the respondent to refix the pay of the applicant correctly and recover the over payment. The case of the applicant for refixation was examined and was put up to him being Dy. Registrar (Admn.) and the Head of Office on 31.01.2000, who kept the file with him for about two months and recorded his note to the effect that "if necessary Accounts Officer may kindly refix the pay as per rules". The pay of the applicant was thereafter refixed at the stage of Rs.2975 w.e.f. 02.04.1993 by order dated 10.05.2000. According to the respondent, the contention of the applicant not to make recovery of over payment at the belated stage is not sustainable in law. He has relied upon the decision of the Bombay Bench of the Tribunal in OA No.1091/1994 (A.K.Ravi Vs. UOI) decided on 13.10.95, in which it has been held that recovery of an over payment after a lapse of 7 to 8 years is not invalid. In view of the aforesaid submissions, the applicant is not entitled for any relief as prayed for and the OA may therefore be dismissed.

5. Heard the contentions of the rival contesting parties and perused the records.



6. During the course of the arguments, the learned counsel for the applicant has stated that the respondent has not issued any notice to the applicant before refixing his pay and making recovery from his salary. Respondent started making recovery without any prior notice. It was only after deductions had been made from his salary that the applicant came to know about this fact and immediately made representation which was rejected. He also submitted that no recovery can be made from the salary of the employee for the wrong committed by the administration. For this he has relied upon the judgement of the Jodhpur Bench of this Tribunal dated 23.11.95 in OA No.284/1994 (R.B.Saxena Vs. UOI & Ors.). He has also relied upon the judgement of the apex court in the case of Sahib Ram Vs. State of Haryana (1995 SCC (L&S) 248). In this case, decided on 19.9.1994, the Hon'ble Supreme Court has held that "It is not on account of any misrepresentation made by the appellant that the benefit of higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances, the amount paid till date may not be recovered from the appellant". Learned counsel for the applicant also relied upon the judgement of Hon'ble Apex Court of 22.11.1988 in the case of Bharat Petroleum Corporation Ltd. Vs. S.Sitaram & Ors. (1989) 1 SCC 765 in which the apex court has held that post decisional hearing is not substantial compliance with natural justice.

7. On the other hand the learned counsel for the respondent has stated that the pay of the applicant was fixed erroneously at the stage of Rs.3050/- It was



only after the audit party pointed out that his pay should not have been fixed under FR 22(I)(a)(1) with reference to his pay in the ex-cadre post, his pay was correctly refixed at the stage of Rs.2975/- instead of Rs.3050/-. He also drew our attention to the judgement of the Bombay Bench of the Tribunal in OA No.1091/94 (supra). In this case the Tribunal has held that recovery of over payment after a lapse of about 7 to 8 years is not invalid.

8. After hearing both the parties and perusing the records, we find that the pay of the applicant was fixed erroneously by the respondent and the applicant has not misrepresented the facts/rules for getting his pay fixed at the stage of Rs.3050/-. It was entirely due to the fault of the respondent and the individual should not suffer for the mistake of the administration, particularly when he has already retired from service.

9. In view of the legal position as set out in the judgement of the Hon'ble Supreme Court in the case of Sahib Ram and Bharat Petroleum Corporation Ltd. (supra), we set aside the impugned order dated 5.3.2001 and direct the respondent to refund the amount to the applicant already recovered from his pay and allowances, within a period of two months from the date of receipt of a copy of this order. The OA is partly allowed to this extent. There shall be no order as to costs.

S. Raju

(Shanker Raju)
Member(J)

M.P. Singh

(M.P. Singh)
Member(A)

/gtv/