

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 965/2001

New Delhi this the 7th day of March, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri M.P. Singh, Member (A)

A.K. Agarwal,
S/O Late Sri Jai Prakash,
G-1/80, Vikas Puri,
New Delhi-110018

.. Applicant

(Present in person)

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Union of India, through :

1. The Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan,
New Delhi-110001
2. Director,
Central Soil & Material Research
Station, Olof Palme Marg, Hauz Khas,
New Delhi.

.. Respondents

(By Advocate Shri K.R. Sachdeva)

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(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J))

The applicant is aggrieved by the Memorandum issued by the respondents dated 9.11.2000 and order dated 8.12.2000 whereby his basic pay fixed earlier at Rs. 600/- w.e.f. 21.1.1983 by order dated 16.6.1992 in the pay scale of Rs. 550-900, has been lowered to Rs. 575 + Rs. 5 (personal pay). The respondents have stated that the pay of the applicant had been erroneously fixed and accordingly the subsequent re-fixation of pay on the basis of revision of pay scale/promotion etc. was also wrong. They have stated that the

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applicant's pay is, therefore, proposed to be refixed (a) in the grade of Research Assistant (RA)(Sc.) in the pay scale of Rs.550-900 under FR 22 (a) (ii), and (b) on promotion to the grade of Assistant Research Officer(ARO)(Sc.) w.e.f.15.5.1987 under FR 22 (a) (i). The respondents have stated in the impugned order dated 9.11.2000, that on implementation of the recommendations of the Vth Central Pay Commission and financial upgradation w.e.f. 9.8.1999 under the Assured Career Progression (ACP) Scheme his pay has been refixed under FR 22(1)(a)(i). They have also stated that on account of such refixation of pay, an excess amount of Rs.39,001 as on 31.10.2000 paid to the applicant is proposed to be recovered from him at the rate of Rs.1000/- per month from his pay w.e.f. November, 2000.

2. The applicant is working as Research Officer (RO) with respondent No.2 i.e. the Central Soil and Materials Research Station (CSMRS), New Delhi under the Ministry of Water Resources/ respondent No.1. The applicant had earlier filed application (TA-136/1987) which was disposed of by Tribunal's order dated 18.7.1991. He then filed OA 1942/1993 which was disposed of by Tribunal's order dated 9.9.1997. Again he had filed OA 2320/1999 which was disposed of by Tribunal's order dated 7.9.2000, copies of these orders have been annexed by the applicant. In OA 2320/1999, he had impugned the order passed by the

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respondents dated 24.2.1999 by which over payments made to the applicant were ordered to be recovered. As this was not issued after giving a show cause notice to the applicant, the impugned order was quashed and set aside and respondents were given liberty to pass an order after giving a show cause notice to the applicant.

3. The applicant has been heard. He has submitted that in pursuance of the Tribunal's order in OA 1942/1993, the respondents have paid him arrears of pay by Office Order No.1186 dated 13.11.1997. The respondents then passed another order on 24.2.1999 lowering his pay by one increment since 23.1.1983, and recovery of Rs.39,000 was imposed which was stated to have been made as over payment of increments since 1983. That order was set aside in OA 2320/1999, on the ground that no show cause notice was issued. Thereafter, the respondents issued a show cause notice proposing to reduce his pay to which reply was given by letter dated 23.11.2000. The applicant has submitted that the respondents have not given reply to the points raised by him in his letter. One of the contentions raised by the applicant is that he cannot be blamed for any increment given to him since 1983 and that too after so many years, they cannot make recovery at Rs.1000/- per month. He has submitted that starting from December, 2000 till date, an amount of Rs.13,000 has already been recovered from him. He

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has submitted that his basic pay was Rs.580/- in the pay scale of Rs.425-500 as on 23.1.1983. He has, therefore, submitted that his basic pay at Rs.600/- in the pay scale of Rs.550-900 was correctly fixed but now it has been reduced to Rs.575 + 5 and the first year increment of Rs.20/- was granted, instead of Rs.25/-. He has submitted that his pay cannot be lowered in the higher pay scale and the original fixation of his pay was correct.

4. The respondents have stated in their reply that the applicant's pay has been erroneously fixed at the higher stage of Rs.600/ per month w.e.f. 21.1.1983 at the time of his absorption in CSMRS in 1992, by Office Order dated 16.6.1992. They have submitted that the mistake has been rectified by order dated 8.12.2000. They have submitted that the erroneous fixation of his pay has come to their notice only when some of the colleagues of the applicant, namely, S/Shri K.L.Kalra(RO), Y.Swami, S.N.DiXit and Smt.Kanta Kalia, AROs had represented for stepping up their pay at par with that of the applicant, as he was junior to them. These representations appear to have been made from 1997-1999 (Ann.R.IV to R-VII). On examination of the pay fixation orders of the concerned officers, the respondents have stated that they found that the pay of the applicant has been wrongly fixed at a higher stage from the date of his

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absorption in CSMRS on 16.6.1992, due to application of the provisions of FR 22 (a) (ii) in force at that time. Shri K.R.Sachdeva, learned counsel has submitted that the respondents can rectify the mistake at any time and accordingly make the recovery of excess payment from applicant's pay. He has relied on the judgement of the Supreme Court in V.Ganga Ram Vs.Regional Joint Director and Others (1996)(6)SCC 139; 1997 (SCC(L&S) 1652 and Tribunal's order in L.Narahari Vs. The Controller of Defence Accounts and Ors (SLJ 2001(3)CAT (Bangalore Bench)211.

6. We have carefully considered the pleadings and the submissions made by applicant and learned counsel for the respondents.

7. From the facts mentioned above, it is seen that the respondents have themselves admitted that they have wrongly fixed the pay of the applicant at a higher stage of Rs.600 as on 21.1.1983 in their Office Order dated 16.6.1992. Further, it is noticed that it has taken them nearly 8 years to discover the mistake, which they did only when other colleagues of the applicant who are senior had made representations to step up their pay at par with his pay. The applicant has stated that till Feb,2002, the respondents have already recovered Rs.13,000 from a total amount of Rs.39,000^{rs} which is the alleged over payment made to the applicant by the respondents from 1983 onwards.

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8. It is settled law that Government can rectify its mistake. In this case, ^{the} mistake is that of the respondents in fixation of applicant's pay under FR 22. The applicant has tried to submit that the fixation of his pay already done is correct. However, we note from the reply filed by the respondents that the pay of some of the senior officers to the applicant, for example, S/Shri S.L.Kalra, S.C.Jain and Smt.Kanta Kalia, who were also drawing Rs.580/- in the pay scale of Rs. 425-700 as on 21.1.1983, were fixed at Rs.575/-+ 5 (pp) in the pay scale of Rs.550-900 in terms of FR 22 (a) (ii). In the circumstances of the case, the claim of the applicant that his pay should ^{be} ~~have been~~ fixed at Rs.600/- in the pay scale of Rs.550-900, even though his senior colleagues who were similarly situated like him have been correctly given the pay of Rs.575 + 5 (pp) cannot be accepted. In the circumstances of the case, the re-fixation of the pay of the applicant to correct their past mistake, as proposed by the respondents in the impugned orders dated 9.11.2000 and 8.12.2000 cannot be faulted.

9. However, in the facts and circumstances of the case it is clear that the respondents have taken several years to discover their mistake and have also not cared to fix responsibility on the concerned officer(s) who initially fixed his pay erroneously in 1992 or on those who continued it for over 7 years, which on the face of it shows that they have not acted

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in accordance with the relevant law and rules. It is also not denied that an amount of Rs.13,000 i.e. about 1/3 of the over payment made to the applicant has already been recovered from him by the respondents from the date of passing of the impugned order in December, 2000 till Feb.,2002 at the rate of Rs.1000/- per month.

10. In Gangaram's case (supra) taking into account the fact that the Department had wrongly granted additional increments to the petitioner, it was directed that arrears paid prior to 1985 are not to be recovered and excess amount from 1985 is liable to be recovered from the pension payable to the appellant. Similarly, the Tribunal in Narahari's case (supra) held that the respondents shall not make any reduction in the pension or any other pensionary benefits. While, no doubt, the applicant in the present case is still in service and not retired as in the case of Narahari's case (supra), at the same time the question arises whether in the particular facts and circumstances of the case, the respondents ought to be allowed to deduct the over payments made to the applicant from 1983 onwards at this stage. There is no allegation whatsoever made by the respondents that the applicant had in any way claimed/ or was responsible for the wrong fixation of his pay from 1983 by Office Order issued in 1992. This clearly shows that some Officer(s) of the Department cannot

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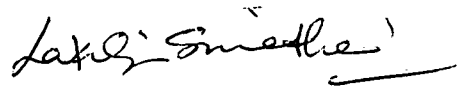
escape liability for their own action which is contrary to the rules, for which apparently the respondents have taken no action to fix responsibility. It is seen that after giving the applicant financial upgradation w.e.f. 19.8.1999 under the ACP Scheme, he has been given the pay scale of Rs.8000-13,500 The fact that the proposed recovery is of the accumulated amount paid to the applicant over a long number of years has also to be kept in view. In *Sahib Ram Vs. State of Haryana and others* (1995) SCC(L&S) 248), the Hon'ble Supreme Court has held that the revised pay scale has been paid to the appellant not on account of any misrepresentation made by him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. In the circumstances, the Apex Court has ordered that the amount paid till date may not be recovered from the appellant. In the facts and circumstances of the case, we respectfully follow the judgement of the Hon'ble Supreme Court in *Sahib Ram's* case (supra). This judgement has been followed by the Tribunal in *R.B.Saxena Vs. Union of India and Ors* (AISLJ 1996 (2) CAT (Jodhpur Bench) 142.(See also the judgement of the Tribunal in *P.S.Jain Vs. Union of India and Ors.* (AISLJ 1996 (3) CAT (PB) 223). Therefore, we consider that it would be appropriate for the respondents to recover the balance of over- payments made to the applicant by fixing responsibility on the concerned erring Officer(s) who were responsible and make recoveries from them in accordance with law and not from the applicant who was not at fault.

11. In the result for the reasons given above, the OA partly succeeds to the following extent:-

The impugned Memo.dated 9.11.2000 and the order dated 8.12.2000, relating to the proposed recovery of over- payments made to the applicant are quashed and set aside prospectively i.e. from Feb.,2002 subject to the observation made in Para 10. In the circumstances of the case, there shall be no order to refund the amount of Rs.13,000/- to the applicant already recovered till that date..

No order as to costs.


(M.P.Singh)
Member (A)


(Smt.Lakshmi Swamianthan)
Vice Chairman (J)

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