

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2283/99

0 New Delhi, this 5th day of May, 2000

Hon'ble Shri Justice V.Rajagopal Reddy, VC(J)  
Hon'ble Smt. Shanta Shastry, Member(A)

A.K. Jaisry  
12-D/DA Block  
Hari Nagar, New Delhi-64 .. Applicant

(By Shri S.P.Sharma, Advocate)

versus

Union of India, through .

1. Secretary  
Ministry of Urban Affairs & Employment  
Nirman Bhavan, New Delhi
2. Director General of Works  
CPWD, Nirman Bhavan, New Delhi
3. Executive Engineer  
J Division, CPWD  
RK Puram, New Delhi .. Respondents

(By Shri R.V.Sinha, Advocate)

ORDER

Hon'ble Smt. Shanta Shastry

The applicant has impugned the order dated 26.6.99 by which recovery of the amount of Rs.19,023 has been ordered declaring the earlier pay fixation from 1.2.86 to 31.12.98 as wrongly made.

2. The applicant is a Junior Engineer in the Office of the Executive Engineer, J Division, CPWD, New Delhi. He was in the pay scale of Rs.425-700 when he joined as JE on 2.3.77. The pay scale was revised with effect from 1.1.86, as per the recommendations of the 4th Central Pay Commission. The Government of India had taken a decision vide their order dated 22.3.91 that there would be two scales of pay for JE/Section Officers in the CPWD namely Rs.1400-2300 and Rs.1640-2900. The entry grade

(9)

would be Rs.1400-2300. On completion of 5 years service in the entry grade, JE is to be placed in the pay scale of Rs.1640-2900 subject to the rejection of unfit. Applicant had already put in 5 years service as JE in the entry grade i.e. Rs.1400-2300 and he was granted the scale of Rs.1640-2900 as on 1.1.86 and his pay was fixed in that scale. While so fixing his pay, the date of increment was taken as 22.3.86 as this happened to be his date of increment in the old scale and all future increments were paid to the applicant accordingly. Now in 1999, the audit party which carried out inspection of the 'J' Division of CPWD found that the pay fixation was wrongly done as the increment was to be taken into account from 1.1.87 after completion of one year service in the scale of Rs.1640-2900 and not from 22.3.86. Accordingly recovery of the excess payment made was ordered in instalments of Rs.500 per month. The applicant was informed accordingly on 27.6.99 that one instalment has already been deducted for the month of September, 1999. Applicant represented against the same several times however to no effect. He has therefore filed the present OA seeking to refix his salary according to the date of increment in the old scale and to refund to him deduction made from the salary towards recovery with interest.

3. It is the contention of the applicant that it was wrongful on the part of the respondents to order recovery on account of the excess payment made due to wrong pay fixation after several years had passed. According to him, his pay fixation which was done

initially on the basis of allowing increments in the new scale on the date of increment due in the old scale was correctly done. He has cited the judgement of the Hon'ble Supreme Court and the decisions of this Tribunal on the same issue.

4. None was present on behalf of the respondents even on second call. It is seen from the counter reply of the respondents that regulation of increment in pay fixation/placement in the higher scale is done as per statutory provisions under Rule FR 22(i)(a)(2). The specific point regarding grant of increment after fixation of pay as on 1.1.86 in the higher scale of Rs.1640-2900 was clarified vide DG(W)'s OM dated 20.11.91. This clarification was based on the instructions of DoPT in their OM dated 22.5.89. According to this when a government servant is appointed from one post to another where the appointment to the new post does not involve assumption of duties and responsibilities of greater importance than those attached to the old post, he will draw initial pay in the stage of the time scale of the new post which is equal to his pay in respect of the old post, or if there is no such stage, the stage next above his pay, in respect of the old post. While in the former case, his next increment will become due on the date he would have received an increment in the old post, in the latter case his next increment in the new post will become due on completion of the required period in which an increment is earned.

*h*

(11)

5. Initially it was made clear in the letter dated 22.3.91 of the Ministry of Urban Development that the higher scale of Rs.1640-2900 will be available to JEs on completion of 5 years service subject to rejection of unfit. However, this will not be treated as promotion grade but will be non-functional with no change in the duties and responsibilities. This being the position, the applicant could not have been given increment w.e.f. 1.3.86 as was allowed to him while fixing his pay initially. When the same was detected by the audit, it was rectified by refixing his pay at the minimum of the scale of Rs.1640-2900 with the next of date of increment on 1.1.87 raising his pay to Rs.1700 and it resulted in the recovery of Rs.19,289/-.

6. Respondents have also further submitted that the judgements referred to by the applicant have no universal application. Besides Government of India, DoPT have not amended the relevant rules in the light of the judgements and therefore the existing rules have been applied in the case of the applicant.

7. We have heard the learned counsel for the applicant and perused the pleadings. At the outset, we find this issue has already been decided by the Hon'ble Supreme Court and by this Tribunal. It has been clearly held in the judgement in the case of C.B. Prasad Vs. UOI in Civil Appeal No.6717/95 dated 18.3.99 that when there has been revision of scale, applicants would be entitled to next increment on the normal date of increment in the

(P)

lower scale and not on the completion of 12 months of service in the revised scale. In this judgement, the Hon'ble Supreme Court also made it clear that officers similarly placed as the appellant could be entitled to get increment in the new scale of the pay due in the old scale. The appellants in the CA decided by the Hon'ble Supreme Court were also working as JEs in Public Works Department of Delhi Adminn. Applicant's case is identical to the one decided by the Hon'ble Supreme Court. Recently we have also decided an identical matter in OA No.2400/96 on 20.4.2000 allowing the OA and to extend the benefit of date of next increment in the old scale after the pay fixation in the new scale with effect from 1.1.86. Applicant's case is squarely covered by the judgement of the Supreme Court (supra) as well as OA 2400/96.

8. This OA is therefore allowed and the impugned order dated 26.6.99 is set aside. Respondents are directed to restore the original pay fixation done prior to the impugned order and to refund the amount already deducted from the salary of the applicant but without any interest.

9. There shall be no order as to costs.

*Shanta S*  
(Smt. Shanta Shastry)  
Member(A)

*V.Rajagopal Reddy*  
(V.Rajagopal Reddy)  
Vice-Chairman(J)

/gtv/