

Central Administrative Tribunal, Principal Bench

Original Application No. 1559 of 1998

New Delhi, this the 11th day of February, 2000

Hon'ble Mr.Justice V.Rajagopala Reddy, Vice Chairman(J)
Hon'ble Mr.R.K.Ahooja, Member (Admnv)

Shri Loka Ram Thakur, S/o Shri Gokala Chand,
Junior Engineer (Civil), 'C' Division,
C.P.W.D., I.P.Bhawan, New Delhi - Applicant

(By Advocate - Shri B.S.Mainee)

Versus

Union of India : Through

1. The Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi.
2. The Director General of Works, C.P.W.D., Nirman Bhawan, New Delhi.
3. The Chief Engineer (Civil), N.D.Z.-II, C.P.W.D., Nirman Bhawan, New Delhi.
4. The Superintending Engineer (Civil), Delhi Central Circle No.I, C.P.W.D., I.P.Bhawan, New Delhi.
5. The Executive Engineer, 'C' Division, C.P.W.D., I.P.Bhawan, New Delhi. - Respondents

(By Advocate Shri Rajinder Nischal)

O R D E R (Oral)

By Reddy, J.-

The applicant was appointed as Junior Engineer in the grade of Rs.425-700 in the CPWD on 29.10.1979. On 1.1.1986 the applicant's pay was fixed at Rs.1560/- in accordance with the revised pay scale as per the Fourth Pay Commission's report. In the year 1991 a circular was issued in terms of which all Junior Engineers who had completed five years of service were to be placed in the higher scale of Rs.1640-2900 from the date of completion of five years of service or from 1.1.1986 whichever is later. Accordingly the applicant was placed in the scale of Rs.1640-2900 on 1.1.1986. The grievance of the applicant is that his next increment which fell on 1.10.1986 as per his normal date

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of increment due in the lower scale was not granted to him. It is the specific case of the applicant that the pay of his junior Shri A.K.Sharma who was appointed on 22.3.1980, on promotion was fixed at Rs.7700/- as on 1.3.1987 whereas on promotion the applicant was placed in the grade of Rs.1640-2900 with effect from 1.1.1986 and was granted the increment only from 1.1.1987 instead of 1.10.1986. The applicant's pay was fixed at Rs.7500/- as on 1.4.1987 whereas the pay of Shri A.K.Sharma has been fixed at Rs.7700/- w.e.f. 1.3.1987.

2. The grievance of the applicant was that his pay should be stepped up as per FR 22-C equal to the pay of his junior. The applicant submits that he had submitted a representation on 5.12.1997 for stepping up of his pay. After the said representation the case of the applicant was considered and his pay was stepped up equal to the pay of Shri A.K.Sharma vide order dated 3.2.1998. However, subsequently, by an order dated 2.3.1998, the said order dated 3.2.1998 was cancelled and it was stated that the pay of the applicant as fixed earlier would continue. The grievance of the applicant in the present OA is that without issuing notice the benefit given to him has been withdrawn and that his pay should have been stepped up at par with the pay of his junior Shri A.K.Sharma.

3. The case of the respondents is that as the pay of Mr.A.K.Sharma was initially wrongly fixed it was subsequently revised to set right the mistake and hence the applicant can no longer complain that his pay was less than Shri A.K.Sharma. They also submit that no notice is required to be served upon the applicant as



the respondents had withdrawn the order dated 3.2.1998 before it was implemented.

4. We have given our careful consideration to the arguments advanced on behalf of both the sides.

5. The main grievance of the applicant in the OA is that his junior Shri A.K.Sharma was getting higher pay and that his pay should also have been stepped up equal to the pay of his junior. It is evident that after considering the representation made by the applicant the pay of the applicant has been stepped up at par with the pay of his junior Shri A.K.Sharma. Subsequently, it was found that the pay of Shri A.K.Sharma itself was wrongly fixed and hence by the impugned order the pay of the applicant and that of Shri A.K.Sharma have been again revised and properly fixed.

6. The learned counsel for the applicant, however, seeks to advance an argument that he is entitled for the increment as on 1.10.1986 as he was getting increment, before the pay was revised, on 1.10.1985 but his increment was given only on 1.4.1987. He, therefore, seeks to submit that he was entitled, as per the pay fixation rules, that his increment was not properly fixed; and consequently his pay was also not fixed properly. But, it is not the case of the applicant in the pleadings that his increment was delayed and that there is violation of the relevant rules. No ground, therefore was taken by him in the OA. The relief claimed by him was to step up his pay. Hence the respondents did not have an occasion to answer this plea in their counter. The applicant seeks to raise these objections in the rejoinder. The claim of the applicant should be found in the OA itself and not in



the rejoinder. We do not, therefore, permit to put up a new case based on the rejoinder.

7. As regards the contention that a notice was not served before cancellation of the order dated 3.2.98, it is seen that by order dated 3.2.1998 the applicant's pay had been fixed at par with his junior but it has been withdrawn by the impugned order dated 2.3.98. We are, however, of the view that the applicant is not prejudiced by the cancellation of the order since his pay was wrongly fixed and the same has been set right by the impugned order very shortly thereafter.

8. The learned counsel for the applicant relies upon a decision in the case of Bhagwan Shukla Vs. Union of India, 1995 (2) SLJ 30. In that case the basic pay of the appellant was fixed at Rs.190/-. By the impugned order his pay was sought to be revised by reducing his pay to Rs.181/- per month from Rs.190/-. It was the case of the respondents therein that due to administrative lapses his pay which was wrongly fixed initially has been rectified. The Supreme Court held that as the appellant was visited with civil consequences, he ought to have been given a notice to show cause against reduction of his basic pay. In that case, it has to be noticed that as early as in 1970 his basic pay was fixed which was continued till 1991 and only thereafter the mistake was found and rectified. In the circumstances the Court held that a notice ought to have been given to the appellant. In the present case the applicant was granted the higher pay by an order dated 3.2.1998 and the same was withdrawn by the order dated 2.3.1998 i.e. hardly within one month. It is also stated by the learned counsel for the respondents

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that the order dated 3.2.1998 has not been implemented so that the applicant did not suffer any prejudice. Hence, the decision in the case of Bhagwan Shukla is not applicable to the present case. In Calcutta Municipal Corporation and another vs. Sujit Baran Mukherjee and others, (1997) 11 SCC 463 it was contended that the withdrawal of monetary benefit was without notice and, therefore, it was violative of principle of natural justice. In this case also it was found that no amount was in fact withdrawn from the employee pursuant to the order passed and what all that they have done was to have revised the pay scales after realising the mistake on that ground the contention was rejected. In the present case also as stated by the respondents the order of stepping up of pay dated 3.2.1998 has not been implemented when the impugned order was passed after realising the mistake thus the applicant cannot be said to have been visited with any civil consequences.

9. It is, however, pointed out by the learned counsel for the applicant that the pay of Shri A.K.Sharma, has not been withdrawn. The learned counsel for the respondents submits that he is not aware of the same but he submits that a decision was taken that the pay of Shri A.K.Sharma was wrongly fixed and it has to be withdrawn. We are of the view that the applicant is entitled to have his pay stepped up equal to that of his junior.

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10. In the circumstances we direct the respondents to fix the pay of the applicant equal to the pay of Shri A.K.Sharma and in no event at no time it should be less than Shri A.K.Sharma. The O.A. is disposed of. No costs.

R.K. Ahooja
(R.K. Ahooja)

Member (Admnv)

rkv

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice Chairman (J)