

Central Administrative Tribunal
Principal Bench

O.A. No. 1865/98

New Delhi this the 28th day of January, 2000. (3)

Hon'ble Mr. Justice V. Rajagopala Reddy, V.C. (J)
Hon'ble Mrs. Shnata Shastry, Member (Admnv)

Smt. Prabha Devi,
widow of late Sh. R.P.S. Chaudhary,
R/o Radio Colony,
Shamshabad Road, Agra (U.P.) ...Applicant

(By Advocate Shri D.N. Sharma)

-Versus-

1. The Secretary to the Govt. of India, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi.
2. The Director General, Doordarshan, Mandi House, Compernicus Marg, New Delhi.
3. The Pay & Accounts Officer, Doordarshan, "Soochna Bhawan", CGO Complex, Lodhi Road, New Delhi.
4. The Station Engineer, Doordarshan Kendra, Shamshabad Road, Agra (UP).
5. Sh. Rakesh Sharma, Asstt. Engineer, (Engineering Branch), (Tape Recording Branch), Directorate General, All India Radio, Akashvani Bhawan, New Delhi. ...Respondents

(By Advocate Shri R.P. Aggarwal)

O R D E R

By Reddy, J.:-

The applicant is a widow of late Shri Raj Pal Singh Chaudhary who was holding the post of Senior Engineering Assistant at Doordarshan. He died on 6.9.86. After the death of her husband, the applicant was sanctioned family pension on the basis of pay drawn by the deceased on the date of his death.

C.R.P.

(A)

2. In view of an order of the Supreme Court, the pay scales to the post of Engineering Assistant in All India Radio and Doordarshan were revised w.e.f. 1.1.1978/1.1.1986, by order dated 3.8.95, in the following manner:-

Designation of the post.	Old Pay Scale	Revised Pay Scale	Effective from
Engineering Asstt.	Rs. 425-15-500- EB-15-560- 20-640-EB- 20-700-25- 750.	Rs. 550-25- 750-EB- 30-900	1.1.1978
Engineering Asstt.	Rs. 1400-40-1600- -50-2300-EB- 60-2600.	Rs. 2000-60- 2300-EB- 75-3200.	1.1.1986
Sr. Engineering Assistant	Rs. 1640-60- 2600-EB-75- 2900	Rs. 2000-60- 2300-EB- 75-3200	1.1.1986

3. The benefit of the revision of pay scales in the grade of Engineering Assistant was also extended to those employees who were retired/expired. The applicant's husband also got the benefit of the revised pay scale. His pay scale ^{was} fixed at Rs. 2450/- in the revised pay scale of Rs. 2000-3200 as on the date of his death on 6.9.86 in the Office Memo dated 10.5.96. Copy is exhibited at Annexure A-4.

4. However, by the impugned order dated 26.8.96/15.10.96 the revision of the pay scales has been withdrawn to the applicant's husband and the pay has been fixed at Rs. 2,174/- which was earlier at Rs. 2,450/-. Copy of the revised Fixation of the impugned Memo is exhibit at Annexure A-5.

5. It is the grievance of the applicant that the impugned order is illegal as it was passed without issuing any notice to the applicant and that the fixation of pay was contrary to the FR-22 (I) (a) (i).

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15

In fact, it is contended that his pay was correctly fixed as per the above rules at Rs. 2450/- and there was no reason to slash it down at Rs. 2,174/-.

6. The case of the respondents, however, is that the pay was wrongly fixed at Rs. 2450/- and the present fixation of pay at Rs. 2174/- is in accordance with the rules. As the applicant's husband not a party in the case of Shri Raj Kumar Sharma & Others Vs. Union of India and others, he was not entitled for the higher pay scale of Rs. 2000-3200 w.e.f. 1.1.86 in the post of Senior Engineering Assistant. He was only entitled for replacement scale fixed by the 5th Pay Commission in the pay scale of Rs. 1640-2900 w.e.f. 1.1.86. It is pointed out that as the pay scale of the applicant's husband in the promoted post of Senior Engineering Assistant being neither identical nor higher than that was drawn by him. F.R. 22 (1) (a) (i) has no application. As he was given, by mistake, a higher pay, it was correctly fixed, by the impugned order.

7. We have given careful consideration to the arguments advanced on either side. We are of the view that the plea raised by the applicant, of want of notice has considerable force. It is not in dispute that the pay of the applicant's husband was originally fixed at Rs. 2550/- permonth and it has now been re-fixed at Rs. 2174/- by the impugned order dated 15.10.96. It is not in dispute that the applicant's husband was receiving the family pension and that it depends upon the pay that her husband draws. It, therefore, follows that the re-fixation of the pay had

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(16)

direct effect on the quantum of the family pension that the applicant gets. It can, therefore, be said that the applicant is an affected party. It is also not in dispute that the respondents have not issued any notice to the applicant before passing the impugned order. Whatever may be the justification or illegality of the impugned order for re-fixing the pay, which we are not considering in this case, the issuance of the impugned order without notice to the applicant appears to be contrary to the principles of natural justice. The contention that notice could not be given as the employee was no more, cannot be accepted. As the applicant is the affected party as he would be drawing family pension as a direct consequence of the refixation of pay, she is entitled for notice.

8. In the circumstances, we are of the view that the impugned order is bad for want of notice. The OA therefore, succeeds. The impugned order of re-fixation of pay is quashed. It is open to the respondents to take action after issuing proper notice to the applicant and after affording opportunity for the applicant to make her representation against the notice and pass the orders as per law.

9. The OA is accordingly allowed. No costs.

Shanta Shastray

(Mrs. Shanta Shastray)
Member (A)

Antony Landry

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

cc.