

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2090/98

(21)

New Delhi, this 24th day of April, 2000

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

M.N.Tiwari
Flat No.2, Type IV, Police Colony
Shalimarbagh, New Delhi-52 .. Applicant

(By Shri A.K. Behera, Advocate)

versus

1. Lt. Governor
Govt. of NCT of Delhi
Raj Niwas, Raipur Road, Delhi
2. Chief Secretary
Govt. of NCT of Delhi
5, Shamnath Marg, Delhi
3. Principal Secretary
Govt. of NCT of Delhi
5, Shamnath Marg, Delhi
4. Commissioner of Police
Police Hqrs., IP Extn. New Delhi .. Respondents

(By Shri Vijay Pandita, Advocate for R-1 to R-3
Shri Ajay Gupta, Advocate for R-4)

ORDER

Hon'ble Smt. Shanta Shastry

The applicant is an Assistant Commissioner of Police (ACP, for short) posted with 1st Battalion of Delhi Armed Police. In pursuance to the recommendations of Fifth Central Pay Commission (FCPC, for short), R-2 issued orders on 15.9.98 for implementation of the said recommendations in respect of officers of DANICS and DANIPS. The orders were issued after approval of R-1 in anticipation of the approval of Government of India (GoI, for short). The orders also stipulated that the officers being paid their higher salary, if any, resulting from pay fixation according to the said orders would furnish an undertaking that they would refund the

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extra amount paid in case GoI does not eventually accept the recommendations of the FCPC. In pursuance of the said orders, pay of the applicant was revised and refixed at Rs.8275 p.m. from 1.1.86 vide orders dated 23.9.98. Applicant also submitted an undertaking for refund of arrears in case GoI did not agree to the recommendations vide his letter dated 1.9.98. Applicant received salary for the month of September, 1998 as per the revised pay. Thereafter it was informed vide order dated 30.9.98 that the pay of ACPs may not be drawn in the revised scale till further communication. The amount of additional pay paid to the applicant for September, 1998 due to revised pay was refunded by the Accounts Officer of R-3 and R-4 on 8.10.98 accordingly and was deposited in the Treasury and the excess payment was ordered to be recovered from the salary of the applicant for the month of October, 1998. Applicant represented against the same on 7.10.98 and 8.10.98 but without any success.

2. It is the case of the applicant that while ordering recovery of the excess payment on account of revision of pay he was not given any notice nor was his consent taken. According to him, since the recommendations have been accepted by R-1 and R-2, the recovery is arbitrary and against the principles of natural justice. He has therefore challenged the impugned order dated 30.9.98 and prayed for setting aside this order as well as the last line of the impugned order dated 23.9.98 regarding design of format of undertaking. He has also sought

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directions to the respondents to implement their orders dated 15.9.98 in toto, including payment of arrears of salary and allowances on the basis of the said orders from 1.1.96 as already circulated.

3. As an interim measure, respondents were restrained by this Tribunal vide its order dated 30.10.98 from making payment of salary at a rate lesser than what the applicant had got in pursuance of the pay fixation done on 23.9.98 by the order as at Annexure A-4.

4. The respondents have submitted in their counter reply that the Govt. of NCT vide their Cabinet decision No.357 dated 10.9.98 ordered to implement the revised scales of pay in respect of DANICS and DANIPS officers with the approval of the Lt. Governor and in anticipation of the GoI's approval. However the decision was made with the stipulation that the officers being paid higher salary on account of such revision, if any, will furnish an undertaking that they would refund the extra amount paid in case GoI did not eventually accept the recommendations of FCPC. Respondent had taken adequate care to issue instructions to all the Pay & Accounts Officers to obtain such an undertaking for refund of excess amount, if any, before making payment of the revised salary. Unfortunately, GoI (Ministry of Home Affairs) have not yet taken any decision. In the meantime, the pay of the applicant along with two other ACPs of the Delhi Andaman & Nicobar Islands Admn. cadre was refixed and subsequently the same had to be

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cancelled. Though orders issued by respondents were valid and indicated their intention to grant the revised scales to the officers of DANICS/DANIPS, in the absence of approval from GoI the same cannot be implemented and therefore they had to cancel the revised pay fixed for the applicant and others who have similarly drawn revised pay.

5. The Union of India which is the competent authority to take a decision on the recommendations of the FCPC was impleaded later on as a respondent and the GoI also filed their reply, wherein they have explained the facts that since the recommendations of FCPC in regard to revised scales for the officers of DANICS and DANIPS would have disturbed the existing horizontal and vertical relativity amongst various services and would have created an anomalous situation, the Cabinet considered it expedient to constitute a Committee of Secretaries to examine and make recommendations. The Committee of Secretaries after detailed deliberations and after hearing representatives of DANICS and DANIPS and other services submitted its report on 1.10.97. This committee did not recommend acceptance of the recommendations of the FCPC in regard to the grant of higher scale to the entry grade officers of DANICS. The said report of Committee of Secretaries was placed before the Union Cabinet on 3.10.97. The Cabinet deferred consideration of the matter with the direction to the cadre controlling authorities for DANICS/DANIPS to submit a specific proposal for discussing further the

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matter further with the representatives of the concerned services. Accordingly, the revised proposal was put up for consideration of the Cabinet on 22.9.98. The Cabinet decided that this issue was rather complex and therefore it could be considered by a group of Ministers in all its aspects. The group of Ministers took some time to consider the recommendations and finalised its recommendations in respect of only 4th grade. On the issue of the entry grade however it gave certain directions to the cadre controlling authorities. Thereafter no meeting of group of Ministers has been held and the matter is still pending.

6. We have heard the learned counsel for the applicant as well as the respondents and have perused the pleadings carefully. We find that the orders dated 15.9.98 of Govt. of NCT of Delhi were issued after a policy decision was taken by the Delhi Govt. However, the matter was reviewed by the Lt. Governor, Delhi and he directed that the orders may not be implemented till formal approval of GoI was received to the recommendations.

7. In our view this issue is not an ordinary issue but a policy issue, affecting a particular category of officers. Since it is the GoI which has to take a final decision in the matter and since the decision is pending, respondents have rightly decided to withdraw the revised pay scale granted to the applicant. Applicant's contention that he was not given any notice

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nor was his consent taken before withdrawing the benefit of revised pay and before ordering recovery cannot be accepted because at the beginning itself the applicant has admittedly given an undertaking to the effect that in case GoI did not approve the recommendations of FCPC, any excess payment made would be recovered. He must abide by it. Therefore the action of the respondents cannot be faulted. Moreover the applicant is not the only one affected by the decision. There are others similarly placed to the applicant who have also not been given the revised scale. In the facts and circumstances of the case, the case of the applicant is devoid of merits.

8. We accordingly dismiss the application. The interim order dated 30.10.98 thus stands vacated. We however do not order any costs.

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(Smt. Shanta Shastri)
Member(A)

V. Rajagopala Reddy

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

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