

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No. 749 /1998

Date of Decision: 14 - 10-1998

Shri Furan Singh Kadiyan

APPLICANT

(By Advocate Shri Jasbir Malik

versus

Union of India & Ors.

RESPONDENTS

(By Advocate Shri M.K. Gupta

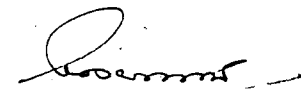
CORAM:

THE HON BLE SHRI

THE HON BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES

2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER
BENCHES OF THE TRIBUNAL?


(S.P. Biswas)
Member (A)

Cases referred:

1. State of Orissa V. Dr (Ms.) Binapani Dei & Ors.
AIR 1967 SC 1269
2. Bhagwan Shukla V. UOI SC 1995 (2) SC 30

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-749/98

New Delhi this the 14th day of October, 1998.

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri Puran Singh Kadiyan,
S/o Shri Uday Singh Kadiyan,
H.No.F-2888, Netaji Nagar,
New Delhi.

..... Applicant

(through Shri Jasbir Malik, advocate)

versus

1. Union of India through
the Secretary, Ministry of Health
& Family Welfare,
Nirman Bhawan, New Delhi.

2. Additional Director,
Head Quarter,
CGHS, Nirman Bhawan,
New Delhi.

3. Additional Director
Central, CGHS,
Nirman Bhawan,
New Delhi.

4. Administrative Officer Estt.(NG),
CGHS, Nirman Bhawan,
New Delhi.

..... Respondents

(through Shri M.K. Gupta, advocate)

ORDER(ORAL)

Hon'ble Shri S.P. Biswas, Member(A)

The short issue that falls for determination is
whether the respondents' action, as in Annexure P-1 dated
5.1.98, could be held legally valid.

2. The background facts, in brief, are as
hereunder:

2/1

The applicant was given in-situ promotion in the pay scale of Rs.1200-1800 w.e.f. 1.2.96. This promotion was on account of the fact that the applicant was stagnating for 25 years. His pay as LDC was fixed at Rs.1530/- p.m. by order dated 4.7.96. The scale of pay in-situ promotion was itself revised from 1200-1800 to 1200-2040. Subsequently, the applicant was promoted as UDC by P-5 order. His pay accordingly was fixed at Rs.1600 p.m. with effect from 1.3.97 and it was raised to Rs.1640 p.m. from 1.3.98. The applicant was shocked when he received for the month of July, 97 Rs.1560 as salary instead of Rs.1640. He represented his case twice on 11.11.97 and 20.12.97 respectively but without any success.

3. The aforesaid order dated 5.1.98 intends to reconfirm the respondents' action already taken beforehand in revising the applicant's pay downwards from Rs.1640 to Rs.1530 p.m. without any notice. The order says "Hence his pay has been refixed w.e.f. 1.2.96 in the pay scale of Rs.100-2040 (pre-revised) i.e. the date of in situ promotion". We find that the actual reduction in salary and recovery effected earlier to 5.1.98 was not preceded by any notices.

4. The case of the respondents is that consequent upon in-situ promotion of the applicant his pay was accordingly fixed at the stage of Rs.1530 under FR 22(1)(a)(i). Meanwhile the applicant was promoted to the post of UDC w.e.f. 28.3.96 in the scale of Rs.1200-2040 i.e. the same scale in which he was granted in-situ promotion and again he was given benefit of fixation of

pay in the grade of UDC under FR 22(1)(a)(i) which was wrong as in the identical scale of pay an official cannot get benefit of pay fixation twice. As such, the earlier order dated 4.7.96 by which applicant's pay was revised upwards had to be withdrawn by issuing a modified order on 3.7.97 reducing his pay to Rs.1530 with retrospective effect. This also necessitated recovery from the applicant, the respondents contended.

5. We find that the impugned order dated 5.1.98 conveys retrospective refixation of salary. We also find that the actual reduction in salary and recovery effected earlier to 5.1.98 was not preceded by any formal notice. That apart, it was stated at the time of oral arguments that the respondents have recovered Rs.3000 against over payment.

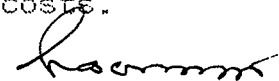
6. It is well settled in law that an order to the detriment of an official cannot be made without affording him/her an opportunity to show cause against the proposed order. Affected persons must know the reasons for which the action is proposed. Authority is legion for this purpose and it is available in a long chain of decisions i.e. State of Orissa Vs. Dr. (Ms) Binapani Dei & Ors. AIR 1967 SC 1269 and Bhagwan Shukla V. UOI, SLJ 1995 (2) SC 30 decided by the Hon'ble Supreme Court. In the later case, the apex court held that the pay of an employee cannot be reduced without giving an opportunity of hearing. In the present case, the applicant was never asked to show cause, before 5.1.98, why his pay should not be reduced or recovery made.

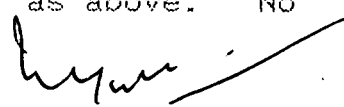
{4}

7. Admittedly, the impugned order (P-1) cannot fulfil the requirements under the law of natural justice. It has been issued after the adverse actions in reducing the salary and recovery of over payment have already been effected. An opportunity to show cause to the applicant was required before effecting the recovery. This was not done. Unfairness in the form of unreasonableness is akin to violation of natural justice. For that reason, we quash the impugned order at P-1. The application is, therefore, allowed with the following orders:

- (i) The order at P-1 dated 5.1.98 is quashed.
- (ii) The applicant's salary shall be refixed to Rs.1640 p.m. as was in July, 1997. The recoveries effected from the applicant shall be refunded back to him. This shall be done within a period of six weeks from the date of receipt of a copy of this order.
- (iii) Our orders, however, shall not stand in the way of the respondents in effecting refixation of pay as well as recoveries, if they have a case. In that event, the respondents shall issue a show cause notice to the applicant, hear him, consider his defence and take an objective decision in terms of law of natural justice.

The application is disposed of as above. No costs.


(S.P. Biswas)
Member(A)


(T.N. Bhat)
Member(J)

/vv/