CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.946/1998

New Delhi, this 27th day of May, 2003

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Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri C.S. Chadha, Member(A)

Mrs. Anju Jain
H.No.1050, Sector 15
Vasundhara, Ghaziabad, UP .. Applicant

(Shri P.S.Mehandru, Advocate)

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Government of NCT of Delhi, through
1. Medical Secretary
   Old Secretariat, Delhi
2. Director
   Guru Nanak Eye Centre
   Maharaja Ranjit Singh Marg, New Delhi
3. Dy. Medical Superintendent
   Guru Nanak Eye Centre
   Maharaja Ranjit Marg, Marg, New Delhi .. Respondents

(Shri Vijay Pandita, Advocate)

ORDER(oral)

Shri C.S. Chadha

The applicant was appointed as Technical Assistant (Opth) {TA(O), for short} in the pay scale of Rs.1400-2600. It transpires that all similarly TAs(O) in other Hospitals of Delhi Administration were entitled to receive pay scale of Rs.1400-2300 (pre-revised) and the applicant was erroneously given this higher scale of Rs.1400-2600. When the mistake was detected by a vigilant Accounts Officer, the applicant's department adopted a very quaint method to get the mistake rectified. Vide Annexure A-1 dated 22.12.99, she was asked to give her willingness for accepting the scale of Rs.1400-2300 (pre-revised). She was further informed that "In case you do not accept the above scale then your case will be sent to Law Deptt. in view of the observation of the Accounts Officer and your case will be finalised after getting opinion from Law Deptt. without delay". The applicant has challenged this Memorandum and has pleaded that her pay fixed at the time of her appointment cannot

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now be altered after a lapse of several years and after she had drawn pay in the scale of Rs.1400-2600 and had drawn nine increments in that scale. The mistake was detected only when the 10th increment fell due and the same was withheld. By filing this OA, apart from quashing the Memorandum at Annexure A-1, she has also sought that her revised pay after 1.1.96 should be fixed in the scale of Rs.5000-8000 which is corresponding to that of Rs.1400-2600 (pre-revised). She has also prayed that increments withheld should be released forthwith together with penal interest thereon.

2. We have heard the learned counsel for both the parties at length.

3. Learned counsel for the applicant vehemently argued that Annexure A-1 was absolutely illegal inasmuch as the applicant cannot be forced to give an option to accept the scale lower than the one she was drawing for nearly the nine years. We have no doubt in our mind that the directions issued vide Annexure A-1 are very ineptly worded. What the Department was required to do, after it had detected its mistake, was to issue a simple show cause notice to the applicant as to why her pay scale should not be reduced to Rs.1400-2300 because of the mistake committed at the time of her appointment. Thereafter, after consideration of her representation, her her pay should have been fixed in the scale of similarly placed TAs(O) in all other Hospitals under the control of Delhi Administration who were entitled to the scale of only Rs.1400-2300 (pre-revised). Therefore we have no hesitation in quashing Annexure A-1 Memorandum as it is not only ineptly worded but also absolutely illegal.

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4. We have to further see as to what is the relief that ultimately she is entitled to. We have no doubt in our mind that she was wrongly given the pay of Rs.1400-2600 in excess of her entitlement i.e. Rs.1400-2300 (pre-revised). However after the mistake was detected even after 10 years the benefit can be withdrawn. In accordance with the judicial pronouncement of the Supreme Court in the case of Sahib Ram Vs. State of Haryana 1995(1) SLJ 151, it can always be withdrawn even after a lapse of many years and the Government servant is not entitled to get the benefit of mistake committed by the department perpetuated in her favour. In the normal course, after quashing Annexure A/1 memorandum, we could have remitted the case back to the respondents to give her show cause notice, hear her and pass a fresh order on pay fixation. However, since she has also sought other reliefs in this OA for her pay fixation in the scale of Rs.5000-8000 (corresponding to the pre-revised scale of Rs.1400-2600), we can adjudicate the issue once for all without having recourse to further litigation. For, if the case is remitted back she is not going to get the benefit she is claiming and she would be left with no option but to file yet another OA. By filing this OA, she has got an opportunity to agitate her grievance that she should have got a proper show cause notice rather than Annexure A-1. She has now been heard on this issue. As mentioned above, from the written statement filed by the respondents, we find that all similarly placed TAs(O) in all other Hospitals under the control of Delhi Administration receive and are entitled to the pre-revised scale of Rs.1400-2300 only and, therefore, there is no doubt in our mind that the applicant is also not entitled to the higher pay scale of Rs.1400-2600 and as a result the second relief prayed for in the OA cannot

be granted to her. We would therefore hold that she is entitled to get pay from 1.1.96 only in the revised scale corresponding to old scale of Rs.1400-2300.

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5. In the circumstances mentioned above, the OA is only partly allowed and Annexure A/1 Memorandum is quashed, which is of no consequence because as regard relief 8(ii) we direct that her pay should be fixed in accordance with the 5th Central Pay Commission's recommendations for the pre-revised scale of Rs.1400-2300. Be that as it may, the excess payment already made to her should not be recovered. Her pay fixed after detection of the mistake will be in accordance with the above directions and increments, if any, due in the scale so fixed will be automatically given to her. Therefore, relief at 8(iii) also cannot be given to her.

6. During the course of the arguments, learned counsel for the respondents drew our attention to the fact that an enquiry has been ordered to fix responsibility for the wrong pay fixation. Although we appreciate that, it would be meaningful if only the excess payment made to her is recovered from those who were responsible for such wrong fixation. The Accounts Officer who has detected the mistake also deserves congratulations for being alert and saving government money.

7. OA is disposed of in the aforesaid terms. No costs.

(C.S. Chadha)
Member(A)

(Smt. Lakshmi Swaminathan)
Vice-Chairman(J)

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