

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A.No.2046/95

New Delhi, the 3rd day of December, 1998.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI R.K.AHOOJA, MEMBER(A)

Shri B.B.L.Hajelay,
Presiding Officer,
Industrial Tribunal-I, (Retired),
Govt. of National Capital Territory of Delhi,
residing at SB-96, Shastri Nagar,
Gaziabad, U.P.

... Applicant

(By Sri Ashok Aggarwal)

vs.

1. Govt. of National Capital Territory of Delhi,
through its Chief Secretary,
5. Shyam Nath Marg,
Delhi-110054.

2. The Secretary, (Labour),
Govt. of National Capital Territory of Delhi,
15 Rajpur Road,
Delhi-110054.

.. Respondents

(By Mrs. Jyotsna Kaushik)

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant, a retired District and Sessions Judge, was re-employed as Presiding Officer, Industrial Tribunal, Labour Deptt., Delhi Administration, in the pre-revised pay scale of Rs.2000-2250 less pension and pension equivalent of gratuity by order dated 19.11.1986. Though the appointment was initially for a period of one year, he continued in service until he was relieved on the afternoon of 28.12.91. By order dated 19.9.1988 (Annexure-B) the

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Δ applicant's pay was fixed at the stage of Rs.4500/- in the scale of Rs.4500-5700 stating to be after ignorance of the pension and subject to audit observations. He was receiving pay at that scale and rate till the date on which he was relieved. . The applicant made a claim for encashment of 75 days of earned leave , which according to him, he was entitled to, by a letter dated 28.3.92(Annexure-D).

While he was expecting the Delhi Administration to process the claim and to pay him the cash equivalent of the earned leave, the applicant was served with the order dated 23.12.93(Annexure-1) by which in supersession of the office order dated 19.9.88 by which his pay was earlier fixed purportedly in accordance with the provisions the provisions contained in para 6(b)(ii) of the Central Civil Services(fixation of pay of re-employed pensioners) Orders, 1986 issued vide O.M.No.3/1/86-Estt.Pay(II) dated the 31st July,1986 issued by Govt. of India, Ministry of Personnel Public Grievances and Pension as also clarification of Govt. of India, Department of Personnel & Training contained in their letter No.3/3/87-Estt/Pay.II dated 12.10.88, the pay of the applicant was re-fixed in the scale of Rs.4500-5700 at Rs.3411/- w.e.f. 20.11.86 to 31.5.88 and at Rs.3698 w.e.f. 1.6.88 to 28.12.91 . Aggrieved by the re-fixation and reduction of his pay unilaterally , the applicant made representation dated 18.1.94 for cancellation of the order. He also made a representation to the Secretary, Labour on the same date requesting for cancellation of Annexure-1 order, for disbursement of the cash equivalent of 75 days earned leave and also to extend to him the benefit of

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higher salary in the scale of Rs.5900-6700 on the ground that the Delhi High Court had allegedly directed the Delhi Administration to pay to the members of the Delhi Higher Judicial Service, salary in the grade of Rs.5900-6700 instead of Rs.4500-5700 with effect from 1.1.86 stating that only the members of the Higher Judicial Service were appointed as Presiding Officers of the Industrial Tribunal. While so, the applicant received the Annexure-2 order dated 28.3.94 conveying the sanction of the competent authority under Rule 39(2)(a) of the CCS(Leave) Rules, 1972 for payment of cash benefits of basic pay and DA only to the applicant in lieu of 75 days of unavailed earned leave at his credit. However, there is a foot-note attached to this order stating that the amount of encashment has been adjusted against recovery of over paid pay and allowances. The applicant aggrieved by the adjustment of the leave salary towards alleged over-payment without any prior notice to him represented against such action and finding no response caused a lawyer notice to be issued in which he repeated his claim for the higher pay scale on par with the members of the Delhi Higher Judicial Service. In reply to this legal notice, the counsel of the applicant received the order dated 1.11.94 turning down the claim of the applicant for the higher rate of pay on the ground that his claim had no basis as also the judgment of the High Court had been stayed by the Supreme Court. The applicant was further informed that the re-fixation of his pay under Annexure-1 was perfectly in order and an amount of Rs.43,774/- was to be remitted

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by him after adjustment of the cash equivalent of the earned leave. Aggrieved by this order, the applicant has filed this application for the following reliefs:

- (a) To quash the impugned Office Order No.PF/B/POIT/Estt/93/802 dated 23.12.1993 (Annexure-1) the Order No.F.B/POIT/Estt/94/124 dated 28.3.1994 (Annexure-2) by which the encashment of leave has been adjusted and also Order No.PF/B/POIT/Estt/93/509 dated 1.11.1994 (Annexure-3) whereby the respondents have rejected the representation of the applicant.
- (b) to direct the respondents to pay the encashment value of 75 days unavailed portion of earned leave alongwith interest @ 18% per annum thereupon from 1.4.1992 till the payment is made.
- (c) To award the cost of this application.
- (d) to grant such other reliefs as this Hon'ble Court may in the facts and circumstances of the present case deem fit and proper in favour of the applicant and against the respondents.

2. The respondents in their reply contend that the re-fixation of the pay of the applicant was done on the basis of audit observation and in conformity with the rules and that the same is unexceptionable. On the claim of the applicant for higher pay scale of Rs.5900-6700 the respondents contend that though the High Court of Delhi has given an order granting such a scale to the members of the Higher Judicial Service, the matter is pending in appeal before the Hon'ble Supreme Court and as the same has not been extended to the Presiding Officers of the Industrial

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Tribunal, the claim of the applicant is without basis.

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3. We have gone through the pleadings and the documents placed on record. We have heard Sri Ashok Aggarwal, the learned counsel of the applicant and Mrs. Jyotsna Kaushik, the learned counsel of the respondents.

4. Shri Ashok Aggarwal with considerable tenacity argued that the action of the respondents in unilaterally refixing the pay of the applicant 2 years after his retirement purportedly acting under audit observations and the rules, without informing the applicant as to how the figures were worked out, is arbitrary, irrational and opposed to the principles of natural justice. He argued that the refixation of the applicant's pay with retrospective effect resulting in huge pecuniary loss to the applicant, should not have been made by the respondents without informing the applicant of the reasons for doing so and giving the applicant a reasonable opportunity to show-cause against such an action. He further argued that the claim of Rs.43,774/- made from the applicant in the impugned order dated 1.11.1994(Annexure-3) is also untenable because it was made without giving the applicant a notice detailing how the amount was arrived at. The adjustment of the money due to the applicant by way of encashment of earned leave made in Annexure-2 is also unsustainable, argued the counsel.

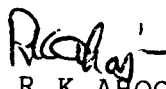
4. Learned counsel of the respondents raised an argument that the right of the applicant to impugn the Annexure-1 order dated 23.12.1993 is lost by limitation. We find little merit in this contention because against the order, the applicant had made a representation and again when the applicant was told by the impugned order(Annex.2) that the cash equivalent of the earned leave


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was adjusted towards over-payment the applicant had made a representation and caused a lawyer notice issued, to which the Annexure-3 order dated 1.11.1994 was given to the counsel of the applicant. Counting from the date of Annexure-3, we find that the application has been filed within time and that there is no merit in the argument of the learned counsel that the application is barred by limitation. Meeting the argument of Sri Aggarwal that the impugned order of re-fixation of pay to the detriment of the applicant without a notice is unsustainable, learned counsel of the respondents argued that the applicant had been told by the impugned order(Annexure-3) as to why the pay was re-fixed and that this is sufficient compliance with the principles of natural justice. We are unable to accept this argument of the learned counsel. It is well-settled by now that any administrative order which has an adverse civil consequence can be made only after giving the person affected by the order an opportunity to show-cause against passing such an order. Admittedly, the respondents have not before issuing the impugned orders, Annexure-1 or Annexure-2 or Annexure-3 for that matter informed the applicant of the intention to re-fix the applicant's pay giving reasons and the facts and figures giving an opportunity to show that such a proposal would not be legal. It has not been made clear in any of the impugned orders as to how the money to be recovered was arrived at and what was the basis of the re-fixation of pay. We are of the considered view that the impugned orders, re-fixing the applicant's pay to his detriment, the order Annexure-2 making adjustment of the money due to the applicant towards the alleged over-payment and the direction in

Annexure-3 to the applicant to refund Rs.43,774/- having been made without giving the applicant a proper opportunity to show-cause against, are unsustainable in law and that these orders are liable to be struck down.

5. In the result, in view of what is stated above, we set aside the impugned orders, Annexure-1 to A-3. However this order will not preclude the respondents from taking appropriate action in the matter of re-fixation of applicant's pay, but they should do so only after giving the applicant a notice proposing the re-fixation, giving details and after considering his objections, if any. There is no order as to costs.


R.K. AHOOGA
MEMBER(A)


A.V. HARIDASAN
VICE CHAIRMAN

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