

(11) CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1959 of 1996

New Delhi, this the 25th day of November, 1997

Hon'ble Mr. N. Sahu, Member (Admnv)

1. Shri Jagdish Rai, S/o late Shri Puran Chand, r/o Type II/120 Press Colony, Mayapuri, New Delhi - 110 064.
2. Shri Babu Lal son of Shri Bhagwan Dass, r/o 32A Sarojani Naidu Park, Shastri Nagar, Delhi 110 031.
3. Shri Shiv Darshan, s/o Late Sham Dass r/o F/262, Shudha Nagar, Gali No.20, Palam Colony, New Delhi - 110 045.
4. Shri Deen Dyal, son of Shri Attar Singh, r/o RZ F/25A, West Sagarpara, New Delhi-110046 -APPLICANTS

(By Advocate Mrs. Meera Chhibber)

Versus

1. Union of India through Secretary, Ministry of Urban Development, Government of India, Nirman Bhawan, New Delhi.
2. Government of India Press through its Manager (Admn) Ring Road, New Delhi. -RESPONDENTS

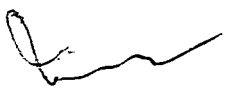
(By Advocate Shri R.P. Agarwal)

J U D G M E N T

By Mr. N. Sahu, Member (Admnv)-


The four applicants have joined together with a common cause of action. They are aggrieved against similar orders issued to each one of them dated 20.8.1996 by which their pay was reduced by Rs.100/-. The applicants allege that this action was arbitrary because show cause notice was not issued before their pay was reduced.

2. The admitted facts are that the four applicants were promoted as Assistant Section Holders



with effect from 12.4.1990, 17.4.1990, 7.5.1990 and 11.5.1990 respectively and again promoted as Section Holders with effect from 17.4.1990, 7.5.1990, 11.5.90 and 4.6.1990. On both the occasions, their pay was fixed under FR 22-C. At this stage under the Inter Departmental Committee report, the pay scale of Asst. Section Holders of Rs.1320-2040 has been raised to Rs.1400-2300 and the post of Asst. Section Holder was redesignated as Section Holder with effect from 31.10.89. The respondents implemented the inter departmental committee report by orders dated 30.8.90 with effect from 31.10.1989. From this date the post of Assistant Section Holder was redesignated as Section Holder and the pay was revised from Rs.1320-2040 to Rs.1400-2300.

3. The crux of the stand taken by the respondents is that the applicants cannot claim the higher pay scale of Rs.1400-2300 as a result of redesignation and benefit of FR 22-C twice. Accordingly, the pay of the applicants was refixed by the impugned orders dated 20.8.1996. The applicants contend that the respondents were under an obligation even on 31.8.1990 to take an option under FR 23 which they did not do. On 30/31.8.1990 the first applicant for instance was drawing Rs.1680/-, therefore, it could not have been refixed at Rs.1600/- without giving a notice to show cause to the affected employee. An employee similarly affected, namely, Shri Sardar Gulzar Singh filed an O.A.No.323 of 1994 which was disposed of by a Division Bench on 11.4.1997. In that case also the applicant was



13

:: 3 ::

promoted as Assistant Section Holder with effect from 1.8.1990 and his pay was fixed on promotion in accordance with FR 22-C. He was thereafter promoted as Section Holder on the scale of Rs.1400-2300 with effect from 7.2.1995 and his pay was again fixed upon getting that promotion under FR 22-C. Following the OM dated 30.8.1990 and because of merger of the post of Assistant Section Holder in the higher post of Section Holder the respondents pointed out that the applicant could not have got the benefit of pay fixation twice on higher promotion. On the ground that the impugned order worked to the applicants' disadvantage and that too retrospectively and as no notice of hearing was issued such an order was held to be unsustainable in law and it was directed that no recovery shall be made from the applicant. The learned counsel for the applicant has relied on two decisions of the Hon'ble Supreme Court in the cases of Shyam Babu Verma and others Vs. Union of India and others, (1994) 27 ATC 121 and Sahib Ram Vs. State of Haryana, (1994) 28 ATC 747. In the case of Shyam Babu Verma (supra) their Lordships have held that recovery of excess amount paid on account of higher pay scale erroneously given to the petitioners since 1973 would not be just and proper as the petitioners received the higher scale without any fault or without any misrepresentation on their part. In Sahib Ram's case (supra) their Lordships have again held that recovery of excess payment of pay is not permissible when an upgraded pay scale was given due to a wrong construction of the relevant order by the authority concerned without any misrepresentation by the employee. The learned counsel for the applicant also cited a decision of

Madras Bench of the Tribunal in the case of D.Chandrasekara Rao Vs. Union of India and others, (1994) 27 ATC 343 which deals with a case of wrong pay fixation from a retrospective date. While the Tribunal upheld refixation from a prospective date as correct and valid also for computing pensionary benefits yet the recovery of amounts on account of non-fixation was held to be not permissible.

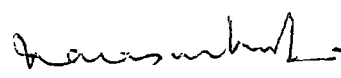
4. In this case, the impugned orders were issued without show cause notice or hearing the employees. The O.M. was issued in August, 1990 and the respondents took six long years to revise the scales of pay. There was no misrepresentation on the part of the employees. The respondents could have revised the pay in August, 1990 or September, 1990 on redesignation as Section Holder in the scale of Rs.1400-2300 and reduced the pay from Rs.1680/- to Rs.1600/- as in the case of Sri Jagdish Rai, the first applicant. Six years later when some of the applicants are about to superannuate/ have already superannuated, they have refixed the pay by reducing the same retrospectively from 12.4.1990, 17.4.1990, 7.5.1990 and 11.5.1990 respectively. The above exercise was admittedly done without issuing a show cause notice. I have, therefore, no hesitation in quashing the impugned order dated 20.8.1996 issued identically to all the applicants.

[Handwritten signature]

25 15
:: 5 ::

5. I make it clear, however, that the respondents may fix the pay of the applicants in accordance with law after giving a proper opportunity of hearing and considering their objections against the adverse revision.

6. The O.A. is allowed. No costs.


(N. Sahu)
Member (Admin)

rkv.