

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO. 398/1996

New Delhi, this the 29th day of May, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SMT. SHANTA SHASTRY, MEMBER (A)

1. Smt. K.Shakuntala Ramakrishna
W/O Shri K.Ramakrishna.
2. Jnan Ranjan Adhikari S/O G.C.Adhikari.
3. Smt. Tapti Mitra.

All employed in the office of the
Director General of Audit,
Central Revenue, New Delhi-110002, and
C/O Shri B.S.Oberoi, Advocate,
D-23, East of Kailash,
New Delhi-110065.

... Applicants

(None present)

-versus-

1. Union of India through
Secretary, Ministry of Personnel
and Training, New Delhi-110001.
2. Comptroller and Auditor General of India,
No.10, Bahadur Shah Zafar Marg,
New Delhi-2.
3. Director General of Audits,
Central Revenues,
New Delhi-110002.

... Respondents

(None present)

O R D E R (ORAL)

Smt. Shanta Shastri, AM :

None appears either on behalf of applicants or the respondents either in person or through their counsel. Since the matter is of 1996, we proceed to dispose of the application on merits on the basis of available pleadings, in terms with Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987.

2. Applicants, three in number, had joined in the office of Accountant General at different places, i.e.,

Orissa and Assam on various dates. Applicant No.1 was a Senior Auditor and was on deputation in the office of respondent No.2 upto 16.2.1990. Applicant No.2 was a Senior Accountant and was on deputation with respondent No.2 upto 31.7.1992. Applicant No.3 was also promoted as Senior Accountant on 1.4.1987.

3. Respondent No.3 had some vacancies of Auditors. However, to avoid transfer and consequential problems, applicants opted for unilateral transfer to the office of respondent No.3 on offered terms which they signed ~~for~~ at the time of request for transfer. The terms of transfer were the same in all the three cases as per Annexures A-3 and A-4. Initially, on such unilateral transfer their pay was fixed as Auditors in the scale of Rs.1200-2040 in accordance with FR-22. Thereafter, applicant No.1 was promoted as Senior Auditor on 3.5.1993 and her pay was refixed as Senior Auditor. One of the terms of the unilateral transfer was that the applicants would be placed at the bottom of the seniority list of Auditors in the office of respondent No.3 and their pay would be fixed in the scale of Auditors considering the pay being drawn by them. Accordingly, the applicants who were Senior Auditors at the time of transfer became Auditors and their pay was refixed in the lower scale. They were given increments in the lower scale. Applicants were under the impression that the pay being drawn by them earlier would be protected. All of a sudden, respondent No.3 issued memos to applicants on 8.3.1995 informing them that their pay had to be refixed in terms of orders received from respondent No.2 dated 10.10.1994. Applicants represented against the said memos stating

D that had the stipulation of not protecting their pay been there, they would not have opted for the unilateral transfer. However, respondent No.2 vide order dated 20.11.1995 refixed the pay of applicants at a lower level than what they were drawing, and ordered recovery of the overpayments made since the date of their joining on unilateral transfer.

4. It is the contention of applicants that if respondents were to examine the terms of the unilateral transfer afresh and take certain decision, that decision could have only prospective effect and could not be applied retrospectively to applicants by unsettling the already settled position. Respondents could have reduced their pay at the time of transfer and not after a prolonged period had elapsed. According to applicants, the terms of transfer clearly brought out that they would be assigned the juniormost positions in the cadre in the new office, but these terms did not mention anywhere that the transfer would involve reduction in pay at any stage. Therefore, respondents are estopped from reducing their pay after nearly three years of their transfer and directing recoveries of excess payments. Applicants have, therefore, sought to set aside the order dated 20.11.1995 and to give prospective effect to the contents of letter dated 10.10.1994. They have also prayed that the respondents be directed not to make any reductions in their pay and to effect recoveries and whatever has been recovered as excess payment be refunded to applicants.

5. In their counter reply, the respondents submit that the applicants joined in the office of respondent

No.3 on unilateral transfer. The condition of unilateral transfer clearly stipulates that applicants would be taken as Auditor and would rank junior, in the Auditors' cadre and would forego all benefits accrued to them in their parent office. There is no condition of protection of pay in their parent office. Therefore, the pay had to be fixed in the lower grade to which they have been appointed. Since applicants had accepted the appointments and had joined ^{respective} on their postings, applicants cannot claim to protect their pay at this stage. Clarificatory instructions were issued to all Heads of Departments in IA&AD on 10.10.1994 by the Comptroller and Auditor General of India stating that the pay has to be fixed in such cases in lower posts and the pay drawn in the higher post is not to be protected and where pay has been protected it should be refixed and overpayments made be recovered. Respondents have implemented these orders. The terms of unilateral transfer are very clear and applicants were to be considered as fresh appointees in the Auditors' cadre on being transferred. Therefore, their pay has to be refixed with reference to the lower pay scale and not with reference to the pay drawn in the parent office as they are considered as direct recruits in the cadre of Auditors. No doubt, initially the pay was fixed wrongly. However, having realised the mistake, the respondents have implemented the instructions dated 10.10.1994 correctly.

6. Respondents have also cited the decision taken on 29.1.1996 in O.A. No.1430/95 : Chandan Saha v. Principal Director of Audit & Anr. (Principal Bench), in a similar case. That O.A. was dismissed by this

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D Tribunal as having no merit. In the said O.A. also the applicant who was working in the scale of Rs.1400-2600 as Senior Auditor had sought unilateral transfer to Northern Railway. According to the terms of the transfer, the applicant had to be considered as a fresh appointee and was to be ranked as juniormost in the Auditors cadre in the new office and he had to forego all the benefits that had accrued to him in his earlier posting. The present O.A. is similar in facts.

O 7. We have perused the terms and conditions at Annexures A-3 and A-4 of the O.A. According to clause 8 of the terms, "The name of Temporary UDC/LDC will be struck off from the rolls of his parent office and he will have no claim for confirmation in his parent office. Technically, he would be deemed to have resigned from his parent office." This term was known to applicants when they had sought the unilateral transfer and had joined their new postings. Thus, it cannot be said that applicants were not aware of this. Since ^{it} ~~this~~ has been clearly stated that it would be treated as a fresh appointment, respondents, according to us, have rightly refixed the pay of applicants in the lower scale and we, therefore, do not find any fault in the action of respondents. Also since this matter is covered by an order of the Tribunal dated 29.1.1996 in the aforesaid O.A. No.1430/95, we adhere to the said decision.

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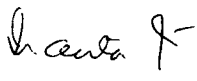
8. As far as the recovery of excess payments is concerned, the same is being made after a period of three years after the joining of applicants in their new postings. Since it is a matter of reduction in pay,

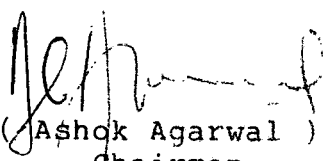
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natural justice demands that they should be given a notice before directing recoveries to be made. Respondents, therefore, may issue a notice to applicants in regard to recoveries to be made and decide the same after considering the reply of applicants.

9. At this stage, Shri M.K.Gupta, the learned counsel for respondents appears and informs that an O.A. with similar facts was decided by the Circuit Bench at Sikkim of Calcutta Bench of this Tribunal allowing the claim of applicants, whereas another similar O.A. No.1430/95 was dismissed by the Principal Bench on 29.1.1996. The Comptroller and Auditor General of India had filed an SLP in the Hon'ble Supreme Court against the order of the Sikkim Circuit Bench and the Apex Court allowed the SLP and set aside the order of the Sikkim Circuit Bench. Thus the order dated 29.1.1996 in O.A. No.1430/95 (Principal Bench) holds the field.

10. In the facts and circumstances of the case, the O.A. being devoid of merit is accordingly dismissed. There shall be no order as to costs.


(Shanta Shastri)
Member (A)


(Ashok Agarwal)
Chairman

/as/