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Central Administrative Tribunal, Principal Bench

Original Application No.271 of 2000

New Delhi, this the 29th day of June, 2000

Hon'ble Mr. Justice Ashok Agarwal Chairman
Hon'ble Mr. V.K. Majotra, Member (Admnv)

Shri Vishal Narula, Programme Assistant,
Pusa Polytechnic, Pusa, New Delhi-110012,
R/o C-556, Saraswati Vihar, Delhi-110034. - Applicant

(By Advocate Shri M.L. Ohri)

Versus

1. The Lt. Governor of National Capital Territory of Delhi through the Chief Secretary, N.C.T. of Delhi, Delhi Admn. Secretariate, 5, Sham Nath Marg, Delhi-110054.
2. The Secretary, Directorate of Training and Technical Education, N.C.T. of Delhi, Pitampura, Delhi.
3. The Principal, Govt. of N.C.T. of Delhi, Pusa Polytechnic, Pusa, New Delhi-110012-Respondents

(By Advocate Mrs. Meera Chhibber)

O R D E R (Oral)

By Justice Ashok Agarwal, Chairman.-

The applicant was appointed as Programme Assistant in Delhi Administration with effect from 21st December, 1995 vide order dated 3rd January, 1996. He was placed in the pay scale of Rs.1400-2600. In the offer of appointment made to the applicant on 13th December, 1995 aforesaid pay scale of Rs.1400-2600 was ~~finding a place~~ ^{indicated}. After the passing of the Fifth Pay Commission, the applicant was placed in the pay scale of Rs.5000-8000. This was on the basis of the pre-revised scale of Rs.1400-2600 offered and granted to him. Respondents, it transpires, later on realised that aforesaid pay scale had been erroneously fixed. The pay scale for Programme Assistant is Rs.1400-2300 and not Rs.1400-2600 as was awarded to the applicant. This mistake was noticed by the Principal, Pusa Polytechnic,

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when one Ms. Anuja Sharma was selected by the Staff Selection Board and was recommended for appointment as Programme Assistant in the scale of pay of Rs.4500-7000. In the circumstances, by an office corrigendum issued on 15th September, 1999 pay of the applicant as on the date of his appointment was fixed in the scale of Rs.1400-2300 in place of Rs.1400-2600 (pre-revised). Thereafter by an Office Order passed on 18th October, 1999 pay of the applicant has been fixed at Rs.4500/- in the pay scale of Rs.4500-7000 with effect from 1.1.1996 in terms of the recommendations of the Fifth Pay Commission. By a further order passed on the very same day i.e. on 18th October, 1999 the applicant has been directed to deposit a sum of Rs.32,269/- being the excess payment made to him on account of erroneous fixation of pay. Aforesaid orders of 18th October, 1999 are impugned in the present O.A.

2. We have heard the learned counsel appearing for contending parties.

3. As far as the pay scale of Programme Assistant is concerned, the same is Rs.1400-2300. This is clear from Notification dated 7th September, 1989 at Annexure-R-I. On this aspect there is no dispute. It is, therefore, clear that when the pay scale of the applicant was fixed at Rs.1400-2600 the same was a mistake. In our judgment if the applicant has been given a wrong pay scale by mistake the same can always be corrected. It is, however, contended on behalf of the applicant that aforesaid pay scale was finding a place in the offer of appointment as is clear from Office Memorandum dated 13th December, 1995 at Annexure-A-3. The very pay scale finds a place in the

office order of 3rd January, 1996 whereby the applicant has been appointed. As far as the said pay scale is concerned, that is a matter of contract between the applicant and the respondents. The same cannot ~~vary~~^{be varied} to his disadvantage. In our judgment there is no merit in the aforesaid contention. The appointment of the applicant is to a civil post. The said post carries a fixed pay scale which is provided under the Recruitment Rules framed under proviso to Article 309 of the Constitution. Hence a higher pay scale cannot be awarded on the strength of a contract which has been set up by the applicant.

4. We, however, find that the applicant has received the excess payment on the basis of wrong fixation of pay during the period 1.1.1996 till the passing of the impugned order on 18th October, 1999, which is for over a period of 3 1/2 years and this is for no fault on his part. In the circumstances we hold that the order directing the applicant to refund the amount of Rs.32,269/- is unjust and harsh. The same in the special facts and circumstances of the case we find should not be implemented. In the case of Shyam Babu Verma and others Vs. Union of India & ors., (1994) 27 ATC 121 the Supreme Court on a similar ~~case~~^{facts} has observed as under :-

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. 1-1-1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from 1-1-1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount

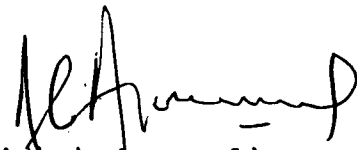
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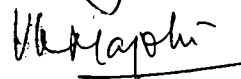
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paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

5. In the circumstances, we hold that the applicant has been rightly fixed in the pay scale as reflected in the impugned order of 18th October, 1999 at Annexure-A-1. We, however, direct that the order of the very same day at Annexure-A-2 directing the applicant to deposit the excess payment of Rs.32,269/- should not be implemented.

6. Present O.A. is partly allowed in afore-stated terms with no order as to costs.


(Ashok Agarwal)
Chairman


(V.K. Majotra)
Member (Admnv)

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