

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 1547/89  
T.A. No.

199

DATE OF DECISION 17.8.1990.

Shri S.C. Sharma	<del>Petitioner</del> Applicant
Shri B.B. Srivastava	Advocate for the <del>Petitioner(s)</del> Applicant
Versus	
Union of India & Others	Respondent
None	Advocate for the Respondent(s)

### CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by Hon'ble  
Mr. D.K. Chakravorty, Member)

The grievance of the applicant is that a sum of Rs.1728/- has been wrongly recovered from his salary on the ground of a mistake committed by the respondents. Despite service of notice on the respondents, they did not enter appearance or file their counter-affidavit. Several opportunities were given to them to file the counter-affidavit. Accordingly, the Tribunal directed on 28.3.90 that the respondents have forfeited their right to file the counter-affidavit.

2. We have heard the learned counsel for the applicant and have gone through the records of the case carefully. The facts of the case in brief are as follows. The applicant joined Government service in 1959 as a Sub-Inspector and

7

was promoted as Inspector in 1971. While working as Inspector (ordinary grade), he was promoted to the Grade of Inspector (Selection Grade) vide order dated 3.1.1986 of the Collector of Central Excise, Meerut. Pursuant to the aforesaid order, the Assistant Collector, Central Excise, Ghaziabad, fixed the pay of the applicant under F.R. 22(c) vide order dated 19.2.1986. As the applicant was getting Rs.660/- in the pay-scale of Rs.425-800 as Inspector (OG), his pay as Inspector (SG) in the scale of Rs.550-900 was fixed at the stage of Rs.700/- with the date of next increment due on 1.1.1987. As the increment falling due to him in the pay-scale of Rs.550-900 was not drawn from 1.1.1987 for over seven months, the applicant, vide his application dated 24.8.87, requested the Assistant Collector, Ghaziabad, to draw the same or intimate the reasons for its non-drawal. The respondents informed him vide their letter dated 27.4.1988 as follows:-

"3. It is noticed that you were promoted as a Senior Grade Inspector in the scale of Rs.550-25-750-EB-30-900 effective from 3.1.86. The Central Board of Excise & Customs vide their telex dated 30.10.86 issued vide their file No.8-12017/28/86-Ad.IIIA had communicated that in pursuance of the 4th Pay Commission's recommendations, the cadre of Sr. Grade of Inspectors ceased to exist w.e.f. 1.1.86. The implication of this decision was that there could be no promotions from Inspector (OG) to Inspector (SG) subsequent to 31.12.85. It is in this regard that vide Estt. Order No. 26/87 issued by the Collector, Central Excise, Allahabad vide his F. No.II(217)Estt/85/1730 the promotion of Shri S.C. Sharma, Inspector (SG) and others included in the list from Inspector (OG) to Inspector (SG) made subsequent to 1.1.86 were cancelled.

8 ✓ 4. Your pay was to be fixed in revised scale, in pursuance of the acceptance of the recommendations of the 4th Pay Commission effective from 1.1.86 at Rs.1940/- p.m. and you are required to

draw next increment on the date of increment due in normal course, i.e., September, 1986. This is because due to the cancellation of the orders promoting you from O.G. to S.G. No fixation of pay was warranted in the Sr. Grade on 3.1.86.

5. It has been reported that your pay was already fixed in the Sr. Grade for which you were not entitled, hence after the implementation of the decision of the Govt. that there was no cadre of S.G., there would be recoveries made from you rather than arrears due to you.

6. Your pay from 1.9.86 would be Rs.2000/- and from 1.9.87 Rs.2060/-. It is noticed that you have been drawing Rs.2060/- since 3.1.86 i.e. the pay drawn by you is more than the entitled pay to you. It is in the circumstances that no increments are drawn to you as the increment are to be adjusted against the salary already drawn by you."

3. The applicant was directed to refund the excess payment of Rs.1728/-, failing which the respondents stated that the same would be recovered from his pay.

4. The applicant sent a representation to the Collector, Central Excise, Meerut on 8.6.1988 against the proposed recovery. The respondents informed him vide their letter dated 8.12.1988 that the recovery has been made in view of the provisions of the Government of India's orders below F.R.31. According to the said orders, the orders of promotion or appointment of a Government servant are to be cancelled as soon as it is brought to the notice of the appointing authority that such a promotion or appointment has been resulted from factual error and the Government/servant concerned should immediately on such cancellation, be brought to the position which he would have held but for the incorrect order of promotion or appointment. According to them, the action for recovery of the amount paid to the applicant in excess was, therefore, within the rules.

5. The applicant made a further representation on 12.1.1989 to which he did not receive any reply.

6. We have gone through the records of the case and have heard the learned counsel for the applicant. The applicant's promotion to Selection Grade w.e.f. 3.1.1986, was made on 3.1.1986 along with 31 other Inspectors. The respondents have not cancelled the promotions of all these Inspectors. In our opinion, this amounts to discrimination.

7. Apart from the above, it may be stated that the Central Civil Services (Revised Pay) Rules, 1986, though brought into force on 1.1.1986, were notified in the Gazette on 13.9.1986. According to the instructions issued by the Government on 30th September, 1986, which have been reproduced in Swamy's Compilation of Central Civil Services (Revised Pay) Rules, pages 14-15, the cases of employees drawing pay in the non-functional selection grade before 30.9.1986 will be governed by Note below Part-A of the First Schedule to the Rules. The said Note provides that "Except as otherwise provided in the case of an employee drawing pay in the selection grade before the date of publication of these rules, his pay shall be fixed in the revised scale corresponding to such Selection Grade and the said pay shall be personal to such employee." (vide page 14 of Swamy's Compilation).

8. In view of the <sup>said</sup> ~~afore-~~ provision, cancellation of the promotion and recovery of the excess payment from the applicant, is not legally sustainable. No show-cause notice was issued to him before the

respondents effected the recovery.

9. In the light of the foregoing, we allow the application and pass the following orders and directions:-

- (i) The respondents shall refund to the applicant the amount of alleged excess payment recovered from his pay and allowances.
- (ii) The respondents are directed to restore to the applicant his original pay fixed as Inspector (SG) together with increments accrued thereon.
- (iii) The respondents are directed to comply with the above directions within a period of three months from the date of communication of this order.

There will be no orders as to costs.

*D. K. Chakravorty*  
(D.K. Chakravorty)  
Administrative Member

17/8/90

*P. K. Kartha*  
(P.K. Kartha)  
Vice-Chairman(Judl.)

17/8/90