

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 591/1989. DATE OF DECISION: 29-10-1991.

Shri Prem Kumar APPLICANT.

V/s.

Union of India & Anr. RESPONDENTS.

CORAM: Hon'ble Shri B.S. Sekhon, Vice Chairman (J).
 Hon'ble Shri P.C. Jain, Member (A).

Shri P.K. Agrawal, counsel for the applicant.
Shri P.H. Ramchandani, counsel for the respondents.

P.C. JAIN, MEMBER: JUDGMENT

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed Office Order dated 1-7-1987, by which his fee has been fixed with retrospective effect from 15.9.73 in the scale of Rs.550-900 instead of in the scale of Rs.650-1200 (Annexure 'D'), Memo dated 8.9.1988 by which he was asked to report in Administration Section for signing his new contract reflecting the revised fee scale (Annexure 'H') and Memorandum dated 4.3.1989 by which he was reminded to contact Administration Section regarding signing his new contract as above.

2. Briefly stated, the relevant facts are as below: -

The applicant was appointed as a Staff Artist - Music-Tabla Player - on 15.9.1973 in the All India Radio in the fee scale of Rs.215 - 540, initially for a period of six months (Annexure 'A'). The contract was extended for a further period of 2½ years i.e., upto 14.9.1976 with probation of 1½ years more i.e. upto 14.9.75. The probation period came to an end with effect from 15.9.75 (page 23 of the paper book). Vide Endorsement dated 15.9.1976, the period of contract was extended upto 31.3.2001 in the same fee scale of Rs.215 - 540 and he was redesignated as Tabla Player (page 24 of the paper book).

3. Fee scales of Staff Artists were revised on the analogy of the recommendations of the Third Central Pay

Commission in respect of regular Government posts, with effect from 1.1.1973, vide Ministry of Information and Broadcasting letter dated 8.3.1977 (Annexure 'B') and arrears were made admissible from 1.1.1973. For Instrumentalists (to which category the applicant belongs), the scale of Rs.215 - 540 was revised to Rs.650 - 1200. Accordingly, vide Office Order dated 13.4.77, the fee of the applicant was fixed at Rs.650 in the revised fee scale of Rs.650 - 1200 with effect from 15.9.73 i.e., the date of his initial appointment (Annexure 'C'). However, vide Office Order dated 1.7.1987 the fee of the applicant was fixed at Rs.550 in the revised fee scale of Rs.550 - 900 with effect from 15.9.1973. The endorsement to the Accounts Branch, Doordarshan Kendra, New Delhi also directed for necessary recovery on account of over-payment to be made immediately under intimation to Administration Branch (Annexure 'D'). The applicant made a representation on 24.8.1987 and sent a reminder (Annexures 'E' and 'F'). He sent another letter dated 22.4.1988 (Annexure 'G'). Without sending any reply to the representations made by the applicant, the applicant was asked to contact the Administration Section for signing his new contract in the revised fee scale (Annexure 'H'). He sent another letter on 13.9.1988 (Annexure I). Still there was no reply, but a reminder for contacting the Administration Section for signing the new contract was issued to him on 4.3.89 (Annexure 'J').

4. The applicant has challenged the action of the respondents in reducing his fee scale from Rs.650 - 1200 to Rs.550 - 900, ordering recovery in pursuance thereof, and trying to force him to sign a new contract in the reduced fee scale on the grounds:

- (1) that the pay scale of the applicant cannot be revised to his detriment after a lapse of 15 years;

- (2) that the action of the respondents in reducing the pay scale of the applicant amounts to a penalty of reduction in rank and the same cannot be imposed on him without following the procedure laid down in CCS (CCA) Rules;
- (3) that the action of the respondents in this regard is wholly arbitrary, whimsical and capricious inasmuch as they have not given any reason for reducing his fee scale;
- (4) that the applicant is a regular civil servant in view of the decision of the Supreme Court reported in AIR 1987 S.C. 1526 and AIR 1988 S.C. 1970, he is no more a contractual employee but has a status;
- (5) that all other incumbents of the said post who were in the pre-revised scale of Rs.650-1200 have been retained in the said scale and he alone has been singled out, the action of the respondents is violative of Article 14 of the Constitution; and
- (6) that the reduction of the pay scale seriously affects his civil rights and ^{as} the same has been done without giving any opportunity to him to show cause, the same is violative of the principles of natural justice.

5. The respondents have contested the O.A. by filing a return and the applicant has filed a rejoinder thereto. We have carefully perused the material on record and have also heard the learned counsel for the parties.

6. The facts regarding appointment of the applicant in the fee ~~fixa~~ scale of Rs.215-540, the revision of the scale to Rs.650-1200 with effect from 1.1.1973, fixation of the pay of the applicant in the scale of Rs.650-1200 with effect from ^{date} 15.9.1973 on which/he joined, and the downward revision of the scale from Rs.650-1200 to Rs.550-900 vide orders passed in

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1987 with retrospective effect i.e., 15.9.1973, are not in dispute. It is also not in dispute that no notice was given to the applicant before his scale was revised downward and the alleged excess payment was ordered to be recovered. It is also not in dispute that the Third Central Pay Commission did not consider the scales of pay of the Staff Artists of the All India Radio, as at that time, they were not treated as regular Government servants, but the Government, on their own, decided to revise their fee scales with effect from 1.1.1973 i.e., the date on which the revised scales were given to regular Government servants on the recommendations of the Third Central Pay Commission.

7. The case of the respondents, in brief, is that "the applicant's fee scale was originally fixed under an erroneous impression that he was an "A grade" Instrumentalist when he actually was only a "B" High grade" Instrumentalist. The contract was therefore due to mistake and is void ab-initio or at any rate voidable. The government is also entitled to rectify all its administrative mistakes". It is also stated that the applicant is liable to pay back to the Government all the over payments made to him having regard to the doctrine of "unjust enrichment". The applicant, according to the respondents, was, therefore, entitled only to the grade of Rs.133 - 340 instead of Rs.215 - 540 on his initial appointment on 15.9.1973 and to a revised scale of Rs.550 - 900 upto 31.12.1985 and to a corresponding scale with effect from 1.1.1986 i.e., the date from which the revised scales recommended by the Fourth Central Pay Commission came into effect. According to them, the scale of Rs.215-540 and the revised scale of Rs.650-1200 are admissible to an Instrumentalist who was graded as 'A' in All India Radio and at the T.V. Centre, New Delhi where he joined. It is also stated that he did not make any attempt to upgrade his grading from 'B High' to 'A grade' and also did not bring it to the knowledge of the officers and continued to draw fee in a higher fee scale not admissible to him knowingly. The respondents have also

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stated that the "applicant's file relating to granting of initial higher fee scale is not traceable. But it is apparent that he has a hand in this because he has managed to procure by unfair means extracts of noting on the file of DG: Door-darshan, to which he was not authorised to have access, and attached the same with his representation dated 13.9.88 (Annexure I of application) which clearly reflects on his integrity and manner of functioning".

8. We have given a careful consideration to rival contentions of the parties. The respondents have not placed before us any material to substantiate their contention that the applicant was initially graded as 'B High'. Further, there is also nothing to show that such a grading by the selection committee was ever communicated or made known to the applicant. The action of the respondents, which has been assailed by the applicant undisputedly has adverse civil consequences for the applicant. It has been held repeatedly by the Apex Court that even an administrative order which has adverse civil consequences to a public servant, has to comply with the principles of natural justice (STATE OF ORISSA Vs. DR. (Miss) BINAPANI DEI & OTHERS (AIR 1967 SC 1269). This was reiterated in UNION OF INDIA Vs. E.G. NAMBUDDIRI (AIR 1991 S.C. 1216).

9. In the case before us, admittedly, no opportunity was given to the applicant to show cause against the action of reducing downward his fee scale and ^{that} /too after a lapse of nearly 14 years and with retrospective effect. There cannot be any manner of doubt that the impugned orders resulted in adverse civil consequences to the applicant. It is true that if there is an administrative mistake, it can be corrected by Administration. However, such a principle does not constitute any authority in favour of the Administration to act arbitrarily and after unduly long delay without giving reasonable opportunity of showing cause to the concerned public servant.

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10. In the light of the foregoing discussion, the impugned order dated 1.7.1987, by which the applicant's fee scale was revised from Rs.650-1200 to Rs.550-900 with effect from ^{his} the date of appointment i.e., 15.9.1973 and the recovery of the alleged over payment was ordered to be made, is hereby quashed and set aside. The impugned Memo dated 8.9.1988 and Memorandum dated 4.3.89, by which the applicant had been asked and reminded respectively to get in touch with the Administration Section for signing his new contract reflecting the revised fee scale are also hereby quashed and set aside. Accordingly the O.A. is allowed in terms of the directions that the applicant shall be entitled to his fee in the fee scale of Rs.650-1200 with effect from 15.9.1973 and he shall be further entitled to fixation of his fee/pay in the corresponding new scale which came into effect with effect from 1.1.1986 from the date which may be relevant in accordance with the option exercised by him, if any, under the Revised Pay Rules on the recommendations of the Fourth Central Pay Commission. The applicant shall also be entitled to arrears of fee/pay and allowances admissible thereon. These directions shall be complied with within a period of two months from the date of receipt of a copy of this order by the respondents. There shall be no order as to costs.

29/10/91
(P.C. JAIN)
Member(A)

29/10/91
(B.S. SEKHON)
Vice Chairman (J)

29.10.1991.

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