

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

**O.A. No.557/2016
M.A. No.597/2016**

Reserved on :08.02.2021
Pronounced on:10.02.2020

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Badri Narayan Atal S/o Late Shri Prabhati Lal Atal aged around 56 years, R/o 633, Surya Nagar, Near Gopalpura Bypass Road, Jaipur (Raj.). Presently working as Officer Surveyor (RGDC), Survey of India, Great Arc Bhawan, Sector 10, Vidhyadhar Nagar, Jaipur (Raj.).

...Applicant.

(By Advocate: Shri Amit Mathur)

Versus

1. The Union of India through its Secretary, Ministry of Science & Technology, North Block, New Delhi.
2. The Surveyor General of India, O/o Surveyor General of India, Hathibarkala Estate, Dehradun Uttarakhand.
3. The Director (RGDC), Survey of India, Great Arc Bhawan, Sector 10, Vidhyadhar Nagar, Jaipur (Raj.).

...Respondents.

(By Advocate: Shri Lalit Mohan Bhardwaj)

ORDER

Per: Dinesh Sharma, Member (A):

In the present OA, the applicant has prayed for quashing the orders at Annexures A/1 and A/2 by which it is proposed to revise his pay downwards. He has also prayed

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for staying the operation of these orders during the pendency of this OA.

2. The applicant has claimed that his pay was fixed, by an entry in his Service Book dated 06.07.2015 (Annexure A/8) at Rs.5850 as on 01.01.2001, following FR 22(1)(a)(2), by way of allowing the benefit of the order passed by CAT Guwahati Bench, that was confirmed by the Hon'ble Guwahati High Court (Annexure A/3). The impugned orders are seeking to revise this pay fixation, following recommendations of a board, based on FR 22(I)(a)(1) (and NOT on FR 22 (I)(a)(2) as was done earlier). The applicant claims that the earlier fixation [based on FR 22(1)(a)(2)] was in line with the earlier orders and clarifications issued in this regard including the orders issued for the Guwahati staff and the information given in reply to his petition seeking relevant information(Annexures A/5, A/6, A/9 and A/10 respectively).

3. A stay order was issued by this Tribunal, by its order dated 13.07.2016, on any recovery pursuant to the notices at AnnexuresA/1 and A/2. However, it was stated that there would not be any bar to any further fixing of pay by the respondents following these notices.

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4. The respondents have denied the claim of the applicant. It is stated that the earlier fixation was done because of a misinterpretation of the relevant rules, while implementing the order of the Hon'ble Guwahati High Court. Since there were some doubts regarding fixation of pay, the Surveyor General of India constituted a board to examine the matter in the light of the rule position. This board came to the conclusion that when upgraded revised pay scale in respect of any particular post or cadre is granted in conjunction *with effective date of implementation* of any pay commission's report (either on the recommendations of pay commission or otherwise), the pay of such an employee is to be fixed on the basic pay that is drawn by the employee on the pre revised lower scale of pay, by applying the formula introduced under the concerned CCS (RP) Rules. According to them, the application of FR 23 and FR 22(1) (2) was not correct in this particular case when the pay is sought to be fixed, as per the Hon'ble High Court's order, from the *effective date of implementation* of CCS (RP) Rules, 1997. The pay fixation for the post of "Survey Assistant" at the time of granting revised/upgraded scale had to be done as per model table equivalent to "Surveyor" and thereafter promoted persons got ACP and MACP as per the rules in that hierarchy of scale. The respondents have informed that they have issued

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further orders revising the pay, in suppression of their earlier office order, by their order dated 20.07.2016 (Annexure R/2). The matter of recovery of excess payment has been adjourned since there is a stay by this Tribunal. Following the principles laid down by the Apex Court in **“Chandi Prasad Uniyal and Others vs. State of Uttarakhand and Others** (C.A. No 5899/2012, order dated 17.08.2012), the excess payment of public money has to be recovered.

5. No rejoinder has been filed.

6. The matter was heard through video conferencing on 08.02.2021. Both the parties reiterated the arguments mentioned in their pleadings.

7. After going through the pleadings and hearing the arguments, it is clear that the main issue in this matter is- which of the FRs, FR 22(I)(a)(1) or FR22(I)(a)(2) should apply while fixing pay following the Hon'ble Guwahati High Court's orders. Both these FRs have been given in the OA and are also reproduced here below:

“F.R.22(I) The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows:

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(a) (1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued [rupees one hundred only] whichever is more.

(2) When appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis:

8. The learned counsel for the applicant has argued that the fixation done earlier, following FR 22 (I) (A) (2) was correct. This is what was done in case of the Guwahati staff and also clarified through various earlier communications. The learned counsel for the respondents argued that the earlier fixation was on a wrong interpretation of rules. There is no violation of the Hon'ble High Court order in the new fixation. It has been done to carry out the direction of the Hon'ble High Court order (to grant Survey Assistants pay at par with Surveyors from 01.01.1996 while following the correct rule for such fixation. We have gone through the

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Hon'ble High Court order and have also perused the impugned orders at Annexures A/1 and A/2. Annexure A/1 clearly spells out reasons why the respondents are seeking to revise the allegedly wrong fixation done earlier. There is obviously no violation of the Hon'ble High Court order in the new fixation. The order of the Hon'ble High Court related to parity between Surveyor and Survey Assistant and did not say anything about the application any particular FR. The learned counsel for the applicant, however, argued forcefully that the earlier fixation, which was confirmed in the clarifications (Annexure A/6) and in their answer to RTI query (Annexure A/11) was correct and therefore should not be revised just because a board considers a different rule is more apt (for fixing the pay in such situation). We do not agree with this argument since there cannot, logically, be a ban on anyone from correcting oneself, especially when dealing with public money. We find the communication at Annexure A/1 is sufficiently well reasoned. There is no allegation by the applicant that the revision is being done out of malice and is applied only in his case. The interpretation of the rules explained in the impugned order (Annexure A/1) is *prima facie* sound. It is done based on a conclusion reached by a board of officers who have looked into this matter in detail. It would be wrong on our part to substitute that conclusion with our own interpretation of

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these rules, in the absence of any malice or any *prima facie* apparent error. The applicant has also not given any reason to support his argument other than stating that it was interpreted in a different way earlier. There is also an implicit acquiescence with the downward revision (done after filing of this OA) since neither a rejoinder nor a fresh plea to quash the order (Annexure R/2) has been made.

9. Under these circumstances, we find no merit in the OA and it is therefore dismissed. The applicant has not stated any specific ground for not effecting recovery (e.g. Rafiq Masih etc). He had prayed for stay only on account of application of wrong FR. In the light of our finding on the correctness of the rules applied, the stay issued on recovery by this Tribunal's order dated 13.07.2016 is vacated. The respondents are expected to follow the law (including the relevant judicial pronouncements in such matters) before effecting any recovery. No costs.

10. MA No.597/2016 for vacation of stay is disposed of accordingly.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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