

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2557/2004

New Delhi, this the 7th day of July, 2005

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Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

Dr. Ajit Sinha,
S/o Shri N.K. Prasad,
E/20, Anand Lok Society,
Mayur Vihar Phase-I, Delhi.

Working as Sr. Surgeon,
Safdarjung Hospital,
Delhi – 110 029.

...Applicant

(By Advocate Shri Vijay K. Mehta)

Versus

1. Union of India
through Secretary,
Ministry of Health & Family Welfare,
Dept. Of Health
Nirman Bhavan,
New delhi – 110 011.
2. Medical Superintendent,
Safdarjung Hospital,
New Delhi – 110 029. ...Respondents.

(By Advocate Shri V.S.R. Krishna for respondent no.1 and Ch. Shamsuddin Khan for respondent no.2)

O R D E R (ORAL)

By Mrs. Meera Chhibber, Member (J):

By this OA, applicant has sought the following reliefs:

"a) Hold and declare that the Office Orders No. A. 12034/36/97-
Admn. I dated 29.5.2003 (Annexure-A/1) and No. 1-17/97 –
Admn. I dated 14.7.2004 (Annexure-A/2) whereby the pay of the
applicant has been reduced and refixed from the date of his
initial appointment as being illegal, arbitrary, unreasonable,
against the principles of natura justice and violative of Articles
14 and 16 of the Constitution.
b) Set aside the impugned orders detailed in prayer (a) and
direct the respondents to grant all consequential benefits to the
applicant including grant of increments, pay fixation, arrears etc.
c) Award the cost in favour of the applicant and against the
respondents;
d) Pass such other order(s) in the facts and circumstances of
the case and in the interest of justice".

2. It is submitted by the applicant that he was earlier working with E.S.I.C.
and was getting the pay at Rs. 3950/- plus NPA Rs. 950/-, When he was

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selected by U.P.S.C. as Specialist Gr.II (Surgeon) and was posted in Central Health Services in July 1992. The last pay certificate annexed at page 27 shows that he was drawing pay at Rs.3950/- plus NPA Rs.950/-. His pay was fixed vide order dated 11.5.1993 at Rs.4000/- plus NPA Rs.950/- (page 28) but subsequently by an office order dated 11.3.1998, his pay was fixed at Rs.4125/- plus NPA Rs.950/- w.e.f. 1.7.1992 (page 30) and he had been drawing this salary as per his pay fixation.

3. Applicant was subsequently given two promotions, the last being in sr. scale of Rs.14300-18300/- vide order dated 24.5.2001 (page 37) and has been drawing his pay regularly as per pay fixation done by the respondents.

4. The grievance of ~~the~~ applicant is that order dated 29.5.2003 (page 18 and 20), was issued whereby his pay was re-fixed at Rs.4000/- plus NPA Rs.950/- w.e.f. 29.7.1992 which was further reduced to Rs. 3875/- plus NPA Rs.950/- w.e.f. 29.7.2002 vide order dated 14.7.2004 (page 22 and 23), that too without putting him ~~to~~ notice or issuing any show cause notice. Counsel for applicant has relied upon a number of judgements which are quoted below to substantiate his arguments that once his pay was fixed and no mis-representation has been made by the applicant, the same could not have been reduced by the department without putting him ~~to~~ notice.

- (1995) Supp. (1) SCC 18 – Sahib Ram Vs. State of Haryana.
- (1995) Supp. (3) SCC 722 – Nand Kumar Vs. State of Bihar.
- (1994) 27 ATC 121 – Shyam Babu Verma Vs. Union of India.
- (1994) 6 SCC 154 – Bhagwan Shukla Vs. Union of India.
- (1995) Supp. (1) SCC 149 – Gabriel Saver Vs. State of Karnataka.

5. The OA is opposed by the respondents who have submitted that there was ~~exist~~ anomaly in fixation of pay of the applicant from time to time due to non-receipt of corrigendum dated 7.4.1998 issued by respondent no.1 and respondent no.2. Therefore, they had only fixed his pay correctly as per the corrigendum dated 7.4.1998. They have right to correct the mistake and to



recover the difference of pay, which had wrongly been paid to the applicant.

They have tried to explain that his pay could not have been fixed at Rs.4000/- and Rs.4125/- ^{as} ~~and~~ that was fixed by mistake. Therefore, the OA may be dismissed.

6. We have heard both the counsel and perused the pleadings as well. It is not the case of the respondents that the pay of the applicant was fixed at Rs.4000/- initially or at Rs.4125/- plus NPA Rs.950/- in 1993 and 1998 due to mis-representation made by the applicant. On the contrary, they have themselves submitted that the pay of the applicant was fixed wrongly as they had not received the corrigendum dated 7.4.1998. It is thus clear that mistake was done on the part of the respondents as per their own showing as well. The law on this point is well settled by now that even if pay is fixed wrongly and there is no mis-representation made by the applicant concerned, the same cannot be corrected without giving him any show cause notice or without putting him to notice. ~~However~~, It is admitted that no show cause notice was issued nor applicant was put to notice before re-fixation of his pay, therefore, this OA deserves to be allowed on this point alone. Accordingly, the impugned orders dated 29.5.2003 and 14.7.2004 are quashed and set aside. We, however, make it clear that since this OA is being allowed on a technical ground for want of non-compliance of principles of natural justice, it would be open to the respondents to pass an appropriate order after giving show cause notice to the applicant and after hearing him in person or by way of representation. This shall be done within a period of three months from the date of receipt of a copy of this order. Till such time the final orders are passed, no recoveries shall be made from the applicant.

7. With the above directions, OA is disposed of.

Om
 (S.K. Malhotra)
 Member (A)
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B. Meera Chhibber
 (Mrs. Meera Chhibber)
 Member (J)