

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1677/2004

New Delhi, this the 6th day of May, 2005

**HON'BLE JUSTICE SHRI V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI M.K. MISRA, MEMBER (A)**

Umesh Verma
Director (CP&PR) (Retired)
Department of Telecommunications,
Ministry of Information Technology and Communications,
R/o 11270, Varma Building,
Varma Lane, New Rohtak Road,
New Delhi-110005.Applicant.

(By Advocate : Shri S.S. Ray with Shri S.N. Anand)

VERSUS

Union of India through Secretary,
Department of Telecommunications,
Ministry of Information Technology and Communications,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi-110001.Respondent.

(By Advocate : Shri K.R. Sachdeva)

ORDER

SHRI M.K. MISRA, MEMBER (A) :-

The applicant – Shri Umesh Verma by virtue of this OA seeks the following reliefs:-

- "a) Set aside and quash the impugned order dated 12-6-2003 alongwith pay fixation order dated 26-12-2003 vide which applicant's pay has been fixed in the lower scale of Deputy Director in place of the post of Director in the pay scale of Rs.3700-5000/-, which he held from 1988 till his superannuation;
- b) Direct the respondent to pay arrears accruing to the applicant by fixing his pay at Rs.12750/- (Basic pay Rs.4700 in pre-revised scale) in the revised pay scale of Rs12000-375-16500/- from 1-1-1006 till his superannuation from 30-11-1996;

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- c) Direct Respondent to revise retrial dues of the applicant on the basis of average emoluments drawn by the applicant during the last ten months preceding his superannuation on the post of Director with basic pay of Rs.4700/- plus DA in the pay scale of Rs.3700-5000 = basic pay 12,750/- in the revised pay scale of Rs.12,000-16,500/-;
- d) Award interest at the rate of 18% arrears of pay and revised retrial benefits as per (b) and (c) above;
- e) Direct Respondent to fix responsibility upon the erring official(s) responsible for causing delay in releasing the aforesaid benefits as per Rule 68 of CCS (Pension) Rules, 1972; and
- f) Award damages to the applicant for causing untold mental agony, misery and harassment to the applicant who is a senior citizen;
- g) Pass such further or other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. Briefly the facts of the case are that the applicant was appointed as Visual Artist, TV Centre, Akashwani Bhawan, New Delhi in 1963 and continued to work there till October, 1965. Thereafter he was appointed as Junior Artist-cum-Lecturer in the Graphic Art Section and in Photo Section in National Institute of Audio Visual Education, NCERT till June 1969. Later on the applicant went to France for post-graduate studies under French Government Scholarship Scheme from June, 1969 to October, 1974. When he returned from France, he joined as Senior Artist in the Department of Advertising and Visual Publicity, Ministry of Information and Broadcasting, New Delhi in October, 1974 and continued to work till December, 1980. Subsequently, the applicant was appointed as Senior Artist in Advanced Level Telecom Training Centre, (hereinafter referred to as 'ALTTC'), Ghaziabad.

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3. The Ministry of Communications invited application for filling the sole post of Director (Commercial Publicity and Public Relations) (hereinafter referred to as "C.P. & P.R.") in the Department of Telecommunication, New Delhi, which carried the pay scale of Rs.1500-1800 (revised scale Rs.3700-5000 as per Vth Central Pay Commission's recommendations). It was pointed by the learned counsel for the applicant that in the notification dated 18.4.1985 (Annexure A/2), the mode of appointment i.e. deputation etc. has not been mentioned. Meanwhile, the post of Deputy Director (Media Support) became vacant in ALTTC, Ghaziabad and for that the applicant sent his application for selection on permanent transfer basis. Thereafter the applicant was permanently absorbed as Deputy Director (Media Support) in Department of Telecommunication vide order dated 2.7.1986 in the pay scale of Rs.1100-1600/- w.e.f. 4.7.1986. He also functioned as Director (C.P. & P.R.) in Department of Telecommunications and as Director (Staff Relations).

4. The term of the applicant on deputation basis for the post of Director (C.P. & P.R.) was extended from time to time vide order dated 22.5.1986 (Annexure A/3), letter dated 12.10.1988 (Annexure A/7) and letter dated 29.12.1992 (Annexure A/10) and further extended the period of deputation vide letter dated 31.1.1995 (Annexure A/11).

5. Vide letter dated 3.4.1996 (Annexure A/12), the post of Deputy Director (Media Support) was upgraded to Junior Administrative Grade level designated as Director (Media Support) in the pay scale

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of Rs.3700-5000/- and the applicant worked in that capacity. Vide letter dated 9.4.1996 (Annexure A/13), the applicant was asked to repatriate to his original department and accordingly he was posted as Deputy Director (Media Support) in ALTTC in the pay scale of Rs.3700-5000/- (Annexure A/14). The applicant superannuated on 30.11.1996 (Annexure A/15). As per the last pay certificate dated 11.6.1997, the applicant was drawing Rs.12,433/- per month with basic pay of Rs.4700/- (Annexure A/17). Subsequently, his pay was reduced in the scale of Rs.3000-4500/- (Revised scale of Rs.10,000-15,200/-) (Annexure A/20). This revision in pay was made without any notice to the applicant. The applicant in the present OA has assailed this order dated 26.12.1997 (Annexure A/20) as well as pay fixation order dated 12.6.2003 (Annexure A/1). The order dated 26.12.1997 reads as under:-

"OFFICE ORDER

In accordance with the Central Civil Services (Revised Pay) Rules, 1997, the pay of Shri Umesh Verma, Director (CP&PR) (Retired), Department of Telecommunications who has elected for the revised scale of pay, is fixed in the revised scale with effect from 1.1.96 as shown below:

Pay in the existing scale as on 1.1.96	Pay fixed in the revised scale as on 1.1.96	Remarks
Rs.4500/- *	Rs.12,275	*Since his appointment as Director (CP&PR) from 1.7.95 to 30.11.96 has not been approved by the Competent authority so far, the pay fixation in Revised Pay Rules, 1997 has been done taking his substantive pay as Deputy Director.
Rs.3000-4500	Rs.1000-15200/-	

2. The above mentioned officer will be entitled to arrears of Pay and Allowances in accordance with the

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orders of Ministry of Finance Notification No.50(1)/IC/97 dated 30.9.97.

3. The above fixation of pay is subject to post audit and in the light of the audit observation, the over payments made, if any, either in the form of arrears or otherwise, shall be recovered from amount due to him subsequently, without notice."

6. The pay fixation order dated 12.6.2003 reads as under:-

"It has been intimated that you were appointed as temporary Junior Artist in NCERT against a short term vacancy. During the period you were working in NCERT, you had proceeded on training abroad on your violation even as the leave sought for 5 years was neither sanctioned nor admissible to you under the rules of Council. Further, since the service rendered by you in NCERT was on short term basis, the same will not qualify for pension purposes.

As regards, the question of fixation of pay under CCS (Revised) Pay Rules, 1997, it is stated that since your appointment to the post of deputation basis was not extended beyond 30.6.95, the benefit of fixation of pay in the post could not be given. Therefore, your pay was fixed in the pay scale of Rs.10,000-15,200/- w.e.f. 1.1.96."

7. The learned counsel for the applicant submitted that both the orders are discriminatory and are violative of Rule 34 of CCS (Pension) Rules, 1972. Since the applicant continued to hold the post in the scale of pay of Rs.3700-5000/- till his retirement, therefore, the average emoluments of ten months should have been calculated on the basis of pay fixed in that scale and accordingly, retirement benefits should have been given on that basis.

8. The learned counsel for the respondent in their reply submitted that Rule 34 of the Rules ibid deals with calculation of average emoluments, which are determined with reference to pay drawn by the Govt. servant during the last ten months of his service.

As per Rule 9 (21) (a) (i) of Fundamental Rules, pay means amount

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drawn monthly by the Govt. servant as the pay other than special pay and pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre. Accordingly, the learned counsel for the respondent averred that the applicant was appointed to the post of Director (C.P. & P.R.) in the Department of Telecommunications on deputation basis and the claim of the applicant that he was posted there on that post on regular basis is not based on correct facts. He was posted on deputation basis as per conditions laid down in Column 12 of the Recruitment Rules w.e.f. 14.10.1988 for the period of four years. This fact was mentioned in the payment letter dated 12.10.1988. The period of deputation of the applicant was extended from time to time upto 30.6.1995 could not be treated as on deputation as per the extant policy. His retiral benefits were calculated on the basis of extant rules. The pay of the applicant was fixed in terms of OM dated 7.11.1975 of the Ministry of Finance, Govt. of India.

9. We have heard the learned counsel for the parties at great length.

10. We observe that the applicant was posted as Director (C.P. & P.R.) in the Department of Telecommunications in the pay scale of Rs.3700-5000/- on deputation basis as per Recruitment Rules existing for the said post. His pay was to be governed by Govt. of India, Ministry of Finance's OM No.372/21/87-STG-III I (Annexure A/7). Similarly, we also observe that his deputation was extended
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from time to time upto 30.6.1995 as per letter dated 31.1.1995 (Annexure A/11). We further observe that the competent authority upgraded the post of Deputy Director to the Junior Administrative Grade level in the pay scale of Rs.3700-5000/- to accommodate the applicant for the period upto 30.11.1996 vide letter dated 3.4.1996 (Annexure A/12). The applicant was asked to repatriate to his original department vide letter dated 9.4.1996 (Annexure A/13). The applicant did not come back from ALTTC, Ghaziabad to his original department. Therefore, the order become infructuous. Subsequently, vide letter dated 11.2.1997 (Annexure A/16), a request was made to the Department of Personnel and Training by the Telecommunications Commission for regularization of the period of deputation of the applicant against the post of Director (C.P. & P.R.) from 30.6.1995 to 30.11.1996. The said request was not approved by the competent authority till his retirement. Therefore, the period of deputation was not considered to be fit for regularization for the purpose of fixation of pay in the scale of Rs.3700-5000/- (Annexure A/20). A reminder was also issued vide letter dated 15.7.1998 (Annexure A/21) but nothing was heard from the competent authority. However, his pay was fixed vide order dated 26.12.1997 in the scale of Rs.3000-4500 (Revised scale of Rs.10,000-15,200/-) taking his substantive pay as Deputy Director, as his appointment as Director (C.P. & P.R.) from 1.7.1995 to 30.11.1996 was not approved by the competent authority.

11. The expression emoluments under Rule 33 of CCS (Pension) Rules, 1972 means basic pay as defined in Rule 9 (21) (a) (i) of the Fundamental Rules which a Government servant was receiving

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immediately before his retirement or on the date of his death; and will also include non-practising allowance granted to medical officer in lieu of private practice.

12. Rule 34 of the Rules ibid defines average emoluments in the following terms:-

“Average emoluments shall be determined with reference to the emoluments drawn by a Government servant during the last ten months of his service.”

13. Rule 9 (21) (a) (i) of Fundamental Rules defines pay as under:-

“the pay, other than special pay and pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre”

14. The applicant repatriated vide order dated 9.4.1996 and the applicant retired on 30.11.1996. Vide order dated 9.4.1996 (Annexure A/14), It is observed that the office order clearly indicated that the repatriation of the applicant from the post of Director (C.P. & P.R.) in the Department of Telecommunication. He was posted in the upgraded post of Deputy Director (Media Support) in AILLC in the scale of pay of Rs.3700-5000 with immediate effect. However, the applicant did not join on this post. The applicant continued working in the ALTTC, Ghaziabad in the pay scale of Rs., 3700-5000/- till his retirement and after his repatriation order, he was directed to work in the pay scale of Rs. 3700-5000/-. It is further observed that the necessary approval was sought from the DOP&T for regularization of his period from 1.7.1995 to 30.11.1996 for the purpose of pay fixation and till his retirement & pay fixation order dated 26.12.2003,

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necessary approval could not be obtained/given for which the applicant was not responsible. The applicant worked in the above pay scale for more than a decade and later on, after his repatriation order, he was to serve in the same pay scale. Therefore, the pay of the applicant should have been fixed in the pay scale of Rs. 3700-5000/- w.e.f. 1.1.1996 as per the recommendation of the Vth Central Pay Commission duly accepted by the competent authority and he was, therefore, entitled to get his pension fixed accordingly. Even the applicant was not issued any notice till his pay was revised to the lower scale i.e. Rs. 3000-4500/-. Thus, there is a violation of principles of natural justice. Further, the applicant was not getting any deputation allowance. Rather, he was getting pay in a running scale of pay in a post, which was occupied by the applicant on deputation basis. As per the definition of "Emoluments" supra, the pay so fixed is to be considered as "emoluments" for the purpose of pension. Only deputation allowance is not to be considered as emoluments. In the present case, there is no deputation allowance. More so, even on reversion, the pay scale of the applicant was the same.

15. In view of the above facts, the respondents are directed to fix the pension and retiral benefits of the applicant based on the pay scale of Rs. 3700-5000/- and pay the same along with consequential benefits to the applicant. This exercise should be carried out by the respondents concerned within a period of three months from the date of receipt of a certified copy of this order. The applicant would also be entitled to interest @ 9% per annum on the difference

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between the actual payment and the amount to be payable after revision of the pensionary benefits, as per rules.

16. The upshot of the above discussion is that there is sufficient merit in the Original Application, hence it is allowed with no order as to costs.



(M.K. MISRA)
MEMBER (A)



(V.S. AGGARWAL)
CHAIRMAN

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