

In the Central Administrative Tribunal
Principal Bench, New Delhi

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Regn. No. DA-2478/92

Date: 16.7.1993.

Smt. Narinder Marwah Applicant

Versus

Union of India Respondents

For the Applicant Shri M.L. Chawla with Shri
S.L. Lakhan Pal, Counsel

For the Respondents Shri R.S. Agarwal, Counsel

CORAM: Hon'ble Mr. J.P. Sharma, Member (Judl.)

1. To be referred to the Reporters or not? y3

(Judgement of the Bench delivered by Hon'ble
Mr. J.P. Sharma, Member)

The applicant was appointed with the respondents' Office in March, 1968 as L.D.C./Key Punch Operator and after earning promotions, she was holding the posts of Technical Research Assistant (TRA) in the Office of the Directorate of Income Tax (Research, Statistics, Publication and Public Relations), New Delhi till her voluntary retirement on 1st February, 1992. The case of the applicant is that she was promoted as TRA in the pay-scale of Rs.550-900 and her pay was fixed at the stage of Rs.600/- w.e.f. 9.1.1984 by the order dated 8th February, 1984 (Annexure A-1). This pay-scale was subsequently revised w.e.f. 1.1.1986 to 1640-2900 and her pay was fixed at Rs.1940/-. At the time of her retirement on 31st January, 1992, she was drawing Rs.2300/-

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per month. The Directorate of Income Tax, acting on the direction of Accounts Officer Z.A.O., C.B.D.T., New Delhi letter dated 11th August, 1992, issued the impugned order dated 24th August, 1992/7th September, 1992 (Annexure-A), revising the fixation of pay w.e.f. 9.1.1984, when the applicant was promoted as T.R.A. By this impugned letter, the pay of the applicant has been fixed at Rs.575/- per month from Rs.600/- per month w.e.f. 9.1.1984. The applicant has challenged this letter in the original application and has prayed that the aforesaid order dated 24.8.1992/7.9.1992, be quashed and a direction to the respondents be issued to release the terminal benefits, corresponding to the pay last drawn by her on 31st January, 1992. A prayer for interest on the unlawfully withheld amount of terminal benefits and a restraint on them not to effect recovery from the terminal benefits, be placed.

2. The respondents contested this application and in the reply stated that at the time of promotion as T.R.A., the applicant was drawing the pay of Rs.545/- as a Stenographer (S.G.) and her pay was wrongly fixed as T.R.A. at Rs.600/- while it should have been fixed at Rs.575/- as given out in the impugned letter dated 24.8.1992, which reads as follows:-

"Consequent upon her promotion as T.R.A. on ad-hoc basis w.e.f. 9.1.1984 in the pay scale of Rs.550-25-750-EB-30-900 vide order P.No.E-25(5)/RSP&PR/83-84/3780 dated 9.1.1984, pay of Smt.

Narinder Marwaha is fixed under FR 22(1)(a)(1) (FR 22-C then) as under:

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| 1. Pay in the lower post as on 9.1.84 | Rs.545 |
| 2. Pay after notional increase by one increment | Rs.560 |
| 3. Pay in the promoted post on 9.1.84 grade Rs.550-900 | Rs.575 |
| 4. Date of next increment | 1.1.1985. |

This supersedes the earlier fixation orders of even number dated 8.2.84 and 28.7.1992.

The present fixation has been done in view of Z.A.O., C.B.D.T., New Delhi's letter of ZAO/CBDT/DLI/9-4/1032 dated 11.8.1992."

3. It is further stated that on the pointing out of the Zonal Accounts Officer, the mistake has been corrected.

Thus, the applicant has no case as she has taken undue advantage in the matter of higher pay and also in the matter of preponement of her next date of increment.

4. The applicant has filed the rejoinder reiterating the averments made in the O.A. and further stated that the applicant has officiated as a Stenographer (S.G.) in the pay-scale of Rs.550-900 from 29.6.1979 to 31.3.1981, from 11.5.1981 to 10.7.1981, from 14.6.1982 to 24.7.1982 and 10.5.1983 to 3.7.1983 and the total period comes to two years, two months and eight days. The applicant, in preponement of the increment, has been given the benefit of this officiating service under proviso to FR-22(1). The pay fixation done by the respondents earlier is, therefore, correct. The respondents cannot reduce

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in the year 1992, the pay of the applicant fixed in the year 1984, when she had already retired from service.

5. I have heard the learned counsel for the parties at length and perused the records. During the course of the hearing, the learned counsel for the respondents has filed a letter dated 6.7.1993 which goes to show that the applicant has since been paid leave encashment amounting to Rs. 25,171/-, CGEIS Rs. 3,348, GPF Rs. 67,287, and provisional pension in full without commutation at Rs. 934/- per month w.e.f. 1st February, 1992. It is further written in the said letter that the matter of commutation of pension and payment of gratuity is also being processed.

6. The contention of the learned counsel is that after such a long gap of 8 years, when the applicant has already taken premature retirement, the respondents cannot reduce her pay. In fact, ^{by} the earlier pay fixation order as T.R.A. dated 8.2.1984, the pay has been fixed under FRs 22 and 26 and in this, the period when the applicant officiated as a Stenographer (S.G.) in the grade of Rs. 550-900, has also been counted. In a subsequent letter dated 28th July, 1992, the same position has been confirmed and the letter reads as follows:-

"Consequent upon her promotion as TRA on ad-hoc basis w.e.f. 9.1.1984 vide order F.No. E-25(5)RSPR/83-84/3780 dated 9.1.1984 (copy enclosed) initial pay of Smt. Narindera Marwaha

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is fixed at Rs. 600/- w.e.f. 9.1.1984 in the scale of Rs. 550-25-750-EB-30-900 under FR 22(1) (a) (1) read with proviso to FR 22(1) i.e. the pay she drew on the last occasion as Stenographer (S.G.) in the same time scale of Rs. 550-25-750-EB-30-900, with next date of increment on 1.11.1984.

2. The period from 14.6.82 to 24.7.82 and 10.5.83 during which she drew the pay of Rs. 600/- as Stenographer (S.G.) on the same time scale will count for increment at that stage and thus her next increment on 1.11.1984 under proviso to FR 22(1).

3. The fixation order F.No.P-II-1(44)/P&P/80-81 dated 8.2.1984 may be treated as modified as above."

7. The impugned order does not give out any reason of reducing the pay of the applicant, nor was any show-cause notice issued to the applicant to represent her case. The learned counsel for the applicant has relied upon the case of Neelkanth Shah Vs. Union of India & Others reported in 1987, Vol.II, ATJ 492. The Calcutta Bench has held that when the respondents have taken more than 7 years in detecting their mistake regarding wrong pay fixation which resulted in over-payment of more than Rs. 13,000 and even after a waiver of 50 per cent on compassionate ground, the applicant is required to pay back more than Rs. 6000/- from his salary. Then, the applicant of that case was not penalised. A similar view was taken in the authority of Himanshu Kumar Chatterjee Vs. Union of India & Others, reported in A.T.R. 1992, Vol.I, C.A.T. 301. That was also a case where recovery was being effected from the employee on the very belated detection of error of wrong fixation of pay without giving him an opportunity for showing

cause against the principles of natural justice. The reliance in this case has also been placed on the case of C.S. Bedi Vs. Union of India & Others, reported in A.T.R. 1988 (2) CAT 510.

8. Taking all these facts into account, firstly, the impugned order suffers from the defect that the respondents did not take into account the officiating period as a Stenographer (S.G.) of about 2 years, 2 months and 8 days of the applicant which required preponement of the date of increment in the next higher grade of the applicant. Secondly, no chart of fixation of pay in the revised pay-scale w.e.f. 1.1.1986, has been given as a supplement to the impugned order. Thirdly, the applicant, on the basis of the last pay drawn, has sought voluntary retirement which was granted to her w.e.f. 31st January, 1992. She may have changed her idea if her fixation of pay on promotion to T.R.A. was to be revised as that would normally result in recovery of the amount paid in excess. When the applicant has already retired from service, any action on the part of the respondents without giving an opportunity to her, would be against the principles of natural justice.

9. In view of the above facts and circumstances, the application is allowed and the impugned order dated 24.8.1992/7.9.1992 is quashed and the original order of fixation of pay dated 8.2.1984 and 28th July, 1992,

13

is upheld. The respondents are directed to pay the terminal benefits on the basis of the last pay drawn as certified in their L.P.C. dated 25.6.1992, when she was getting her basic pay as Rs.2300/- and total emoluments as Rs.4,483/- and to calculate the pension, gratuity, etc., on that basis. Certain amounts have been paid to the applicant, but the amount of DCRG and the arrears of pension, if any, will be paid with interest at the rate of 12 per cent per annum since one month after the retirement till the date of payment within a period of three months from the date of receipt of a copy of this judgement. The parties to bear their own costs.

J. P. Sharma
(J.P. Sharma) 16.7.93
Member(J)