

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.867 of 1992

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New Delhi this the 17th day of September 1996

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

Smt.Suresh Gupta
Wife of Sh. Basant Lal
House No.11/61 Sector III
Rajinder Nagar
Sahibabad - 201 005 (UP).

...Applicant

((By Advocate: Sh. Ranjan Mukherjee)

1. The Director of Education
Dte. of Education
Old Secretariat
Delhi.

2. The Dy. Director of Education
Dist. (East)
Dte. of Education
Rani Garden
Delhi - 110 031.

3. The Principal
Govt. Girls Senior
Secondary School
Shahdara, Delhi.

..Respondents.

(By Sh. B.S.Oberoi, proxy counsel for Sh. Anoop Bagai)

O R D E R (Oral)

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

This application is directed against the order of the Directorate of Education dated 27.8.1991, addressed to the Principal, Govt. Girls Senior Secondary School, Shahdara, Delhi stating that the competent authority has held that the fixation of the pay of the applicant w.e.f. 2.4.73 in the scale of Rs.440-750 at Rs. 480 was irregular and recovery of over payment involved about Rs. 20,000, as also stating that the service book of the applicant and original bills/claim for Rs. 13,145, 7,119.45 and Rs.6,678.80 were returned for necessary action at his end.

2. The facts absolutely necessary for disposal of the application can be stated as follows:

The applicant commenced her career as a Librarian in Manav Sthali Secondary School, Rajinder Nagar, New Delhi in the year 1966 while the applicant was in the pay scale of Rs. 220-500. Manav Sthali Senior Secondary School became defunct w.e.f. 1.1.1973. In accordance with the policy of the Union Territory of Delhi, the applicant was absorbed on regular basis with protection of pay as Librarian in the Directorate of Education w.e.f. 2.4.1973. Her pay was protected at Rs. 220 on such appointment. Subsequently, the pay scale of Rs. 220-500 was revised to Rs. 250-550 w.e.f. 27.5.1970 by virtue of order dated 4.3.1974. Thereafter, on acceptance of the recommendation of the Third Pay Commission, the scale of pay of Rs. 225-550 was revised to Rs. 440-750. The applicant's pay was initially/^{wrongly} fixed at Rs. 440 against which she made a representation. [✓] However, ultimately, the applicant's pay was fixed at Rs. 480 on 2.4.73 and this was endorsed on her service records on 14th March 1985 by the Principal. Consequent on the re-fixation of the pay as stated above, a sum of Rs.7119.45 representing the period from 1.1.81 to 30.4.85 towards arrears was paid to the applicant but the payment for the earlier period i.e. from

2.4.73 to 31.12.80, amounting to Rs. 6878.80 was not paid ^{made} to the applicant. The applicant made a representation seeking balance of arrears amounting to Rs.6878.80. It was while the applicant was awaiting a favourable reply from the representation that the impugned order was passed by the Directorate of Education on 27.8.91. Aggrieved by the order, the applicant has filed this application. It has been alleged in the application that there is no justification for reducing the pay of the applicant fixed way back in the year 1985 and to order recovery of the alleged over payment.

3. The respondents in their reply contend that the wrong fixation of the pay of the applicant at Rs. 480 instead of Rs. 440 having come to light, the competent authority decided to rectify the error and to recover the over payment and, therefore, the applicant is not entitled to the reliefs claimed. According to the respondents, as the applicant's basic pay was only Rs.220, her pay should have been fixed on acceptance of the recommendations of the Third Pay Commission only at Rs. 440 and not Rs. 480.

4. I have carefully gone through the pleadings in this case and have heard Sh.Ranjan Mukherjee, learned counsel for the applicant and Sh. B.S.Oberoi, proxy counsel for Sh. Anoop Bagai appearing for the respondents.

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The pleadings in this case make one thing clear that the applicant has not been responsible for the fixation of her pay at Rs.480 and it was solely the responsibility of the competent authority to have fixed the applicant's pay at Rs. 480, going through the service records of the applicant in the light of the relevant rules and instructions. It is also evident that the pay fixation of Rs. 480 w.e.f.2.4.73 was made way back in the year 1985. The applicant has been after such fixation of pay getting her pay at Rs. 480 per month with effect from the relevant date. If the competent authority was of the view that the mistake had crept in in the fixation of the applicant's pay, it is not as if it does not have the competence to rectify the error. However, if an employee is being paid at a particular pay fixed by the competent authority for a long period of time, any reduction in the pay or any recovery on the ground of alleged over payment will be one which involves adverse civil consequences. It is well settled by now that where any order which would result in such adverse civil consequences, an opportunity should be given to the affected person to show cause against such an action. Admittedly, in this case, before issuing the impugned order, the Directorate of Education has not given the applicant a notice stating that fixation of the applicant's pay was wrong. If such a notice was

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given, the applicant would have had an opportunity to state that the fixation was correctly done and she could probably have a chance to establish her case. Whether the applicant would be successful in persuading the competent authority to accept her case or not is not a matter which the Tribunal should be concerned at this juncture. I find that this opportunity has been denied to the applicant. From the material on record, it cannot be held categorically that the fixation of pay made in the year 1985 was right or wrong. It is evident from the material on record that the Director of Education himself had accepted the fixation of pay of the applicant on 2.4.1973 at Rs. 480 and had sanctioned payment of arrears of pay on that basis by order dated 17th October 1986 (Annexure A-4). This order at Annexure A-4 has not so far been recalled. Therefore, it is not clear as to whether the fixation of pay of the applicant w.e.f. 2.4.1973 at Rs. 480 is actually wrong or right.

In these circumstances, I am of the considered view that the action of the Director of Education directing the Principal to effect recovery of a huge amount from the pay and allowances of the applicant is arbitrary and unjustified.

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5. The applicant is a low paid employee. If for any reason the mistake was committed by the competent authority in fixing the pay and even if something in excess of what was really due to her was being paid every month by reason of mistake committed by the respondents over a period of time though they may after giving a reasonable opportunity to the person concerned decide to rectify the mistake and pay thereafter only at a rate ~~which is~~ actually due to make recoveries from the pay and allowances during these days of inflation, according to me, is unduly harsh. As the applicant has not been in any way responsible for the over payment, I am of the considered view that any recovery on the ^{grand of} ~~alleged~~ over payment cannot be made from the pay and allowances of the applicant in the facts and circumstances of the case.

6. As the impugned order is one which results in adverse civil consequences ^{to} ~~for~~ the applicant, I am of the considered view that the order which has been passed in violation of the principle of natural justice has no legs to stand and, therefore, is liable to be set aside.

7. Sh. Oberoi, the counsel appearing for the respondents argued that the impugned order is an internal communication between the Director and the Principal and it does not give rise to a cause ~~of action~~.

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of action and that it is for the Principal to take appropriate decision, may be that he would issue notice also to the applicant affording her an opportunity to explain. In that view of the matter, Shri Oberoi argued that the application deserves to be dismissed. I am not inclined to agree to this argument. A reading of the impugned order would make it clear that the Principal has no discretion to take a different decision than what has been conveyed to him by the competent authority. A clear statement has been made by the competent authority that the fixation of the pay of the applicant was wrong and a direction has been given to effect recovery of the alleged over payment. No authority is given to the Principal to rectify the mistake, if any, committed by him after giving the applicant an opportunity to make a representation.

8. In the light of what is stated above, the application is allowed and the impugned order at Annexure A-1 is set aside. The respondents are directed not to make any recovery from the pay and allowances of the applicant on the basis of the impugned order. Consequent on the striking down of the impugned order, the applicant is entitled to get pay at the rate which she was receiving, treating that the impugned order has never taken

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~~effect~~ If she was paid at a reduced rate after the impugned order, the resultant arrears should be paid to her within two months. However, it is made clear that this order does not preclude the respondents from rectifying the mistake, if any , prospectively, but that should be done only after giving her a show cause notice and an opportunity of being heard in accordance with law.

There is no order as to costs.



(A.V.Haridasan)
Vice Chairman (J)

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