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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 446/93

New Delhi this the 29th day of July, 1993.

Hon'ble Mr. N. Sahu, Member (A)
Hon'ble Dr. A. Vedavalli, Member (J)

Shri M.S. Jethwani ...Applicant
(By Advocate Shri J.C. Saxena)

-Versus-

Union of India & Ors. ...Respondents
(By Advocate Shri M.L. Verma)

1. To be referred to the Reporter or not? YES/NO
2. Whether it needs to be circulated to other Benches
of the Tribunal? YES/NO


(N. Sahu)
Member (A)

(14)

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Hon'ble Mr. N. Sahu, Member (A)
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Shri M.S. Jethwani,
Draftsman Grade III
Central Water Commission,
Sewa Bhawan,
R.K. Puram,
R/o JG-3/207B, Vikas Puri,
New Delhi.

...Applicant

(By Advocate Shri J.C. Saxena)

-Versus-

1. Union of India through
Secretary to the
Govt. of India,
Ministry of Water Resources,
Shram Shakti Bhawan,
New Delhi.
2. Central Water Commission,
through its Chairman,
Sewa Bhawan, R.K. Puram,
New Delhi.

...Respondents

(By Advocate Shri M.L. Verma)

O R D E R (ORAL)

HON'BLE MR. N. SAHU, MEMBER (A):

Heard Shri J.C. Saxena, learned counsel for the applicant and Shri M.L. Verma, learned counsel for the respondents.

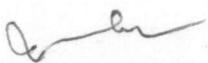
2. The prayer in this OA is to quash the order at Annexures A-1 and A-2 under which the applicant's pay has been reduced to the pre-revised scale of Rs.975-25-1150-EB-30-1540 with retrospective effect from 1.9.97 against the existing scale of Rs.1200-30-1500-EB-40-2040 which he was drawing at the time impugned order was passed. He challenges the refixation of his pay in the lower scale and also challenges the recovery of over drawn pay and allowances for the period from 9.11.87 to 31.12.92 at monthly instalment of Rs.200/- per

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month w.e.f. 1.1.1993. This Court on 24.3.93 directed that no recovery be effected from the applicant's salary, if not already effected and this was made further clear on 5.3.93 that there shall be no recovery from his salary from 24.3.93.

3. In spite of several opportunities the respondents did not file any counter-affidavit. Shri M.L. Verma, however, argued this case on the basis of the material on record without a counter-affidavit on 27.7.98.

4. The applicant's claim is that he had been holding the post of Draftsman Grade III in a substantive capacity and he is entitled to receive pay and allowances of the post. The respondents cannot after allowing him to draw in the scale of Rs.1200-2040 during the last five years take away the benefits accrued from that scale retrospectively and place him in a lower scale of Rs.975-1540 and that too without affording him a reasonable opportunity of being heard. It is urged by Mr. Saxena, appearing for the applicant that the benefit of the scale of Rs.1200-2040 was given under a Presidential sanction and this order cannot be modified to the detriment of the applicant by authorities subordinate to the President. It is submitted that after 9.11.87 from which date the applicant has been enjoying the scale of Rs.1200-2040 there were changes in the criteria by the impugned order and that such criterial cannot be enforced on the applicant. He states that there has been no over payment so far. An important point was made out that while revising and fixing his pay in the cadre of Draftsman Grade III no conditions were stipulated like (a) qualifications, (b) passing of the departmental examination and it is claimed that these conditions have been introduced after the applicant had been



functioning in the grade of Rs.1200-2040. He states that he has no obligation to pass any departmental examination as he was considered and placed in the next higher grade of Draftsman Grade III. As the impugned order dated 24.12.92 has the effect of placing the applicant at a lower scale and involving financial loss it simply cannot be bulldozed on the ground that it sought to correct a mistake. It virtually amounts to a punishment to the applicant. The learned counsel for the applicant cited the decision of the Hon'ble Supreme Court in Bhagwan Shukla vs. Union of India (AIR 1994 SC 2480). The validity of alteration of service conditions of Government servant as a result of which his basic pay was reduced from retrospective effect was the subject matter of consideration in this Supreme Court's decision. The impugned orders were quashed on the ground that his basic pay was reduced without granting him an opportunity of being heard. It is also clearly laid down that an opportunity to show cause is mandatory when there is a retrospective reduction of basic pay.

5. Shri M.L. Verma, learned counsel for the respondents explained that the Ministry of Water Resources objected to the granting of revised pay to the applicant because he did not satisfy the conditions of recruitment qualifications, as laid down in the Ministry of Finance, Department of Expenditure's OM No.F.5(59)-E-III/82 dated 13.3.84 in respect of Draftsmen in C.P.W.D. after the Arbitration Award. The claim of the respondents is that the applicant did not possess the two year diploma in Draftsmanship nor did he pass the CWC's examination which had been equated with such diploma. Under these circumstances, the impugned order dated 24. 12. 92 (Annexure A-1) was

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passed. Pursuant to that the pay scales of five officials including the applicant who is appearing at serial No.5 were reduced and they were placed in the revised lower scale of pay of Rs.975-1540. Thereafter, by Annexure A-15 at page 70 dated 30.1.93 the applicant represented to the Secretary, Ministry of Water Resources who is impleaded here in this OA as respondent No.1. We are informed by the learned counsel that there was no response to this representation. Shri Verma strenuously urged that as soon as the applicant passed the examination on 8.7.93 higher scale was restored to him. He also cited the decision of the P.A. Anil Kumar vs. Supdt. of Post Offices and Others (1991 (1) ATR 483). Shri Verma wants to state that no opportunity to show cause need be given when what is sought to be corrected is a mistake. In the case cited by Shri Verma the selection to the post was made by conducting an interview after considering the claims and qualifications of competing candidates. The applicant was informed in that case that he had been provisionally selected. The applicant would not have been selected had the first respondent noticed the income certificate obtained before the interview. Under these circumstances the question before the Hon'ble Madras Bench was whether the applicant is entitled to a notice of hearing before cancellation. The Bench ruled that as no right has accrued in his favour and as appointment order was issued by a mistake inadvertently by the first respondent and as the mistake is clear and apparent, it could be corrected without a notice to show cause to the applicant.

Shri Verma has placed on record the notification dated 9.11.87 which prescribes the qualifications relating to the post of Draftsman Grade III and it is suggested that this notification cannot be overlooked or by-passed. Shri Verma

[Signature]

has also brought to our notice OM dated 13.3.84 in which the decision of the President is conveyed for the revised scales of pay of Draftsman Grade III, Grade II and Grade I and sanction also was provided for revision of the same provided that the recruitment qualifications are similar to those prescribed in the case of Draftsmen in C.P.W.D. (emphasis supplied by us). It is also further added in that OM that those who do not fulfil the above recruitment qualification will continue in the pre revised scale. Since the applicant has been drawing the higher pay from 1987 and these rules were in existence much before, Shri Verma urged that the higher scale of pay granted to the applicant was a bonafide mistake.

6. We have heard the submissions of the rival counsel. We are of the view that the decision cited by the learned counsel for the respondents in Anil Kumar's case (supra) is not applicable to the present facts. The ratio decidendi of Anil Kumar's case is that no rights accrued to the applicant in that case because he had not assumed charge. Even before issuance of the appointment order the mistake was detected. In the present case, however, the applicant had been enjoying the higher scale of pay for a period of five years. If the instructions relating to the qualification as a pre condition for becoming Draftsman Grade III in the higher scale of pay was available as early as 1984, how could the respondents be so negligent as to issue the order and allowed the applicant to work in the higher scale for a period of five years upto 1992? That apart, the respondents did not have the courtesy of even examining or replying to the legal notice/representation filed by the applicant, referred to above. The Supreme Court's decision cited by the learned counsel for the applicant squarely applies to this case. We

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have also before us the following decisions to support the applicant's claim that ex parte orders reducing the scale of pay retrospectively without affording an opportunity to the applicant are bad in law.

Two decisions of the Hon'ble Supreme Court are in the cases of **Shyam Babu Verma and others Vs. Union of India and others**, (1994) 27 ATC 121 and **Sahib Ram vs. State of Haryana**, (1994) 28 ATC 747. In the case of **Shyam Babu Verma** (supra) their Lordships have held that recovery of excess amount paid on account of higher pay scale erroneously given to the petitioners since 1973 would not be just and proper as the petitioners received the higher scale without any fault or without any misrepresentation on their part. In **Sahib Ram's case** (supra) their Lordships have again held that recovery of excess payment of pay is not permissible when an upgraded pay scale was given due to a wrong construction of the relevant order by the authority concerned without any misrepresentation by the employee. The ratio decidendi of the decisions in the cases of **T.R. Sundararaja Iyengar vs. The PMG, Karnataka Circle** [(1989) 1 SLJ (CAT) 238]; **Pushpa Bhide (smt.) vs. Union of India & Ors.** [ATR 1989 (1) CAT 397]; **C.S. Bedi vs. Union of India & Ors.** [ATR 1988 (2) CAT 510]; **Gobinda Sinha & Ors. Garrison Engineer and Ors.** [1990 (1) SLJ (CAT) 74]; **Nilkanth Sinha vs. Union of India** [1987 93 SLJ (CAT) 306]; and **Satyanand Sinha vs. Union of India & Anr.** [1989 (4) SLJ (CAT) 272], is that even if a payment was made wrongly or in misinterpretation of any provisions or when the discovery of a wrong payment was made subsequently, the Government servant cannot be compelled to refund the same suddenly and without giving him an opportunity to explain against the recovery action sought to be taken against him.

Thus it is clear even if admittedly the higher salary was allowed to be drawn by mistake, after lapse of certain reasonable period of time peremptory recovery cannot be made. In view of the legal position stated above, we are unable to defend the impugned orders Annexure A-1 dated 24.12.92 and Annexure A-2 dated 18.1.93. These orders are quashed. The interim order, prohibiting the respondents from recovering at the rate of Rs.200/- per month is hereby made absolute. However, there is a representation clearly stating the facts and grievances of the applicant pending before the respondents. The respondents may, if advised, if law permits, consider the representation, the decisions cited above and consider the claim of recovery in accordance with law.

7. O.A. is allowed. No costs.



(DR. A. VEDAVALLI)
MEMBER (J)



Narasimha Sahu
(N. SAHU)
MEMBER (A)

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