

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ALLAHABAD THIS THE 30th DAY OF APRIL, 2003

HON'BLE MR. JUSTICE R.R.K. TRIVEDI, VICE-CHAIRMAN
HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

ORIGINAL APPLICATION NO. 885/1996

Karunanidhi Nath Goswami,
Retired Senior Auditor Office of the A.G. (Audit) I,
U.P. Allahabad, aged about 59 years,
son of late Sri Behari Nath Goswami,
392 Calenelganj,
Allahabad.Applicant

(By Advocate Shri O.P. Khare)

Versus

1. Union of India,
through the Principal Secretary,
Ministry of Finance,
New Delhi.
2. The Comptroller and Auditor General Of India,
10, Bahadur Shah Zafar Marg,
New Delhi.
3. The Accountant General (Audit-I) Office,
of the A.G. Audit-I,
U.P., AllahabadRespondents

(By Advocate Shri S.K. Anwar)

ALONGWITH

ORIGINAL APPLICATION NO. 886/1996

Ram Nath Prasad,
Retired Senior Auditor,
Office of the AG Audit-I,
U.P. Allahabad aged about 63 years,
R/o 224 Pritam Nagar,
Allahabad.Applicant

(By Advocate Shri O.P. Khare)

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Versus

1. The Union of India,
through the Principal Secretary,
Ministry of Finance,
New Delhi.
2. The Comptroller & Auditor General of India,
10, Bahadurshah Zafar Marg,
New Delhi.
3. The Accountant General (Audit I) Office
of the AG (Audit) I,
U.P. Allahabad.Respondents

(By Advocate Shri S.K. Anwar & Shri S. Chaturvedi)

ALONGWITH

ORIGINAL APPLICATION NO.887/1996

Rama Pati Lal,
Retired Senior Auditor,
Office of the A.C. (Audit) I U.P.,
Allahabad aged about 64 years,
son of Late Sri Aditya Prasad,
resident of 41-A/31-1,
Tilaknagar,
Allahpur, Allahabad.Applicant

(By Advocate Shri D.P. Khare)

Versus

1. The Union of India,
through the Principal Secretary,
Ministry of Finance,
New Delhi.
2. The Comptroller and Auditor General Of India,
10, Bahadurshah Zafar Marg,
New Delhi.
3. The Accountant General (Audit.I),
Office of the A.G. (Audit-I)
U.P. Allahabad.Respondents

(By Advocate Shri S.K. Anwar & Shri S. Chaturvedi)

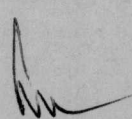
O R D E R

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER-A

As the cause of action and the relief sought for in these OAs are similar, these cases are being decided by a common order. The leading case being O.A. No.885 of 1996.

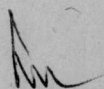
In this O.A. filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed that the orders dated July 1995 and 21.11.1995 (Annexure A-1 & A-2) passed by respondent no.2 and 3 be quashed and direction be given to respondent no.3 to implement the order of respondent no.1 dated July 1995 under FR 27 and fix the pay of the applicant accordingly. The applicant has further sought for a direction to respondent no.3 to refund the pay and allowances amounting to Rs600/- already recovered from the salary of the applicant besides refund of Rs9150/- recovered from D.C.R.G. with 18% interest.

3. The facts of the case, in short, are that the applicant was employed as Senior Auditor in the office of A.G. (Audit 1, U.P. Allahabad) and retired on 29.02.1996. The applicant submitted his representation before respondent no.1 on 05.02.1987 regarding anomaly in fixation of his pay with reference to the pay fixed in respect of his junior Shri Suresh Chandra Srivastava. In July 1991 the pay of the applicant was stepped up under FR 27 by respondent no.2 after getting the approval of respondent no.1. However, he was served with a show cause on 22.05.1995 giving the reference of his representation dated 05.02.1987 as to why



^{a.p.} did he make wrong representation. The applicant sent his reply on 28.05.1995. The applicant did not get any reply ^{from respondents} and on 23.02.1996, he received intimation regarding his fixation of pension, gratuity on the basis of reduced pay without passing any order to that effect. Aggrieved by the recovery of alleged excess payment and also ^{in reduction in} deduction in pensionary benefits, causing financial loss to the applicant, the applicant sent a reminder on 09.05.1996 giving his reference of the earlier reply dated 26.05.1995 regarding illegal and arbitrary order passed by respondents vide letter dated 21.11.1995. The respondents did not take any action to redress the grievance of the applicant and, therefore, he filed this O.A. on 07.08.1996 which has been contested by the respondents by filing counter reply.

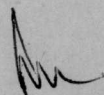
4. Shri O.P. Khare, learned counsel for the applicant submitted that the action of the respondents is arbitrary and illegal. The applicant's position in the gradation list as on 01.03.1997 is at sl.no.730 with personal no.2766/4044 while that of Shri Suresh Chandra Srivastava is at serial no.784 with personal no.2889/700. Thus, there is no doubt that Shri Satish Chandra Srivastava was junior to the applicant and, therefore, the representation of the applicant for stepping of pay filed on 05.02.1987 was genuine. His case was examined thread-bare in the office of respondent no.2 and only then his pay was stepped up vide order passed in July 1991 and the pay of the applicant was fixed at the stage of Rs1850/- per month with effect from



01.01.1987 (Annexure-5) under FR 27. The applicant continued to draw the pay so refixed for almost four years and it is not understood as to why just before one year of his superannuation, he was issued a show cause on 22.05.1995.

5. The learned counsel for the applicant further submitted that inspite of his reply given on 26.05.1995 the applicant was not given any reply by the respondents and it was only on 23.02.1996 that he received intimation regarding his fixation of pension, gratuity on the basis of reduced pay without passing any order to that effect. The applicant's counsel has placed reliance on the judgement of Hon'ble Allahabad High Court in the case of B.N. Singh Versus State of U.P., Allahabad Law Journal 1979 (1184) and submitted that the respondents are stopped from recovery of any amount paid in bonafide manner. Therefore, the recovery order passed by the respondents in their order dated July 1995, 7.8.1995 and 11.11.1995 are bad in law and are not sustainable in the eyes of law. The learned counsel for the applicant also placed reliance on the judgement of this Tribunal ^{in Bench} Ernakulam in K. Krishan Pillai and Others Versus Union of India And Others (1994)26 Administrative Tribunal Cases 641. It is submitted that since the applicant is senior to ^{in of} Shri Suresh Chandra Srivastava he is entitled for stepping up ⁱⁿ pay under FR 27.

6. Resisting the claim of the applicant the respondents



have submitted that the contention of the applicant that he was senior to Shri Suresh Chandra Srivastava, is not correct. Shri Suresh Chandra Srivastava entered into the Government service as Lower Division Clerk (L.D.C.) on 25.10.1957 whereas the applicant joined Government service on 22.05.1958. Therefore, Shri Suresh Chandra Srivastava being senior in L.D.C. cadre had drawn more pay as L.D.C. This fact was over-looked while processing the case of the applicant in Head quarter office (C & AG of India). The omission/mistake was, however, detected by the Head Quarters office during September 1994 and, therefore, the recovery for the over paid amount was ordered. Processing the applicants case to step up of his pay with reference to the pay drawn by Shri Suresh Chandra Srivastava was merely due to mis-representation of facts. The respondents have acted as per law and their action is fully covered by the rules on the subject.

7. We have heard counsel for the parties, considered their submissions and perused records.

8. The short controversy involved in this O.A. is whether the applicant is senior to Shri Suresh Chandra Srivastava or not. The applicant in his representation dated 05.02.1987, addressed to Accountant General (Audit)-1 to rectify the anomaly, on the basis of which his pay was stepped up to the pay drawn by his juniors, had claimed that he was senior to Shri Suresh

Chandra Srivastava, as per the gradation number. The same is found to be correct from the gradation list as on 01.03.1981, copy attached to this original application as Annexure A-4. Further it is seen that the applicant was promoted as Upper Division Clerk earlier and drew more pay from that date than Shri Suresh Chandra Srivastava with whom his pay is compared till later was promoted as Senior Auditor. These facts are not denied by the respondents. The details given in Annexure CA-1 to the Suppl. CA corroborate the claim of the applicant. Therefore, the plea of the respondents that the applicant mis-represented is not tenable.

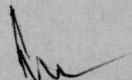
9. The contention that the applicant was junior for a few months in grade of L.D.C. in the beginning of his service career and drew less pay as on 10.01.1970 in the grade of L.D.C. is of no relevance as the pay was stepped up in the grade of Senior Auditor and the pay drawn in the grade, prior to the promotion as Senior Auditor, is to be the criterion. It is further noteworthy that the applicant drew the maximum scale as on 01.11.1982 and stagnated till his promotion as Senior Auditor while the other official i.e., Shri Suresh Chandra Srivastava reached the maximum only on 01.11.1983 and was promoted after the revision of the pay scale as on 01.11.1986. The stepping of the pay of the applicant is correct as the applicant was senior and drew same pay before promotion and the



contention that the pay anomaly has resulted due to the other official (Shri S.C. Srivastava) opting for pay fixation after the date of increment is not correct. As such, anomaly is also a direct result of application of FR 22(C). Further paras 3 and 4 of O.M. No.1(14) EIN/89 dated 16.06.1989 (Pages 60 and 61 Swami's compilation of FR,SR Part-1 1999 Addition) very clearly stipulate that such stepping up is to be given and, therefore, the decision to recover the amount was taken without proper application of mind. The recovery order is technically also not correct as the stepping up order of July 1991 (Annexure-5) was never revoked as it seen from the records produced. On the point of recovery we would like to observe that the action of the respondents has been illegal. The Hon'ble Allahabad High Court in the case of Shri B.N. Singh (Supra) has held as under:-

"It is well settled principle that wages paid to an employee by an employer voluntarily in ^{bona} ^{fide} manner without there being an element of fraud or misrepresentation, cannot be recovered from the employee subsequently merely on the ground that some mistake of interpretation of rules might have been committed by the employer for which the employee could not be held responsible. This view finds support from the decision of Allahabad High Court in Gulab Chand Versus State of U.P. (Civil Misc. Writ Petition No.1479 of 1962 decided on March 19, 1969)."

In view of the above we are of considered opinion that the applicant is entitled for the refund of irregular recovery made from him.




10. In the ^{facts and} circumstances and our aforesaid discussions, the O.A. Nos.885/96 ⁱⁿ, O.A. No.886/96 ⁱⁿ and O.A. No.887/96 ⁱⁿ are allowed. The impugned orders dated July 1995, Annexure A-1) and 21.11.1995 (Annexure A-2) in O.A. No.885/96 and 18.11.1995 in O.A. No.886/95 and 8/13.11.95 in O.A. No.887/95 are quashed with following directions:-

- i) The respondent nos.2 and 3 are directed to re-fix the pay of the applicant with reference to the pay of his junior Shri S.C. Srivastava. The applicant is entitled for re-fixation of ^{his} pension and also other retiral benefits with reference to re-fixed pay. The arrears on account of re-fixation of pay and also the arrears of post retiral benefits shall be paid to the applicant within a period of four months from the date of communication of this order alongwith interest of 10% p.a. thereon from the date of superannuation of the applicants in each O.A. to the date of payment.
- ii) The respondent no.2 and 3 are directed to refund the entire amount recovered from the salary of the applicants and also the recovery made from the DCRG within a period of three months with 10% p.a. of interest thereon from the date of superannuation of the applicants in each O.A. to the date of payment.

10. With the above directions the O.A. Nos.885/96 ⁱⁿ, O.A. No.886/95 and O.A. No.887/95 are disposed of finally with no order as to costs.


Member-A


Vice-Chairman