

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 793 of 2001

_____ day this the 16 day of August 2007

**Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. K.S. Menon, Member (A)**

Sanmukh Dubey Son of Sri Ram Bachan Dubey, resident of Mannoo Nagar Colony, Dholevaria, Varanasi. At present working as Stenographer, under Asstt. Security Commissioner, Varanasi.

Applicant

**By Advocates Sri R.C. Srivastava
Sri A.K. Dave**

Versus

1. Union of India through Chairman, Railway Board, New Delhi.
2. Director, Pay Commission, Railway Board, New Delhi.
3. Divisional Railway Manager, North Eastern Railway, Varanasi.
4. Senior Personal Officer (Karmik), North Eastern Railway, Varanasi.
5. Divisional Security Commissioner, Varanasi.

Respondents

By Advocate Sri Zafar Moonis

ORDER

By K.S. Menon, Member (A)

The applicant has filed this O.A. challenging the impugned order dated 31.05.2001 (annexure A-1) issued by respondent No.3 by which the applicant's scale of pay was reduced to Rs.4000-6000 from Rs.4500-7000. Being aggrieved by this Order, the applicant seeks the following reliefs: -

- 8.1 To quash the impugned order dated 31.05.2001 passed by the respondent No.3 in respect of deduction in salary and lowering the basic pay scale from Rs.4500-7000 to Rs.4000-6000.

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- 8.2 To issue order or direction thereby commanding the respondents to pay the applicant working on the post of Stenographer on the basic pay scale of Rs.4500-7000 as he was being paid earlier to 25.06.1999.
- 8.3 To issue any order or direction to which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

2. The facts of the case in brief are: -

The applicant is a Stenographer since 16.11.1989 in the Office of respondent No.5 in the pay scale of Rs.1200-2040 which was revised to Rs.4500-7000 in accordance with Vth Pay Commission recommendations. The applicant was drawing salary in the above scale w.e.f. 01.01.1996 as per the Pay Commissions recommendations. On 25.06.1999 respondent No.3 passed an order reducing the salary (basic pay scale from Rs.4500-7000 to Rs.4000-6000) on the grounds of wrong fixation (annexure A-3). The Order also directed reduction of salary consequent upon reduction in the scale of pay as also recovery of excess payment made as a result thereof since 01.01.1996. Since no information or opportunity of being heard was given to him, the applicant represented to the respondents on 02.07.1999. The applicant also filed an O.A. No.777 of 1999 before this Tribunal, which was disposed of on 28.02.2001 by setting aside the Order dated 25.06.1999 (annexure A-5) and directed the respondents to provide an opportunity to the applicant of being heard before passing any order of re-fixation and recovery. The applicant forwarded a certified copy of this Tribunal's order dated 28.02.2001 to respondent No.3. In response to the Tribunal's Order dated 28.02.2001 respondent No.3 vide letter dated 19.04.2001 maintained that the fixation of pay in respect of the applicant had been done correctly in accordance with Railway Board's letter on the basis of the Pay Commission's recommendations. The applicant once again represented on 25.04.2001 drawing their attention to the anomaly in re-fixation of his pay vis-à-vis other cadres like Typist etc. The applicant states that without considering his reply dated 25.04.2001 the respondents issued the Order dated 31.05.2001 directing

deduction of salary in accordance with their earlier letter dated 19.04.2001. Being aggrieved by this Order, he has filed this O.A.

3. We have heard the learned counsel Sri A.K. Dave holding brief of Sri R.C. Srivastava and Sri Zafar Moonis, Counsel for the respondents.

4. Sri Dave has challenged the impugned order on various grounds. The first contention is that prior to the Vth Pay Commission his salary was fixed in the scale of Rs.1200-2040 on his promotion as Stenographer w.e.f. 16.11.1989 which was at par with that of Senior Clerks and being on the ministerial staff he should continue to get the same scale after the Vth Pay Commission's recommendations.

5. The second issue raised by the applicant is that other Stenographers in the Personal Branch and even Typist in the department are getting the pay scale of Rs.4500-7000, while the applicant a Stenographer and being senior to a Typist is being sought to be fixed in a lower scale (Rs.4000-6000). Besides as per the Railway Board's letter dated 22.02.2001 wherein revised cadre wise pay scale has been annexed, shows category Typist in the scale of Rs.4500-7000 and Rs.5000-8000/-, which is proposed to be revised to Rs.5000-8000/- and Rs.5500-9000 w.e.f. 31.01.2001 (annexure A-8).

6. The third contention of the applicant is that without giving him an opportunity of being heard or taking into consideration the issues raised in his representation dated 02.07.1999, the impugned order was passed, which is arbitrary.

7. Reference to this Tribunal's decision dated 21.03.2002 in O.A. No. 495 of 2000 and connected Original Applications, has also been made, with a view to support the claim for scale of Rs.4500-7000/- w.e.f. 01.01.1996, but, after going through the same, we find that controversy there was different one and the same was, whether cadre of Typist was to be treated in general

clerical cadre, for purposes of revised pay scales, as no separate pay scales were recommended for typists. Here is a case of Stenographer.

8. Shri Zafar Moonis, the learned counsel for the respondents outright rejects the arguments of the applicant's counsel. As regards the parity issues with Senior Clerks, Shri Moonis firstly agrees that prior to the Vth Pay Commission's recommendations, pay scales of Stenographers and Senior Clerks were the same i.e. Rs.1200-2040. However after the Vth Pay Commission's recommendations, Senior Clerks were given the scale of Rs.4500-7000 as per Railway Board's letter dated 16.10.1997 (Annexure CR-I). He states that the applicant and some other Stenographers were wrongly fixed in the scale of Rs.4500-7000/- instead of Rs.4000-6000/- which is the replacement scale for Rs.1200-2040. Thus, this wrong fixation was rectified fixing it in the correct scale of Rs.4000-6000 and consequently recovery w.e.f. 01.01.1996 was thus ordered.

9. Shri Moonis further submits that the rectification letter dated 25.06.1999 was as per Railway Board's letter dated 16.10.1997 and submits that the applicant is the only Stenographer who is trying to take benefit of his pay fixation in the wrong scale of Rs.4500-7000/- instead of in the correct scale of Rs.4000-6000, which has not been implemented due to this Tribunal's interim Order dated 23.07.1999 passed in O.A. No. 777/1999, filed by the applicant.

10. Countering the applicant's argument in paragraph No.4.18 of the O.A. that Typist being a grade lower than Steno are getting a higher scale of Rs.4500-7000 and Rs.5000-8000, Shri Moonis in paragraph No.12 of the Counter Affidavit submits that the applicant's contention is incorrect. The chart indicated in paragraph No.12 shows that Typists and Senior Typists are in the scale of Rs.3050-4590/- and Rs.4000-6000/- and there is no change in these scales for these categories w.e.f. 30.01.2001. However, it's the Head Typist, Chief Typist whose scales have

changed from Rs.4500-7000 and Rs.5000-8000 to Rs.5000-8000 and Rs.5500-9000 respectively. The Steno's category is not concerned with these scales or the changes made therein.

11. Shri Moonis reiterates that the applicant is at present in Stenographer Grade II in the scale of Rs.5000-8000 w.e.f. 23.12.2005. His pay was incorrectly fixed in the scale of Rs.4500-7000/- instead of Rs.4000-6000. This mistake was rectified after issue of Railway Board's letter dated 16/10/1997 vide letter dated 19.04.2001 and 31.05.2001. The learned counsel argues that the applicant who is a Stenographer Grade II cannot claim parity with the Senior Clerk for the simple reason that nature of work and responsibility is entirely different. He further points out that even within the cadre Enquiry-cum-Reservation Clerk/Ministerial Staff Clerk/Commercial Clerk, there are different pay scales based on the nature of work and responsibility. He has also relied on case law 2003 (7) S.C. 612, U.O.I. Vs. Tarit Ranjan Das, in which the Apex Court has held that there can be no parity in pay scales of Stenographers in subordinate offices and the Secretariat as the nature of work, duties and responsibilities of the two categories are different. The recovery ordered through the impugned order dated 31.05.2001 was stayed vide this Tribunal's Order dated 10.07.2001 so, Sri Moonis seeks that it should be vacated.

12. In view of the above, it is evident that Stenographers and Senior Clerks were on the scale prior to the Vth Pay Commission's recommendations. This the respondents have admitted that after the Pay Commission's recommendations the applicant's pay was fixed in the scale of Rs.4500-7000/- w.e.f. 01.01.1996 inadvertently and was rectified vide Order dated 31.05.2001 and recovery was accordingly ordered. The question to be gone into here is whether the applicant was responsible for the mistake committed by the respondents or whether he had any role to play in the mistake. From the pleadings on record and the submissions made, it does not appear to be so. Even if a show cause notice was issued to the applicant and his reply was

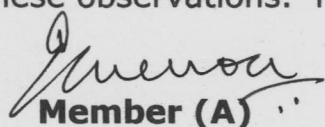
considered as evident from the impugned order dated 31.05.2001, respondents action to recover alleged excess payment is bad in law and cannot be enforced. The respondents are at liberty to fix his pay in the appropriate scale as per Vth Pay Commission's recommendations and Railway Board's letter dated 16.10.1997 however, excess payment should not be recovered from the applicant.

13. There are many settled case laws on the issue, which are as under: -

- (i) Harish Chandra Srivastava Vs. State of U.P. and others
[C.M.W.P. No.7271 of 1986 decided on 26.04.1996 by Allahabad High Court]
{1996 (2) E.S.C. 317 (All.) }
- (ii) Bihar State Electricity Board and another Vs. Bijay Bahadur and another.
[Civil Appeals No.6913 of 1999 with No.6914 of 1999, decided on 01.12.1999]
{ (2000) 10 SCC 99 }
- (iii) Bandu Mukti Morcha Vs. Union of India and others
[1 A No5 in WP (C) No. 2135]
- (iv) Shyam Babu Verma and others Vs. Union of India and others
[Writ Petition (C) Nos. 12897 to 12899 of 1984, decided on 08.02.1994]
{(1994) 2 SCC 521}

In all the above Judgments it has been held that in case over payments have been made for no fault of the employee, it shall only be just and proper not to recover excess payment from the employee.

14. In view of the above, we are not inclined to interfere with orders passed by the respondents refixing the scale of pay of the applicant in the scale of Rs.4000-6000/-. The order of recovery of excess payments made to the applicant w.e.f. 01.01.1996 to the date the interim order dated 10.07.2001 staying the recovery was passed, is quashed. Recoveries made so far from the applicant, if any, shall be refunded to him. The O.A. is disposed off with these observations. No order as to costs.


Member (A)


Vice Chairman

/M.M./