

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

**Original Application No. 1094 of 2005
alongwith**

**Original Application No. 1093 of 2005
Original Application No. 1092 of 2005**

____ day, this the 1st day of November 2007

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

O.A. No. 1094 of 2005

Prem Nath Gupta, aged about 54 years S/o Late Sarjoo Prasad, r/o 146-Nav Vihar Colony, Chukhuwala, Dehradun.

Applicant

Versus

1. Union of India through the Secretary, Ministry of Communications, Department of Post, New Delhi.
2. The Director General, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
3. The Chief Postmaster General, Uttarakhand Circle, Dehradun.

Respondents

O.A. No. 1093 of 2005

Shiv Mohan, aged about 55 years S/o Sri Ram Adhin, r/o C-446, Rajendra Nagar, Bareilly, (U.P.).

Applicant

Versus

1. Union of India through the Secretary, Ministry of Communications, Department of Post, New Delhi.
2. The Director General, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
3. The Chief Postmaster General, U.P. Circle, Lucknow.
4. The Postmaster General, Bareilly Region, Bareilly.



(11)

5. The Senior Superintendent of Post Offices, Bareilly Division, Bareilly.

Respondents

O.A. No. 1092 of 2005

Ram Pal, aged about 55 years, S/o Sri Puran Lal, r/o D-35, Chandan Nagar, Krishna Colony, Street No.4, Muradabad.

Applicant

Versus

1. Union of India through the Secretary, Ministry of Communications, Department of Post, New Delhi.
2. The Director General, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
3. The Chief Postmaster General, U.P. Circle, Lucknow.
4. The Postmaster General, Bareilly Region, Bareilly.
5. The Senior Superintendent of Post Offices, Moradabad Division, Moradabad.

Respondents

By Advocate Sri H.S. Srivastava

(Counsel for the applicants in all the O.As)

By Advocate Sri Saumitra Singh

(Counsel for the respondents in all the O.As)

ORDER

By K.S. Menon, Member (A)

The facts, circumstances, cause of action and relief sought in the O.A. No.1094 of 2005 are similar to that in O.A. No. 1093 of 2005 and O.A. No. 1092 of 2005. Hence, all these three Original Applications are decided by this common order.

2. These Original Applications filed under Section 19 of the Administrative Tribunals Act, 1985 are against the action of the respondents in reducing the pay scale of the applicants from Rs.1350-2200 to Rs.1200-2040/- w.e.f. 01.10.1997 i.e. after a period of 11 years, without any notice or any opportunity of being heard. They therefore pray for directions to be issued by this Court to the respondents to restore their pay in the scale of Rs.1350-2200/- from the date it was reduced and pay the arrears alongwith 18% interest p.a. from the due date till actual date of payment.

9/2

(12)

3. The case of the applicants in brief is that they were appointed as a Laboratory Technician (categorized as Para Medical Group 'C' staff). The applicant in O.A. No. 1094 of 2005 was appointed in the P & T Dispensary, Dehradun on 08.04.1974, applicant in O.A. No. 1093 of 2005 was appointed in P & T Dispensary, Bareilly on 20.05.1976 and applicant in O.A. No. 1092 of 2005 was appointed in P & T Dispensary Moradabad on 30.12.1976. They all were appointed in the pay scale of Rs.330-560/- . They were confirmed as Laboratory Technician with effect from 01.03.1981 and had been drawing pay and allowances in the above scale. Thereafter based on the 4th Central Pay Commission, (4th CPC) recommendations, the pay scale of Para Medical Staff-Technicians was made Rs.1350-2200/- and the applicants' pay was fixed accordingly in that scale w.e.f. 01.01.1986 and they continued to draw pay in this scale and subsequently in revised scale of Rs.4500-7000/ as per recommendations of the 5th CPC, which came into effect from 01.01.1996. The applicants submit that they had been drawing pay in the scale of Rs.330-560/- which was revised to Rs.1350-2200/- and then to Rs.4500-7000/- from 01.01.1986 to 30.09.1997. Then all of sudden their pay scales were reduced by the respondents to Rs. 1200-2040/- (revised Rs.4000-6000) with effect from 01.10.1997, without any notice or an opportunity of being heard. The applicant in O.A. No.1094 of 2005 sent representations on 03.11.1997 and 01.01.1998, the applicant in O.A. No. 1093 of 2005 sent representations on 29.10.1997 and 17.11.1997 while the applicant in O.A. No. 1092 of 2005 sent representations on 21.10.1997 and 24.11.1997 to rectify the error and restore them to the pay scale of Rs.1350-2200/-. The Employees Federation also took up the issue with the respondents on 24.11.1997. On 06.09.1998 the respondents informed their subordinate offices that the matter regarding upgradation of scale of Laboratory Technicians was under consideration after obtaining the comments of all P.M.Gs, and recommendations of Chief Medical Officer-in-Charge, Bareilly and no reminders need be forwarded by them.

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(13)

4. Aggrieved by the action of the respondents, one of the Laboratory Technicians in the P&T Dispensary at Varanasi Shri Prahlad Prasad filed an O.A. No. 1006 of 1998. An extract of the Tribunal's Judgment dated 23.03.2001 is as under: -

"5. In the facts and circumstances outlined in the preceding paragraphs, we have reached the conclusion that if the pay scale earlier given to the applicant was at all required to be reduced, the respondents should have first issued a notice to the applicant to show cause in the matter, and a decision should have been taken only after giving reasonable opportunity to the applicant to state his case. This has not been done in circumstances which do not clearly indicate that the respondents have taken the right decision in the matter. The decision taken by the respondents to reduce the pay scale of the applicant from Rs.1350-2200/- to Rs.1200-2040/- is, therefore, quashed and set aside. His pay will be restored to Rs.1720/- PM with effect from the date from which it was reduced to Rs.1530/- PM and the applicant will be entitled to consequential benefits. The respondents are given liberty to issue a notice to the applicant and allow him full opportunity to state his case before the matter is decided. In the event of the order to be passed by the respondents being adverse to the applicant, the respondents will pass a speaking and a reasonable order having regards to the points, raised in the present OA and to such other material as the applicant might place before the respondents during course of personal hearing. The respondents are also directed to take a decision for placing the Lab Technicians in the revised scale of Rs.4500-7000/- as expeditiously as possible and in any event within a period of three months from the date of receipt of a copy of this order."

Applicants submit that despite the direction to the respondents to place all Laboratory Technicians in the revised scale of Rs.4500-7000/- within a period of three months from the date of receipt of the order, the respondents took no action. Respondents subsequently filed a Writ Petition in the Allahabad High Court against the orders of the Tribunal dated 23.03.2001 in O.A. No. 1006 of 1998. The case is pending and no stay has been granted by the High Court. In view of the above, merely filing an appeal before Supreme Court does not justify non compliance of the Tribunal's Order, submit the applicants relying on the High Court of Allahabad Judgment in 1978 CR L.J. 789. Applicants have also cited a Supreme Court Judgment in [{2002} 4 SCC 21]

9

Anil Ratan Sankar and others Vs. Hirak Ghosh and others, wherein the Court has held that disobedience of a clear and unambiguous order of a Court not capable of more than one interpretation would amount to a contempt. Applicants submit they have already suffered the impact of reduction in pay for the past 8 years due to the arbitrary action of the respondents and waiting for the High Court decision would result in them suffering an irreparable loss as they might retire in the meanwhile. Since the action of the respondents are illegal, arbitrary, discriminatory and against the principles of natural justice, they have prayed by way of relief for their scale and pay to be restored to the position prior to the date their pay scale was reduced with all consequential benefits and 18% interest on the arrears.

5. The respondents in their counter affidavit do not deny the facts upto the time of recommendations of the 4th Central Pay Commission. They submit that while accepted the recommendations of the 4th Central Pay Commission, they erroneously fixed the pay of the applicants in the scale of Rs.1350-2200/-, taking into account the Technicians of other Departments instead of the scale Rs.1200-2040/- which was the recommended replacement scale of Rs.350-560/- by the 4th Central Pay Commission. Respondent No.2 subsequently, on the basis of Central Administrative Tribunal, Jabalpur Bench Orders in O.A. No. 55 of 1996, 76 of 1996, 140 of 1996 and 213 of 1996 issued directions to all subordinate offices on 10.10.1997 to rectify the erroneous pay fixation in the pay scale of Laboratory Technicians by reducing the pay scale from Rs.1350-2200/- to Rs.1200-2040/- w.e.f. 01.01.1986. The pay scale of the Lab Technicians including the applicants was therefore modified from Rs.1350-2200 to Rs.1200-2040/- and pay was fixed on 01.10.1997 in the scale Rs.1200-2040/- which was the replacement scale of Rs.330-560/-. They have relied on Judgment passed in the High Court of Rajasthan, Jaipur in Writ Petition No. 6579 of 2003 Smt. Maya Verma Vs. U.O.I. and others, wherein the Court has confirmed the pay scale of Lab Technicians as Rs.1200-2040/- and thereafter Rs.4000-6000/- as

(15)

recommended by 5th Central Pay Commission (Annexure-1 to Supplementary Counter Affidavit). Their contention is that the applicants' pay scale has been wrongly fixed in a higher scale and reduction to a lower pay scale and consequently a reduction in pay by way of rectification cannot be said to be suffering a loss of pay. The whole O.A. therefore being without merits is liable to be dismissed.

6. Heard, the counsels for the parties, Sri H.S. Srivastava for the applicants and Shri Saumitra Singh for the respondents in all three Original Applications and perused the pleadings on record.

7. In this case, the cause of action arose to the applicants when the Department issued directions on 01.10.1997 to rectify the error in fixing of the pay scale of Lab Technicians in the P & T Dispensaries which occurred when fixing of pay scales was done on the recommendations of the 4th Central Pay Commission. The 4th Central Pay Commission did not specifically recommend any scale for Lab Technicians coming under Para Medical Staff but had only recommended Rs.1200-2040 as the replacement scale for the existing scale of Rs.330-560/-. The Department appears to have erroneously fixed the scale of Rs.1350-2200/- for Lab Technicians based on the scales existing in other departments and is the replacement scale for the pre-revised scale of Rs.380-620/- Rs.380-640/-, Rs.425-600/- and Rs.470-580/- and not for Rs.330-560/- instead of adopting the replacement scale of Rs.1200-2040/- recommended by the 4th Central Pay Commission. Respondents have carried out the rectification on the directions of the C.A.T., Jabalpur Bench in O.As 55 of 1996, 76 of 1996, 140 of 1996 and 213 of 1996. It is clear from the above the applicants could not have been fixed in the scale Rs.1350-2200/- w.e.f. 01.01.1986 and if the respondents have made a mistake then they are at liberty to rectify the same and no judicial interference is called for. This is supported by the Supreme Court's Judgment dated 12.03.1997 in Union of India and others Vs. P.V. Hariharan, the relevant portion of which reads as under: -

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"Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government, which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated as well as those situated above and below, put forwarded their claims on the basis of such changes. The Tribunal should realize that interfering with the prescribed pay scales is a serious matter. The Pay Commission which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon the issue, very often, the doctrine of "equal pay for equal work" is also being mis-understood and mis-applied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter."

8. We are of the opinion that if there is a wrong fixation, respondents can rectify the same, however they should have given the applicants due notice if a recovery is to be effected based on such a refixation of pay scale. In this case the respondents informed the applicants that the refixation and consequential recovery was being effected based on the departments' instruction dated 01.10.1997 only on receipt of the applicants' representation against the refixation and consequent recovery. There are settled laws on the recovery of excess payments. In case the applicants have not contributed or had any role to play in the wrong fixation of the pay scale resulting in excess payments, then it is just and proper that no recovery should be affected. It has been established in this case that the mistake had been committed by the respondents, therefore, no recovery of over payments can be affected for the period upto 30.09.1997, as ordered.

9. In view of the above, we hold the view that the refixation of the pay scale of the applicants in the pay scale of Rs.1200-2040/- w.e.f. 01.01.1986 and subsequent fixation in the scale of Rs.4000-6000/- as per the 5th Central Pay Commission is in order

92

(17)

and does not call for any interference by this Court. The respondents are however directed not to ~~affect~~ ^{effect} any recovery of over payments made from 01.01.1986 to 30.09.1997. Recoveries, if any, made for the above period shall be refunded to the applicants.

10. The O.A. is disposed of with the above directions. No costs.

J. M. M.
Member (A) 01.11.2007

J. M. M.
Vice Chairman

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