

13

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 22nd day of March 2007.

Original Application No. 630 of 2005.

Hon'ble Mr. P.K. Chatterji, Member-A

Bhaoodeo Prakash Rochan, S/o late Gurudeen, R/o 241
Sohabitabagh, Allahabad and serving in 508 Army Base
Workshop, Allahabad.

. . . . Applicant

By Adv: Sri S. Lal.

V E R S U S

1. Union of India through Defence Secretary,,
Ministry of Defence, New Delhi.
2. Director General E.M.E. (E.M.E. Civ) Army
Headquarters, D.H.Q.P.O. New Delhi.
3. Commander Headquarters Base Workshop Group
E.M.E. Meerut Cantt.
4. Commandant & M.D. 508 Army Base Workshop,
Allahabad.

. . . . Respondents

By Adv: Sri S. Singh.

O R D E R

This application has been filed against the order of respondent No. 4 dated 24.03.2005, whereby the pay of the applicant was reduced without any show cause notice to the applicant. The applicant has stated that giving an opportunity for representation was necessary on the principle of natural justice. The applicant was promoted as Engineering Equipment Mechanic on 07.12.1996 which was equivalent to Highly Skilled Grade I. The pay scale was Rs. 1340-2040. This scale was subsequently revised to Rs. 4000-6000 w.e.f. 01.01.1996. On revisions of the pay scales under

[Signature]

RPR 1997, the pay of the applicant was fixed at Rs. 4300/- as on 01.01.1996 in the previous post of Vehicle Mechanic. On promotion as Engineering Equipment Mechanic on 07.12.1996 his pay was fixed at Rs. 4600/- as on 01.03.1997. The applicant was drawing periodical increment in the pay scale of Rs. 4000 - 6000. He got one further increment of Rs. 100/- on 01.03.2003 and his pay was raised to Rs. 5200/- per month and on 01.03.2004 it was raised to Rs. 5300/- per month.

2. The facts as mentioned above have not been disputed by the respondents. However, when he was due to get a further increment on 01.03.2005, respondent No. 4 cancelled all the previous daily orders by which the applicant's pay was fixed as mentioned above. This was done by the respondent No. 4 without any show cause notice to the applicant. Respondent No. 4 issued another order No. DO Part II No 73/Est-Ind/2005 dated 07.05.2005 by which the applicant's pay was reduced. Instead of granting the pay of Rs. 5400/- as on 01.03.2005 the applicant's pay was reduced to Rs. 5200/-. It is alleged by the applicant that the action of respondent No. 4 was wholly arbitrary, illegal and in violation of principle of natural justice.

Merat
3. The applicant has prayed for the direction upon the respondents to quash the impugned order dated 24.03.2005 containing the orders dated 07.05.2005 (Annexure A-1 and A-2). He has also prayed for a direction to the respondents to grant him further increment from 01.03.2005 in the pay scale of Rs. 4000 - 6000.

4. The grounds upon which the relief was sought are :

- a. Reducing the pay without show cause notice was a violation of the principle of natural justice.

Merat

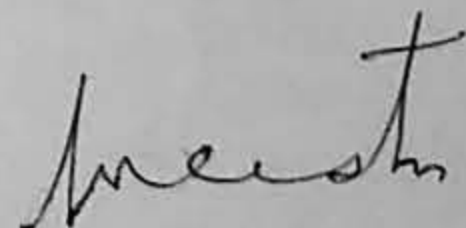
(15)

- b. His pay was rightly fixed under FR 22 (A) (i) as on 07.12.1996 and 01.03.1997. He was also given further increment upto 01.03.2004. The action by respondent No. 4 to put it back at Rs. 5100/- as on 01.03.2004 was arbitrary and illegal.

The applicant has further supported his claim by citing the following two judgments :

- i. **2006 (1) ATJ 359 : OA 1247/04 of Allahabad Bench of this Tribunal : Rajesh Kumar Srivastava & another Vs Union of India & Ors** : In this order it was held there could not be a retrospective effect of a subsequent order, more so when it adversely effect the career of the employees who were the beneficiaries of the earlier order. While passing this order the Tribunal relied upon the Apex Court Judgment in the case of K.V. Subharao Vs. Govt. of AP [1988 (2) SCC 201]. It also relied upon the judgment in the case of V.K. Dubey Vs. Union of India [1997 (5) SCC 81].
- ii. **2004 (1) ATJ 432 Hyderabad Bench of Administrative Tribunal's Judgment in B. Aboobhakar Vs. General Manager, South Central Railway Secunderabad & Ors in OA No. 1379/01** : In this judgment the Tribunal had held that order reducing the pay scale and recovery of excess amount cannot be passed without giving prior show cause notice to the employee to make representation. The relevant portion of the judgment is as follows:

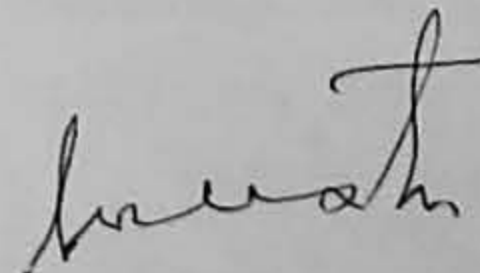
"In reply to the above submission, the learned standing counsel for the respondents submitted that the applicants ought to have submitted representation in this regard to the authorities before approaching this Tribunal in the present O.A. and therefore they must be



directed to submit their representation to the authorities concerned and the authorities may be asked to examine the same and pass appropriate orders in this regard. He further submitted that the action taken by the authorities in fixing the pay of the applicants in the scale of Rs. 3050-4950 from the date of regularization of their services in the cadre of Driver on regular establishment, is in accordance with para 604 of Chapter II of Indian Railway Establishment Manual as explained in the reply statement. But having regard to the above position of law that there shall be compliance with the principles of natural justice before ordering for reduction of the pay of any employee and ordering for recovery of the alleged excess amount drawn, we find that the orders passed by the respondents in reducing the pay of the applicant and ordering for recovery of the excess amount, is liable to be set aside and the respondents be directed to comply with the principles of natural justice by issuing show cause notice to the applicants calling upon them to submit representations in respect of the proposed fixation of their pay and only thereafter, to take decision in that regard, if necessary after giving personal hearing to the applicants. Further, we find it necessary to go into the merits of the other contentions raised by the learned counsel appearing on both sides, at this stage."

5. In reply the respondents have stated that as per Govt. of India, Ministry of Defence letter dated 20.05.2003 the Highly Skilled Grade II and Grade I were merged as a single scale and their pay scale was fixed at Rs. 4000 - 6000 w.e.f. 01.01.1996. The audit authority vide PCDA (CC) Lucknow vide circular No. PT/3088/MICS/Vol. IV dated 10.12.2003 directed to cancel all the DO part II whereby the pay was fixed of the applicant earlier. Based upon this policy instructions the respondents cancelled the previous DO Part II and all the cases were taken up for refixation. It has been further stated by the respondents that as the decision was a policy decision common to all Highly Skilled Grade employees, the question of issuing a show cause notice did not arise. The respondents have also furnished the following further clarification regarding the pay fixation:

"FR22 (1)



The initial pay of a Government servant who is appointed to post on a time-scale of pay is regulated as follow:

(A) (1)

Where a Government servant holding a post, other than a tenure post in a substantive or temporary or officiating capacity is promoted or appointed in a substantive or temporary or officiating capacity, as the case may be, subject to the fulfillment of eligibility condition as prescribed in the relevant recruitment Rules, to another post carrying duties and responsibility of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has been accrued or (rupees one hindered only) whichever is more."

6. Having heard the arguments and having gone through the pleadings I have applied my mind to those. The contention made by the respondents are firstly that this being a policy decision affecting all employees and the applicant being not the only individual coming under the preview of the decision, there was no question of giving an opportunity for representation by a show cause notice. The learned counsel for the applicant, however, strongly pleaded that even in cases where wrong fixation is made by an error which is subsequently corrected, it is required that a suitable opportunity is given to the affected individual though a show cause notice. In the instant case no error was made by the respondents. It is not disputed by the respondents that his pay was correctly fixed at Rs. 5300/- as on 01.03.2004. Therefore, there was a stronger necessity for providing an opportunity to the applicant. In this way there has been a violation of principle of natural justice. In support the learned counsel for the applicant has cited the decision of the Hyderabad bench of this Tribunal (supra).

7. The learned counsel for the respondents has strongly defended the right and authority of the

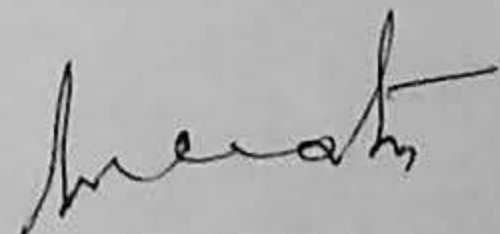
Mursh

(10)

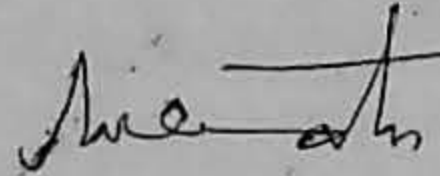
respondents in merging the two pay scales of Highly Skilled Grade I and II. He has stated that this is a policy and it is an executive domain. It is conceded that the executive has the authority to revise service conditions, pay scales, cadre structure etc. Such decisions and policy changes cannot be assailed in so far as these operate in future without affecting the right of the officials already enjoyed. While citing the above mentioned judgments of the apex Court applicant's counsel has strongly pleaded that such policy changes as would effect the right which has already accrued to him cannot be justified legally. If because of the merger of the two scales the prospects of his future promotion was affected adversely, perhaps he would not have had a ground for challenging the same. However, in this case his pay which was fixed correctly by the application of the relevant provisions of FRSR which is still in existence has been curtailed. This is the pay which he has already drawn for quite some time.

8. Applicant's counsel is thus confident that the Apex Court judgments referred to above would apply in his case. Downward revision of his pay by the application of merger tantamount to giving retrospective effect to the decision. It affects the pay which he has already drawn. The right which has already accrued to him cannot be curtailed in this way.

9. I am of the view that there is force in the arguments of the learned counsel for the applicant. Reference to the above mentioned Apex Court judgment also reminds me of the well known case of V.C.R. Rangadhamaiah Vs. Chairman Railway Board. Which laid down that executive orders/revision of policies which would operate in future so as to affect the future interests of the officials cannot be assailed



on the ground of retroactivity. However, no such order can be allowed to curtail/affect the right of individuals which has already accrued to them. Having applied my mind to the entire factual matrix of the case and also the references of the legal position of the case, I am of the view there is merit in this OA. The OA is, therefore, allowed. The impugned order 24.⁰³.2005 is quashed. The pay of the official which he was drawing prior to the merger has to be protected and he should be suitably fixed on the revised pay scale from 01.03.2005. This should be done within a period of four months from the date of receipt of a copy of the order. With this direction the OA is disposed of.



Member-A

/pc/