

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 27th day of February, 1996
Original Application No. 1681 of 1993

District : Kanpur

CORAM:-

Hon'ble Mr. S. Das Gupta, A.M.

Prem Shankar Shukla
Assistant Director,
Small Industrial Service Institute,
Kanpur

(By Sri A.B. Lall Srivastava, Advocate)

..... Applicant

Versus

1. Union of India through the Secretary
Ministry of Industry, Department of
Industrial Development, Udyog Bhawan,
New Delhi.

2. The Development Commissioner
Small Scale Industries,
Nirman Bhawan, New Delhi.

3. The Director,
Small Scale Industrial Service Institute
107, Industrial Estate,
Kalpi Road, Kanpur.

(By Kmti Sadhna Srivastava, Advocate)

..... Respondents

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O R D E R

By Hon'ble Mr. S. Das Gupta, A.M.

The controversy in this OA is on the fixation of pay of the applicant on his promotion as Assistant Director Grade IV of the Indian Economic Services, retrospectively w.e.f. 1-10-1990. The grievance of the applicant is that his pay which was earlier fixed at Rs.3300 w.e.f. 1-10-1990 in the pay scale of Rs.2200-4000 was reduced to Rs.3100 by refixation of pay by an order dated 21-7-1993. As a result of such refixation, the applicant was directed by the order dated 16-8-1983 to refund the alleged excess payment of Rs.11,147/-. It is further grievance of the applicant that the respondents again refixed his pay at Rs.3000/- w.e.f. 1-10-1990 by the order dt.21.9.1993. He was also told that the excess amount repayable by him had increased to Rs.17907/-. All these orders have been challenged by the applicant on the ground that these are violative of the principles of natural justice as the applicant was not put on any notice before such refixation was ordered and the recoveries were sought to be made. He has sought relief of quashing of these orders and a direction to the respondents to pay to the applicant according to the initial fixation of pay.

2. Brief facts of the case may be noted at this stage. The applicant was service under respondent no.3 as Small Scale Industry Promotion Officer in the pay scale of Rs. 1640-2900 and was drawing maximum of the pay scale w.e.f. 1.3.1989. He was promoted as Asst. Director Grade II and was posted in the Liaison Cell in SISI on adhoc basis for

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a period of one year w.e.f. 21-10-1989 in the pay scale of Rs.2000-3500. His pay was fixed on his promotion on Rs. 3050/- His date of next increment was 1-10-1991. The applicant actually held this post till 4.2.1991. Pursuant to the judgement of the Hon'ble Supreme Court, the applicant amongst others was promoted as Asst. Director Gr. IV of Indian Economic Service retrospectively w.e.f. 10.10.1990. On such promotion his pay was fixed at Rs.3300/- w.e.f. 1-10-1990, by an order dated 13-6-1991. Thereafter, his pay was refixed downward twice in succession as already stated in the foregoing paragraphs.

3. The respondents have filed a counter reply in which it has been stated that the applicant's pay was wrongly fixed at Rs.3300/- w.e.f. 1-10-1990. It was, however, subsequently found that the pay has been fixed wrongly by taking into account the pay drawn by the applicant as Assistant Director Grade II to which post he was promoted on adhoc basis. It is stated that the said post was an ex-cadre post and, therefore, the pay drawn on that post was not to be taken into account for the purpose of fixation of pay on his appointment as Asst. Director Gr. IV in the IES. When this was detected his pay was revised. It has been further stated that subsequently the internal audit found a mistake even in the revised pay and based on their advice, the applicant's pay was further refixed. It is the case of the respondent that the fixation of pay of a Government servant on promotion

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is automatically regulated by the competent authority and, therefore, the question of giving opportunity to show cause in such cases does not arise.

4. The applicant has filed a rejoinder affidavit. Apart from reaffirming his original contention, he has denied that the post of Assistant Director Grade II was an ex-cadre post.

5. The respondents have filed a suppl. counter affidavit. The suppl.R.A. has also been filed. The pleadings in these affidavits mainly relate to the controversy as to whether the post of Assistant Director Grade II was or was not an ex-cadre post.

6. I heard learned counsel for both the parties and perused the record carefully.

7. It is clear from the pleadings on record that the refixation of pay of the applicant at lower stages was done without giving an opportunity to the applicant or putting him on notice. The respondents have taken a stand that no such notice is required to be given as pay of a Government servant can automatically be regulated by the competent authority on his promotion or demotion. In my view the case can be decided on this short point only without going into the controversy as to what should be the correct fixation of pay of the applicant on his promotion to the post of Assistant Director Grade IV in IES.

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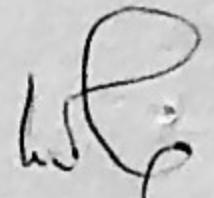
8. On the question of giving notice in a refixation of pay, I have for my guidance, the decision of the Hon'ble Supreme Court in the case of Bhaawan Shukla Vs. Union of India reported in AIR 1994 S.C.2480. The Hon'ble Supreme Court held that refixation of pay without putting the applicant on notice was in flagrant violation of the principles of natural justice. Also in the case of Shaligram Vs. State of Himachal Pradesh reported in AIR 1985 S.C.C. 284, it was unequivocally held by the Hon'ble Supreme Court that when a pay scale was given to an employee due to wrong construction of the relevant order by the authority concerned, without any mis-representation by the employee, the recovery of payment already made cannot be ordered.

9. In view of the authoritative pronouncement of the apex court in the cases cited above, I need look no further. The impugned orders of refixation of pay in two successive stages are clearly violative of the principles of natural justice. Also the orders regarding recovery of alleged overpayments are also invalid as it is not the case of the respondents that initial fixation of pay of the applicant at Rs.3300/- was on account of any misrepresentation by the applicant. I, therefore, quash the orders by which his pay was refixed twice in succession at the stages of Rs.3100/- and Rs.3000/-. I also quash the orders by which the applicant was directed to refund the alleged excess payment resulting from such refixation of pay. The respondents, however, shall be at liberty to give an appropriate notice to the applicant indicating reasons why his pay should be revised at a lower stage and after giving due consideration to his reply may fix his pay in accordance

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with the extant rules. Till such time he shall be paid on the basis of the initial fixation of pay on his promotion to the post of Assistant Director Grade IV in Indian Economic Service. Also, even if his pay is revised at a lower stage after giving him an appropriate notice, the applicant shall not be liable to refund any payment made on the basis of the pay initially fixed.

9. The party shall bear their own costs.



Member (A)

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