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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 167 OF 2000
CUTTACK THIS THE 18th DAY OF June 2001

Purna Chandra Dhar

.....

Applicant

-Versus-

Union of India and Others

.....

Respondents

For Instructions

1. Whether it be referred to reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
18.6.2001

G. Narasimham
(G. NARASIMHAM)
MEMBER (J)
18.6.2001

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 167 OF 2000
CUTTACK THIS THE 13th DAY OF June 2001

CORAM:

THE HON'BLE SOMNATH SOM,
THE HON'BLE G.NARASIMHAM,

VICE-CHAIRMAN
MEMBER (J)

....

1. Purna Chandra Dhar
aged about 49 years,
S/o. Trinath Dhar,
at present working as
Telecom Office Assistant
Gr.I in the Office of the
Chief General Manager
Telecom, Orissa Circle,
Bhubaneswar.

By the Advocates

..... Applicant(s)
M/s Ganeswar Rath
S.N.Misra
A.K.Panda
S.R.Mohanty
T.K.Pahraj

-Versus-

1. Secretary, Deppt, of Telecom Services
Sanchar Bhawan, 20 Ashoka Road New Delhi.
2. Chief General Manager Telecom Orissa
Circle, Bhubaneswar 751001.
3. Secretary, Deppt, Of Posts Dak Bhawan
New Delhi.
4. Chief Post Master General, Orissa Circle
Bhubaneswar 751001.

..... Respondents

By the Advocates

Mr.J.K.Nayak
A.S.C

.....

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O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, Purna Chandra Dhar, while serving as a Medical Store Keeper, P & T Dispensary, Bhubaneswar under the Department Posts, represented to the Director General, Department of Telecom on 28.5.1997 for his unilateral transfer to the Department of Telecom side to suitable post (Annexure A/2). He represented so, because of certain domestic difficulties and because of the fact of order of transfer to Berhampur. He was then drawing basic pay at Rs.6000/- in the scale of Rs.4500-7000/-. His representation was considered and Department of Telecom permitted him to be absorbed as Telecom Office Assistant, Grade 'A' in the pay scale of Rs.3200-4900/-, vide letter dtd.28.1.98(Annexure A/3). subject to the following terms and conditions:

1. The transferee will sever all connections with his parent department.
2. The transferee will not ask for repatriation to his parent department.
3. The transferee will be deemed to be a new recruit in the unit to which he is ordered and will be accommodated against outside quota vacancies.
4. The transferee will be given pay protection and his pay will be regulated as per Rules/Orders/Instructions of the Department of Telecom in this regard.
5. His past service will count for all purposes as per the existing Rules/Orders/Instructions of the Department of Telecom in this regard.
6. His movement to the new unit under Department of Telecom will be on his own request and cost.
7. The transferee will resign from his present post

from his parent Department.

8. The above absorption will be subject to the condition that there is no disciplinary/vigilance case pending or contemplated against the official in his parent Department.
9. The seniority of the transferee will count from the date of his joining the Department of Telecom.

A copy of the Department of Telecom letter No.249-12/97-STN-1 dtd.28.01.1998 is made as Annexure A/3 to this Original Application.

Further, in a letter dtd.27.5.98(Annexure-4)of the Telecom Department, the transfer of the applicant to the Telecom Department was approved by the Postal Department with further two conditions i.e. (i) he will have to give technical resignation and an undertaking that he will not claim any benefits on the Postal side, and (ii) he is agreeable to the conditions mentioned in the approval of the Department of Telecommunications. The applicant furnished the required undertaking on 7.8.98 (Annexure A/5). Further he also furnished the same undertaking to the Department of Telecommunications. Thereafter, by order dtd.6.10.98 the Chief General Manager Telecom, Orissa Circle (Respondent No.2) issued posting order of the applicant in his Office under Annexure-A/6 in the scale of Rs.3200-4900/-. Pursuant to this order the applicant joined as Telecom Operating Assistant on 9.10.98. From 9.10.98 to 31.12.99 he was paid Rs.6000/- which was the pay drawn by him in the Postal Department. Thereafter, his basic pay was reduced to Rs.4900/- These facts are not in controversy.

2. The grievance of the applicant is that he was being paid Rs.4900/-, besides Rs.1100/- as personal pay from 9.10.98 to 31.12.99, by way of pay protection of his basic pay of Rs.6000/- in the Postal Department. One of the conditions of his transfer is that he would get that pay protection as per Rules which means that he would be entitled to personal pay under Rule-9(23) (b) of Fundamental Rules. Due to reduction of his pay to Rs.4900/-, he has incurred a huge loss of Rs.1100/- per month. At any rate his pay reduction should not have been ordered without prior notice to him. Even otherwise, the reduction should not have been made with retrospective effect. His representations to the higher authorities ~~in~~ having not yielded any fruitful result, he files this Original Applications with the following prayers:

- a. Quash the orders of the DTS dtd.21.03.2000 (Annexure-A/8) and
- b. Direct the respondent No.2 to allow the protection of pay last drawn by the applicant by granting him personal pay under Rule FR-9(23)(b) so that there is no short fall in the substantive pay of the applicant last drawn by him after coming to the new cadre and
- c. To direct the respondent to pay the cost of the litigations and
- d. To pass orders as deemed fit by the Honourable Tribunal in the bonafide interest of justice and
- e. To pass order holding the orders of the respondent to recover the excess paid amount of pay & allowances from the applicant as unjust, illegal and inequitable and to direct the respondents not to recover any amount from the applicant's and allowances towards the so called excess payments computed by the respondent even if the final application of the

applicants fails and/or

- f. To pass orders setting aside the order of transfer as per Annexure-A/3 as void ab initio and/or for repatriation of the applicant to his parent post of Store Keeper in the Postal Department which the applicant was holding prior to his transfer to the Department of Telecom in October 1998 for the interest of justice and fair play since the respondents have violated their own commitment regarding protection applicants substantive pay as promised before his transfer to the Department of Telecom and the agreement is nonest.

3. At the initial stage, his prayer for interim relief restraining the Department from paying him salary in the reduced scale was disallowed through an elaborate order dtd.27.4.2000 of this Tribunal after hearing, both sides.

4. Respondents in their counter vehemently oppose the prayers made by the applicant, stating that the applicant himself sought unilateral transfer ^{having} ~~being~~ agreed to the terms and conditions as laid down for absorption as Telecom Operating Assistant in the scale of Rs.3200-4900/-, by giving technical resignation and an undertaking that he would not claim any benefit, which he was drawing in the Postal Department. He therefore, is estopped from claiming his basic pay at Rs.6000/-, which is more than the maximum pay prescribed for Telecom Operating Assistant, Gr.I. It is specifically denied that the applicant was sanctioned personal pay of Rs.1100/- from the date of his joining till 31.12.99. In the absence of receipt

of LPC, the applicant was allowed to draw his salary on the basis of pay slip issued by the Chief Post Master General, describing his basic pay Rs.6000/- per month. He was allowed to draw so provisionally and this was permissible under order No.1 below Rule 229 of P & T, PHB, Volume 1 (Annexure R/1). Question of protection of his ^{pay} ~~which~~ ^{he} was drawing in the Postal Department did not arise as he had been accommodated to the benefit of maximum of Rs.4900/- in the pay scale of Rs.3200-4900/- as per Rule FR-22-1(A)-III. The excess payment made from October 1998 to December 1999 would be adjusted from the pay of the applicant.

5. In the rejoinder the applicant while reiterating the stand as in O.A files an affidavit sworn by one Gandhiji Panigrahi, Pharmacist, P & T Dispensary, Berhampur stating that he has no objection to ^{be} transferred to Bhubaneswar to be posted as Pharmacist in Postal Printing Press, in case the applicant is transferred to his old post in the Department of post. In reply to rejoinder the Respondents have stated that there is no possibility of transfer of Gandhiji Panigrahi from Berhampur to Postal Printing Press, Bhubaneswar.

6. We have heard Shri G.Rath, learned counsel for the applicant and Shri J.K.Nayak Additional Standing Counsel for the Department.

7. Facts are not in dispute. The applicant agreed to the terms and conditions and thereafter relinquishing ~~his~~ his post carrying the pay scale of 4500-4900/-. He also agreed to the conditions, i.e. for giving technical resignation from previous post in the Postal Department, he would not ask

for repatriation to the Department, his seniority in the Department of Telecom will count from the date of his joining and he would be deemed to be a new recruit in the Telecom Department. It was also agreed by him that he would get pay protection and his pay would be regulated as per orders/instructions of the Department of Telecom in this regard.

8. Facts of this cases are almost similar to the facts of the case of Comptroller and Auditor General of India Vrs. Farid Sattar, decided by the Apex Court (reported in 2000(3) SLJ page 286). In this reported case the respondent while serving as Senior Accountant in the Office of Senior Accountant General, West Bengal, sought for transfer under unilateral transfer scheme being reverted to the lower post of Accountant, as direct recruit in the Office of Senior Deputy Accountant General, Sikkim. At that time the pay scale of Senior Accountant was Rs.1400-2600/-. After his joining at Sikkim as Accountant his pay was erroneously fixed at Rs.1560/- in the pay scale of 1400-2600/-. Subsequently, by Memorandum dtd.8.11.94 his pay was refixed with further direction for recovery of the excess payment made. The respondent moved the Central Administrative Tribunal, Calcutta Bench challenging the refixation of pay and consequent recovery. The Department opposed the application stating respondent having agreed to terms and conditions, as laid down in respect of unilateral transfer which was to the effect that he would tender technical resignation from the post of Senior Accountant and join as direct recruit in the lower post of Accountant ranking his position in the cadre of Accountant, his pay

was not required to be protected. The Tribunal however, held that his case was governed by FR 22(1)(A) and accordingly allowed his application. The Apex Court held that his case was not governed under FR Rules, since it was a unilateral transfer, but governed by terms and conditions meant for such unilateral transfer. The Apex Court also made a distinction between FR 22(1) (A) (2) and FR 22 (1) (A) (3), and clearly explained how pay fixation has to be regulated under these Rules, through illustrations. Ultimately the Apex Court held that in view of the terms and conditions in case of unilateral transfer, the pay which Respondent was drawing on higher post, was not required to be protected when he joined in a lower post of Accountant

9. Shri G.Rath, the learned counsel for the applicant, on the other hand, contended that in the Apex Court case there is no condition for pay protection whereas in this ^{case} ~~scheme~~ there is a specific condition that his pay would be protected. As earlier stated, this pay protection is with reference to Rules/Orders/Instructions of Department of Telecom. It is inconceivable that pay protection would mean "protection of pay which an employee was drawing earlier should be more than the maximum in the pay scale" which he is drawing now. ~~This is the reason~~ ^{as well} ~~why~~ The applicant joined as Junior most employee in the Telecom Department in the pay scale of Rs.3200-4900/-. When the post does not carry more than maximum pay of Rs.4900/- it would be against all the cannons of finance to allow more than maximum pay scale. Hence the condition of protection of pay as ~~denied~~ ^{assured} to the applicant has to be viewed from this angle.

10. The Department have given reasonable explanation as to why he was allowed to draw pay scale at Rs.6000/- for 15 months. This because his last pay Certificate was not received in time and therefore, his pay was fixed on the basis of payslip issued by the C.F.M.G, Orissa describing his basic pay at Rs.6000/- on the date of his relinquishment from that Department. This was permissible under Rule 228 & 229 of P & T, FHB, Volume 1 (Annexure R/1) as Clause 1 of this Rule 229 lays down that in order to avoid hardship, the President has been pleased to decide that provisional payment of substantive pay may be allowed to non-gazetted Government servants pending receipt of their L.P.C either on reversion from a Gazetted post or on transfer from one non-gazetted post to another. Basing on this Rule and in the absence of LPC the pay of the applicant was provisionally fixed. In view of this, we do not see any illegality/infirmity in such provisionally fixation of pay.

11. Shri Rath the learned counsel for the applicant, on the other hand, contended that his pay was fixed at Rs.6000/- which includes personal pay of Rs.1100/-. After going through the definition of personal pay under FR 9(23) and Government of India instructions mentioned thereunder, we are convinced that the contention of the learned counsel in this regard is not correct. ~~The~~ Payment of personal pay is not admissible in a case of this nature where a unilateral reversion to a lower pay scale after giving technical resignation from the post carrying higher pay scale is accepted.

12. We are aware that in the Original Application itself decisions of the several C.A.T Benches including the decision of Apex Court in Shyama Babu Verma's case find mention. We have considered these decisions. But in view of the Apex Court decision in Farid Sattar (Supra, this decision in Shyama Babu Verma case needs no consideration. In Shyama Babu Verma case the Apex Court observed that recovery of excess amounts paid to employees for about ten years due to wrong fixation of pay need not be made. This decision is reported in 1994 (SSC) (L&C) page 683. The point whether excess amount paid to an employee erroneously for which the employee was not at fault can be recovered was not raised as an issue in that case. The Apex Court appears to have ordered not to recover the excess amounts paid, in exercise of power under Article 142 of the Constitution for doing complete justice by taking into consideration that the petitioners, for no fault, of theirs had enjoyed the higher payscales continuously for 10 years. On the other hand, in Union of India Vrs Sujata Vedechalan reported in 2000 SCL (L&G) 882, the Apex Court upheld recovery of excess payment on account of wrong fixation of pay.

In the case before us the applicant has joined on unilateral transfer in a post carrying a lesser scale of pay but was allowed to draw the pay which he was drawing earlier at the higher post because of absence of LPC as his pay was fixed provisionally for 15 months on the basis of pay-slip issued by the Postal Department. Thereafter, his pay was refixed at the maximum pay scale in the lower post

and consequently order was issued for recovering the excess payment already made because of wrong fixation of pay. Hence question of issuing notice to the applicant would not arise.

13. We are also not impressed with regard to prayer of the applicant for his repatriation to the Postal Department.

Since he joined the Telecom Department after giving undertaking that he would not claim repatriation, he should be bound by the same and question of repatriation would not arise, even if, there is vacant post for his adjustment in the parent Department, more so, when Respondent No.4 the Chief Post Master General in his reply to rejoinder opposes the same.

14. In the result, we do not find any merit in this Original Application, which is dismissed but without any order as to costs.

G. Narasimham
G. NARASIMHAM
VICE-CHAIRMAN
12.6.60

12.6.60
(G. NARASIMHAM)
MEMBER (J)