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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 29.02.2008

O.A. No .911 of 2005

Abhiram Sahoo Applicant
Vs.
Union of India & Others Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? ^{Yes}
2. Whether it be circulated to all the Benches of CAT or not? ^{Yes}


(C.R. MOHAPATRA)
MEMBER (ADMN.)


(M.R. MOHANTY)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 27.02.2008

O.A. No .911 of 2005

PRESENT:

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN
AND
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER(ADMN.)

In the Matter of:

O.A. No .911 of 2005

Abhiram Sahoo Applicant
Vs.
Union of India & Others Respondents

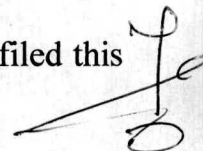
(For Full details, see the enclosed cause title)

For Applicant : Mr. S.K. Ojha, Counsel
For Respondents : Mr.U.B.Mohapatra, SSC.

(ORAL) O R D E R

Per MR.M.R.MOHANTY, VICE-CHAIRMAN (J):

Applicant, being aggrieved by the order under Annexure-A/3 dated 12.08.2004 of the Respondent No.1 and subsequent order under Annexure-A/6 dated 12.07.2005, letter under Annexure-A/9 dt. 06.10.2005 and letter under Annexure-A/10 dated 3.10.2005 (replacing the scale of Rs. 5000-8000/- to a lower Scale of Rs. 4,500-7000/- and order for recovery of the differential amount paid in excess from the pay of the Applicant) has filed this



Original Application under Section 19 of the Administrative Tribunals Act, 1985

2. The Respondents in their reply, have opposed the case of the Applicant. A rejoinder has also been filed by the Applicant.

3. We have heard the Ld. Counsel appearing for the parties and perused the materials placed on record.

4. Applicant was engaged as a Radiographer in the Scale of Pay of Rs.1350-2200/- while extending the benefits revised pay scale (recommended by the 5th Pay Commission) he was placed in the pay scale of Rs.5000-8000/- w.e.f. 01.01.1996. Later, it was found out by the Department that the Applicant was only entitled to pay scale of Rs.4500-7000/-; which was the replaced pay scale for old pay scale of Rs.1350-2200/- and, as it appears, for the reason of an administrative error, a wrong pay scale (i.e. Rs.5000-8000/-) was extended to him. On a close examination of the matter, we found that in Part-A of the Revised Pay Rules of 1997, Rs.4500-7000/- is the replacement scale for the old pay scale of Rs.1350-22000/-. Instead of granting the same, the authorities granted the pay scale of Rs.5000-8000/- to the Applicant; apparently because they were misled by entry ^{xxi-} of Part-B of the ^{said} ~~old~~ Rules; relevant portion of

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which reads as under:-

PART-B

REVISED PAY SCALES FOR CERTAIN COMMON CATEROGIES OF STAFF

The revised scales of pay mentioned in Colun 4 of this part of the Notification for the posts mentioned in column 2 have been approved by the pay Government. However, it may be noted that in certain cases of the scales of pay mentioned in column 4, the recommendations of the Pay Commission are subject to fulfillment of specific conditions. These conditions relate interalia to changes in recruitment rules, restructuring of cadre; re-distribution of posts into higher grade etc. Therefore, in those cases where conditions such as changes in recruitment rules etc, which are brought out by the Pay Commission as the rationale for the grant of these upgrades scales, it will be necessary for the Ministries to decide upon such issues and agree to the changes suggested by the Pay Commission before applying these scales to those posts w.e.f. 1.1.96. In certain other cases where there are conditions prescribed by the Pay Commission as pre-requisite for grant of these scales to certain posts such as cadre restructuring, redistribution of posts etc. It will be necessary for the Ministries/Department concerned to not only accept ;those preconditions but also to implement them therefore the scales are applied to those posts. It would, therefore, be seen that it is implicit in the recommendations of the Pay Commission that such scales necessarily have to take prospective effect and the concerned posts will be governed by the normal replacement scales until then.

Sl. Posts No.	Present Scale (Rs.)	Revised Scale (Rs.)	Paragraph No. of Report
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XXI. RADIOGRAPHERS/X-RAY TECHNICIANS

a) Radiographer	1350-30-1440-40- 1800-EB-50-2200	5000-150-8000	52.107
b) Radiographers requiring a minimum of 2 years diploma /certificate after 10+2		4000-100-6000	52.107

5. A close reading of the opening paragraph of Para-B of the Pay

Rules of 1997 makes it clear that the scale of pay of Rs.5000-8000/- was not

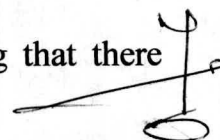
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available to be applicable automatically. Only after amendment of the Recruitment Rules etc., the same was available to be granted to persons qualified for the post. There are no material available on record to show that the said pay scale (i.e. 5000-8000) was available to be extended to the Applicant and, therefore, the Applicant was entitled to get the normal replacement scale.

6. Since grant of pay scale of Rs.5000-8000/- was an administrative error, the same has been corrected by granting the normal replacement scale to the Applicant; but, however, for such a mistake, the Respondents have rightly decided not to recover differential/excess amount from the Applicant.

7. The Respondents have explained in the counter that minimum qualification required for the post of Radiographer is three years diploma to get the pay scale of Rs.5000-8000/-; which qualification the Applicant does not have and that, therefore, having been erroneously granted the higher pay scale of Rs. 5000/8000/-, the same was downgraded, and that cannot be faulted with. Since the new qualification has not yet been prescribed (in any amended Rules) the Applicant was only entitled to normal replacement scale i.e. Rs.4500-7000.

8. Ld. Counsel for the Applicant, at the hearing, submitted that the down- gradation of the pay scale amounts to reversion and as the same has been done without complying with the principle of natural justice, the same are not sustainable. This argument of the Ld. Counsel for the Applicant was strongly refuted by the Ld. Counsel appearing for the Respondents stating that there



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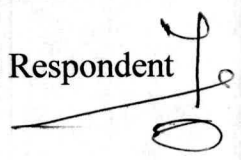
would have been no improvement had the opportunity been given to the Applicant; as, admittedly, the Applicant does not have required qualifications for the purpose of getting the higher scale of pay. He has further argued that the authorities have every right and power to rectify any error/mistake at any point of time and withdraw any benefits illegally/wrongfully conferred.

9. At this juncture, we would like to place reliance of the decision reported in 2005(2) KLT 63 (United India Insurance Co. Ltd. V. Roy) in which the Division Bench of the Hon'ble High Court of Kerala held as under:

“To err is human; to correct an error is also human... It is a large organization where several employees are working and large volume of work is being transacted. In such a situation, human error at times cannot be avoided. No body could expect an ideal situation without any error or mistake is the matter of administration. Due to inadvertence or other wise a mistake has been committed which can always be corrected. Duty to case not only on the administrators but on the beneficiary of the mistake to correct the error. The beneficiary is also part of the administration like the person who has committed the mistake.”

This has also been reiterated in the case of Santhakumari P.J. v. State of Kerala and Others /2006 (1) ATJ 321.

10. Ld. Counsel for the Applicant in his notes of argument has placed copies of the orders past by the Principal Bench of this Tribunal in O.A.Nos. 791,,829,830,951,952,1392,679 of 2006, disposed of on 08.11.2006. We have gone through the above orders and found that the present impugned orders were under challenge by some of the aggrieved employees of the present Respondent

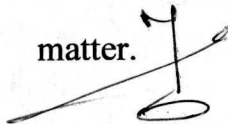


Department posted at Delhi. The Principal Bench of this Tribunal, after taking note of several factors into consideration, disposed of the Original Applications with the following directions:-

“ Keeping in view the above orders passed by the Tribunal and the similarity of the present cases, it was felt that similar directions could be issued in the present set of cases as well, which was not opposed at the Bar. We, therefore, direct the Respondents to reexamine the question of down-gradation of the pay scale from Rs. 5000-8000/- to Rs. 4500-7000/- keeping in view the grounds taken by the Applicants in these OAs and in the light of observations of this tribunal in the order passed on 13.04.2006 in OANos. 2672/2003, 2748/2002 and 2438/2002, and take a final decision within a period of three months from the date of receipt of a copy of this order. Till then status quo with respect to the applicants in the context of the present pay scale be maintained and no recovery shall be made as it has already been decided by the Respondents to waive the same.”

Ld. Counsel appearing for the Respondents has not produced any materials showing that any such decision have been taken by the Respondents pursuant to the directions made above.

But since we have found from rules of 1997 that the Applicant was only entitled to the normal replacement scale of Rs.4500-7000/- and, therefore, there are no reason to remit back the matter to respondents to re-consider the matter.



11. In view of the above, we find no reason to hold that the decision of the Respondents as regards extending the normal replacement pay scale to the Applicant, in any way, wrong. Accordingly, the case is dismissed. No costs.


C.R. MOHAPATRA)
MEMBER (ADMN.)


(M.R. MOHANTY)
VICE-CHAIRMAN