

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 543 OF 1996

Present : Hon'ble Mr. S. Biswas, Administrative Member
Hon'ble Mr. M.L.Chauhan, Judicial Member

Arunava Sen Chowdhury,
Jr. Engineer, Kaliagung
Central Division, CPWD,
1, BB Zone, Kaliaganj,
Dist. West Dinajpur,
R/o C/o Haripada Biswas,
Sudarsanpur, P.O. Raiganj,
West Dinajpur

VS

1. Union of India through the
Secretary, M/o Urban Development,
New Delhi.
2. Director General of Works,
CPWD, Nirman Bhawan, New Delhi-11
3. Executive Engineer, Kaliyaganj
Central Division, CPWD,
(IBB) Kaliyaganj.
4. Superintending Engineer, Malda
Central Circle, 1, BB Zone,
CPWD, Malda.

Respondents

For the applicant : Mr. S.K.Gupta, Counsel

For the respondents : Mr. B.Mukherjee, Counsel

Heard on : 2.4.2002 : Order on : 9.4.2002

O R D E R

M.L.Chauhan, J.M.:

This OA was originally filed by two applicants against the recovery initiated by the respondent authorities on account of overpayment made to them allegedly due to wrong fixation of pay. However, vide order dt. 28.1.98, applicant No. 2 withdrew from this case and the application is now confined only to applicant No. 1 and as such the case is being decided on the basis of averments made qua applicant No. 1 i.e. Arunava Sen Chowdhury only.

2. The applicant has challenged the order dt. 18.1.96 whereby the applicant was directed to refund the overpayment made to him on account of alleged wrong fixation of pay as calculated in the said

order, copy of which has been annexed as Annexure-A1. The applicant

has prayed for a direction on the respondents not to make recovery of Rs. 13,195/- towards the alleged overpayment and to refund the recovery already made from him.

3. The relevant facts of this case may be noticed.

The applicant was appointed as Junior Engineer in the CPWD on 6.8.75 in the pay scale of Rs. 1400-2300/-. After completion of five years service in the entry grade, his pay was fixed at the stage of Rs. 1760/- in the pay scale of Rs. 1640-2900/- on 1.1.86 by the Executive Engineer, Gangtok vide office order dt. 27.6.91 (annexure-A2). He was allowed increment again on 1.8.86, his initial date of increment in the entry grade, raising his pay from Rs. 1760/to Rs. 1820/-. Subsequently, pursuant to the objection raised by the Internal Audit of the Ministry of Urban Affairs & Employment, the pay of the applicant was refixed w.e.f. 1.1.86 to 1.1.96 vide order 18.1.96 (annexure-A1) by superseding the earlier fixation order dt. 27.6.91. It is against this order that the applicant has filed this application with a prayer to cancel the same and for a direction to the respondent authorities not to effect any recovery towards alleged overpayment due to so called wrong fixation of pay.

4. The respondents have contested the case by filing a reply affidavit. It has been averred therein that the pay of the applicant was fixed at the stage of Rs. 1760/- in the pay scale of Rs. 1640-2900/- as on 1.1.86. He was again granted increment w.e.f. 1.8.86 raising his pay to Rs. 1820/-. According to the respondents, the applicant was not entitled to this increment as he was granted higher scale on completion of five years service in the entry grade as per rules. It is contended that as per FR 22(1)(a)(2), the next increment of an incumbent shall be released on the initial date of increment, if the pay has been fixed at the same stage from the entry grade to higher grade but when the pay is fixed at the next higher stage in the higher grade, the increment shall be released on completion of 12 months from the date of fixation of pay in the higher grade. Since the pay of the applicant was fixed at a higher stage in

the higher scale of Rs. 1640-2900/-, he was not entitled to get the next increment on the date of his original date of increment in the entry grade, but after completion of 12 months. According to the respondents, the said increment was granted to him on 1.8.86 erroneously and this has resulted in overpayment. When the mistake was detected by the Internal Audit, his pay was fixed correctly as on 1.1.86 to 1.1.96 and the overpayment was directed to be recovered by the impugned order.

5. It is also contended on behalf of the respondents that after the passing of the impugned order (annexure-A1) dt. 18.1.96, the applicant made a representation dt. 23.1.96 (annexure-RIV to the reply) wherein he stated that his original date of increment was 1.8.86 and not 1.1.87 and further that his pay should have been fixed at the stage of Rs. 2180/- w.e.f. 1.2.91 in the pay scale of Rs. 2000-3500/-. The said representation was examined and it was found that the pay of the applicant should have been fixed at the stage of Rs. 2120/- as on 1.1.91 and accordingly a revised pay fixation order was issued on 6.4.96 (annexure-RV). However, his request for granting him increment from 1.8.86 was rejected. Consequently, the alleged overpayment of Rs. 13195/- as originally calculated by the impugned order dt. 18.1.96 was amended to Rs. 9386/- vide order dt. 27.4.96 (annexure-RVII).

6. It may be pertinent to mention here that this Tribunal vide its interim order dt. 30.4.96 directed that no further recovery should be made from the applicant in terms of the impugned order dt. 18.1.96. But till then, the respondents had already recovered a sum of Rs. 2703/- from the applicant and a balance amount of Rs. 6683/- is still to be recovered from him.

7. We have heard the learned counsel for both the parties and perused the documents on record.

8. The main contention advanced by the ld. counsel for the applicant is that in view of the law laid down by the Apex Court in the case of Shyam Babu Verma -vs- UOI & Ors, (1994) 27 ATC 121 and

also in view of the decision in the case of Bhagwan Shukla -vs- UOI & Ors, 1999(28) ATC 258 (SC), the amount of excess payment made to the applicant due to alleged wrong fixation could not be recovered, especially when no opportunity was given to the applicant before passing the impugned order. For this purpose our attention was invited to the impugned order dt. 18.1.96 (annexure-RIII) whereby it was intimated to the applicant by the Executive Engineer, Kaliyaganj Central Division that the applicant may represent his case to higher authorities for redressal of grievance, if any, but the recovery of overpayment will not be postponed.

9. On the other hand, our attention was also invited by the ld. counsel for the respondents to the decision of the Apex Court in the case of Union of India & Ors -vs- Sujatha Vedachalam & Anr reported in 2000(IX) SCC 187 wherein the Supreme Court after upholding the refixation of pay of the respondent concerned directed recovery of the excess amount paid on account of wrong fixation of pay in easy instalment spread over 15 years or till the date of retirement.

10. Ld. counsel for the applicant has, however, pointed out that the decision of the Apex Court in the case of Union of India & Ors -vs- Sujatha Vedachalam & Anr (supra) is rendered by a Division Bench of two Hon'ble Judges whereas as the decision in Shyam Babu Verma's case (supra) was rendered by a Bench of three Hon'ble Judges and hence, the decision in Shyam Babu Verma's case should be followed to decide the instant case.

11. We have considered the rival arguments advanced by both parties. We are of the view that the matter can be disposed of on another point instead of going into the controversy as to whether the judgement rendered by the larger bench should be followed or not, especially when divergent views have been expressed by the Hon'ble Apex Court on this issue.

12. Admittedly, in this case, the applicant is aggrieved by the impugned order dt. 18.1.96 (annexure-A1). The said order was subsequently modified and superseded by the respondent authorities on

the representation made by the applicant vide orders dt. 6.4.96 (annexure-RV) and 27.4.96 (annexure-RVII). According to the revised orders, only a sum of Rs. 6683/- after effecting recovery of Rs. 2409/- is to be recovered from the applicant at the rate of Rs. 335/per month instead of Rs. 13,195/- which was originally sought to be recovered as per order dt. 18.1.96 (annexure-A1) impugned in this OA. The applicant has not challenged these revised orders at Annexures RV & RVII. At least he was aware of these orders when the reply was filed by the respondents. He could have applied for amending the OA or to file a substantive application challenging the aforesaid revised orders. In the absence of any challenge to the subsequent orders dt. 6.4.96 & 27.4.96, this Tribunal cannot examine the validity of the orders so passed.

13. Thus, the application must fail solely on this ground without going into the merit of the case. In this behalf reference may be made to the decision of the Apex Court in the case of Piare Lal -vs-UOI, AIR 1975 SC 650 wherein the appellant filed writ petition on 29.11.65 challenging various orders passed by the State Govt. promoting officers junior to him. Subsequently, the President of India passed two orders dt. 28.10.66 superseding the earlier orders of promotion and the name of the appellant was not there in the subsequent orders. The appellant did not amend his petition under Art. 226 by including challenge to subsequent orders of the President. The writ petition was dismissed. The matter was carried to the Apex Court. However, the petitioner/appellant applied for amendment after the appeal was heard finally. The Apex Court held that the appellant could have filed petition for amendment earlier, at any rate, during the long period of 7 years when the appeal was pending before the Supreme Court. But the appellant was either lax or negligent. As such the appellant cannot be allowed to amend the petition after long lapse of time, particularly after hearing of the appeal was concluded. The Apex Court further held that in the absence of challenge of the subsequent orders, the court cannot consider the

validity of the said orders dt. 28.10.66 and strike them down.

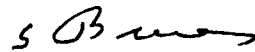
14. Similarly, in the present case, the impugned order dt. 16.1.96 stood modified and superseded by the subsequent orders dt. 6.4.96 and 27.4.96 (annexures-RV & RVII). The applicant has not challenged these orders during all these years and as such the present application has become infructious in view of the passing of two subsequent orders superseding the original order challenged in this OA.

15. For the reasons stated above, the application fails and it is dismissed without any order as to costs.



(M.L. CHAUHAN)

MEMBER(J)



(S. BISWAS)

MEMBER(A)