

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 815 OF 1996

Present : Hon'ble Mr. D.Purakayastha, Judicial Member
Hon'ble Mr. S.K.Ghosal, Administrative Member

Madhumita Chowdhury
W/o Shri Rajiv Chowdhury,
Section Officer,
Audit Office of P & T S.W.& T.C.
Alipore,
R/o 2B/B, Tolly Garden,
340, N.S.C.Bose Road, Calcutta-47

VS

1. Union of India service through the
Secretary, M/o Finance, New Delhi-1
2. Comptroller & Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi- 110 002.
3. Director General of Audit,
Posts & Telecommunication Deptt.
Shamnath Marg, New Delhi-110 054
4. Deputy Director, Audit,
33, B.B.D. Bag (South)
Calcutta-700 001
5. Sr. Audit Officer-in-Charge,
C/o P&T S.W.& T.C. Audit
33, B.B.D. Bag (South)
Calcutta- 700 001.

..... respondents

For the applicant : Mr. S.K. Deb, Counsel
Mr. A. K.Ghosh, Counsel

For the respondents : Mr. B.Mukherjee, Counsel

Heard on : 21.11.2000 : Order on : 29.11.2000

O R D E R

S.K.Ghosal, A.M.:

The applicant was initially appointed as a temporary Auditor in the Deptt. of Post & Telecommunication Audit Office, New Delhi on compassionate ground. Subsequently, i.e. on 1.3.84 she was promoted to the post of Sr. Auditor. However, the applicant sought transfer on compassionate ground to Calcutta in the month of March, 1989 and accepted the terms and conditions of such a transfer. Those terms and conditions stipulated, inter alia, that the applicant would rank below the last officiating Auditor on and from the date of her joining the Calcutta office and further that the question of her seniority,

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confirmation, promotion etc., when they arose, would be regulated only with reference to that latter position. In token of her acceptance of those terms and conditions, the applicant signed a declaration, which is dated 22.5.89, while holding the post of Sr. Auditor at the P & T S.W.&T.C. Audit office, New Delhi and seeking transfer to the P&T, S.W.&T.C. Audit Office, Calcutta. That document is found at page 22 of the rejoinder filed by the applicant on 25.8.97 in the present OA.

2. The applicant thereafter was transferred to Calcutta office and she joined at Calcutta on 15.9.89. In the order dt. 25.9.89 issued by the Dy. Director of Audit, P & T, S.W. & T.C., Audit Office, Calcutta, seen at annexure-A of the said rejoinder, it is specifically mentioned that on reporting for duty on unilateral transfer on 15.9.89, the applicant would rank below the last officiating Auditor of that office on the date of her joining there and further that the question of her seniority for promotion, when it arose, would be decided only with reference to the said position. It was also specifically prescribed therein that she would be on probation for a period of two years from the date of joining the Calcutta office.

3. By an office order dt. 19.10.89 seen at annexure-C to the rejoinder, the pay of the applicant in the cadre of Auditors was fixed by the Dy. Director of Audit of Calcutta Office, mentioned above, giving her the benefit of service in the cadre of Auditor from 1.5.83 in the shape of annual increments and also the revised scale of pay w.e.f. 1.1.86. In the relevant column of that order at Annexure-C to the rejoinder, the pay of the applicant was accordingly fixed at Rs. 1380/- per month, though the applicant was drawing Rs. 1600/- per month from 1.4.89 in the cadre of Sr. Auditor in the New Delhi office. The applicant made a representation against the aforesaid fixation of her pay at Rs. 1380/- under her letter dt. 19.12.89 addressed to the Director of Audit, P & T, New Delhi seeking protection of her last pay drawn at Rs. 1600/- at the post of Senior Auditor, mentioning, in particular, that the terms and conditions of her transfer to Calcutta

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office did not entail any reduction of her pay or revised pay fixation and further that she was under the impression that the pay that she was drawing at New Delhi office would be protected even in the event of her transfer to Calcutta office. The applicant also sent a reminder in the same matter on 17.10.90 as a sequel to her representation aforesaid dt. 19.12.89. Another reminder was submitted by the applicant which was forwarded by the Calcutta office sometime around July 1991. Thereafter, the Dy. Director, P&T, S.W.&T.C., Audit office, Calcutta i.e. the 4th respondent refixed the pay of the applicant w.e.f. 15.9.89 in the scale of Auditor at Rs. 1600/- + the qualification pay of Rs. 30/-, the latter part of the pay on account of her successful completion of the departmental confirmatory examination held in May, 1989. The said order of the 4th respondent dt. 29.7.91 is seen at annexure-A-1-1 of the OA. The said office order specifically stated that it was issued in exercise of power under F.R. 27 and in supersession of the earlier office order dt. 19.10.89 mentioned above.

4. Subsequently, however, the Sr. Audit Officer-in-Charge in the office of P&T, SW&TC, Audit Office, Calcutta i.e. the 5th respondent issued an office order dt. 10.11.95 calling upon the applicant, who had by then been promoted as Senior Auditor, to refund an amount of Rs. 19,562/-, which was reportedly inadvertently overpaid to her as protection of her earlier pay, for the period from 15.9.89 to 31.8.92. That order is seen at annexure-A1 of the OA. Under that order it has been stated that the decision in this regard had been taken by the Director General of Audit, P & T, New Delhi which had been conveyed to the office issuing that order under their communication dt. 22.7.92. The applicant was also enjoined therein to make refund within 30.11.95. Thereafter, the 5th respondent issued another order dt. 28.12.95 seen at annexure-A2 to the OA to the effect that the excess payment of pay and allowance granted to the applicant amounting to Rs. 19,652/-, mentioned above, was under deduction at the rate of Rs. 600/- per month till the recovery of the entire amount and that



deduction would commence from the pay bill of the applicant for the month of December, 1995 onwards. We notice that it would appear from the said order at Annexure-A2 that after the earlier order dt. 10.11.95 at annexure-A1 was issued, there was no response from the applicant. The applicant issued a lawyear's notice dt. 12.1.96 to the effect that the benefit which had already been conferred on the applicant in the wake of her earlier appeal against the initial fixation of pay at Rs. 1380/- could not be withdrawn since it would be violative of the principles of natural justice.

5. The applicant has sought the following reliefs :-

- a) To declare that inasmuch as once in exercise of their discretion the respondents fixed the initial or basic pay of the applicant at Rs. 1600/- they were not competent under the law to reduce such initial pay as originally fixed at Rs. 1440/- and further that such reduction is wrongful, invalid and not binding upon the applicant.
- b) To direct the respondents and each of them to recall and/or set aside the said impugned order and/or direction dt. 10.11.1995 requiring the applicant to refund the said sum of Rs. 19562/-.
- c) To direct the respondents to disburse or pay the said sum of Rs. 41,102/- as on 1.1.1996 being the outstanding salary payable to her for the period as stated in Annexure-A4 hereto.
- d) To direct the respondents to fix up the basic pay at Rs. 2060/- as on 1.1.1996 considering and calculating the initial pay originally fixed by the respondents as on 15.9.1989.
- e) Leave be granted to the applicant to move this application under procedure rule 4(5)(b) or the Act.
- f) And to pass such further order/orders as may seem fit to your honour.

6. The principal grounds urged by the applicant in support of the reliefs claimed by her are that the initial fixation of her pay in the cadre of Auditors, to which cadre she was reverted from the higher



cadre of Sr. Auditor when she joined the Calcutta office on unilateral transfer, was erroneous and that the order dt. 29.7.91 at annexure-A-1-1 refixing her pay under F.R. 27 at Rs. 1600/- was correctly issued, that once the benefits arising from the later refixation of her pay at Rs. 1600/- had already been conferred on her including the arrears arising in that context, the respondents were estopped from recovering the said amount on the ground that the refixation was found to be erroneous subsequently, and finally that there was no disclosure of the reasons for revising the refixed pay from the level of Rs. 1600/- and recovering the allegedly excess amount paid during the intervening period based on the basic pay of Rs. 1600/-. We notice that on behalf of the applicant strong reliance has been placed on the contention that the case of fixation of pay of the applicant on her transfer to Calcutta office in the lower cadre of Auditor ought to have been regulated by FR 27 and that the order dt. 29.7.91 at annexure-A-1-1 refixing her pay at Rs. 1600/- invoking FR 27 was properly issued.

7. In this context, it will be useful for us to quote verbatim the provision of FR 27 and we do so as follows :-

" F.R. 27. - Subject to any general or special orders that may be made by the President in this behalf, an authority may grant a premature increment to a Government servant on a time-scale of pay, if it has power to create a post in the same cadre on the same scale of pay." (emphasis added).

8. Ld. counsel appearing for the applicant has also drawn our attention in the same connection to the instruction No. (13) under F.R. 27 issued by Govt. of India in the Ministry of Law (Dept. of Legal Affairs) dt. 8.8.62 which is summarised at page 133 in Swamy's Compilation of FR SR, Part-I General Rules, 1999(14th) edition. We notice that under that instruction all that is indicated is that once fixation was done by the competent authority in exercise of the discretion vested in it under FR 27, that authority was not competent under the law to reduce the initial pay originally fixed even if such

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pay was based on some data which subsequently turned to be incorrect.

9. The question that arises at this stage for our consideration is whether the provision of FR 27 can be held to have been correctly applied by the 4th respondent while fixing her pay under his order dt. 29.7.91 at annexure-A-1-1. As we have noted above, at annexure-C of the rejoinder filed by the applicant dt. 19.10.89 when her pay as an Auditor in the Calcutta office was fixed at Rs. 1380/-, in the relevant column pertaining to calculation leading to that fixation of pay the benefit of increments were granted to the applicant treating her service as an Auditor from 1.5.83 and again granting her the benefit of revised scale of pay w.e.f. 1.1.86 and thereafter granting her further annual increments in the revised scale of pay. It is, therefore, evident that the applicant had been duly given increments for her past service and no further advance increments had been given to her on her transfer to the Calcutta office. We also observe that F.R. 27 speaks of granting premature increments in the time scale of pay of a post at the time of appointment and not when the pay had to be fixed at a lower post to which a Govt. servant had been reverted after having worked at a higher and promotional post. Thus we find it difficult to hold that in the present case F.R. 27 applies correctly.

10. The respondents in their reply statement have clarified further that when the matter had been taken up by the Central Office with the Govt. of India i.e. the first respondent, it was pointed that the pay of the applicant in the lower post of Auditor had to be fixed at a stage that would have been drawn but for her earlier promotion to the higher post of Sr. Auditor while in Delhi. The respondents have also indicated that in such cases even the provisions of FR 22 (I)(a), (2) and (3) are not applicable and that it is for this reason that the applicant was asked to refund the amount of Rs. 19562/- on account of overpayment of pay and allowance, made to her by way of protection of her previous pay as a Sr. Auditor at the level of Rs. 1600/-, for the period from 15.5.89 to 31.8.92. In her rejoinder the applicant has, however, asserted that it is significant

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that no reason has been assigned in the reply statement filed by the respondents as to why the provisions of FR 22(I)(a), (2) & (3), are not applicable in the case of the applicant. She has quoted those provisions verbatim in her rejoinder and has maintained that there is no reason or justification why those provisions were not followed, but were in fact violated in the particular case of the applicant.

11. The relevant provisions of FR 22(I)(a), (2) & (3), are reproduced as follows :-

"FR 22(I)(a)(2).- When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis :

Provided that where the minimum pay of the time-scale of the new post is higher than his pay in respect of the post held by him regularly, he shall draw the minimum as the initial pay :

Provided further that in a case where pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time-scale of the old post, in case where pay is fixed at the higher stage, he shall get his next increment on completion of the period when an increment is earned in the time-scale of the new post.

On appointment on regular basis to such a new post, other than to an ex-cadre post on deputation, the Government servant shall have the option, to be exercised within one month from the date of such appointment, for fixation of his pay in the new post with effect from the date of appointment to the new post or with effect from the date of increment in the old post.

(3) When appointment to the new post is made on his own request under sub-rule (a) of Rule 15 of the said rules, and the maximum pay in the time scale of that post is lower than his pay in respect of the old post held regularly, he shall draw that maximum as his initial pay.

(b) If the conditions prescribed in clause (a) are not fulfilled, he shall draw as initial pay on the minimum of the time-scale.

Provided that, both in cases covered by clause (a) and in cases, other than the cases of reemployment after resignation or removal or dismissal from the public service, covered by clause (b), if he -

- (1) has previously held substantively or officiated in
 - (i) the same post, or

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(ii) a permanent or temporary post on the same time-scale, or

(iii) a permanent post or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time-scale; or

(2) is appointed subject to the fulfilment of the eligibility conditions as prescribed in the relevant recruitment rules to a tenure post on a time-scale identical with that of another tenure post which he has previously held on regular basis;

then the initial pay shall not, except in cases of reversion to parent cadre governed by proviso (1)(iii), be less than the pay, other than special pay, personal pay or any other emoluments which may be classed as pay by the president under Rule 9(21)(a)(iii) which he drew on the last occasion, and he shall count the period during which he drew that pay on a regular basis on such last and any previous occasions for increment in the stage of the time-scale equivalent to that pay. If, however, the pay last drawn by the Government servant in a temporary post had been inflated by the grant of premature increments, the pay which he would have drawn but for the grant of these increments shall unless otherwise ordered by the authority competent to create the new post, be taken for the purposes of this proviso to be the pay which he last drew in the temporary post which he had held on a regular basis. The service rendered in a post referred to in proviso (1)(iii) shall, on reversion to the parent cadre count towards initial fixation of pay, to the extent and subject to the conditions indicated below -

(a) the Government servant should have been approved for appointment to the particular grade or post in which the previous service is to be counted;

(b) all his seniors, except those regarded as unfit for such appointment, were serving in posts carrying the scale of pay in which benefit is to be allowed or in higher posts, whether the Department itself or elsewhere and at least one junior was holding a post in that Department carrying the scale of pay in which the benefit is to be allowed; and

(c) the service will count from the date his junior is promoted on a regular basis and the benefit will be limited to the period the Government servant would have held the post in his parent cadre had he not been appointed to the ex-cadre post.

12. It is quite evident from the above extract, that the provisions of FR 22 deal with a situation where the Govt. servant is appointed to a post on a time-scale of pay where either the duties and functions attached to that post are of greater importance than the post which he held earlier, or where the duties and the responsibilities of such a post are not of greater importance vis-a-vis the earlier post. In the instant case, the applicant's pay

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had to be fixed at a post admittedly lower than the earlier one, which situation is not envisaged under FR 22. We are, therefore, of the opinion that where the Govt. servant is appointed to a lower post as a condition precedent of a unilateral transfer, the aforesaid provisions of FR 22 (I)(a),(2) or (3), can not be held as being applicable. Thus there can be no automatic protection of pay when a Govt. servant consciously accepts reversion to a lower post in the context of a transfer to a place of his/her choice.

13. We have already observed that the pay of the applicant on her transfer to the lower post, when it was fixed at the office to which she joined on such transfer, also took into account her past service in the lower cadre of Auditor and had duly given her the benefit of annual increments and those of revised scale of pay in the wake of the implementation of the 4th Central pay Commission recommendations. Given these facts and circumstances, we are unable to agree with the contention urged on behalf of the applicant that when her pay was refixed after considering her representations and reminders thereon at Rs. 1600/under order at Annexure-A-1-1 dt. 29.7.91, stated to have been passed ^{under 40} ~~under~~ the provisions of FR 27, it was done correctly and properly.

14. As regards the argument advanced by the 1d. counsel on behalf of the applicant that once the benefit of fixation of pay at the stage of Rs. 1600/- was granted to the applicant, it was not open to the respondents to ask her to refund that excess payment made in the form of higher pay and allowances, we observe that two case-laws relied upon in this context, viz. the one laid down by the Hon'ble Supreme Court in the case of UOI & Ors -vs- M/s Anglo Afghan Agencies (reported in AIR 1968 SC 718) and the other in Century Spinning & Manufacturing Co. Ltd. & Anr -vs-The Ulhasnagar Municipal Council and Anr. (reported in AIR 1971 SC 1021) are not applicable in the instant case. In the first case i.e. UOI -vs-M/s Anglo Afghan Agencies it has been laid down by the Hon'ble Supreme Court that when persons act on the representation made by the Govt. either about a

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fact or about a course of action in future, in the absence of execution of a formal contract under Art. 299 of the Constitution the Govt. was still bound to carry out the promise made based on which such persons had already acted. Similarly, in the second case i.e. Century Spinning etc. =vs= the Ulhasnagar Municipal Council what has been laid down by the Hon'ble Supreme Court is that if a party makes a promise in the form of a representation about an existing fact or in the form of a representation as to what it would do in future and the other party acts on such representation, such a situation may give rise to an estoppel in the former case and in the latter case it may result in a contract or an obligation *ex contractu*, which was enforceable in equity and further that such principles apply to the obligations of public bodies like a municipality.

15. However, it is clear from the facts and circumstances of the instant case, that have been narrated above in some detail, that it is not the respondents who had made a representation about either of an existing fact or about what they were going to do in future, based on which the applicant herein had acted. On the contrary, it is based on the representation made by the applicant that the initial fixation of her pay at Rs. 1380/- on her transfer to Calcutta on reversion to the lower grade of Auditor on her own volition, was wrong and that her previous pay of Rs. 1600/- at the higher grade of Sr. Auditor should be protected, that the respondents had refixed her pay at Rs. 1600/- per month. We are, therefore, unable to agree with the ld. counsel for the applicant that the principles laid down by the Hon'ble Supreme Court in the aforesaid two case-laws are at all attracted in the facts and circumstances of the present case.

16. Ld. counsel for the applicant has also relied on a summary of the principles laid down in S. Natesan Iyer -vs- UOI & Ors reported in (1989) 9 ATC 608, which is to the effect that if a Govt. servant is originally promoted to a higher post and then reverted and is repromoted subsequently to such a higher post, the benefit of service rendered earlier in the higher post, even though that service was of

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the nature of an ad hoc promotion, should be taken into account and the Govt. was directed in that case to fix the pay under FR 22C, (now reprinted as FR 22(I)(a)(1), after taking into consideration his past service in the pay scale attached to that higher post. All we need to say in this context is that it cannot certainly be the case of the applicant that her pay was ¹⁹ ~~not~~ refixed at Rs. 1600/- on her repromotion to the higher post of Sr. Auditor. We, therefore, fail to understand how the said principle can be considered as relevant at all in the present case.

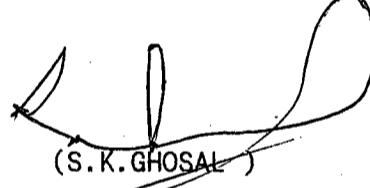
17. The Tribunal has to take judicial notice of the fact that the Govt. as a whole is a mammoth organisation and is dependent for decision-making on multifarious levels in the administrative hierarchy. It is inevitable, given this overall nature of a large Govt. Deptt., that there may be some errors in the decision-making process due to wrong application of rules framed by the Govt. In the matter of pay fixation of a particular Govt. servant in a particular situation, ¹⁹ there may thus be wrong application of rules. Here, as the respondents have clarified, neither the provisions of FR 22 (1)(a), (1) or (2) or (3) or nor those of FR 27 were rightly applied while refixing the pay of the applicant at Rs. 1600/-. It was only subsequently, that is, after more than a year, that this error was detected and the applicant was informed about the excess payment made to her during a particular period on account of such wrong refixation. We also observe that the respondents have decided to recover the excess amount paid only at the rate of Rs. 600/- per month from the applicant.

18. We do not find that the actions taken by the respondents, as briefly summarised above, suffer from any serious irregularity. It cannot be said that if on account of an initial wrong application of a rule, that too based on a representation of a Government servant, excess payment is made to that Govt. servant, that amount, even though admittedly it is public money, cannot be recovered subsequently when the error is detected. It is well established that in such a

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situation the excess payment made can certainly be recovered from the Govt. servant, though it should be done in easy monthly instalments. We are satisfied that the respondents have taken actions in the present case in accordance with that well established principle. In our considered view, those actions of the respondents cannot be faulted. We, therefore, uphold the initial fixation of the pay of the applicant when she came to the Calcutta office in the reverted and lower cadre of Auditor at Rs. 1380/- Since that initial pay fixation is upheld by us, all other consequential reliefs claimed by the applicant arising from the erroneous and subsequent refixation of her pay at Rs. 1600/- are not tenable and hence cannot be granted.

19. For the reasons mentioned above at some length, we uphold the impugned order dt. 10.11.95 at Annexure-A1 and the impugned order dt. 28.12.95 (Anneure-A2). We do not find any merit in the present OA. We accordingly dismiss the same. There will be no order as to costs.



(S.K. GHOSAL)

MEMBER(A)



(D. PURAKAYASTHA)

MEMBER(J)