

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 4.4.1997

O.A. No. 127/1996

Dr. M.B.L. Saxena

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Applicant.

v e r s u s

1. Union of India through Secretary (DARE),
Indian Council of Agriculture Research,
Krishi Bhawan, New Delhi.
2. The Director General, I.C.A.R.,
Krishi Bhawan, New Delhi.
3. The Director, Central Arid Zone Research
Institute, Jodhpur.

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Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.

Mr. V.S. Gurjar, Counsel for the respondents.

CORAM:

Hon'ble Mr. Gopal Krishna, Vice Chairman.

Hon'ble Mr. O.P. Sharma, Administrative Member

PER HON'BLE MR. O.P. SHARMA :

In this application under Section 19 of the Administrative Tribunals Act, 1985, Dr. M.B.L. Saxena has prayed that the respondents be directed to implement the specific order dated 13/15.6.1995 (Annexure A/7) passed by the respondent No. 1 and grant the pensionary/retiral benefits to the applicant on the basis of actual basic pay drawn by him vide order dated 26.6.1989 (Annexure A/1) and fixation dated 17.11.1989 (Annexure A/3) (i.e., after grant of five yearly assessment) with all consequential benefits including release of the withheld amount of D.C.R.G. He has further prayed that the respondents may be directed to pay the applicant the market rate of interest on the amounts due, but not paid / withheld.

2. The brief facts of the case as stated by the applicant are that vide Annexure A/1 dated 26.6.1989, he while working as Scientist Grade S-3 was fixed in the scale of pay of Rs. 1800-2250 (pre-revised) as personal to him with effect from 1.1.1986. Vide Annexure A/2 dated

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20.12.1990, it was decided that the benefit of five yearly assessment on the basis of which fixation as per Annexure A/1 was done would be admissible only upto 31.12.1985 and the pay as on 1.1.1986 in the revised scale shall have to be fixed as per normal rules of fixation. However, earlier vide Annexure A/3 dated 17.11.1989, the applicant's pay was fixed in the scale of Rs. 4500-7300 with effect from 1.1.1986, the scale of pay Rs. 4500-7300 being equivalent to the pre 1.1.1986 scale of Rs. 1800-2250. However, vide Annexure A/4 dated 29.8.1992, the applicant's pay was again refixed in the scale of Rs. 4500-7300, but the effect of this refixation was that whereas by order Annexure A/3 his pay had been fixed at Rs. 4950/- as on 1.1.1986, it was now refixed vide Annexure A/4 at Rs. 4650/- as on 1.1.1986. Consequently, vide Annexure A/4 the applicant became entitled to the pay of Rs. 5550/- as on 1.1.1992, whereas on the basis of fixation done as per Annexure A/3 earlier, he would have been entitled the basic pay of Rs. 5,900/- with effect from 1.1.1992. The applicant retired from service on 31.8.1992. The refixation of pay vide Annexure A/4 dated 29.8.1992 has resulted in a lower amount of pension being fixed as per Annexure A/5 dated 29.8.1992 and an amount of Rs. 30,000/- has been withheld by the respondents for the purpose of making final adjustment. The applicant's case is that as per Annexure A/6 dated 6.9.1995, the benefit of promotion on the basis of five yearly assessment is available in all the grades and is not restricted to the Scientists who were promoted to the erstwhile Grade S-2 and S-3 with effect from 1.1.1986 and 1.7.1986. The applicant has also relied on Annexure A/7 dated 13/15.6.1995 wherein a direction has been issued by the I.C.A.R, New Delhi, to the Head of the Institution where the applicant was working to grant the pay scale of Rs. 1800-2250 to the applicant with effect from 1.1.1986 / 1.7.1986 (the equivalent scale from 1.1.1986 being Rs. 4500-7300). The applicant has, therefore, prayed that the fixation made earlier vide Annexure A/3 dated 17.11.1989 should not be disturbed and since he was drawing a pay of Rs. 5900/- on the date of his retirement, his pensionary benefits

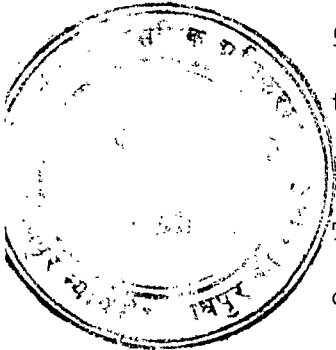
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should be refixed accordingly and the amount of withheld gratuity should also be released to him.

3. The respondents in their reply have stated that the revised fixation has been done as per rules and therefore, the recovery of excess pay is permissible under Rule 17 (2) of the Delegation of Financial Powers Rules. The refixation in the case of the applicant was done when an audit object was raised that his original fixation was not in order.

4. We have heard the learned counsel for the parties and have perused the materials on record.



5. The learned counsel for the applicant has drawn our attention to the judgement of Ernakulam Bench of the Tribunal in O.A. No. 1742/91 delivered on 25.9.1992 in the case of Smt. Grace Mathew vs. The Director Central Marine Fisheries Research Institute, Kochi and 2 others. In this judgement, fixation of pay on the basis of five yearly assessment was upheld regardless of the number of years of service put in by the Scientists. According to the learned counsel for the applicant it was on this basis that Annexure A/6 dated 6.9.1995 was issued by the respondents and the applicant is entitled to the benefit thereof. Further, according to the learned counsel for the applicant, this Bench of the Tribunal had passed an order dated 8.3.1995 in O.A. No. 213/93, Rishi Kumar Arora vs. Union of India & Ors., wherein a direction was given for refixation of pay with effect from 1.1.1986 having regard to the judgement of the Ernakulam Bench referred to above.


6. After hearing the learned counsel for the parties, we direct that the respondents shall consider the matter regarding refixation of pay of the applicant in the scale of Rs. 1800-2250 (pre-revised), the equivalent revised scale with effect from 1.1.1986 being Rs. 4500-

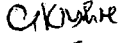
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7300, in accordance with the refixation done earlier vide Annexure A/3 dated 17.11.1989 in the light of Annexure A/6 dated 6.9.1995, Annexure A/7 dated 13/15.6.1995 and Annexure A/8 dated 15.12.1994. The pensionary benefits of the applicant shall also be refixed by the respondents after refixation as above with regard to his pay has been done and arrears of pension shall also be paid as may be due to him.

So once the pensionary benefits are revised and it is found that an amount of Rs. 30,000/- has not been correctly withheld out of the gratuity payable to the applicant, this amount shall also be released to him. Necessary consideration shall be made by the respondents within a period of four months from the date of receipt of a copy of this order.

7. The O.A. is disposed of accordingly with no order as to costs.


(O.P. SHARMA)
Member (A)


(GOPAL KRISHNA)
Vice Chairman

cvr.

