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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 91/2003

198

~~Part No. 1~~

DATE OF DECISION 19 March 2004

D.R. Sharma

Petitioner

Mr. S.K. Malik,

Advocate for the Petitioner(s)

Versus

The Commissioner, K.V.S. & Ors. Respondent

Mr. K.K. Shah

Advocate for the Respondent(s)



CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member

The Hon'ble Mr. M.K. Misra, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes

M.K. Misra
(M.K. Misra)
Adm. Member

J.K. Kaushik
(J.K. Kaushik)
Judl. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO. 91/2003
Jodhpur : This the 19th day of Mar 2004.

Hon'ble Mr. J. K. Kaushik, Judicial Member
Hon'ble Mr. M.K. Misra, Administrative Member

D.R. Sharma S/o Shri Matadin Sharma,

Aged about 46 years, R/o 121, Central

School Scheme, Jodhpur (Raj), presently

Working on the post of Yoga Teacher in

K.V.No.2 (Airforce) Jodhpur (Raj)

[By Advocate Mr. S.K.Malik, for applicant]

.....Applicant.

Versus



1. Commissioner, Kendriya Vidhyalaya Sangathan,
18 Institutional Area, Shahid Jeet Singh Marg,
New Delhi - 110 016
2. Assistant Commissioner, Kendriya Vidhyalaya Sangathan,
Regional Office, 92, Gandhi Nagar Marg,
Bajaj Nagar, Jaipur (Raj)
3. Principal, Kendriya Vidhyalaya No. 2 (Airforce),
Jodhpur (Raj)

[By Advocate Mr. K.K.Shah, Advocate, for respondents
.....Respondents.

ORDER

[BY J.K.KAUSHIK,JUDICIAL MEMBER]

Shri D. R. Sharma has assailed the order dated 24.3.2003

(Annex. A/1) and has inter alia prayed for its setting aside and for

seeking a direction to the respondents to restore his basic pay and also to refund any amount recovered from him. 13

2. With the consent of learned counsel for the parties, the case was taken up for final disposal at admission stage and we have carefully considered the pleading and the records of this case.

3. Filtering out the unnecessary details, the indubitable facts as deduced from the pleadings of the parties are that the applicant was initially appointed to the post of Yoga Teacher on dated 19.10.81 in the pay scale of Rs. 425-640 and posted at K. V. Aamgarh. He came on posting to Rewari where he remained from 24.10.86 to 22.8.99. He was allowed the pay fixation in the pay scale of Rs. 5500-9000 at Rs. 6500 w.e.f. 1.1.96 in pursuance with the Recommendations of the 5th Pay Commission and was also paid certain arrears somewhere in July 1999.

4. The applicant was allowed his due increments and his basic salary raised to Rs. 7600 in Feb. 2002. The applicant was issued with impugned order dated 24.3.2003 (Annex.A/1), reducing his salary to Rs. 7425/- and ordering recovery without any prior notice or giving the details thereof. The Original Application has been filed on numerous grounds mentioned in para 5 and its sub-paras which we shall deal a little later in this order.

5. As regards the variances, the pay revision was done awaiting approval of A.I.O. after taking specific undertaking from the individual employees to the effect that overpayment, if any, made consequent on fixation of pay in the revised scale will be refunded by the employee. There were instructions to this effect vide letter dated

30.12.97 (R/1) and the applicant gave such undertaking which is at



Annexure R/2. When the discrepancy was noticed, the suitable amendment in the pay fixation was made and the pay of the applicant was fixed at Rs. 6025/- in the pay scale of Rs. 5500-9000 as on 1.1.96. There was no need of any notice since the revised pay fixation itself was conditional which was agreeable to him.

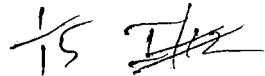
6. The learned counsel for the applicant has endeavored to persuade us that the applicant has completed about 14 years of service for which he must have earned 14 increments and as per the rules of fixation of pay he ought to have been allowed four increments by bunching three increments into one increment in the revised scale. He has also reiterated the facts and grounds mentioned in the Original Application. He has placed reliance on numerous decisions which we shall deal separately.

7. Per contra, the learned counsel for the respondents has reiterated the defence as set out in the reply. He has contended that the revised fixation was done awaiting correct fixation by the competent authority and it was meant to give expeditious benefits to the employees. The position was also made clear and an undertaking was taken. Thus it is not the case where one could be said to have been taken with surprise. His pay fixation has been now correctly done as per rules in force. There was nothing unusual in the undertaking and the same can not be termed as an unconscionable or adhesive contract. Therefore no illegality or arbitrariness can be fastened with the action of the respondents.

8. We have considered the rival contentions raised on behalf of the both the parties. At the outset, we may point out that there have been certain missing links in as much as we were not provided with

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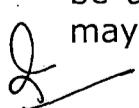


the details regarding the pay fixation done as per the Recommendations of Fourth Pay Commission and also as to what was the wrong pay fixation done up awaiting approval from A.I.O. Both the parties ignored the same and did not find it expedient to facilitate us with the requisite materials. The arguments advanced by the learned counsel for the applicant that since the applicant has rendered 14 years of service, he would be entitled for bunching of increments on the basis of 14 increments seems to be attractive but deceptive in substance. However, we could overcome the dismal situation with our incisive analysis and resorting to patch work. We have seen from the records that the applicant was admittedly drawing Rs. 1900/- as on 31.12.1995 which is stage when one gets 11 increments. There the applicant would get only three increments by the rule of bunching of three years for grant of one increment in the revised scale. In this way he would get the pay fixation at Rs. 6025/- on grant of three increments in the pay scale of Rs. 5500-175-9000. Thus, there is nothing wrong with the revised fixation of his pay.

9. Now, adverting to the other issues, firstly as regards the recovery is concerned, the learned counsel for the applicant has placed reliance on the following decisions:

Sahib Ram v. State of Haryana, 1995 Suppl (1) SCC 18: (1995 AIR SCW 1780), wherein the Hon'ble Apex Court has observed as under:

"The principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant."

In Shyam Babu Verma v. Union of India, (1994) 2 SCC 521, the Hon'ble Apex Court considered the similar case and held that if the employee has received the extra money due to no fault of him and that scale is reduced subsequently with effect, from back date, it shall only be just and proper not to recover any excess amount which has already been paid to him. This Court, in Nand Lal v. R.S.E.B. (1999) 2 Rajasthan LR 707, has passed the same order.

In Bhagwan Shukla, Appellant v. Union of India and others, Respondents AIR 1994 Supreme Court 2480. (Relevant portion of para 3), their Lordships have held as under:



"The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter"

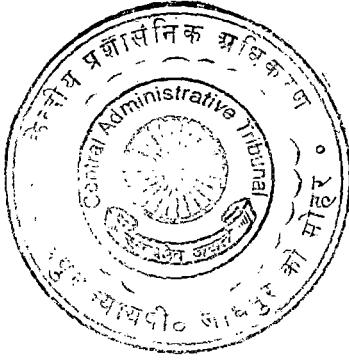
Mr. G. Shankar Reddy. Vs. the Post Master Accounts Kolar and Ors. reported in 2003 (1) ATJ CAT 592 and Anoop Singh Vs. State of Haryana reported in 2003 (1) ATJ Punjab and Haryana High Court 440 – facts of these cases are also distinguishable and do not support the contention of applicant in any manner.

In Secretary-cum-Chief Engineer, Chandigarh, v. Hari Om Sharma and others, AIR 1998 Supreme Court 2909, their Lordships have held as under:-

"8. Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer-I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit

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pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma holders available for promotion to the post of Junior Engineer-I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act."



10. None of the aforesaid decision applies to the facts and circumstances on the instant case. In the present case, the applicant was very much informed in advance and to this effect an undertaking was given by him. It was only an arrangement for release of immediate benefits otherwise the applicant would have to wait. We find the action of the respondents was fair and shown a favour to the applicant in particular and other employees in general. The action also did not offend the equality clause and the competent authority has done the fixation of pay as per rules in force.

11. As regards of the undertaking, the same can not be termed as adhesive or unconscionable since it was a favour to the applicant without any iota of dominance. We are not impressed with the submissions of the learned counsel for the applicant in this regard. We have come across a decision of a co-ordinate Bench of this Tribunal in case of R. R. Dhobale & Ors., V. Union Of India & Ors., 2000-(002)-SLJ CAT -0043 -ATBOM wherein it has been observed as under (Para 12) :

"Now on merits, we have reached the conclusion that the applicants in this O.A. are not entitled to the benefit of O.M. of 1984. If by wrong calculation or by mistake the benefit has been given to the applicants, the administration has every right to recover that amount. The respondents have also brought to our notice the relevant rules which are at exhibit R-1 to the written statement which gives powers to the authorities to recover the excess payment or over payment made to the employees due to wrong calculation, etc."

The respondents have also placed on record the undertaking given by the applicants which is dated 11.10.1996. The undertaking reads as follows:



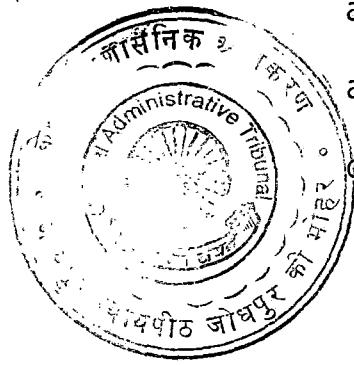
"I, hereby undertake that any over-payment on account of arrears of C.P.W.D. pay fixation made to me will be refunded in one lump sum as and when noticed subsequently by Audit Authority/Controller, CQA (SV) Dehu Road."

The above undertaking clearly shows that all the applicants have given undertaking that they are going to refund the amount if the amount is objected by the Audit Authority/Controller. Therefore, it is a (sic) payment subject to recovery of amount if found that the applicants are not entitled to that amount. Now, on merits we have held that applicants are not entitled to the revised pay scale like the Draughtsmen of C.P.W.D. Hence, the action of the respondents to recover the amount from the applicants is fully justified and according to law."

We find that similar in the position here and the decision squarely covers on all fours the controversy involved in this case and we have no hesitation in following the same to this case; rather we assert that independent of the said authority also, we would have reached to the same conclusion.

A handwritten signature in black ink, appearing to be a stylized 'S' or a similar mark.

12. In the circumspect of the aforesaid discussion, we come to an inescapable conclusion that the Original Application sans merits and substance and the stands dismissed. However, the parties are directed to bear their respective costs.



M. Misra
(M.K. Misra)

Administrative Member

J.K. Kaushik
(J.K. Kaushik)

Judicial Member

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