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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 83/2011

Date of Order : 27.02.2012

CORAM:

HON'BLE MR. SUDHIR KUMAR, MEMBER (A)

Arjun Singh Gehlot S/o Late Shri Ram Lal Gehlot, aged about 55 years R/o 882, Chitrawata Bera, Chainpura Via Mandor, Jodhpur, at present employed on the post of Assistant Engineer in Central Ground Water Board, Division-11, C-8, Saraswatinagar, Pali Road, Jodhpur.

.....Applicant.

(By Mr. J.K.Mishra, Advocate)

Versus

1.Union of India through Secretary to the Government of India, Ministry of Water Resources, Shram Shakti Bhawan, Rafi Marg, New Delhi.

2.The Director (Admn.), Central Ground Water Board, NH-IV, Bhujal Bhawan, Faridabad - 121001.

3.The Executive Engineer, Central Ground Water Board, Division-11, C-8, Saraswatinagar, Pali Road, Jodhpur.

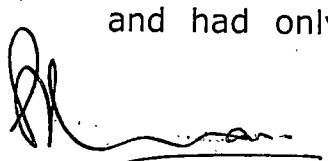
.....Respondents.

(By Mr.Ankur Mathur for Mr. Vinit Mathur, Advocate)

O R D E R

Heard both the learned counsels in detail.

2. The case of the applicant is that he is a Junior Engineer in the Central Ground Water Board (CGWB), and at a particular point of time, his request for parity with the Engineers in the C.P.W.D. had been allowed through the orders of this Tribunal in O.A. No. 142 of 1998 on 01.10.1999 (Annex.A/2). The respondents had then gone in a Writ Petition before the Hon'ble High Court of Rajasthan, and in its order dated 04.09.2001 in D.B.C.W.P. No. 3423/2001, the Hon'ble High Court had upheld the decision of this Bench, which had followed the decision of the Bangalore Bench of the Tribunal, on similar facts, and had only allowed extension of time to the respondents/writ



petitioners before the Hon'ble High Court to implement the Tribunal's judgment.

3. However, the issue thereafter was as to whether the applicant had completed five years of service for the grant of higher scale of pay. Therefore, the orders of the Hon'ble High Court of Rajasthan delivered on 04.09.2001 could not be complied with, and, in the meanwhile, the applicant had filed another OA No. 92/2001, in which the orders came to be passed on 14.03.2002 (Annex.A/4), in which a specific direction was given to the respondents to fix the pay of the applicant in the higher scale of pay w.e.f. 31.07.1990, within a period of three months.

4. In the meanwhile, the respondents had gone in appeal against the orders of the Hon'ble High Court of Rajasthan before the Hon'ble Apex Court, in Civil Appeal No. 6579/2003, which came to be considered and decided by the Hon'ble Supreme Court on 09.12.2009 (Annex.A/5). The Hon'ble Supreme Court had taken the view that in a series of decisions the Hon'ble Supreme Court had already said that the pay parity cannot be granted unless there is a complete and wholesale identity between the two groups of posts, vide State of Punjab Vs. Surjit Singh (2009) 9 SCC 514, and since such parity and complete and wholesale identity was not recognized by the Hon'ble Supreme Court in between the Junior Engineers of the CGWB with that of Junior Engineers of the CPWD, the appeal of the respondents was allowed, and the judgment and order of the Hon'ble Rajasthan High Court dated 04.09.2001 was set aside. Since the High Court's judgment had upheld the orders of this Tribunal dated 01.10.1999 in the O.A. No. 142/1998, by implication the order of this Tribunal was also set aside by the Apex Court.

5. The respondents thereafter implemented the judgment of the Hon'ble Supreme Court, and issued fresh fixation of salary of the

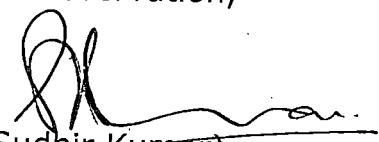
applicant on 13.07.2010 (Annex.A/6). It was submitted by the learned counsel for the applicant during the arguments that he does not have any grievance against the respondents in obeying the orders of the Hon'ble Supreme Court, and issuing order Annex.A/6. His only grievance is that no recovery in pursuance of this re-fixation of salary orders should be made from his pay, as he has submitted that firstly the Hon'ble Apex Court did not expressly order for any such recovery to be made, and secondly the wrong fixation of his pay was not on his own volition and fault. In support of his contention the learned counsel for the applicant has cited the case of Shyam Babu Verma and Ors. Vs. Union of India and Ors. decided on 08.02.1994 by the Hon'ble Supreme Court [JT 1994 (1)SC 574] and the case of Sahib Ram Vs. State of Haryana and Ors. reported in 1995 (1) SLJ 151 (SC) decided on dated 19.09.1994. The learned counsel submitted that in both these cases it has been clearly held by the Hon'ble Apex Court that when excess payment has been made for no fault of the employee, the respondents cannot recover such excess payment from the salary of the employee thereafter.

6. However, in his detailed arguments, the learned counsel for the respondents submitted that Hon'ble Supreme Court has already decided the law, and applied it to the specific case of the applicant. Therefore the applicant cannot now be allowed any relief, which does not flow from, or violates the order of the Hon'ble Supreme Court. He has also pointed-out that the excess payment was actually made to the applicant on the basis of the undertaking given by him on 28.04.2000, through Annex.R/4, in which he had undertaken that in the event of any over-payment made by virtue of fixation of his pay in the upgraded pay scale being pointed out by the Audit, or if it is found that the aforesaid CAT judgment is not applicable, he will refund the excess amount drawn by him. The submission of the respondents was

that now, since the Hon'ble Supreme Court itself had held that the applicant was not entitled to the relief which had been allowed by this Tribunal, and up-held by the Hon'ble Rajasthan High Court, they were fully within their rights to recover the amount paid in excess to the applicant, more so in view of the express undertaking given by the applicant through Annex.R/4.

7. However, the learned counsel for the applicant submitted that in the notings of the DOP&T dated 02.01.2010 at Annex.A/1 page No. 13, as submitted by him, it has been suggested that the recovery of the amount may be adjusted in future emoluments to be drawn by the Government servant, and that the Department of Expenditure may be consulted in the matter of recovery of extra payment of pay and allowances drawn by the Government servant. The learned counsel for the applicant submitted that this part of the suggestion of the DOP&T had not been pursued by the respondent department, and therefore, the recovery may perhaps required to be adjusted against the future emoluments of the applicant, as suggested by the DOP&T itself.

8. Adjustment of recovery against future emoluments is nothing but recovery of the amount paid in excess in installments, so that the actually drawn salary of the applicant does not suddenly get reduced all of a sudden. It is seen that the applicant still has four years of service left, and the recovery of amount held to have been paid in excess to the applicant, as per the orders of the Hon'ble Supreme Court, can perhaps be made against future increases in the emoluments of the applicant existing as on today, thus minimizing the hardship likely to be caused to the applicant. With this observation, the O.A. is dismissed, with no order as to costs.


(Sudhir Kumar)
Member(A)