

In The Central Administrative Tribunal
Calcutta Bench

CA.295 of 1997

Present : Hon'ble Mr. D. Furkayastha, Judicial Member
Hon'ble Mr. G.S. Maingi, Administrative Member

Manindra Nath Halder

.... Applicant

- VS -

- 1) Union of India, service through the Secretary, Ministry of Water Resources, Government of India, New Delhi.
- 2) The General Manager, Farakka Barrage Project, Farakka, Dist: Murshidabad.
- 3) The Deputy Controller of Accounts, Pay and Accounts Office, Farakka Barrage Project, Farakka, Murshidabad.
- 4) The Executive Engineer, Electrical Division, Farakka Barrage Project, Farakka, Murshidabad.

... Respondents

For the Applicant : *(Mr. MS Banerjee)*
Mr. T.K. Biswas, Advocate

For the Respondents: Ms. K. Banerjee, Advocate

Heard on : 14-02-2000

Date of Order : 14-02-2000

ORDER

D. PURKAYASTHA, JM

The question before us is whether the respondents were justified to withhold Rs.27,222/- ^{or DCRG} for the purpose of recovery of excess payment on the basis of earlier fixation of pay done by the respondents w.e.f. 1.1.1986 vide letter dated 27.6.1996 (Annexure-A to the application). According to the applicant, he was holding the post of Electrician Grade-I attached to the Electrical Division and his pay was fixed at Rs.1400/- per month

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w.e.f. 1.1.1986 with the date of next increment on 1.12.86 in the higher scale of pay i.e. Rs.1400-40--1800-EB-50-2300/-. It is alleged by the applicant that respondent, without giving any opportunity to him, again re-fixed his pay reducing to Rs.1320-2040/- in the pay scale of Rs.1320-30-1560-EB-40-2040/- by way of order of re-fixation dated 27.6.96 (Annexure-A to the application). It is stated by the applicant that respondents wanted to recover Rs.27,222/- from his DCRG money. It is also stated by the applicant that he retired from service from 30.6.1996 and he received the order of re-fixation i.e. the order of recovery after the date of his retirement. Therefore, it is alleged by the applicant that the impugned order is arbitrary, illegal and violative of principles of natural justice.

2. Respondents filed written reply denying the claim of the applicant. According to the respondents, applicant was not entitled to get benefit of higher pay scale of Rs.1400-2300/- w.e.f. 1.1.86 as he was not working in the Workshop and the recommendation of the Pay Commission was meant for Workshop Employees only. Therefore, on the basis of wrong fixation, applicant was paid excess payment after taking undertaking from him. Therefore, the order dated 27.6.96 cannot be said to be arbitrary and violative of principles of natural justice as alleged by the applicant.

3. Mr. Biswas, Id. Advocate for the applicant submits that applicant in the meantime retired w.e.f. 30.6.96 and no opportunity of being heard was given to the applicant before making re-fixation of his pay vide order dated 27.6.96. Since no opportunity of being heard was given to the applicant, therefore, order of re-fixation can be said to be arbitrary and liable to be quashed. So, applicant is entitled to get the refund of Rs.27,222/- which has been withheld by the Department as excess payment for the period from 1.1.86 to 30.6.96. Id. Advocate also referred to a judgement

(S.B. Verma - Vs - UOI & Ors.) reported in 1994(27) ATC page 121.

Id. Advocate for the respondents contended

that the applicant had given an undertaking that excess payment, if any made by the Department, would be refunded by him. Therefore, question of granting further opportunity to the applicant does not arise in this case and order of re-fixation has been done by the respondents in accordance with the rules. It is stated by the Id. Advocate that applicant was not entitled to get benefit of higher pay scale of Rs.1400-2300/- as he was not working in the Workshop under the respondents and that matter has been considered by the General Manager. Therefore, order of recovery as passed by the respondents cannot be considered to be arbitrary, illegal and violative of principles of natural justice as alleged by the applicant.

5. We have considered submissions of Id. Advocate of both the parties. From the record we find that before making payment, the respondents could not determine the question whether the higher pay scale of Rs.1400-2300/- would be applicable to the applicant. We find that the Department was in confusion in this regard. Department could have decided the matter regarding entitlement of the pay scale before making payment. In the instant case we find that the Department was in dilemma regarding applicability of the pay scale to the applicant. That matter has been subsequently decided by the respondents on the ground that since applicant was not working in the Workshop, he is not entitled to get the benefit of the higher pay scale.

6. Id. Advocate Mr. Biswas on behalf of the applicant submits that it would be hardship on the part of the applicant if Rs.27,222/- is recovered from his DCRG money, since, in the meantime applicant had retired and for wrong re-fixation applicant is not responsible.

7. We have considered the judgement of Hon'ble Apex Court and the Hon'ble Apex Court held that after lapse of 9 years the respondents were not justified to pass order of recovery without giving the employee an opportunity of being heard and the applicant would

be debarred from challenging the order of re-fixation, if any,

wrongly done by the respondents. But, it is true that the undertaking was given by the applicant to that effect that he would refund the money, if any excess payment was made. We find that applicant in the meantime retired from service and before re-fixation of his pay by way of correcting of the earlier fixation vide order dated 27.6.96, no opportunity of being heard was afforded to the applicant. It is settled law, as per judgement of the Hon'ble Appex Court mentioned above, that no order detrimental to the interest of pensioner or employee should not be passed by any authority without affording reasonable opportunity of being heard or to state his case. According to the Id. Advocate of the applicant, despite the fact that the applicant had given undertaking, the respondents ought to have given an opportunity by disclosing the fact as to why re-fixation of pay is required to be done as per order of the competent authority. Having not done this, the action of the respondents vide order dated 27.6.96 (Annexure-A) can be said to be arbitrary and violative of the principles of natural justice. We find that the recovery sought to be made after lapse of 10 years from the date of alleged payment made to the applicant and after retirement of the applicant. Considering all these facts, we are of the view that it cannot be said that respondents have no right to correct the wrong, if any wrong was noticed. But that power of correction of wrong cannot be exercised arbitrarily and in violation of the principles of natural justice. Considering the hardship of the applicant, we find that order of recovery to the extent of Rs.27,222/- was violative of principles of natural justice. Therefore, the order of recovery should not be made effective by the respondents. The applicant is entitled to get back the amount of Rs.27,222/- which has been withheld by the respondents as excess payment made to the applicant. This amount should be paid to the applicant within two months from the date of communication of this order. And applicant would be entitled