

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 420/2004

FRIDAY THIS THE 1 ST DAY OF SEPTEMBER, 2006

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

M.K.Mohammed Yusuf, aged 60 years,
S/o Abdulla Kutty,
Retired Assistant Engineer/Civil/
Central Public Works Department/
Central Division Mysore,
residing at Rasmi House, Cherukunnu
Othukkungal PO,
Malappuram District.Kerala.Applicant

(By Advocate Mr. TCG Swamy)

V.

- 1 Union of India, represented by the Secretary
to the Govt. of India, Ministry of Urban Development,
Nirman Bhavan, New Delhi.
- 2 The Director General (Works)
Central Public Works Department,
Nirman Bhavan, New Delhi.
- 3 The Pay and Accounts Officer,
Central Public Works Department, Rajaji Bhavan,
Basant Ngar, Chennai.90
- 4 The Executive Engineer,
Central Public Works Department,
Mysore Central Division,
Sidharth Nagar, Mysore.11.Respondents

(By Advocate Mr. Thomas Mathew Nellimootil)

The application having been heard 22.8.2006, the Tribunal on 1.9.2006
delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

The applicant has retired as Assistant Engineer (Civil) from the

Central Public Works Department (CPWD) on 31.7.2003 while working at Mysore Central Division under the 4th respondent, namely, the Executive Engineer, CPWD, Mysore. He is aggrieved by the Annexure.A.1 order dated 11.7.2003 fixing his pay as per FR 22(1)(a)(ii) retrospectively with effect from 1.1.86 and ordering recovery of excess pay and allowances paid to him from 6.7.95. He is also aggrieved by Annexure.A2 order dated 18.7.2003 refixing his pay in terms of the Annexure.A1 order.

2 Earlier the applicant and nine others approached this Tribunal vide OA 1018/94 against the order of recovery of the benefits received by them on account of fixation of their pay under FR 22(c) and against another order wherein it was decided that the higher scale of pay of Rs. 1640-2900 already offered to them will not be treated as promotion pay but will be non-functional and benefits of FR 22(c) (now FR 22(1)(a)(i)) will not be admissible to them. The case of the applicants in the said OA was that it was covered by an earlier order in OA 33/89, according to which those applicants were declared eligible for fixation of their pay under FR 22(c) on the basis of the respondents' own letter No.A-26017/1/89-EC.VI dated 18.5.89 and the relevant portion of the same reproduced in the order in OA 1018/94 is extracted as under:

"Accordingly, the case was referred to Department of Personnel & Training/Ministry of Finance for advice as to whether the pay of Junior Engineers on promotion from Junior Engineers Grade-II to Junior Engineers Grade-I is to be fixed under FR 22(a)(ii) or under FR 22(c). It has been decided that the pay of Junior Engineers on promotion from Grade -II to Grade-I is to be fixed under FR 22(c)...."

On the basis of the respondents' own above letter, OA No.1018/04 was allowed with the following directions:-

"The higher fitment or grade already granted to them cannot be cancelled to their prejudice and that too retrospectively

✓

without giving a predecisional hearing. We find that there is no force in this contention. In fact, applicants' pay was fixed taking into consideration the OM dated 18.5.89 which was in force at the relevant time. In this O.M respondents have categorically stated that the pay of Junior Engineers to Grade-I is to be fixed under FR 22(c). Hence, it was treated as promotional post and on their promotion their pay was fixed under FR 22(c). Applicants are drawing higher grades pursuant to the fixation as per O.M dated 18.5.89. It is well settled that higher placement already granted to the employees cannot be cancelled to the prejudice of them and that too without giving them an opportunity to respondent.

In view of the circumstances aforementioned, we are of the view that the stand of respondents in this case cannot be sustained and the application is to be allowed. Accordingly, we quash impugned orders and allow the application to the extent of restraining respondents from recovering payments made to applicants. We have not expressed any opinion regarding the course open to respondents for any future action."

3 With the issuance of Annexure.A1 impugned order, the respondents have suddenly after eight years, that too just a couple of days before the retirement of the applicant, held that the order of this Tribunal dated 5.7.05 in OA 1018/94 was allowed only partly to the extent of restraining the respondents from recovering payments to the applicants but there was no order restraining the respondents from fixing the pay of the applicant under FR 22(1)(a)(ii) and for the recovery of the excess amount from 6.7.95, the date following the aforesaid order. Without giving any opportunity to the applicant to make a representation against the said Annexure.A1 order dated 11.7.03, the respondents have proceeded by Annexure.A2 order dated 18.7.03 and re-fixed his pay under FR 22(a)(a)(2) with retrospective effect from 1.1.86 which has resulted a situation where the applicant had to repay a large amount of money which alleged to have been received by him as over payment above his entitlement.

4 The applicant's contention is that one of the applicants in OA

1018/04, namely Shri K.G.Zacharia was also faced with a similar situation of reduction in his pay. He, therefore, approached this Tribunal vide OA 120/98 . While appointing him as JE Gr.I with effect from 1.1.86 in the scale of pay of Rs. 1640-60-2600-EB-75-2900 his pay was fixed at Rs. 2240/- with effect from 1.1.86 giving the benefit under FR 22(c) {now FR 22 (1)(a)(i)}. He was later promoted as Assistant Engineer with effect from 4.3.91 and his pay was fixed at Rs. 2675/- in the scale of pay of Rs. 2000-60-2300-EB-75-3200 with effect from the said date under FR 22(c). He was also issued with an order dated 16.6.94 retrospectively withdrawing the benefit under FR 22(c) on the ground that promotion to higher scale Rs. 1640-2900 as JE Gr.I with effect from 1.1.86 was non-functional and directing recovery of over payment. It was at that stage that he along with the applicant and others have approached this Tribunal vide OA 1018/94 which was disposed of on 5.7.95 setting aside the order of recovery. Since there was no further course of action was ordered by the Tribunal, the respondents issued the order dated 25.7.97 withdrawing its earlier order dated 16.6.94 holding that the benefit of FR 22(1)(a)(i) (old FR 22(c)) in the grade of JE Gr.I was admissible to Shri Zacharia and the pay fixation order dated 13.7.87 was in order. Later he sought voluntary retirement, which was accepted by the competent authority with effect from 1.5.97 but his pensionary benefits were not granted to him by fixing his basic pay and also the last drawn salary protecting his pay. After considering the entire facts, this Tribunal held that there was no justifiable reason to deny the benefit of pay fixation under FR 22(1)(a)(i) to the applicant. Therefore, the respondents were directed to forward the pension papers of the applicant and to fix his pay accordingly and disburse the pensionary benefits.

5 The respondents' stand in the present OA is that the order of this Tribunal to allow fixation under FR 22(1)(a)(i) was applicable to Zacharia only and therefore his pension case was finalized accordingly.

6 The applicant has produced another order of this Tribunal by another applicant in OA 1018/94, namely Shri V.V. Asokan. He was also superannuated on 31.3.04. He was allowed to draw only the provisional pension. The contention of the respondents was that his pay was fixed in the scale of Rs. 1640-2900 as JE Gr.I with effect from 1.1.86. With the introduction of ACP Scheme his pay was fixed in the scale of Rs. 10000-15200 with effect from 9.8.99 giving him the benefit of second ACP. The pension papers were delayed for the reason that the applicant had already been granted two financial up-gradations and further fixation of pay in the scale of Rs. 10000-15200 was not in order and sought specific approval of the second respondent which was obtained later and accordingly his Pension Payment Orders were issued reckoning Rs. 11,625/- as the last pay drawn by the applicant.

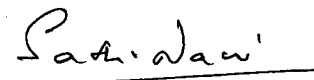
7 The applicant has also pointed out that in the case of Shri George Varghese, the 2nd applicant in OA 1018/94, the third respondent has not effected any recovery or reduced his pay when he retired on 30.4.2003. But in the case of the applicant, the third respondent has taken discriminatory attitude. According to the applicant, the aforesaid cases of Shri K.G.Zacharia, Shri VV Asokan and Shri George Varghese, the respondents have granted them the benefit under FR 22(c) as on 1.1.86. The applicant being a similarly placed employee there is no justifiable reason on the part of the respondents to deny this benefit to him alone.

8 ✓ The respondents have not denied that Shri KG Zacharia, Shri VV

Asokan and Shri George Varghese are not similarly placed persons. Once this Tribunal has come to the conclusion in OA 120/98 decided on 26.3.99 that the applicant in the said OA was entitled for the benefit of pay fixation under FR 22(1)(a)(i) and similar order also has been passed in the case of Shri V.V. Asokan in OA 860/04, we do not find any justifiable reasons for the respondents to deny the same benefit to the applicant, who is also exactly and similarly placed. In this view of the matter, we quash and set aside Annexures.A1 and A2 orders dated 11.7.03 and 18.7.03 respectively. Since the Annexure.A2 refixation order has already taken effect, we direct the respondents to pay the arrears of pay and allowances upto his retirement on 31.7.2003. The applicant shall also be paid arrears of pension and other retirement benefits w.e.f. 1.8.2003 with interest at the rate of 8% (eight percent) per annum on the difference in pension and retirement gratuity from 1.8.03 until full and final settlement is made. There shall be no order as to costs.

Dated this the 1st day of September, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

S