**CENTRAL ADMINISTRATIVE TRIBUNAL**
**ERNAKULAM BENCH**

O.A.No.498/09

Wednesday this the 24th day of February 2010

**C O R A M :**

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER**
**HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

C.A.Ibrahim,
S/o.late Ali,
Tradesman Mate (Semi Skilled), I.N.S.Garuda,
Southern Naval Command, Kochi – 682 004.
Residing at Poothepadathu House,
Nettoor P.O., Ernakulam District – 682 304. ...Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr. along with Mr.C.S.G.Nair)

**V e r s u s**

1. Commodore,
Chief Staff Officer (Personnel & Administration),
Headquarters, Southern Naval Command,
Kochi – 682 004.

2. Flag Officer Commanding-in-Chief,
Southern Naval Command, Kochi – 682 004.

3. Union of India represented by its Secretary,
Ministry of Defence, South Block,
New Delhi – 110 001. ...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 24th February 2010 the Tribunal on the same day delivered the following :-

**O R D E R**

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER**

The applicant has sought the following reliefs in this Original Application :-

1. To declare that Annexure A-1 order of penalty dated 15.12.2006 which has been implemented and ceased to be operative long before the promulgation of the Central Civil Service (Revised Pay) Rules, 2008 published as GSR 622 (E) in the Gazette of India Extra Ordinary dated 29.8.2008 cannot be made applicable to the revised Pay Structure admissible to the applicant with effect from the date of penalty as shown in Annexure A-5 CE List dated 9.7.2009.

2. To call for the records leading to Annexure A-5 and to set aside the same to the extent it adversely affect the applicant.

3. To issue appropriate direction or order directing the respondents to give effect to the CCS (Revised Pay) Rules, 2008 in respect of the applicant granting annual increments as allowed in the Rules without regard to Annexure A-1 and to restore the pay of the applicant at Rs.6780/- with Grade Pay Rs.1800/- with effect from 1.1.2007 and the annual increments due to the applicant.

4. To issue appropriate direction or order directing the respondents not to effect cut in pay or to recover any amount alleged to be paid in excess due to non-implementation of penalty while fixing the pay of the applicant in the revised pay structure in accordance with the CCS (Revised Pay) Rules, 2008.

5. To issue appropriate direction or order directing the respondents to refund the amount illegally recovered from the pay of the applicant or from the arrears of pay and allowances.

6. To issue appropriate direction or order which this Tribunal deems fit, just and proper in the circumstance of the case and

7. To award the costs to the applicant.

2. When this case was admitted counsel for the applicant submitted that this case is identical to O.A.327/09, O.A.329/09, O.A.330/09 & O.A.331/09. Those O.As have already been disposed of by this Tribunal vide order dated 6.1.2010 in O.A.254/09 and connected cases. The operative part of the said order was as under :-

"10. Arguments were heard and documents perused. The main issue could be bifurcated as under :-

(a) When on the basis of a penalty order, reduction of pay was effected as per the pre-revised pay scales with increment attendant thereto, whether the subsequent revision of pay scale with retrospective effect from a date anterior to the period of currency of penalty would warrant modification of penalty to be in conformity with the pay and increment under the revised pay scale or is independent of the penalty imposed even in respect of the period of currency of penalty.

(b) If there be any excess payment made in the grant of revised pay scale purely on oversight, can the excess amount so paid is recoverable (with or without prior notice) from the individuals concerned, on the strength of an undertaking given by the individual concerned.

11. The senior counsel emphatically argued that in so far as the extent of penalty is concerned, since the same has been fully prescribed and described, there is no scope for changing the same. The reduction is one increment and the said increment was Rs.100/-. The pay scale was Rs.4000-6000. And, presently the extent of annual increment being variable, i.e. 3% of the basic pay the same cannot be substituted to the fixed Rs.100/-. The senior counsel further argued that it would have been a different matter, had the penalty order contained only to the extent of reduction by one increment in the present pay scale of the applicant in which event, there may be some justification to introduce the new pay scale and the attendant increment thereto, whereas that is not the case here. As the extent of penalty has been defined and confined, the reduction of Rs.100/- becomes inflexible.

12. This point has to be dealt with first. Prescription of pay scale, increment attendant thereto, the pay drawn before penalty, the pay admissible during the currency of penalty etc., are necessarily to be made as the same is mandated in the Rules. In this regard, reference has to be made to the prescribed proforma, under Government of India Instructions No.12 under Rule 11 of the CCS (CC&A) Rules, 1965 which reads as under:-

"(12) Reduction to a lower stage in a time-scale.- Every order passed by a competent authority under sub-rule(1) of Fundamental Rule 29 imposing on a Government servant the penalty of reduction to a lower stage in a time-scale should indicate -

(i) the date from which it will take effect and the period (in terms of years and months) for which the penalty shall be operative.

(ii)the stage in the time-scale (in terms of rupees) to which the Government servant is reduced; and

(iii)the extent (in terms of years and months), if any, to which the period referred to at item (i) above should operate to postpone future increments.

It should be noted that reduction to a lower stage in a time-scale is not permissible under the rules for an unspecified period or as a permanent measure. Also when a Government servant is reduced to a particular stage, his pay will remain constant at the stage for the entire period of reduction. The period to be specified under (iii) should in no case exceed the period specified under (i).

In order to achieve the object of not allowing increments during the period of reduction, every order passed by a competent authority imposing on a Government servant the penalty of reduction to a lower stage in a time-scale should invariably specify that stage in terms of rupees to which the Government servant is reduced as in the following form :-

"The ..... has decided that Shri..... should be reduced to a pay of Rs..... for a period of ..... with effect from ....."

[G.I., M.F., O.M. No. F. 2(34)-E. III/59, dated the 17th August, 1959; 9th June, 1960; and 24th June, 1963.]

It has been decided that in future while imposing the said penalty on a Government servant, the operative portion of the punishment order should be worded as in the form given below :-

"It is therefore ordered that the pay of Shri..... be reduced by ..... stages from Rs..... to Rs..... in the time-scale of pay of ..... for a period of ..... years/months with effect from ..... It is further directed that Shri..... will/will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will/will not have the effect of postponing his future increments of pay".

[D.G., P.&T., Letter No.6/8/70-Disc. I, dated the 16th December, 1970.]

13. As such, prescription of pay scale as well as increment that is withheld as a matter of penalty is as per the rules and just because such a prescription has been made, the same cannot be held to be inflexible, when the pay scale for the said period undergoes a revision. Lumpsum amount as penalty as a one time measure, may have no nexus to the pay scale or increment attached thereto. But reduction of increment does have. Thus, as long as the pay scale remained Rs.4000 – 6000/- the reduction was by way of one increment attached to the said pay scale. However, when the pay scale underwent an upward revision and the applicant opted for the same, increment attached to this pay scale cannot be ignored or replaced by the earlier increment of Rs.100/-. The applicant cannot claim higher pay scale with increment at Rs.100/- during the period of currency and at a higher rate for the rest of the period. When an individual opts for a particular scale, he does so with the rate of increment attached to it. Thus, increment is attached to pay scale and once he has opted for revised pay scale, the inevitable corollary is that correspondingly increment admissible to the pay in the said revised pay scale would alone have to be taken into account. The oft quoted words of Lord Asquith in the case of ***East End Dwellings Co. Ltd. v. Finsbury Borough Council*** **it was observed: (All ER p. 599 B-D)** is relevant in this regard, wherein it has been stated as under:-

*"If one is bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. ... The statute says that one must imagine a certain state of affairs. It does not say that, having done so, one must cause or permit one's imagination to boggle when it comes to the inevitable corollaries of that state of affairs."*

14. Such a situation was visualized as early as in 1987 when the fourth Pay Commission Recommendations were accepted and Pay Revision took place. The Government had, vide order dated 4th May, 1987 has directed as under:-

| Sl. No. | Point raised | Clarification |
|---|---|---|
| 1 | 2 | 3 |
| 7. | What will be the mode/manner of fixation of pay under C.C.S. (R.P.) Rules, 1986, of persons who are drawing reduced pay as on 1.1.1986 in the existing scale on account of imposition of penalty under the provisions of C.C.S.(C.C.A.) Rules, 1965? | The pay in such cases may be fixed as under :<br>(a) on the basis of pay actually drawn on 1.1.86; and<br>(b) on the basis of pay which would have been drawn but for the penalty.<br>The revised pay as fixed at (a) above may be allowed from 1.1.1986 to the date of expiry of penalty and the revised pay fixed as at (b) above from the date following the date of the expiry of the penalty after allowing increments, if any, that might have notionally fallen due in the revised scale during the period from 1.1.86 to the date of expiry of the penalty. The next increment in the revised scale will be regulated in accordance with Rule 8 of the C.C.S. (R.P.) Rules, 1986. |

15. Thus, in so far as the contention that once the penalty order prescribes the reduction in pay to the tune of Rs.100/- the same cannot be varied, has to be rejected. For, the said Rs.100/- is only the increment attached to the pre-revised pay scale and the same cannot be imported when the applicant has sought to have his pay revised from any date after 01-01-2006. Nor does the contention that the Disciplinary authority cannot modify the order holds good in this case.

16. Coming to the second contention that there is no question of reduction of emoluments without show cause, the fact that the applicant has given a clear undertaking cannot be lost sight of. Such an undertaking is not an empty formality but with a specific purpose that no unintended benefit goes to any person. Thus, the possibility of any erroneous payment is foreseen in advance and such an undertaking was obtained from all the individuals. Even in the case of those who do not suffer any penalty, and in whose case there has been excess

payment due to error in calculation, the excess would be recovered. The applicants cannot be an exception to the same. If one is not entitled to a particular benefit one need not be put to prior notice. The Apex Court in the case of ***P.D. Agrawal v. State Bank of India,(2006) 8 SCC 776,*** held that the need to comply with principles of natural justice would arise only when actual prejudice is caused by the action of the respondents. The apex court has in that case observed as under:-

*"principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/ doctrine of audi alteram partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straitjacket formula."*

17. There are, of course, cases, where once an excess payment has been made which was not based on the statement or mistatement of an individual, recovery of the payment made cannot be made. see (a) ***Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18:*** (b) ***Bihar SEB v. Bijay Bhadur, (2000) 10 SCC 99:*** (c) ***Col. B.J. Akkara (Retd.) v. Govt. of India,(2006) 11 SCC 709:*** (d) ***Purshottam Lal Das v. State of Bihar,(2006) 11 SCC 492*** and (e) ***State of Bihar v. Pandey Jagdishwar Prasad,(2009) 3 SCC 117.*** However, where there has been a clear undertaking, such a recovery could be effected. In the case of ***Tata Iron & Steel Co. Ltd. v. Union of India,(2001) 2 SCC 41,*** the Apex Court has held as under:-

"in the event of there being a specific undertaking to *refund* for any amount *erroneously paid or paid in excess* (emphasis supplied), question of there being any estoppel in our view would not arise."

18. In fact, even the Apex Court adopted the method of securing undertaking when payment of DCRG was sought to be released, vide judgment in ***Sita Ram Yadava v. Union of India, 1992 Supp (2) SCC 434,*** stating -

"3. *We, therefore, by this interim order direct the release of DCRG to the petitioner on the petitioner giving an undertaking to this Court to refund the same in the event this Court so directs."*

19. Notwithstanding the above, issue of show cause notice before effecting recovery is certainly a healthy practice. If in the past such practice was followed, the same has to proceed further. In the instant case, by virtue of a stay order, recovery has been withheld. Respondents may well issue show cause notice to all concerned explaining the circumstances under which the erroneous excess payment happened to be made and on receipt of the representation filed by the individuals concerned, a judicious decision could be taken.

20. Thus, in so far as the second issue is concerned, the respondents are expected to put to prior notice of recovery, invite representations, consider the same and arrive at a decision. Till then, no recovery shall be made.

21. In view of the above the O.A. is disposed of holding as under :-

(a) That the applicant's claim that once the penalty had been suffered, there is no scope in modification of the same is rejected as the modification is a logical corollary to the revision of pay scale. Hence, Annexures A-5 and A-10 are not liable to be quashed or set aside.

(b) As regards recovery of arrears of pay and allowance erroneously granted, applicants and similarly situated individuals may be put to notice and their representations invited. On consideration, a judicious decision shall be arrived at by the competent authority.

22. No costs."

3. Since this O.A is identical to O.A.254/09 and connected cases (supra), the aforesaid directions of this Tribunal dated 6.1.2010 shall equally applicable in this case also. Accordingly, this OA is also disposed of on the same lines. There shall be no order as to costs.

(Dated this the 24th day of February 2010)

**K.GEORGE JOSEPH**
**ADMINISTRATIVE MEMBER**

**GEORGE PARACKEN**
**JUDICIAL MEMBER**

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