

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.580/02

Friday this the 20th day of February 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T.NAYAR, ADMINISTRATIVE MEMBER

P.S.Aravindakshan,
S/o.P.N.Sankaran,
Assistant Engineer (Electrical),
Central Public Works Department,
AG's Office Building, 4th Floor,
Karunakaran Nambiar Road,
Thrissur - 20.

Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by
the Secretary to Govt. of India,
Ministry of Urban Development,
Central Public Works Department,
New Delhi.
2. The Executive Engineer (Electrical),
Kochi Central Electrical Division,
Central Public Works Department,
Anjiparambil Building,
Near Manorama Junction, Kochi - 16.
3. The Senior Accounts Officer,
Pay & Accounts Office,
Central Public Works Department,
Ministry of Urban Development,
Rajaji Bhavan, Basanth Nagar,
Chennai - 600 090.

Respondents

(By Advocate Mr.R.Prasanthkumar,ACGSC)

This application having been heard on 20th February 2004
the Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

The applicant, Assistant Engineer (Electrical) in the
Central Public Works Department (CPWD in short), Thrissur now in
the pay scale of Rs.10000-15200/- has filed this application
aggrieved by Office Order No.3(6) KCED/2002/2427 dated 24.7.2002

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of the 2nd respondent retrospectively reducing and refixing his pay with effect from 1.7.1986 (Annexure A-1) and the order dated 24.7.2002 (Annexure A-2) giving effect to the Annexure A-1 order under the Revised Pay Rule, 1997 and proposal for recovery of the alleged over-payment. The facts of the case can be briefly stated as follows :

2. The applicant initially joined CPWD on 1.7.1967 as a Section Officer, which post was later re-designated as Junior Engineer in the year 1970. On or with effect from 1.1.1986, 75 percent of the posts in the cadre of Junior Engineer were upgraded to the scale of pay of Rs.1640-2900 and the remaining 25 percent continued to be in the lower scale of Rs.1400-2300. The applicant was accordingly fitted in the higher scale of pay of Rs.1640-2900 with effect from 1.1.1986 under the FR 22(a)(ii). Later after getting a clarification the pay of the applicant was refixed with effect from 1.1.1986 under FR 22(a) (i) with effect from 1.7.1986 the date on which the applicant drew his annual increment in the lower grade fell due. The applicant was then promoted as Assistant Engineer in the higher scale of Rs.2000-3500 with effect from 30.1.1989. The applicant's pay was therefore in the scale of Rs.1640-2900 as also Rs.2000-3500 fixed by Superintending Engineer by order dated 3.7.1990 (Annexure A-3). The applicant continued to receive his pay and increments on that basis thereafter. While so, all of a sudden without issuing any notice the impugned order has been issued reducing and refixing the applicant's pay with retrospective effect and it is proposed to make recovery of the alleged over-payment. Under these circumstances the applicant has filed this application

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seeking to set aside Annexure A-1 and Annexure A-2 with consequential benefits.

3. The respondents in their reply statement seek to justify the impugned action on the ground that the fixation of pay under FR 22 (a)(i) was wrongly made, that on the basis of an agreement the pay should have been fixed only under provision FR 22(a)(ii) and that this mistake having come to light in 2002 while verifying the service record of the applicant the action has been correctly taken and recovery is being ordered strictly in accordance with the Rule 62 (Receipt & Payment) Rules. The respondents have also contended that when identical orders were challenged before the Madras Bench of the Tribunal in OA.290/94 titled T.Balakrishnan Vs. Union of India, Madras Bench of the Tribunal upheld the validity of the impugned order but restrained the administration from recovering the alleged over-payments and the Hon'ble Supreme Court upheld the above judgement of the Madras Bench of the Tribunal in Civil Appeal No.7059/96.

4. We have gone through the pleadings and all the materials placed on record and have heard Shri.T.C.Govindaswamy, learned counsel of the applicant and Shri.R.Prasanthkumar,ACGSC appeared for the respondents. Shri.T.C.Govindaswamy argued that the retrospective refixation of applicant's pay to his detriment after expiry of more than a decade from the date the applicant's pay was originally fixed is unsustainable especially when the order has been made without any notice and without affording any opportunity of being heard. He argued that the entire orders are liable to set aside. Shri T.C.Govindaswamy further argued that

even if that argument is not accepted since the fixation of the applicant's pay was in the year 1990 and receipt of pay accordingly throughout the period not being on account of any misrepresentation made by the applicant, it is unkind to recover the over-payment from the pay and allowances of the applicant at a time the applicant is about to retire from service. Shri.R.Prasanthkumar, on the other hand, argued that it is the duty of the competent authority to rectify the mistakes committed and to recoup the loss to the State Exchequer and in terms of Rule 62 of Receipt and Payment Rules 1983 such action can be taken even without issuing any notice.

5. Giving the facts and circumstances our anxious consideration we are convinced that while the rectification of mistake by refixing pay even with retrospective effect can be done bonafide and in good faith, the recovery of over payment is unsustainable because the applicant was not responsible for the mistake committed. It would be too harsh to make the applicant refund the amount at a time when he is on the verge of retirement. We are fortified in taking this view by the judgement of the Madras Bench referred to in the reply statement and which has been upheld by the Hon'ble Supreme Court of India.

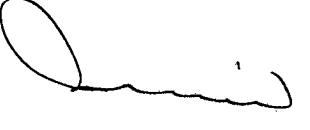
6. In the light of what is stated above this application is disposed of with the following declarations and directions : Prayer of the applicant to set aside impugned orders in toto is not granted while upholding the refixation of the applicant's pay retrospectively as is done by Annexure A-1 and Annexure A-2 we

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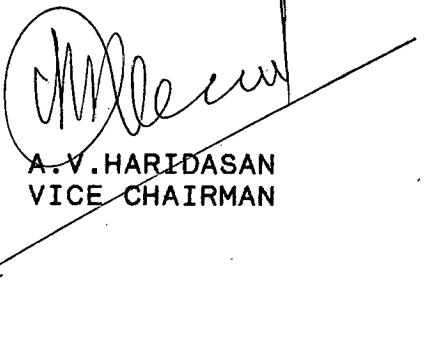
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direct the respondents not to make any recovery from the applicant of the alleged over payments on the basis of Annexure A-3 or the impugned orders. No costs.

(Dated the 20th day of February 2004)


T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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A.V. HARIDASAN
VICE CHAIRMAN