

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.610/97

Thursday, this the 23rd day of September, 1999.

CORAM:

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

HON'BLE MR J.L.NEGI, ADMINISTRATIVE MEMBER

M.I.Mathai,
Junior Engineer,
C/o Executive Engineer,
Cochin Central Sub Division,
Central Public Works Department,
Cochin-35.

- Applicant

By Advocate Mrs Sumathi Dandapani

Vs

1. The Executive Engineer,
Cochin Central Division,
Central Public Works Department,
Cochin-35.
2. The Executive Engineer,
Trichur Central Division,
Central Public Works Department,
Thrissur.
3. The Director General(Works),
Central Public Works Department,
New Delhi.

- Respondents

By Advocate Mr P.R.Ramachandra Menon, ACGSC

The application having been heard on 16.9.99, the
Tribunal on 23.9.99 delivered the following:

O R D E R

HON'BLE MR J.L.NEGI, ADMINISTRATIVE MEMBER

The O.A. is directed against an Office Memorandum
No.3(18)/TRCD/96/370 dated 8.5.96 by the 2nd respondent and
subsequent letter No.3(18)/Chcd/97/594 dated 22.2.97 by the 1st
respondent.

2. The facts of the case are: The applicant was appointed as Junior Engineer in the Central Public Works Department on 4.3.77 in the scale of Rs.425-700. Thereafter, on the basis of the IVth Pay Commission which came into force with effect from 1.1.86, the scale was revised to Rs.1400-2600 and the applicant's pay was fixed at Rs.1600 as on 1.1.86. Applicant's pay was fixed at Rs.1640 as the next date of increment was said to be on 1.3.86. As per the office memorandum dated 27.3.91, the Junior Engineers who had put in 5 years service were given the higher grade scale of Rs.1640-2900 and the applicant's pay was fixed at Rs.1640 as on 1.1.86. Subsequently, after two years, on 4.11.93 the pay of the applicant was fixed in accordance with the provisions under FR 22(i)(a)(2) fixing the higher scale of pay scale of Rs.1640-2900 with effect from 1.3.86 and including the increment as on 1.3.86, his pay was fixed at Rs.1700. Applicant's pay was further fixed on 10.4.93 at Rs.2240 as per the office memorandum No.3/18/TRCD/93/1757 dated 4.11.93 and his scale of pay was fixed at Rs.2000-3500. A copy of the said order is A-2. Pursuant to A-2 order, his pay was fixed at Rs.2450 including increment. The applicant was working under the Executive Engineer, Trichur Central Division and on 10.4.96 he was relieved from Trichur and joined under the 1st respondent at Cochin. Later on it was noticed that his pay was stated to be erroneously fixed under FR 22(i)(a)(i) which was pointed out by the Audit and A-4 order was passed by refixing his pay as under:

- "1. Pay drawn as on 1.1.86 in the scale of pay of Rs.1400-40-1800
EB-50-2300 - Rs.1600.00
- 2. Pay fixed from 1.1.86 in the scale of pay of Rs.1640-60-2600
EB-75-2900 - Rs.1640.00
- 3. Date of subsequent increment and pay
 - 1.1.87 - Rs.1700.00
 - *1.2.88 - Rs.1760.00
 - 1.2.89 - Rs.1820.00
 - 1.2.90 - Rs.1880.00
 - 1.2.91 - Rs.1940.00
 - 1.2.92 - Rs.2000.00

4. Pay fixed w.e.f. 10.4.92
(date of grant of pay scale
of Rs.2000-60-2300-EB-75
-3200-100-3500) on
personal promotion

1.3.93	- Rs.2120.00
1.4.94	- Rs.2180.00
1.4.95	- Rs.2240.00
1.4.96	- Rs.2300.00
	- Rs.2375.00

*The date of next increment
postponed 1.1.88 to 1.2.88
due to participation in strike
period from 14.7.87 to 19.8.87
(37 days)"

Learned counsel for the applicant submitted that A-4 order refers to an initial pay on the basis of which the office memorandum A-1 and A-2 were superseded. As per A-4, the pay that was revised was Rs.1640 with effect from 1.1.86 by not giving increment with effect from 1.3.86. This increment was put off upto 1.1.87 and the applicant's representation to the 2nd respondent immediately on 16.5.96 was not replied to. The applicant made a further representation dated 19.7.96 which is as A-6 and in this representation the applicant had pointed out the injustice caused to the applicant. It has been further stated that his juniors, namely, Smt Radhamani Amma, Shri P.V.Shaji, Smt.Molly Poulose and Shri P.N.S.Nair were all drawing salary more than that of the applicant, this anomaly is liable to be set at right. After making repeated reminders to the authorities concerned, the applicant was informed by the 1st respondent that the request of the applicant for fixing the increment as done in A-1 cannot be acceded to. Learned counsel further stated that similarly placed persons had approached this Tribunal in O.A.737/96 which was adjudicated upon by quashing the fixation of pay on the basis of audit objection. He also relied on a decision of Principal Bench in the case of Rajeshwar Tyagi Vs Union of India and others(O.A.1936/96).

3. Learned counsel for the respondents submitted that Junior Engineers were given a pre-revised scale of Rs.425-700 and also

there was a scale in selection grade of Rs.550-900 in the pre revised scale. The IVth Pay Commission abolished selection grade and recommended two scales of pay for J.E.s in the CPWD i.e. Grade II with the scale of Rs.1400-2300 and in Grade.I with the scale of Rs.1640-2900 which was came into force with effect from 1.1.86. The scale of pay of Rs.1400-2300 is known as Entry Grade and Rs.1640-2900 is as Non-functional. On completion of 5 years service as Junior Engineer in the entry grade he was to be placed in the scale of Rs.1640-2900 subject to the rejection of unfit. It was mentioned that while fixing the pay in the higher grade, there will be no change in duties and responsibilities. It was further stated that the J.E.s were allowed to give option for fixation of their pay in the scale of Rs.1640-2900 with effect from 1.1.86 vide O.M.No.A-11014/1/91-EC.VI dated 12.4.93 so as to become entitled to the monetary benefits. The applicant's pay consequent on his placement in the Grade.I scale with effect from 1.1.86 was to be fixed in the Non-functional scale of Rs.1640-2900 in accordance with the instructions contained in O.M. dated 23.6.93 under FR 22(i)(a)(ii) whereas his pay was erroneously fixed under FR 22(i)(a)(i) based on his option for fixing of pay after accrual of increment in the lower scale on 1.3.86, his pay would have been fixed only at Rs.1640 in the Non-functional scale i.e. in the same stage whereas Executive Engineer, Trichur Central Division has fixed his pay at Rs.1700 with effect from 10.4.86 by allowing one increment in excess which is not admissible. He also stated that as the applicant was drawing excess pay, it is incumbent on the part of the department to refix his pay correctly as per the rules in vogue and not merely on the audit observations, as alleged by the applicant. So far as the anomaly in pay is concerned, it was submitted that the official got personal promotion in the scale of pay of Rs.2000-3500 on 10.4.92, his pay

was straight away fixed with reference to the basic pay drawn in the non-functional higher grade of Rs.1640-2900 whereas in the cases of Smt Radhamony Amma, Smt. Moly Poulose etc. the officials exercised option for getting the regular fixation in the scale of pay of Rs.2000-3500 with effect from the date of accrual of next increment. It was also submitted that the judgement in O.A.737/96 is not squarely applicable in this case as the department has not merely acted on the observations of audit but corrected the mistake committed by the department and there is no reason for fixing his pay in the scale of Rs.1640-2900 under FR 22(i)(a)(i). The learned counsel also drew our attention that the excess amount paid to the applicant would have been recovered for the period from 10.4.86 to 4/96 due to the wrong fixation but not effected in the light of the judgements in O.A.971/95 and O.A.1018/94 for not recovering the arrears already paid.

4. We have considered the rival submissions made by the learned counsel on both sides. There is no doubt that the department is not making any recovery of the arrears in the light of the abovementioned judgements. Yet the basic question to be answered is whether A-4 was correct or not. Although the learned counsel for the respondents stated that the department has corrected its mistake committed by the department and has not merely acted on the observations of audit, the impugned order A-4 dated 8.5.96 states as under:

"In supersession of this office memorandum No.3/18/TRCD/1756 dated 4.11.93 and No.3/18/TRCD/93/1757 dated 4.11.93 and as pointed out by internal audit, the pay of Shri M.I.Mathai Junior Engineer is revised as under.."

5. The impugned order does not disclose what was the mistake pointed out by the internal audit. No opportunity at all has been given to the applicant before the respondents decided to refix the pay of the applicant reducing the same. Reduction of pay which the applicant had been receiving for quite some time is an act which has adverse civil consequence. It is well settled by now that before passing an order which would visit a person with adverse civil consequence, an opportunity should be given to that person to show cause against such action, and that otherwise the action will amount to violation of the principles of natural justice. Hence the impugned orders A-4 and A-7 are liable to be set aside.

6. In the result, the O.A. is allowed. Impugned orders A-4 and A-7 are set aside. However, we make it clear that this order would not preclude the respondents from rectifying the mistake, if any, and refixing the pay of the applicant after giving the applicant a notice and opportunity to show cause. No costs.

Dated, the 23rd of September, 1999.

19/9/99
(J.L.NEGI)
ADMINISTRATIVE MEMBER

Alley
(A.V.HARIDASAN)
VICE CHAIRMAN

trs/22999

List of Annexures referred to in the Order:

1. A-1: True copy of OM dated 4.11.93 No.3/18/TRCD/93/1756 issued by the 2nd respondent.
2. A-2: True copy of OM No.3/18/TRCD/1757 dated 4.11.93 issued by the 2nd respondent.
3. A-4: True copy of OM No.3/18/TRCD/96/370 dated 8.5.96 issued by the 2nd respondent.
4. A-7: True copy of communication No.3/18/ChCD/97/594 date 22.2.97 issued by the 1st respondent.