

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 617/ 2008

Tuesday, this the 9 th day of August, 2011.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

K.I.Abdulla Koya,
Agriculture Officer (Group B Gazetted),
Agricultural Department, Amini,
Lakshadweep.Applicant

(By Advocate Mr N Nagaresh)

v.

1. Administrator,
Union Territory of Lakshadweep,
Kavaratti-682 55.
2. Director of Agriculture,
Administration of the UTL,
Directorate of Agriculture,
Kavaratti-682 555.
3. Secretary (Finance),
Administration of the UTL,
Kavaratti-682 555.Respondents

(By Advocate Mr S Radhakrishnan)

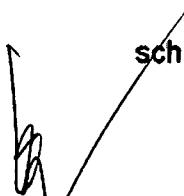
This application having been finally heard on 2.8.2011, the Tribunal on 9, 8.2011
delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The matter is simple and short. What should be the pay at the time of
grant of first ACP to the applicant is the question involved in this case.

2. ACP is granted subject to a few conditions and fixation is as per the
scheme. The same are extracted first as hereunder:



"(a) Two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed of by an employee.

(b) Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose.

(c) Under the ACP Scheme, pay of an employee shall be fixed under the provisions of FR 22(1)(a)(1) subject to a minimum of financial benefit of Rs 100 as per the DOPT OM dated 05-07-1999."

3. The applicant joined in June, 1980 as a Soil Conservative Assistant in the pay scale of Rs 425 – 700 (Revised as Rs 1,400 – 2,300 in the wake of Fourth Pay Commission recommendations and as Rs 4,500 – 7000 after the fifth Pay Commission Recommendations) and the next hierarchical promotional post is Agricultural Officer, which carries a pay scale of Rs 1640 – 2900 pre-revised which was replaced by the pay scale Rs 5,500 – 9,000/-.. The applicant was promoted on ad hoc basis to the post of Agricultural Officer in November, 1996 in the above scale and pay fixed at Rs 2060/-.

4. On the implementation of the recommendations of the V Central Pay Commission, the pay scale of the applicant in the substantive post of Soil Conservative Assistant was fixed at Rs 4,500 – 7,000/- and his pay fixed at Rs 6,000/- with the date of next increment on 01-10-1996.

5. While that was the pay on substantive post, in view of his promotion on ad hoc basis w.e.f. November, 1996, his pay was fixed in the scale of pay of Rs. 5,500 – 9,000/- and pay fixed at Rs 27-11-1996 with the next date of increment on 01-11-1997 and thus as on 01-11-1997 his pay was fixed at Rs 6,550/-. This pay fixation was checked on 24-08-1998 by the internal audit, as authenticated in the service book of the applicant (Volume III at page 21). Thereafter, the above said pay scale was incremented by one increment as on 01-11-1998 and pay fixed at Rs 6,725/- which was increased on earning of one more increment as on

01-11-1999 to Rs 6,900/- . This part of the service book was also verified and so authenticated at page 4 of Volume IV of the service book.

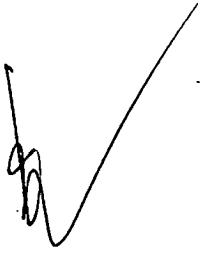
6. The applicant was reverted to his substantive post vide Reversion order dated 25-10-1999 and he joined duty on 15-01-2000 after the expiry of his earned leave. He was thereafter relieved to join a deputation post as Private Secretary to Hon'ble Deputy Speaker of Lok Sabha Secretariat at New Delhi.

7. On reversion, his pay was to be fixed in the substantive pay scale of Rs 4,500 – 7,000 and the same was carried out by fixing his pay w.e.f. 01-10-1999 at Rs 6,500/- vide order dated 27-07-2000 referred to in page 8 of his service Book (Vol. IV).

8. It was by this time that the financial upgradation under the ACP was introduced w.e.f. 09-08-1999 and the applicant was fixed in the pay scale of Rs 5,500 – 9,000 and pay fixed at Rs 6,550/- w.e.f. 09-08-1999 with the next date of increment as on 01-08-2000. Entry in the service Book at page 8 of Volume VI refers.

9. As a deputationist in the Lok Sabha Secretariat, the applicant was placed in a different pay scale, about which we are not concerned in this OA. This OA is confined to the pay scale fixation in the substantive post and the first financial upgradation.

10. Vide order dated 06-01-2005 issued by the respondents, the pay of the applicant was refixed as under:-

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- (a) Rs 6725/- w.e.f. 01-08-2000
 - (b) Rs 6,900/- w.e.f. 01-08-2001
 - (c) Rs 7,075/- w.e.f. 01-08-2002

(d) Rs 7,250/- w.e.f. 01-08-2003
(Date of next increment on 01-08-2004).

11. Earlier, the applicant had challenged the above order before this Tribunal in OA No. 585 of 2006 which was disposed of on 18-08-2006 (Annexure A-10) with a direction to the respondents to dispose of the pending representation after considering the legal grounds raised in the Original Application. Liberty was given to the applicant to approach the Tribunal in case the decision of the respondents was not to the taste of the applicant. Impugned order dated 31/12/2007 vide Annexure A-11 is in pursuance of the above order of the Tribunal and the same is challenged in this OA.

12. The grievance of the applicant is that the downward revision of his pay vide order dated 06-01-2006 as confirmed by the impugned order dated 31-12-2007 is illegal and unjust. Yet another case of the applicant is that a junior to the applicant vide Annexure A-10 of the OA has been drawing more than the pay of the applicant, when all along upto the pay fixation prior to implementation of the V Central Pay Commission, his (junior;s) pay had been less.

13. The applicant has, thus, sought for the following relief(s)

- (a) quash and set aside the order dated 31-12-2007 vide Annexure A-11.
- (b) for fixation of pay of the applicant at Rs 6,900/- as on 09-08-1999 in the scale of pay of Rs 5,500- 9,000/- and at the stage of Rs 7,700/- from 01-08-2003; and
- (c) for payment of arrears arising out of the above fixation.
- (d) such other appropriate orders or directions as the Tribunal may deem fit, just and proper in the facts and circumstances of the case.

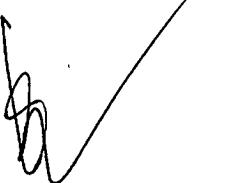
14. Respondents have contested the OA. According to them, vide Annexure R-1, the pay scale of the applicant was revised from Rs 4,500 – 7,000/- to Rs

5,500 – 9,000/- by grant of ACP from 09-08-1999 with the benefit of application of FR 22(I)(a)(i). His pay was thus, fixed at Rs 6,550/- as on 09-08-1999 and his claim for Rs 6,900/- is legally untenable. Any higher amount fixed was on the basis of his own declaration which is not correct. Claim for higher pay on the basis of his ad hoc promotion is not permissible as the applicant is entitled to pay fixation under the ACP scheme only with reference to his pay scale in the substantive post.

15. The applicant has filed his rejoinder reiterating his contention and he had also annexed as Annexure A-15 an office memorandum dated 14-02-2006 relating to clarification regarding fixation of pay in case of employees who seek transfer to a lower post under F.R. 15(a).

16. Respondents have furnished an additional reply adding therein the last pay drawn prior to the deputation of the applicant, grant of increment as on 01-12-1999 as Agricultural Officer, Relieving order issued on 14-12-1999 and pay fixation order passed by the Lok Sabha Secretariat (dated 30 November, 1999). An additional rejoinder statement has been filed wherein, vide Annexure A-20, the applicant has furnished a comparative statement of his pay and that of his junior one Shri O.G. Hassan, Agricultural Officer. Counsel for the applicant invited the attention of the Tribunal to Annexure A-20 and contended that the applicant is entitled to stepping up of pay even if his pay had been fixed by the respondents correctly from 09-08-1999 when his pay was fixed at Rs 6,550/-.

17. Counsel for the respondents submitted that the service book of the applicant would reflect the exact pay that the applicant had been granted and the same is correct and in tact.



18. Arguments were heard and the documents including the service book perused. (In fact, the details given in paragraphs 3 to 8 above are all taken from the very service book of the applicant.) The rule position under ACP Scheme has also been extracted in para 2 of this order. Thus, the question is whether the applicant had been rightly fixed his pay at Rs 6,550/- as on 09-08-1999 or is the applicant entitled to have his pay fixed at Rs 6,900/- as claimed.

19. ACP is granted only in respect of the substantive post. The applicant's substantive post as on 09-08-1999 is only Soil Conservative Assistant and the pay scale attached to the same is Rs 4,500 – 7,000/-. The pay scale attached to the next hierarchical post is Rs 5,500 – 9,000/-. And, as given in the order at Annexure R(1)(a), the benefit of the provisions of FR 22(1)(a)(i) is also applicable. Thus, the general method of calculation would be as under:-

- (a) Pay as on 09-08-1999 in the substantive post:
- (b) Add one increment to the pay:
- (c) Next stage in the pay scale of the promotional post:
- (d) Pay as on 09-08-1999 after grant of ACP.

20. Applying the above to the case of the applicant, the same is as under:-

- (a) Pay as on 09-08-1999 in the substantive post:

As on 01-01-1996 pay fixed in the scale of
Rs 4500 – 7000/- : Rs 6,000/-

Sanctioned next increment of Rs 125/- as
on 01-10-1996 Rs 6,125/-

Pay as on 01-10-1997: Rs 6,250/-

Pay as on 01-10-1998: Rs 6,375/-

Pay as on 09-08-1999 in the scale of pay
of 4500 – 7000 : Rs 6,375/-

- (b) Add: one notional increment of Rs 125/- Rs 6,500/-

- (c) Stage in the higher pay scale: 5,500 – 175 – 9000: Rs 6,550

- (d) Pay fixed on the grant of first ACP on 09-08-1999: Rs 6550/-

(Date of next increment is 01-08-2000 and pay Rs 6,725/-)

The applicant was repatriated from Lok Sabha Secretariat On 21-05-2004. Vide order dated 06-01-2005, on an information from the Lok Sabha Secretariat the pay of the applicant was refixed as under:-

As on 01-08-2000: Rs 6,725/-
As on 01-08-2001: Rs 6,900/-
As on 01-08-2002: Rs 7,075/-
As on 01-08-2003: Rs 7,250 with DNI on 01-08-2004.

21. The above calculation, which is based on the substantive post held by the applicant is found correct.
22. Though the applicant has given a comparative chart as to the pay drawn by his junior, it is not known to the Tribunal whether the applicant has made a proper representation in this regard. Law, as held by the Apex Court in a recent judgment in the case of **Guru Charan Singh Grewal vs Punjab State Electricity Board (2009) 3 SCC 94**, is settled that a senior cannot be paid a lesser salary than his junior. Even if there is a difference in the incremental benefits in the scales of the two, such anomaly should not be allowed and the anomaly ought to be rectified so that the pay of the senior is stepped up to that of the junior.
23. Coming to the contention of the respondents vide the penultimate paragraph of the impugned order, the respondents have stated that the entire issue cropped up is based on a self declaration dated 11-02-2000 of the applicant submitted before the Lok Sabha Secretariat on his pay as Rs 6,900/- at the time of his deputation by passing the official LPC for Rs 6,550/- issued by his then DDO, the Block Development Office, Kadmat/Administration. And the applicant continued to draw the said pay of Rs 6,900/- plus annual increments in the Lok Sabha Secretariat for his entire period of deputation. The Competent

authority on detection of the above, regulated the pay of the applicant as per law with direction to remit the excess payment made to him by the Lok Sabha back to them under proper acknowledgment. Now, this issue which has also been challenged (as the challenge is the entire order at Annexure A-11) has to be addressed, though specific relief has not been sought for except the residual prayer i.e. such other order which the Tribunal may deem fit in the facts and circumstances of the case. If the main prayer is allowed then the question of recovery sinks into oblivion. In case the relief sought is negatived, without any consideration on this issue, the same might lead to another set of litigation.

24. The applicant was no doubt holding the substantive post of Soil Conservator in the scale of pay of Rs 4,500 – 7,000/- but had in the meantime been promoted to the higher post of Agricultural officer w.e.f. 27-11-1996 and his pay fixed in the scale of pay of Rs 1640 – 2900 (pre revised) at Rs 2060/-. After the revision of pay scales in the wake of the recommendations of the V Pay Commission he was placed in the pay scale of Rs 5,500 – 9,000/- and his increments regulated as per service book as under:-

- (a) Pay as on 26-11-1996: Rs. 6,375/-
- (b) Pay as on 01-11-1997: Rs 6,550/- (on gaining one increment)
- (c) Pay as on 01-11-1998: Rs 6,725/- (on gaining second increment)
- (d) Pay as on 01-11-1999: Rs 6,900/- (on gaining third increment)

25. Thus, as on the date when the applicant was on deputation to the Lok Sabha Secretariat, New Delhi, for which orders were issued vide order No. 1/8/99Agr dated 10-12-1999, he was in receipt of Rs 6,900/- as his pay, albeit in his ad hoc promotional post.

26. Though the respondents have added a copy of the Last Pay Certificate

(LPC) vide Annexure R1(c), the same does not contain any covering letter nor the date of issue is known. In any event, the service book has been authenticated by EO right from the time the applicant had been on deputation to the Lok Sabha Secretariat. Thus, the pay fixation made by the Lok Sabha Secretariat is presumed to be only from the details available in the very service Book and even if the information had been furnished by the applicant that he was in receipt of Rs 6,900/- on the date of his deputation, the same cannot be considered to be incorrect as he was as such, drawing the said pay when he was functioning as Agricultural Officer. As the applicant was on earned leave after he was relieved from the post of Agricultural Officer till he took over again as Soil Conservator on 15-01-2000, his last pay of Rs 6,900/- would have been kept in tact. Again, in all probability, the applicant would not have drawn his salary as a soil conservator assistant on his reversion in 2000 as immediately on reversion he had taken up the deputation post. As such, it is inconceivable that he would have got his pay at Rs 6,550/- on the date of his joining the deputation post. Thus, higher fixation of pay at the Lok Sabha Secretariat cannot be said to be due to any mis-statement of the applicant. Hence, the question of recovery of the excess amount from the applicant does not arise as held in the following cases:

- (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 :***
- (g) ***Paras Nath Singh v. State of Bihar, (2009) 6 SCC 314 :***
- (h) ***Union of India v .R. Vasudeva murthy (2010) 9 SCC 30 – wherein the excess payment already made has been directed not to be recovered.***

27. In view of the above the OA is disposed of with the following finding/observations:-

- (a) that the applicant's pay with the first ACP has been fixed correctly and he is not entitled to any higher pay as claimed by him.
- (b) The respondents shall not proceed with the decision as contained in the penultimate para of letter dated 06-01-2005 in so far as recovery from the applicant of alleged excess amount concerned.
- (c) In so far as the case of junior drawing more pay, since the same was not so raised or contended at the time of filing of the OA but has been projected at the stage of filing rejoinder, the same is not discussed here and it is for the applicant to move a proper representation in this regard.

28. No cost.


K NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S. RAJAN
JUDICIAL MEMBER

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