

Central Administrative Tribunal

Ernakulam Bench

Dated, the seventh day of April Nineteen Ninety Two

Original Application No.73/91

&

Original Application No.263/91

Coram

Hon'ble Shri N. Dharmadan, Member(Judicial)

OA 73/91

E.S. Joseph

V.

The Govt. of India represented by Secretary,
Department of Space, New Delhi and 2 others

Mr. S. Subramani, Advocate appeared for the
applicant

Mr. V. Ajith Narayanan, ACGSC appeared for the
respondents

OA 263/91

Thommai Nicholas and 14 others

V.

Government of India represented by its Secretary,
Deptt, ofSPACE, New Delhi and another.

M/s. S.Subramani and M Balagovindan Advocates for the
applicant

Mr. NN Sugunapalan, SCGSC, appeared for the respondents.

JUDGMENT

N. Dharmadan, M(J)

These two cases are heard together on agreement
of parties in view of the fact that identical question
rises for consideration. Facts ~~in~~^{of} both cases are also
similar. For convenience facts detailed in OA 73/91 are
dealt with.

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2. The applicant in this case seeks to quash A-II order dated 22-1-89. It was passed by the Administration Officer-II proposing recovery of over payment on the basis of the earlier wrong fixation of ^{applicant's} ~~his~~ pay with effect from 1-1-86 in the light of the recommendations of the IV Pay Commission. The applicant is working as Scientific Engineer, in the Indian Space Research Organization (ISRO for short), Trivandrum. On the basis of the recommendations of the IV Pay Commission, which had been accepted by the Government and implemented by ISRO, the basic pay of the applicant in his post had been fixed at Rs.4950/- as per Annexure-I tabular statement dated 23-3-87. He had been receiving the salary in the said scale of pay till December 1989. But by Annexure-II dated 22-1-89, the 2nd respondent revised the earlier fixation of the basic pay and decided to fix the basic pay of the applicant at Rs.4652/- instead of Rs.4950/- which was fixed as per the earlier proceedings. On receipt of Annexure-II, the applicant submitted Annexure-II representation raising the contention that he is eligible for the pay as fixed earlier i.e. Rs.4950/- and it can be sustained under FR 31(2). He submitted that fixation of his pay as per Annexure-I tabular statement is correct as there is no necessity for any re-fixation. The method of re-fixation adopted by the respondents is wrong and cannot be sustained. He also produced Annexure-IV tabular statement indicating that there

was an anomaly for his junior was drawing higher pay*.

But his representation had been rejected as per Annexure-IV proceedings. It is under these circumstances that the applicant has filed this application with the following reliefs:

"

i) Declare that the applicant is entitled to get the salary on the basis of Annexure-I with effect from 1-1-90. Further quash Annexure-II and V and further direct to re-pay the amount recovered from the applicant as excess amount, with 12% interest forthwith.

ii) Direct the respondents not to recover amount from the applicant on the basis of Annexure-II, till the disposal of Original Application.

iii) Issue such other order that this Hon'ble Tribunal may deem fit and proper under the circumstances of the case...."

3. The respondents in their reply contended that the original fixation of pay as per Annexure-I proceedings had been issued in a hasty manner since there was no sufficient time to implement the decision of ISRO on the basis of the recommendations of the IV Pay Commission report which was accepted and finalised only in March 1987. However, this fixation was made on the basis of the instructions of Ministry of Finance containing the following clause:

"In the absence of pre-check there is likelihood of some of the arrears being wrongly calculated resulting in over-payments which might have to be recovered subsequently. The Disbursing Officers should make it clear to the Govt. servants under them, while paying the arrears, that the payments are being made subject to the adjustments from any amounts due to them subsequently in the light of discrepancies noticed later. For this purpose every employee while receiving salary in the revised scale, will be required to give an undertaking in writing to the effect that any excess payment that may be found to have been made as a result of fixation of pay will be refunded by him to Govt. either by adjustment against future payments or otherwise"

According to them the applicant was working as Scientist Engineer SE in the grade of Rs.1500-200 (pre-revised) till 30-6-83 and with effect from 1-7-83 he was promoted as Scientist Engineer ~~SE~~₂ in the grade of Rs.1800-2250 (Pre-revised). Subsequently he was promoted as Scientist Engineer ~~SE~~₂ in the grade of Rs.5100-6300 (Revised) with effect from 1-7-89. At the time when his pay was fixed at Rs.4950/- he had given an undertaking Annexure-R.A to the effect that the applicant will "refund any excess amount that may be found to have been made to me as a result of fixation of pay, payment of arrears etc. either by adjustment against future payment or otherwise". As per the CCS(Revised Pay) Rules 1986 an employee can elect to come over ^{6^b} the revised pay scale either from 1-1-86 or from any one of the following dates:

- ".(a) the date of next increment in the post held by him on 1-1-86.
- (b) the date of any subsequent increment raising the pay to a particular stage in post held on 1-1-86 but not later than 31-12-89.
- (c) the date on which the officer would vacate or cease to draw pay in the existing scale (i.e. by promotion).."

According to the respondents, the applicant's case does not come within FR 22-C. His case will have to be examined under FR 31(2) as he has been promoted prior to 1-1-86 to a post holding a grade of Rs.1500-2000 (pre-revised). At the time of applicant's promotion from Scientific Engineer SC to Scientific Engineer

SF with effect from 1-7-83, the applicant was drawing Rs.1500-2000 in the former post and Rs.1800-2250 in the later promoted post. Hence, he was not eligible for pay fixation under FR 22-C, but his case can be considered only under FR 31(2). However, advertent to this fact, his pay has been fixed in the following manner:

Date	Pay in Grade SE (1500-2000) (PR)	Pay in grade SF (Rs.1800-2250) (PR)
1-7-83 (Promotion to SF)	Rs. 1740	Rs. 1800
1.1.84 (increment in SE)	1800	1900-FR 31(2)
1-1-85 (increment in SE)	1900	200-FR 31(2)
1-1-86 (increment in SE)	2000	2125-FR 31(2)

As on 1-1-86, on the revision of scales of pay as per the recommendations of IV Pay Commission, the applicant's pay was provisionally fixed as under

Dates	Pay in Grade SE (3750-5000) (Revised)	Pay in Grade SF (Rs.4500-5700) (Revised)
1-1-86	2000	2125 FR 31(2) in the prerevised scale.
1-1-86 (Consequent on the employee opting for the revised scale with effect from 1-1-86 his pay in grade SF is fixed at Rs	-----	Rs.4950/- in the revised scale (i.e. the corresponding stage to Rs. 2125/- (PR)

Thereafter, when a doubt arose, the matter had been referred to higher authorities, for clarification as indicated in Annexure R-B. After examining the matter in detail

the Ministry of Finance, to whom the matter was referred to by the Deptt. of Personnel and Training, observed as follows (Annexure R-C). Relevant portion of the above Notes is extracted below:

"It appears that in this case, the concerned officers opted the revised scales of pay with effect from 1-1-86. As such, their pay in grade SE will first be fixed in the revised scale and their pay in Grade SF will then be re-fixed under FR 31(2) with reference to their pay in the lower grade SE. In other words the calculation in Annexure-II will be taken as in order.."

The Under Secretary (E-III) of the Ministry of Finance, endorsing the above conclusion, observed as follows:

"In cases of promotion on 1-1-86, first pay in revised scale is required to be fixed in lower post and then in higher post. It is not that pay in higher is fixed in pre-revised scale. Keeping this in view, pay fixed at Rs-4650/-, Annexure-II is correct....."

Since the implementation of the Annexure R-C involved recovery of excess payment, ISRO decided to refer the matter again to the Ministry of Finance. It was referred as per Annexure R-D a D.O. letter from the Joint Secretary to Deptt. of Expenditure, of Ministry/Finance. The Ministry of Finance, clarified the matter by their letter Annexure R-F dated 28-8-89 and reiterated the view taken by them in Annexure R-C proceedings. Relevant portion of Annexure R-F reads as follows:

"Kindly refer to your D.O. letter No.19(12)/89-DE dated the 7th April 1989 regarding fixation of pay in regard to cases attracting re-fixation under FR 31-(2). The matter has been reviewed in consultation with Department of Personnel & Training. As earlier advised, the pay fixation formula suggested in Annexure-II received with Department of Space, Bangalore, OM No.2/3(2)/86-III(Vol.VI) dated the 3rd March 1989 is correct. In such cases, pay has first to be fixed in the lower post in the revised scale from 1-1-86 under Rule 7 of the CCS(RP) Rules, 1986 and thereafter pay re-fixed in the revised scale of the higher post in terms of FR 31(2) viz in accordance

with the provisions of FR 22(a)-(i). The formula of pay fixation suggested in Annexure-I of the OM dated 3rd March 1989 *ibid* cannot be accepted....."

In the light of these clarifications, the 2nd respondent has issued the impugned order Annexure-II. It is valid and legal.

4. Having heard the matter, I am of the view that the statement of the respondents regarding the original fixation of basic pay of the applicant ^{in Feb 4 87} had been done without examining all the aspects because of the limited time available for the same ^{is correct. 2}. After the IV Pay Commission's recommendations, the matter was finalised by the 3rd weeks in March 1987. Hence the department was in hurry because of the limited time available for fixing the pay consequent upon the recommendation of the IV Pay Commission. The 2nd respondent with reference to relevant dates submitted that there were only 12 days available for granting the benefit of fixation of basic pay to the concerned employee. Accordingly, they have obtained undertakings from all the employees who opted for the revised pay and granted fixation of pay. While fixing the pay of the applicant at Rs.4950/- as his basic pay, they have not correctly followed the procedure under the Fundamental Rules. Since the pay of the applicant was taken at Rs.1590-2000 (Pre revised) ² into account, and applied the provisions under FR 31(2) as if the applicant was getting the basic pay of Rs.2125/- in the pre-revised scale a tentative decision was taken to grant basic pay of Rs.4950/- to the applicant.

However, in the light of the clarification at Annexure R.C and F the department realised the mistake. The correct procedure is that the pay of the employee is to be fixed in the revised scale Scientist Engineer (SC) grade and thereafter his pay in SF grade (revised) to be fixed under FR 31(2). In other words the pay of the applicant has to be first fixed in the revised scale in SE grade and his pay in the SF grade(revised) has to be refixed under FR 31(2) with preference to the pay in SE grade (revised). Therefore, the second respondent was compelled to review and refix the pay of the applicant. Accordingly, it was correctly fixed at Rs.4575/- on 1-1-86 instead of Rs.4650/- in SF grade as on 1-1-86.

5. Thus it is clear from the explanation furnished by the respondents in the reply that the method adopted by the 2nd respondent originally in fixing the pay of the applicant was not correct. By the impugned order, the second respondent has only rectified the mistake crept in while implementing the recommendations of the IV Pay Commission. The fixation had been done in this case strictly in accordance with Annexure R-C and F clarifications of Ministry of Finance and Deptt. of Personnel and Training.

6. The plea of violation of principles of natural justice raised by the applicant cannot be sustained in view of the fact that the applicant had already given the undertaking Annexure R-A at the time when he received the pay in

revised rates of pay i.e. Rs.4950/-. It is to be presumed that the applicant was fully aware of the fact that there is possibility of incorrect fixation of pay and drawal of excess amount. Otherwise what is the necessity of any such undertaking by the applicant as stated in Annexure A. Under these circumstances the plea that recovery of the excess amount paid is against the principles of natural justice cannot be appreciated.

7. The learned counsel for the applicant argued that there was an ^{analogous} ~~analogous~~ position in the pay as pointed out by the applicant in Annexure-III representation with comparative statements of pay of the applicant and one Mr. Reddy who is his junior. He submitted that had the fixation been made with effect from 1-4-86, the applicant would have come within original fixation of Rs.4950/-, but it was ^{26.1.1.86} pre-poned/ and thereby the applicant was prejudicially affected.

8. This contentiion is met by the respondents in the reply statement. The correct calculations are given in the reply statement which has been extracted above. The applicant had not filed any rejoinder denying the statement and calculations contained in the reply. Hence I am not in a position to accept the plea of the applicant and grant

any relief. The applicant has not made out any case for granting relief as prayed for in this application.

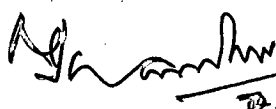
9. But having regard to the facts and circumstances of the case the only relief that can be granted to the applicant is the benefit of repayment of the excess amount in easy instalment. The learned counsel for the respondents submitted that excess amount paid to the applicant, which is due to the 2nd respondent is now sought to be recovered in 15 monthly instalments. The learned counsel for the applicant submitted that the applicant may be given the benefit of refundingⁱⁿ the same in 40 monthly instalments. I am of the view that interest of justice would be met if I direct the respondents to divide the total excess amount received by the applicant on account of mistaken fixation of basic pay into thirty monthly instalments and either recover or adjust the same from the future monthly salary of the applicant from the month of June 1992 as 30 monthly instalments, ~~from the monthly salary~~ ^{on the applicant.}²

10. With the above observations, the Original Application is disposed of. The connected case OA 263/91 is also

disposed of with the same directions and observations-

There shall be no order as to costs.

Copy of this order be kept in the case file
of OA 263/91.


(N. DHARMADAN)
Member(Judicial)
7-4-1992

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