

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 100/2000

Wednesday, this the 6th day of February, 2002.

CORAM :

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

C. Raveendran Nair,
S/o Chellappan Pillai, aged 47 years,
Pump Attendant,
Lakshmi Bai National
College of Physical Education,
Trivandrum, residing at Rohini,
Kalathil, Arasamoodu,
Kulthoor P.O., Trivandrum. Applicant

(By Advocate Mr. M.R. Rajendran Nair).

Vs

1. Union of India rep. by
Secretary to Government of India,
Ministry of Sports, New Delhi.
2. Director General,
Sports Authority of India,
J.N. Stadium, Lodhi Road Complex,
New Delhi.
3. Principal,
Lakshmi Bai National College of
Physical Education,
Trivandrum. Respondents

(By Mr. Govind K. Bharathan)

The application having been heard on 6.2.2002, the
Tribunal on the same day delivered the following :

ORDER

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

The applicant was appointed as Pump attendant in the
scale of pay of Rs.800-15-1010-EB-20-1150 under the 3rd
respondent by order dated 19.5.1988. Subsequently, an order
dated 3.8.95 A2 was issued in which the applicant was
described as Pump Operator and placed in a rationalised scale
of pay of Rs.850-15-1010-EB-20-1150. However, the 3rd
respondent on 15.2.96 issued a corrigendum A3 to the office
order dated 3.8.95 A2 to the fact that in the said order

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instead of "Pump Operator", it should be read as "Pump Attendant". On completion of 8 years in service, by A4 order dated 8.7.96, the applicant was placed in the pay scale of Rs.950-1500/- as Pump Attendant. While the applicant's pay was fixed in accordance with the 5th Pay Commission Report, the scale of pay of the applicant up to 7.7.96 was shown as Rs.800-1150. The applicant immediately made a representation A6 stating that his pay till 7.7.96 was Rs.850-1150. When the applicant was waiting for a reply to this representation A6, A7 order dated 16.12.99 issued by the 3rd respondent stating that Audit Party of the AG, Kerala has stated that fixation of pay w.e.f. 21.5.88 was irregular and informing the applicant that over payment is to be recovered. An extract of the AG Kerala Audit Para was appended to A7. Aggrieved by this, the applicant made A8 representation. However, the 3rd respondent on 30.12.99 with reference to his representation issued an order A9 re-fixing the pay of the applicant at Rs.800/- in the scale of pay of Rs.800-15-1010-20-1150 w.e.f. 21.5.1988 and at Rs.2845/- in the revised scale of Rs.2650-65-3300-70-4000 w.e.f. 1.1.96, further ordering that excess payment would be recovered in monthly instalments. Aggrieved by this, the applicant has filed this application impugning A5, A7 and A9 orders. According to him, he is entitled to get the pay scale of Rs.850-1150 w.e.f. the date of initial appointment, and there is no justification for the action taken by the respondents to reduce his pay scale and the recovery of the excess payment without even giving him notice and opportunity of being heard.

2. The respondents seek to justify the impugned order on the ground that by an order dated 24.7.95, the pay scale of Rs.850-1150 has been given only to the Pump Operator and not to the Pump Attendant. Coming to know of the mistake in the

pay fixation of the applicant, the Department had rectified the mistake and re-fixation of the pay of the applicant is made and ordered recovery of the excess payment, contend the respondents.

3. We heard the counsel on either side. The learned counsel for the applicant states that the applicant would take up the issue regarding A5 with the Department and therefore the applicant does not press the relief regarding challenge the A5 order in the application. The applicant now seeks to set aside the A7 and A9 orders only.

4. Shri Hariraj, the learned counsel of the applicant referred us to A2 and A3 and argued that by issue of a corrigendum to A3, the nomenclature of the post alone has been changed but the grant of pay scale of Rs.850-1150 remained. He brought to our notice para 6 of the order of the Ministry of Human Resources Development, Government of India dated 23.6.95(Annexure R-C) which is reproduced as below :-

"As regards . . . the rationalisation of pay scales in regard to the other posts, the same is still under consideration of the Government and as soon as decision is arrived at, the same will be communicated to the Sports Authority of India for implementation."

5. The learned counsel argued that the scale of pay of Pump Attendant and Pump Operator had been the same before rationalisation, that the applicant is not aware whether any other order regarding rationalisation of the pay scale of Pump Attendant was issued and that as the placement of the applicant in the scale Rs.850-1150 was not cancelled even by Annexure A4, the impugned action of refixation of pay even without giving him a notice is bad for denial of principle of natural justice. He further argued that as the fixation and drawal of pay even if not as per rules was not account of any

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act on the part of the applicant, the applicant not being responsible for the mistake, if any, the respondents are not justified in making recoveries on the ground of over payment. To buttress this argument, the learned counsel referred the rulings of the Apex Court in Shyam Babu Verma and Ors. Vs Union of India(1994) 27 ATC 121, Mandaki Vs. Director of H&FW Service(1996) 8 SCC 11, State of Orissa Vs. Adwait Chenan Mohanty(1995) Suppl. I SCC 470, Administrator, Union Territory of Daman & Diu and Ors. Vs. R.D. Valand(1995) Suppl.(IV) SCC 593 etc.

6. On a careful scrutiny of the materials available on record, we find impugned order A7 and A9 are non-sustainable as they have been issued in violation of the principles of natural justice. If as a matter of fact as Pump Attendant the applicant was not entitled to the pay scale of Rs.850-1150 before refixing the applicant's pay and order of recovery of over payment, the applicant the affected person, should have been given a notice and an opportunity of being heard. It is well settled before an order which visits a person with adverse civil consequences ^{that} ^{is passed} the person should be given an opportunity of being heard. Such an opportunity has not been given to the applicant. It is also seen that although a Corrigendum changing the name of the post held by the applicant as Pump Attendant Annexure A3 was issued, the placement of the applicant in scale of Rs.850-150 made in Annexure A2 was left unaltered. Therefore a ~~notification~~ ^{refixation} without notice is unjustified and is liable to be set aside.

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7. In Shyam Babu Verma and Ors. Vs. Union of India (1994) 27 ATC 121, the Supreme Court held that

"Although the petitioners were entitled only to the lower scale of pay w.e.f. 1.1.1973 and only after a period of 10 years they became entitled to the higher pay scale but as they have received the higher scale since 1973 due to no fault of theirs and that scale was reduced in the year 1984 with effect from 1.1.1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

The above principle applies to the case of alleged over payment in this case and therefore even if the pay fixation of the applicant was erroneous the applicant was not responsible for the same, we hold that the respondents are not justified in recovering the alleged over payment.

8. In the light of what is stated above, we dispose this application setting aside A7 and A9 orders and directing that no recovery be made from the pay and allowances of the applicant for the ^{alleged} over payment. However, this order would not preclude the respondents from rectifying the mistake if any in the pay fixation of the applicant after giving the applicant notice of the same giving reason and in accordance with law. But over payment if any made for reason not attributable to the applicant shall not be recovered. No costs.

Dated the 6th February, 2002.



T.N.T. NAYAR,
ADMINISTRATIVE MEMBER



A.V. HARIDASAN,
VICE CHAIRMAN

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A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the order of temporary appointment bearing No.Estt/19/172/88 dated 19.5.1988 issued by the 3rd respondent to the applicant.
2. A-2: True copy of the office order No.595/95 dated 3.8.1995 issued by the 3rd respondent.
3. A-3: True copy of the corrigendum No.Admn(10)/96, dated 15.2.1996 issued by the 3rd respondent to the applicant.
4. A-4: True copy of the office order No.489/96 issued by the 3rd respondent to the applicant.
5. A-5: True copy of the office order No.742/98 dated 19.9.1998 issued by the 3rd respondent.
6. A-6: True copy of the representation dated 28.9.1998 submitted by the applicant to the 3rd respondent.
7. A-7: True copy of the letter No.Accts/2939/99, dated 16.12.1999 issued by the 3rd respondent to the applicant.
8. A-8: True copy of the representation dated 23.12.1999 submitted by the applicant to the 3rd respondent.
9. A-9: True copy of the office order No.891/99, dated 30.12.1999, issued by the 3rd respondent to the applicant.
10. A-10: True copy of the representation dt.6.1.2000 submitted by the applicant to the 2nd respondent.

Respondents' Annexures:

1. R-1A: Photocopy of the letter No.SAI/Admn/2260/91 dated 24.7.1995 issued by Dy.Director.
2. R-1B: Photocopy of the letter No.O.A.4/12-51/99-2000/242 dated 12.11.1999.
3. R-C: Photocopy of the order No.F.No.3-136/91-D(SAI) dated 23-6-1995 issued by Desk Officer.

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