

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 130 of 2009

Friday....., this the 22nd day of January , 2010

CORAM:

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

K.K. Venu,
S/o. Raman, T.No. 1316, Mazdoor,
Office of the Superintendent B/R,
Military Engineer Services,
West Hill, Kozhikode

... Applicant.

(By Advocate Mr. K. Shri Hari Rao).

v e r s u s

1. Union of India represented by its
Secretary, Ministry of Defence,
New Delhi.
2. The Flag Officer Commanding in Chief,
Southern Naval Command,
Headquarters, Naval Base, Kochi- 4
3. The Commodore Superintendent,
Naval Ship Repair Yard,
Naval Base, Kochi - 4
4. The Joint Controller of Defence Accounts
(Navy), Kochi - 4
5. The General Manager,
Naval Armament Depot, Aluva.
6. The Garrison Engineer,
Military Engineer Services,
Red Fields, Coimbatore

... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)



The Original Application having been heard on 18.01.2010, this Tribunal on 22-01-10 delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The short question involved in this OA is whether the applicant, after suffering the penalty of withholding of increments for two years without cumulative effect, effected from his pay for the month of June 2002 had his pay rightly fixed. Shorn of facts unnecessary for adjudication of case, the applicant's date of annual increment is first of June. He was imposed a penalty of "withholding of next two increments when it falls due for two years without cumulative effect" vide order dated 12-03-2002. The applicant suffered the same and in June 2004 he was afforded the first ACP. Details of his pay particulars are as under:-

- (a) Scale of pay : Rs 2550-55-2660-60-3200
- (b) Stage on the date of imposition of penalty: Rs 3140/-.
- (c) Date of Increment: June 2002.
- (d) Pay from June 2002 to May 2003: i) with penalty: Rs 3140/-
ii) without penalty: 3200/-
- (e) Pay from June 2003 to May 2004 i) with penalty: Rs 3140/-
ii) without penalty: 3200/-
- (f) Scale on grant of ACP: Rs 2650 -65-3300-70-4000
- (g) Date of grant of ACP: Rs 4th June 2004.
- (h) Pay on the eve of grant of ACP: Rs 3200/- (penalty non cumulative)



- (i) Notional fixation by grant of one increment due to ACP: 3260/-
- (j) Stage in the scale of Rs 2650 – 65 – 3300 – 70 – 4000: Rs. 3300
- (k) Pay to be fixed as on 4th June 2004 on grant of ACP: Rs 3300/-
- (l) Date of next increment and pay thereof: June 2005 and Rs 3370/-

2. While passing the orders on ACP, with due drawn statement, the authorities have by inadvertent typographical error indicated the pay drawn as on 4th June 2004 (on grant of ACP) as Rs 3033/-. This is manifestly only an error as there is no stage of Rs 3303. Obviously it ought to have been only 3300/-. Again, erroneously they have indicated the pay from July 2004 to May 2005 as Rs 3370/- whereas on the basis of the above calculation it shall be only Rs 3300/-, the stage of Rs 3370/- being admissible only from the pay for the month of June 2005.

3. According to the applicant, his pay as per June 2004 Pay Slip was Rs 3,140/- while the pay shown in the due drawn statement was Rs 3,033/- and since pay on grant of ACP was fixed on the above pay of Rs 3,033 instead of Rs 3140/- his pay has to be increased accordingly. Annexure A-4 refers. The applicant is not correct in his calculation, in view of what has been held in the previous paragraph.

4. Coming to the calculation made by the respondents, vide Para 2 of their reply, the currency of penalty lasted till June 2006 i.e. two years of non-payment of increment and continuance at the same stage of Rs 3200/- for



two years. This is palpably wrong. The interpretation of the term "withholding of increment for a specified period" has been given in GOI decision No. 17 as under:-

"(17) Whether all the increments or only one increment to be withheld during the currency of penalty.- When the penalty of withholding of increment is awarded to an employee, it is obligatory on the part of the disciplinary authority to specify the period for which the penalty should remain current. A doubt has been raised whether in such a case, all the increments falling due during the currency of penalty or only one increment should remain withheld during the specified period. It is clarified that an order of withholding of increment for a specified period implies withholding of all the increments admissible during that specified period and not the first increment only.

[D.G.P.&T.'s letter No. 6/4/55-Disc., dated the 27th October, 1965.]

It is further clarified that where an order of penalty purports to withhold the 'next increment' for a specified period, it implies that all the increments falling due during that period would be withheld, because without getting the next increment, an officer cannot get increments falling after the 'next increment'. All disciplinary authorities should, therefore, ensure that orders of penalty are correctly worded in accordance with their intention. Thus, if it is intended that only one increment should be withheld over a specified period it should not be stated in the order that the 'next increment' be withheld for a specified period. The proper course of action in such a case would be to specifically order that 'one increment' be withheld for a specified period. Such an order will have the effect of withholding one increment only over a specified period and the official concerned will be able to draw the subsequent increments falling during the period, of course, depressed by the one increment which is withheld.

[D.G.,P.&T., Letter No.20/41/66-Disc., dated the 14th April, 1967.]"

5. The import of the above order is that if only the next increment is withheld for a specified period, the individual would suffer that alone and the



increment due beyond one year of penalty would not be withheld. Instead, if more than one increment is withheld, (say two increments as in the instant case), then there would be in all withholding of two increments the first in 2002-2003 and the second in 2003-2004. After May 2004, there is no currency of penalty. The respondents have misconstrued that after withholding the above increments, the pay shall remain in the same stage for two more years i.e. for June 2004-May 2005 and June 2005-May 2006. THIS IS NOT SO. If it were so, the same would amount to enlarging the currency of penalty for two more years. Implicitly it would also result in reduction to a lower stage for the period from June 2004 onwards, for which there is no authority.

6. In view of the above, the OA is disposed of with the direction to the respondents to reschedule the due-drawn statement on the basis of the calculations made in para 1 above, i.e. by fixing the pay of the applicant at Rs. 3300/- w.e.f. 4th June 2004, with the next date of increment on 1st June 2005 (at Rs. 3,370/-) and afford the difference in pay due, if any. If by any chance, there happens to be any excess payment, the same may have to be waived in terms of the law laid down by the Apex Court in the following decisions:-

(a) Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18: "....it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant."



(b) Bihar SEB v. Bijay Bhadur, (2000) 10 SCC 99 :

"We do record our concurrence with the observations of this Court in Sahib Ram case 1 and come to a conclusion that since payments have been made without any representation or a misrepresentation, the appellant Board could not possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time."


(c) Col. B.J. Akkara (Retd.) v. Govt. of India, (2006) 11 SCC 709 :

"27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana , Shyam Babu Verma v. Union of India , Union of India v. M. Bhaskar and V. Gangaram v. Regional Jt. Director):

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly



paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery."

(d) Purshottam Lal Das v. State of Bihar, (2006) 11 SCC 492 :

"We do record our concurrence with the observations of this Court in Sahib Ram case and come to a conclusion that since payments have been made without any representation or a misrepresentation, the appellant Board could not possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time. The act or acts on the part of the appellant Board cannot under any circumstances be said to be in consonance with equity, good conscience and justice. "

7. This order shall be complied with, within a period of three months from the date of communication of this order. Costs easy.

(Dated, the 22nd January, 2010)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr. K B S RAJAN
JUDICIAL MEMBER

CVR.