

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 151 of 2007

Monday, this the 8th day of October, 2007

C O R A M :

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

G. Thrikkraman Nair,
S/o. Late Shri Govinda Pillai,
Retired Assistant Engineer (Electrical),
Trivandrum Central Electrical Division, CPWD,
Usha Mandiram, T.C. 6/920,
Vattiyoorkavu P.O., Thiruvananthapuram- 695013

.... Applicant.

(By Advocate Mr. P.V. Madhavan Nambiar)

v e r s u s

1. Union of India, through the Secretary to the Government of India, Ministry of Urban Development, New Delhi.
2. Directorate General of Works, C.P.W.D., Nirman Bhavan, New Delhi : 110 001
3. Pay and Accounts Officer, Ministry of Urban Development, C.P.W.D. (SZ), Rajaji Bhavan, Basanth Nagar, Chennai – 90
4. Superintending Engineer, Central Electrical Circle, Central P.W.D., Madars : 6
5. Superintending Engineer, Trivandrum Central Circle, Central P.W.D., 1st Floor, C.G.O. Complex, Ponkulam, P.O. Vellayani, Trivandrum : 695 522
6. Executive Engineer, Trivandrum Central (E) Division, Poonkulam, Vallayani P.O., Trivandrum

.... Respondents.

(By Advocate Mr. Sunil Jose, ACGSC)

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


The facts as contained in the O.A. are as follows:

(a) The applicant joined Central Public Works Department as Section officer (E) on 25.03.1967. His designation was changed as Junior Engineer Electrical in November, 1974. He was declared as Junior Engineer Grade-I with effect from July, 1986 in the pay scale of Rs. 1640-60-2900 and his basic pay was fixed at Rs. 2120/- with effect from July, 1986. Thereafter, he was promoted as Assistant Engineer in scale Rs. 2000-60-2300-EB-75-3200-100-3500 in 1987 and pay fixed at Rs. 2240/- with effect from 25.09.1987.

(b) An office order was issued on 13.03.1990 (Annexure A/2) fixing the salary of the applicant at Rs. 2120/- as on 1.3.1986 under F.R. 22(1)(a)(1) on the basis of Annexure A/1 order dated 19.1.1990. He was promoted as Assistant Engineer (E) by that time. In the promoted post also his salary has been fixed in the pay scale of Rs. 2000-60-2300-EB-75-3200-100-3500 at Rs. 2525/- as on 1.3.1990. There was some controversy regarding fixation of pay of the applicant and others with effect from the date of which they were made Junior Engineer Grade-I.. Orders were issued on 27.03.1991 by the Director General of Works vide O.M. No. A.11014/1/91-EC/VI dated 27.03.1991. In that context, an application had to be filed before the Tribunal vide O.A. No. 1018 of 1994 which was decided on 5.7.1995. The Tribunal directed restraining the respondents from recovering the payment made to the applicant and others and also quashing O.M. dated 27.3.1991 of the Director General of Works (R/2) reducing one step in the basic pay of those Junior Engineers in Grade-I given while refixing the salary in Government under



F.R.22(c). After quashing that on 5.7.1995 by the order (Annexure A/3) in O.A. 1814/1994, no steps to restore that order dated 27.3.1991 legally was taken so far by the Director General of Works. So by that order, the order dated 27.3.1991 is non est and inoperative.

(c) In pursuance of Annexure A/3 order, the 5th respondent was issued an Office Memorandum on 19.04.1997 intimating that the Ministry has decided to implement the judgement in O.A. No. 1018 of 1994 in respect of the applicants therein (including the present applicant) vide Annexure A/4. Vide Annexure A/5, Assured Career Progression in the pay scale of Rs. 10000-15200 with effect from 9.8.1999 was granted and by Annexure A/6, applicant's pay was fixed at Rs. 10325/- as on 1.3.2000 in the pay scale of Rs. 10000-325-15200 and the date of next increment shown as 1.3.2001. In the meantime, by an Office Order No. 43 of 1987 dated 6.7.1989, the salary of one K Reghunathan and George Varghese, both Assistant Engineers Civil side, had been fixed and it has been approved by the Office of the Chief Engineer as per order dated 30.8.2000 (Annexure A/7). It was specifically mentioned that such a problem will not arise in the case of George Varghese, one of the applicants in O.A. No. 641 of 1998 upholding the order of Ernakulam Bench in O.A. No. 1018 of 1994. It is binding on the Pay and Accounts Officer, since the Pay and Accounts Officer was a party to O.A. No. 641/1998 along with other respondents. The Pay and Accounts Officer had again raised a doubt on 4.2.2003 (Annexure A/8) about the present applicant's pay fixation as on



1.1.1986 as per F.R.22-C in his service book and observed that his pay should have been fixed as per F.R. 22(1)(a)(2) and also further observed that the consequential 'pay fixation' due to promotion, 5th Pay Commission and A.C.P. are not in order. The applicant superannuated on 31.3.2003.

(d) The applicant made Annexure A/9 representation dated 11.2.2003 to the Executive Engineer explaining therein as to why the applicant is entitled to the full pension and without revision of his pay fixation. The Executive Engineer (Central Division) has communicated the matter to Pay and Accounts Office. The Pay and Accounts Office again persisted by their letter dated 24/25.02.2003 that his pay may be fixed as per F.R.22(1)(a)(2) with effect from 1.1.1986 and excess pay may be calculated from 6.7.1995, the date following the judgement in O.A. No. 1018 of 1994 and to submit the pension papers again. In pursuance of that, the Executive Engineer (E) as per his office order dated 5.3.2003 has revised the pay of the applicant as on 1.1.1986 and consequent revision and refixation has been made at every stage and including his pay in the lower grade as on 9.8.1999 at Rs. 9500/- instead of what has been done previously. On that basis, his pay was fixed in the higher grade in the pay scale of Rs. 10000-325-15200 with effect from 9.8.1999 at Rs. 10000/- and subsequent increment on that basis and at the time of retirement on superannuation on 31.3.2003 at Rs. 10975/-, vide Annexure A/11.

(e) By order dated 10/12.3.2003, his pension was fixed at Rs.

5455/- per month with effect from 1.4.2003 and by another order dated 11/12.3.2003, his gross DCRG was fixed at Rs. 2,75,253/- and after deducting for LPC and NDC Rs. 2000/- and another deduction on account of alleged excess payments of pay and allowances of Rs. 22,000/-, the DCRG payable was fixed at Rs. 2,51,253/- and sent bills along with both. A Pension Payment Order dated 20.5.2003 was issued stating pension at Rs. 5455/- and reduced pension at Rs. 3273/- vide Annexure A/15. The applicant has not been furnished with copy of the Pension Payment Order.

(f) The Pay and Accounts Office at Chennai has written a letter to the Superintending Engineer, Bangalore, on 29.7.2004 vide Annexure A/18 wherein it is stated that the order of the Tribunal in O.A. No. 1018 of 1994 is only restraining them from recovering payments already made and reiterated that not allowing of the refixation under F.R. 22(a)(1) in the scale of Rs. 1640-2900 for Junior Engineer Grade-I is correct. The Director General of Works order in giving ACP will amount to 3rd financial upgradation which is against ACP provision may be got clarified from the DGW so that either release or recovery can be made.

(g) A similar situation arose in the case of Shri V.V. Ashokan, applicant No.8 in O.A. No. 1018/94 and on his representations, it has been clarified by the Directorate General of Works, New Delhi that the salary of V.V. Ashokan at the time of superannuation to be refixed on the basis of pay actually drawn by him who also had been claiming the benefits of Junior Engineer Grade-I of salary as



on 1.1.1986 as in the case of the applicant under F.R. 22(1)(a)(1) and upgradation after 24 years of service and also ACP benefits. Shri V.V. Ashokan has been given his pension and all other benefits. Knowing about the same, the applicant again made Annexure A/20 representation on 3.1.2005 to the Pay and Accounts Officer, Chennai. For return of Rs. 22,000/- retained by the order of the Pay and Accounts Officer, the applicant again sent a reminder on 5.12.2006. No reply has been received so far on the representations made by the applicant.

2. The respondents have contested the O.A. Their version is as follows:

(a) The pay scale of Rs. 1640-60-2600-EB-75-2900 granted with effect from 1.1.1986 and the pay already fixed under F.R.22-C – now F.R.22(1)(a)(1), is not correct due to the reasons that the applicant was promoted to the post of Assistant Engineer (E) with effect from 25.9.1987, the pay on promotion was again fixed under F.R. 22-C – now F.R.22(I)(a)(1), in the pay scale of Rs. 2000-60-2300-75-3200- 100-3500. Under F.R.22, when one Government servant is appointed for a post held on regular basis to a post not higher, without involving higher responsibilities, then the pay of the said Government servant is to be fixed at the same stage as in the old scale of pay and allow the next increment from the date due at the old post. If there is no equal stage, his pay in the new scale of pay at the stage next above the old pay and allow increment in the new post after 12 months of qualifying service

in the new scale of pay. The pay on appointment to a non-functional selection grade post will also be regularised in this manner.

(b) As per the revised Recruitment Rules notified by the Government of India on 26.5.1987, 75% of the posts of Junior Engineers were placed in the same scale of pay of Rs. 1640-2900 and designated as Junior Engineer Grade-I and the remaining 25% posts were designated as Junior Engineer Grade-II in the scale of Rs.1400-2300. Based on the above fact, it may be seen that the designation of the applicant was changed from Junior Engineer (E) to Junior Engineer (E) Grade-I, without involvement of higher responsibilities. Hence he is not eligible for pay fixation under F.R.22-C – now F.R.22(I)(a)(1), with effect from 1.1.1986.

(c) The order Annexure A3 is only to the extent of restraining the respondents from recovering the payments made to the applicants. The 2nd respondent has ordered for implementation of A3 order which states about recovery only and not for the pay fixation as is clear from the A/10 communication of the 3rd respondent. Therefore, the contention of the applicant is contrary being incorrect, is denied.

(d) As regards Shri P.N. Ramachandran Nair, AE (Civil) who was 3rd respondent in Annexure A3 and who has also retired, the excess paid salary has been recovered from him for the period from 6.7.1995 to 7.11.1999 by the 3rd respondent as is evident from

Annexure A/10 order produced by the applicant. The comparison made by the applicant with regard to Shri V.V. Ashokan is also not relevant to the facts of the case nor is the case similar to that of the applicant.

3. Applicant has filed rejoinder to the reply wherein it is stated that Annexure A/4 dated 19.4.1997 will make it clear that no further action has been initiated against the applicants in Annexure A3 by Union of India or Directorate of General of Works, New Delhi. Annexure A/7 order confirms it in the case of two applicants who were also parties in Annexure A3 order. The correct position of law has been made clear in Annexure A/19 in the case of another applicant, V.V. Ashokan, who is applicant No. 8 in Annexure A/3 that the ACP is not third financial upgradation and the audit department has followed it. That applies squarely to the present applicant also. When an order from the higher authority was made making clear about the ACP as in Annexure A/19, any order contrary to that cannot be passed by the case of another similarly situated employee.

4. Learned counsel for the applicant contended that the pay fixation in respect of the applicant at various stages was made strictly in accordance with the rules prevailing at that particular point of time. As far as pay fixation at the level of Junior Engineer Grade-I, the order dated 19.01.1990 (Annexure A/1) was followed. This order does not seem to have been either cancelled or modified. Again, his case is analogous to the case of Shri Ashokan in whose case the respondents vide Annexure A/9 had clearly stated that pension of Shri Ashokan on the basic pay of Rs. 11625/- actually drawn by him consequent upon grant of financial upgradation in the

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scale of Rs. 10000-325-15200 under the ACP Scheme should be fixed. In these circumstances, there is no reason to deviate from the decision adopted in the case Shri Ashokan when the case of the applicant was considered.

5. Learned counsel for the respondents submitted that it may not be possible to accede to the request of the applicant as the applicant had been given undue benefits though not on account of fault, when the pay was fixed at the level of Junior Engineer Grade-I. He has also referred to a decision dated 5.7.1995 of this Tribunal in O.A. No. 1018/94 (Annexure A/3) which restricted the relief only to the extent of restraining recovery of over-payments from the applicants therein. As such if at all, it shall only be to that extent that the recovery of over-payments may not be made whereas rescheduling of pay fixation should take place.

6. Arguments were heard and documents perused. The law on the subject is no doubt clear:

(a) Any error committed by the Government can be rectified in accordance with law (*Maharashtra State Seeds Corporation vs. Hariprasad Drupadrao Jadha*, 2006 3 SCC 690).

(b) The law is equally clear that when an over-payment is made by the Government not on the basis of any misstatement by the individual concerned, the Government cannot effect any recovery [*Sahib Ram vs. State of Haryana*, 1995 Supp(1) SCC 18. Also see *Purushottam Lal Das & Ors. vs. State of Bihar & Ors.*, 2006 (11) SC 492 or (2007) 1 SCC (L&S) 508].

(c) Equally it is a settled law that there cannot be any discrimination

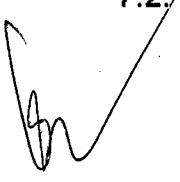
(State of Kerala vs. N.M. Thomas, 1976 (2) SCC 310) and

(d) If undue benefit by mistake has been granted to an individual, the same cannot be granted to others because rules do not provide for the same [Faridabad C.T. Scan Center vs. D.G. Health Services, (1997) 7 SCC 752].

7. The case of the applicant has to be viewed keeping in mind the above said decisions.

7.1. As regards (a) above, it is to be seen whether at all there was an error. The applicant has rightly contended that the fixation of pay as Junior Engineer Grade-I has been done in accordance with Annexure A/1. It is not the case of the respondents that at any point of time this Annexure A/1 was cancelled or modified. The Pay and Accounts Office has held vide Annexure A/8 that the pay of the applicant was wrongly fixed at the time when the applicant's pay was fixed in the pay scale of Rs. 1640-2900 as on 1.1.1986. This has no reference to the order dated 19.1.1990 (Annexure A/1). In fact, the Pay and Accounts Office has a system of internal audit and as such it was expected by the said office to have periodical audit conducted though not annually, at least once in 2 or 3 years, so that any inadvertent error could be duly rectified. After 1986 when the applicant's pay was fixed, the Pay and Accounts Office only in 2003 woke up to say that the pay of the applicant was wrongly fixed. It cannot lie in the mouth of the respondents to get up from hibernation after 18 years alleging error in calculation.

7.2. As regards (b) above, if any overpayment is made not on the basis



of any misstatement, that cannot be recoverable from the applicant in view of the decision in *Sahib Ram vs. State of Haryana and Purushottam Lal Das (supra)*. In any event, that situation does not arise in this case.

7.3. As regards (c) above, Ashokan's case fully applies to the case of the applicant as such there is no question of singling out the applicant from the case of Shri Ashokan or other similarly placed. It is not the case of the respondents that in the case of Ashokan the error has occurred and as such, such a mistake cannot be perpetuated. Their contention is that the applicant's case is not analogous to that of Ashokan's case. Annexure A/19 clearly shows that the case of the applicant is congruent to that of Ashokan.

8. In view of the above, the applicant has made out a cast iron case. The O.A., therefore, succeeds. It is declared that Annexures A/8, A/10, A/11, A/12, A/14 and A/16 in so far as they relate to recovery of excess payment, refixation of pension etc. are not sustainable and are hereby quashed and set aside. The applicant's DCRG has to be paid intact as calculated. The respondents shall afford the applicant the retirement benefits on the basic pay of Rs. 11300/- to which the applicant is entitled to in terms of Annexures A/3, A/6 and A/7. The applicant's pay shall also be fixed at Rs. 11,300/- for the month of March, 2003 and difference, if any, between the payment due and made shall be paid to the applicant. The withheld amount of Rs. 22,000/- from the pension of the applicant should also be released.

9. The above directions shall be complied with within a period of sixty

days from the date of communication of this order. Under the above circumstances, there shall be no order as to costs.

(Dated, 8th October, 2007)



DR. KBS RAJAN
JUDICIAL MEMBER

cvr.