

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 196/2002

Wednesday, this the 31st day of July, 2002.

CORAM :

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

V.A. Padmanabhan,
(Retired Assistant Engineer),
Central Public Works Department,
Trichur Central Division, Trichur,
Residing at No.4, Anjali Gardens,
Pudur Road, Pallipuram Post,
Palghat-678006.

... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Vs

1. Union of India rep. by the
Secretary to Government of India,
Ministry of Urban Development,
Central Public Works Department,
New Delhi.
2. The Executive Engineer,
Trichur Central Division,
Central Public Works Department,
Trichur.
3. The Senior Accounts Officer,
Pay & Accounts Office,
Central Public Works Department,
Ministry of Urban Development,
Rajaji Bhavan, Basanth Nagar,
Chennai-600090.

... Respondents

(By Mrs. Rajeswari A., ACGSC)

The application having been heard on 31.7.2002, the
Tribunal on the same day delivered the following :

ORDER

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

The applicant, retired Assistant Engineer of the Central
Public Works Department(CPWD) is aggrieved because by the
impugned orders dated 18.2.2002(A1) and 2.3.2002(A2), his pay has
been refixed and reduced w.e.f. 1.8.1982 and 1.9.1988

respectively, and A3 order dated 11.3.2002 was issued ordering recovery of Rs.42,053/- from his DCRG without even giving him a notice and affording him an opportunity to represent against such action. The facts germane for consideration are as follows :-

2. The applicant while working as Junior Engineer Ordinary Grade in the Scale of Rs.425-700 was promoted to the Selection Grade of Scale of Rs.550-900 w.e.f. 1.8.1982. He exercised option to have his pay fixed in the Selection Grade on the date of drawal of his annual increment. He was drawing a basic pay of Rs.660/- in the scale of pay of Rs.425-700/- as on 1.8.1982. However, according to the applicant, ignoring his option, his pay was fixed at Rs. 650/- in the higher grade, the difference of Rs.10/- being treated as Personal Pay w.e.f. 1.8.1982. The applicant went on making representations in that regard. Finally, the Superintending Engineer, Madurai Central Circle, CPWD, Madurai by order dated 12.11.1998(A4) refixed his pay from 1.8.1982 onwards. The applicant retired from service on superannuation on 31.1.2002. However, all of a sudden without any notice the impugned orders were issued. The applicant has therefore filed this application for the following reliefs :-

(a) Call for the records leading to the issue of Annexure A1, A2 and A3 and quash the same.

(b) Direct the respondents to calculate the applicant's pension based on the average emoluments actually drawn by the applicant at the time of retirement and to grant the same.

(c) Direct the respondents to calculate the applicant's gratuity and other retiral benefits as if Annexures A1, A2 and A3 were not issued at all.

(d) Direct the respondents to grant 12% interest on the applicant's pension, commuted value of pension, encashment of leave, General Insurance, retirement gratuity and other

retiral benefits, to be calculated with effect from 1.2.2002 upto the date of full and final settlement of the same.

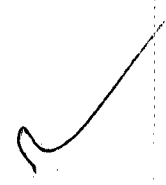
(e) Award costs of and incidental to this application.

(f) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

3. The respondents seek to justify the impugned action on the ground that Annexure R1 by which the applicant's pay was fixed initially did not mention anything about the option exercised by the applicant while fixing the pay in the Selection Grade scale from the date of next increment, that as the records are not seen as to whether the applicant has exercised any option to have his pay fixed on promotion as Assistant Engineer w.e.f 1.2.1988, refixation of applicant's pay by the Superintending Engineer(A4) was not justified and therefore on the advise of the PAO, the impugned orders were issued refixing the pay of the applicant and ordering recovery of the excess payment made.


4. The applicant has filed a rejoinder. We have carefully gone through the entire pleadings and materials placed on record and have heard the learned counsel on either side.

5. By the impugned orders Annexure A1, A2 and A3, the applicant's pay had been reduced and refixed and a huge amount of Rs.42,053/- have been ordered to be recovered from the DCRG of the applicant and that these orders were issued without giving show cause notice to the applicant with retrospective effect after his retirement. As no order visiting a person with adverse civil consequences should be passed without giving him an opportunity of being heard, the impugned orders are liable to be set aside as has been held by the Apex Court in Bhagwan Shukla Vs



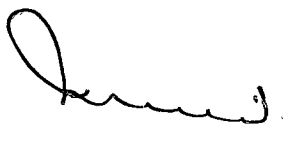
Union of India and Others AIR 1994 SC 2480. Further, in this case we do not find any justification in the refixation of pay of the applicant either w.e.f. 1.8.1982 or from 1.9.1988. From Annexure R1 produced by the respondents themselves, it is evident that the applicant would have exercised his option for fixation of his pay in the Selection Grade w.e.f. 1.8.1982, as otherwise such an order need not have been passed. If the official who issued R1 order did not mention specifically that the applicant had opted or not opted is of no consequence because the pay has been fixed as if the applicant had exercised option. Probably understanding this, after issuance of A1 order, respondents have issued A2 order modifying the Annexure A1 order. Regarding A2 order, once Superintending Engineer had fixed the pay of the applicant by order A4 dated 12.11.1998, it cannot be presumed that it was done without reference to any documents at all. The Executive Engineer, who is an authority junior to the Superintending Engineer has no authority to issue an order re-fixing the applicant's pay. The authority who issued A4 order has not recalled that order.

6. Therefore, we do not find any justification for the respondents in issuing Annexure A1, A2 order refixing the pay of the applicant retrospectively. Therefore A3 order for recovery is also arbitrary and unsustainable in law. These impugned orders are liable to be set aside. Once Annexure A1, A2 and A3 are set aside, respondents have to be directed to finalise and settle the pensionary benefits as if the impugned orders A1, A2 and A3 never existed and basing on the emoluments which the applicant had drawn for the relevant period.



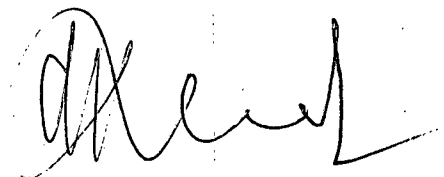
7. In the result, in the light of what is stated above, the impugned orders are set aside and the respondents are directed to calculate the applicant's pension and other retiral benefits based on the average emoluments actually drawn by the applicant at the time of his retirement as if Annexure A1, A2 and A3 have not taken effect. The above directions shall be complied with and the monetary benefits flowing therefrom made available to the applicant as expeditiously as possible at any rate within a period of two months from the date of receipt of a copy of this order. No costs.

Dated 31st July, 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 Office Order No.3(20) TRCD/2002/517 of 18.2.2002 issued by the 2nd respondent.
2. A-2: True copy of the Office Order No.3(20) TRCD/2002/637 of 2.3.2002 issued by the 2nd respondent.
3. A-3: True copy of Office Order No.15(27) TRDC/2002/PF/716 of 11.3.2002 issued by the 2nd respondent.
4. A-4: True copy of the Office Order No.47 of 1998 OF 12.11.98 issued by the Superintending Engineer, Madurai Central Circle, C.P.W.D., Madurai.
5. A-5: True copy of the letter No.PAO/CPWD/SZ/PEN/U.I/2061-02/3617/3618 dated 27.2.02 issued by the 3rd respondent.
6. A-6: True copy of the representation dated 4.3.02 submitted by the applicant to the 2nd respondent.
7. A-7: True copy of the representation dated 4.3.02 submitted by the applicant to the 2nd respondent.
8. A-8: True copy of the representation dated 7.3.02 submitted by the applicant to the 2nd respondent.

Respondents' Annexures:

1. R-1: True copy of Order No.15(163)-83-BCDV-424 dated 13.2.84 issued by Executive Engineer CPWD Bombay.
2. R-2: True copy of the Order No.PAO/CPWD/SZ/PEN/U.I/2001-02/2871 issued by Pay & Accounts Officer dated 9.1.2002.
3. R-3: True copy of order No.15(127)/TRCD/20001/2682 dated 11/9/2001 issued by Executive Engineer, Trichur Central Division CPWD.
4. R-4: True copy of the message dated 4.1.2002 No.23.1.2000-EC:4 issued by Deputy Director.

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16.8.02