

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM EBNCH**

O.A. No. 213 OF 2007

Thursday, this the 25th day of October, 2007.

CORAM :

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

K.K. Hariharan
Topaz, Fishery Survey of India, Kochi-5
Residing at Kidanganeshathu House
Edakochi, Kochi - 6 : **Applicant**

(By Advocate Mr. T.A. Rajan)

Versus

1. Union of India represented by the Secretary
Ministry of Agriculture
Department of Animal Husbandry, Dairying & Fisheries
New Delhi
2. The Director
Integrated Fisheries Project,
Kochi-16
3. The Director General
Fishery Survey of India,
Botawala Chamber, Sir P M Road
Mumbai
4. The Zonal Director
Fishery Survey of India,
Kochi-5 : **Respondents**

(By Advocate Mr.S.Abilash, ACGSC)

The application having been heard on 04.10.2007, the Tribunal
on 25.10.2007, delivered the following :

O R D E R

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

In this O.A the Applicant has resisted the recovery of Deputation
(Duty) Allowance paid to him during the period from 17.05.2001 to
30.09.2005, as illegal.

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2. The brief facts of the case are that while the applicant was working as Topaz in the Integrated Fisheries Project (IFP for short), the 2nd respondent transferred the applicant and 18 others vide Annexure A-1 order dated 02.05.2001 on deputation basis. Accordingly, the applicant was relieved from IFP and he reported for duty in FSI on 17.05.2001 on deputation basis. Though the normal period of deputation was three years, the applicant was not relieved even after four years. Meanwhile, vide Annexure A-3 order dated 19.05.2005, the 1st respondent, Government of India, Ministry of Agriculture, Department of Animal Husbandry Diarying and Fisheries reorganised the Integrated Fishers Project including transfer of various Divisions and staff to Central Institute of Fisheries Nautical and Engineering Training and Fishery Survey of India. On the basis of the aforesaid order, 1st respondent had issued Annexure A-4 order dated 19.05.2005 on the same day stating that the competent authority had accorded approval for transfer of Marine Engineering Work shop excluding Civil Section, Slip way, Jetty and Departmental Canteen from IFP to FSI. The applicant's name was at Sl.No. 25 under the Fisheries staff. It was also stated therein that the Director General, FSI will make arrangements to take over the sections and staff transferred from IFP. The Director General IFP was also requested to issue necessary order for transfer of staff to FSI. Though the directions was to be complied with, by 31.05.2005, because of some industrial dispute raised by the employees of the IFP, the transfer could not take place in time. Later on, a copy of the Annexure A-4 order was endorsed to the applicant on 30.09.2005 stating that he stood relieved with effect from 30.09.2005 (AN) and directing him to report to Zonal Director, FSI. Accordingly, the applicant was treated as a permanent employee of FSI with effect from 01.10.2005. Thereafter, vide impugned Annexure A-5 office order dated 01.02.2007 the respondents ordered for the recovery of deputation (duty) allowance paid to the

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applicant during the period from 17.05.2001 to 30.09.2005. The applicant has challenged the aforesaid Annexure A-5 recovery order as arbitrary, unjust and illegal. According to him, he was on deputation from 17.05.2001 to 30.09.2005 and he was paid deputation(duty) allowance as per the rules and he was entitled for the same. Further, he relied on the judgments of the Apex Court in the cases of **Sahib Ram v. The State of Haryana and Ors.** [1994 (5) SLR] 753 and **Shyam Babu Verma and others v. UOI and ors** [(1994) 2 SCC 521. to say that even if the payment of deputation (duty) allowance was paid to him by way of mistake, it cannot be recovered at a later stage as the applicant has never misrepresented his case or he had drawn the amount by fraud or any fault on his part.

3. Respondents in their reply has stated that the induction of staff of IFP to FSI was not at par with the normal deputation terms as the shift over from the IFP to the FSI was not as prescribed in the Recruitment Rules, but because the vessels on board which they were working in the IFP was transferred to the FSI. They have submitted that the Applicant was holding the post of Topaz in the scale of Rs.2750-70-3800-75-4400 under the Assured Career Progression Scheme introduced with effect from 09.08.1999. According to them, an employee drawing higher pay scale under the ACP Scheme cannot apply for any ex-cadre post on the basis of such ACP pay scale, because practically he doesn't perform the duties attached to such ACP pay scale. In such circumstances, the DOPT vide O.M.No. 22034/5/2000-Estt (D) dated 20.08.2001, gave option to the employees for the higher pay scale under the ACP Scheme without deputation allowance during the period of deputation, if it is more beneficial than the normal entitlements under the existing general orders regarding pay on appointment on deputation basis. In the case of the applicant, on his transfer to FSI, he continued to draw the pay in the pay scale of 3050-

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75-3950-80-4590 which was granted to him under the ACP Scheme which was not admissible to him. Hence the recovery of the amount paid in excess vide Annexure A-5 order dated 01.02.2007 was not arbitrary or illegal as alleged by the applicant.

4. We have heard Shri T.A.Rajan, counsel for applicant and Shri S.Abilash, counsel for respondents.

5. The undisputed fact in this case is that it was on the direction of the respondents that the applicant was sent on deputation from IFFP to FSI. The applicant has never sought any deputation from the parent cadre to the FSI. He had not mis-represented the facts before the respondents nor has he received the Deputation (Duty) Allowance by way of fraud. The respondents on their own granted the deputation (duty) allowance for the entire period of his deputation on their own and the applicant continued to draw the same. The applicant's contention is that the respondents had paid the deputation (duty) allowance in accordance with the rules and the same was not a mistake and the respondents contentions that he was on ACP Scale and he could not have drawn Deputation (Duty) Allowance on the said scale are not relevant. In my considered opinion, the Applicant's case is fully covered by Sahib Ram's case (supra) and Shyam Babu Verma's case (supra). The Apex Court in Sahib Ram's case (supra) has held as under :-

"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of 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. The principle of equal pay for equal work would not apply to the scales prescribed by the University

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Grants Commission. The appeal is allowed partly without any order as to costs. Appeal allowed."

Similarly, in the judgment of Shyam Babu Verma's case (supra) relied upon by the Applicant's counsel, the Apex Court has held as under :-

" 11.... Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission with effect from January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 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."

6. In the above facts and circumstances of the case, I allow this O.A. Accordingly, Annexure A-5 order dated 01.02.2007 is quashed and set aside. There shall be no order as to costs.

Dated, the 25th October, 2007.


GEORGE PARACKEN
JUDICIAL MEMBER

vs