

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A 273/03

Thursday.....this the ^{17th} day of November, 2005

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

V.C.Kunhammed, son of Soopy,
residing at Taj House, Pathiyarakkara,
Vadakara 673 111,
last employed as Assistant Engineer in
the Office of the Assistant Engineer,
Calicut Central Sub Division No.III,
CPWD, Thana, Kannur under Calicut Central
Division, CPWD, Calicut.) Applicant

(By Advocate Mr.Ashok M Cherian)

V.

- 1 The Union of India, represented by the
Secretary to Government of India,
Central Public Works Department,
Ministry of Urban Development,
New Delhi.
- 2 The Senior Accounts Officer,
Office of the Pay and Accounts Officer,
Central Public Works Department (South Zone)
Ministry of Urban Development,
Government of India,
E2-C Rajaji Bhavan
Basant Nagar,Chennai.90
- 3 The Superintending Engineer,
Trivadrum Central Office,
Central Public Works Department,
Trivandrum.4.
- 4 Executive Engineer,
Calicut Central Division,
Central Public Works Department,
Kozhikode. Respondents

(By Advocate Mr.George Joseph, ACGSC)

The application having been heard on 4.11.2005, the Tribunal on 7. 11.2005 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the Annexures A18 and A19 orders to the extent that they direct deduction of excess pay and allowances alleged to have been paid to him from the DCRG. He had also prayed for a direction to the Respondents to pay him the amount already deducted from the DCRG pursuant to Annexure A15, A16, A18 and A19 orders with interest thereto.

2 The facts of the case is that the Applicant was appointed as Junior Engineer on 8.7.64 in the scale of pay of Rs. 180-400. This scale was subsequently revised to Rs. 425-700 with effect from 1.1.73. The Applicant was drawing the pay of Rs. 700 (maximum) in that scale w.e.f 1.7.84. On 1.1.86 as per the Central Civil Services (Revised Pay) Rules, 1986 his pay was fixed at Rs. 2100/- in the revised scale of Rs. 1400-2300 as per the option exercised by him. He was given the next increment with effect from 1.7.86. It was subsequently corrected vide order dated 31.12.86 and the next date of increment was shown as 1.1.87 at Rs. 2150/-. The excess payment made to the Applicant was ordered to be recovered. Subsequently the Applicant was appointed as Junior Engineer Grade I (Civil) in the scale of pay of Rs. 1640-2900 w.e.f. 1.1.86 and fixed his pay at Rs. 2180/-. Thereafter, by Annexure A6 order the Applicant's pay was re-fixed at Rs. 2180/- w.e.f. 1.1.86 and Rs. 2240/- w.e.f. 1.1.87 in the scale of pay of Rs. 1640-2900. However, vide Annexure A7 order dated 2.1.87, the Respondents issued directions to re-fix the pay of the Junior Engineers Grade I under Rule 22(a)(i) instead of Rule 22(c) of FR already fixed and ordered the recovery of the excess payment made. Again the



Respondents reversed its stand and issued directions that the fixation was to be done under FR 22(c) and cancelled the order for recovery of excess payment. The Applicant has also submitted that vide order dated 20.4.2000 in OA 2400/96 (Annexure.A10) the Principal Bench of this Tribunal has held that the similarly placed Applicants are entitled to get the next date of increment which would have been available to them in the lower scale without putting 12 months in the revised scale before grant of the next increment. The Tribunal has, therefore, directed the respondents to grant increment to the applicants from the dates due to them in the old scale after 1.1.86 and pay arrears restricted to one year prior to the date of filing of the O.A. The aforesaid order of this Tribunal was accepted by the Respondents and vide Annexure.A11 order and again re-fixed the pay of the Applicant at Rs. 2180/- w.e.f. 1.1.86 and Rs. 2240/- w.e.f. 1.7.86 in supersession of the earlier order dated 3.7.87. Again vide Annexure.A12 Office Order dated 19.1.2001 the Respondents re-fixed the pay of the Applicant at Rs. 2480/- in the scale of pay of Rs. 1640-2900 w.e.f. 31.7.91 and Rs. 2600/- in the scale of Rs. 2000-35000 from the same date with subsequent increments on 31.7.91, 1.7.92, 1.7.93, 1.7.94 and 1.7.95 at Rs. 2600/-, 2675/-, 2750/-, 2825/- and Rs. 2900/- respectively. W.e.f. 1.1.96 his pay was refixed in the scale of Rs. 6500-10500 at various stages. Finally, he superannuated on 31.1.2003. However, when the pension papers were forwarded to the 2nd respondent, ie., the Senior Accounts Officer he raised the objection regarding pay fixation and the date of increment w.e.f. 1.1.87 and ordered for recovery of the excess payment made. Accordingly vide Annexure.A.17 order dated 7.1.03 the excess payment made from 1.1.86 to 31.12.95 was prepared and communicated to the Applicant. Vide the impugned order dated 13.1.2003 the Respondents decided to deduct Rs. 13,301/- as

excess paid from the DCRG of the Applicant and did so later vide the impugned Annexure.A18 order dated 13.1.03. But the 2nd Respondent again vide the impugned Annexure.A19 letter dated 6.3.2003 asked the 4th Respondent to recover the excess payment made for the period from 1.1.96 to 8.8.99 also in addition to Rs. 13,301/- already recovered.

3 It is in the aforesaid background of the case that the Applicant approached this Tribunal with the present OA for the following reliefs:

- (a) Call for the records leading to Annexure.A15 and Annexure.A.16 and set aside the same declaring them illegal and arbitrary
- (b) Declare that the order in Annexure.A18 and Annexure.A19 to the extent it directs to make deductions from the DCRG payable to the applicant is illegal and unauthorized.
- © Direct Respondents to pay the applicant amount deducted from the DCRG payable to him pursuant to Annexure.A15,A16,A18 and A19 with interests thereto.
- (d) Issue any other orders, declaration or direction appropriate in the circumstances of the case.

4 According to the Respondents the Applicant was paid pay and allowances in excess from 1.1.86 to 31.12.95. The change in date of increment from 1.7.1986 to 1.1.1987 was effected as per proviso 1 to Rule 8 of CCS Revised Pay Rules, 1986. As per the Rule 8 ibid pay as on 1.1.1986 was fixed at Rs. 2100/- (Rs.2050+Rs.50) in the revised scale of Rs. 1400-40-1800-EB-50-2300 after allowing an additional increment of Rs. 50/- (for stagnating a year or more under proviso 1 to Rule 8). Hence his increment was given on 1.1.1987 after completion of qualifying service of 12 months. The Applicant was granted the benefit of FR 22(1)(a)(1) with effect from 1.1.1986 and his pay was fixed at Rs. 2,180/- instead of Rs. 2,120/- under FR 22(1)(a)(2). The higher grade of scale of Rs. 1640-2900 will not be treated as a promotional one but will be non-



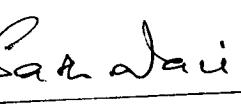
functional and the benefit of FR 22 C now FR 22(1)(a)(1) will not be admissible to the applicant as there would be no change in the duties and responsibilities. The applicant has got the benefit of fixation under FR 22(1)(a)(1) till the date of his retirement. The excess pay paid from 1.1.95 to 8.8.99 worked out to Rs. 9884/- and recovery was effected in addition to the amount of Rs. 13,301/- excess paid for the period from 1.1.86 to 31.12.95. The aforesaid over payment was detected on scrutiny of his service book by the Accounts Officer at the time of his retirement.

5 In view of the facts of the case mentioned above and also in view of the settled position of law that the excess payment drawn by an employee not because of any of his fault cannot be recovered after lapse of several years, we set aside the impugned orders recovering excess payments of Rs. 13,301/- + Rs. 9884/- = Rs. 23,185/- from the DCRG of the Applicant. We also direct that the amount so recovered shall be refunded to him within two months from the date of receipt of this order with 8 (eight) percent interest till the date of payment. No order as to costs.

Dated this the 17th day of November, 2005


GEORGE PARACKEN
JUDICIAL MEMBER

S.


SATHI NAIR
VICE CHAIRMAN