

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 353  
XXXXXX

1990

DATE OF DECISION 30-8-1991

M. Sreekumaran Kutty

Applicant (s)

Mr. M.R. Rajendran Nair

Advocate for the Applicant (s)

Versus

Union of India rep. by the

Secretary to Govt. Ministry of

Surface Transports, New Delhi and others (2)

Mr. N.N. Suganapalan, SCGSC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. Dharmadan, Member (Judicial)

THE HON'BLE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

The applicant is aggrieved by the impugned orders at Annexures-VI, VII, VIII and XIV, passed by the second respondent, pertaining to the re-fixation of his pay to his disadvantage and consequent recovery of a sum of Rs.16,360/- alleged to have been over paid mistakenly to the applicant.

2. The applicant while working as permanent stenographer in the Deptt. of Light Houses and Light ships, was granted Selection Grade in the scale of Rs-210-380 with effect from 1-10-73 under FR 22-C. Subsequently ~~XXX~~ in implementation of the Fourth Pay Commission's report order dated 3-1-74 (Annexure-III) was passed fixing the applicant's pay at

Rs.500/- p.m. in the revised scale of Rs.425-700. As per Annexure-IV, the applicant was promoted to officiate as PA to D.G. in the revised scale of Rs.425-700 with effect from the 24th January 1975. Pursuant to this, an office order at Annexure-V was issued on 31st January 1975 again fixing his pay at the stage of Rs.545/- in the scale of Rs.425-700 with effect from 24-1-75 under FR 22-C. After about 11 years, the impugned orders at Annexures VI, VII and VIII were issued, re-fixing the pay of the applicant at the stage of Rs.470/- plus personal pay of Rs.6/- in the scale of Rs.425-700 with effect from 1-10-73 under FR 22-a(ii) stating that the date of the first increment is 1st May 1974 (date of increment of Stenographer Ordinary Grade) and his personal pay had been granted from 1-5-74 in the light of Director General P & T instructions No.2 below FR 30. This re-fixation of pay was effected as per Annexures VI, VII, and VIII on the ground that there is a mistake in the original fixation of pay of the applicant. Aggrieved by the decision of the 2nd respondent xxxx the applicant submitted Annexure-IX representation dated 21-1-86. He filed further representations also. Ultimately, Annexure XIV letter dated 16-5-89 was

received by the applicant from the Director General intimating that the revised fixation is in accordance with law and the request of the applicant had been considered by the Ministry of Surface Transport in consultation with the Ministry of Finance (Dept. of Expenditure). All the representations were <sup>thus</sup> rejected.

3. The applicant has challenged the impugned order on various grounds including that they are violative of principles of natural justice. No notice or prior intimation was given to the applicant before revising or refixing his pay which according to the applicant was correctly fixed in 1973. If the 2nd respondent decided to revise the fixation, he is bound to give a personal hearing or prior notice to the applicant. Since this procedural formality having not complied with the impugned orders are unsustainable.

4. The learned counsel for the respondents brought to my notice from the statement in the reply filed on behalf of the respondents 1 and 3 that the original fixation of pay of the applicant was made under FR 22-C, but this was required <sup>to</sup> a mistake and it is to be correctly fixed under FR 22-C(a)(ii)

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Accordingly the impugned orders were issued correcting the mistake. The applicant's representation against the revised fixation of the pay of the applicant was considered and rejected as per Annexures R(3) and R(4) on 3rd March 1986 and 19th December 1986, respectively. Hence, there is no violation of principles of natural justice. According to the learned counsel for the respondent, the application itself is highly belated and it is to be rejected on that ground.

5. Having heard the matter and on going through the documents, I am of the view that the learned counsel for the respondents, is unable to satisfy me that the impugned orders, which were issued after a lapse of 11 years, satisfy the elementary requirements of the principles of natural justice of giving prior notice to the applicant. Admittedly no notice of opportunity of being heard was given to the applicant before the passing of the impugned orders. It is true that the applicant objected Annexures VI, VII and VIII by filing representations and the respondents have disposed of the same. But the disposal of the representations, filed after passing an illegal order which is vitiated on account of gross violation of principles of natural justice, would not cure the basic defect of failure to issue a prior notice and satisfy the requirements of natural justice by affording a reasonable opportunity of being heard before passing order in <sup>the</sup> implementation of the decision of the respondents as regards the re-fixation of the pay of the applicant. Rightly or wrongly the applicant's pay

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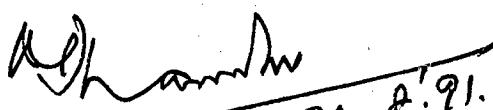
had been ~~xxxx~~ fixed by the competent authority as per orders at Annexures II and V in 1973 and 1975. The fixation was not even objected to by the usual aduits for about 11 years. According to the applicant the post of PA to DG, which is attached only with Head of the Deptt. carried with duties and responsibilities of greater importance than a Stenographer of Selection grade and that the fixation done under FR 22-C is correct and no mistake has crept in the decision. Under these circumstances, if after 11 years a unilateral decision in this behalf was taken by the 2nd respondent and it is being implimented to refix the purporting to pay and allowance of the applicant with retrospective effect it can only be done after serving prior notice to the applicant. Such a notice is absent in this case and hence, orders are violative of principles of natural justice.

6. In this view of the matter, I am not going into the merits of the case and the contentions raised by the parties, I find the orders are unsustainable as they are repugnant to and inconsistant with the principles of natural justice. Accordingly I quash the orders and remit the matter to the second respondent for proper disposal of the case of

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of the applicant in accordance with law after giving him an opportunity of being heard.

7. The application is accordingly disposed of as above. There will be no order as to costs.

  
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(N. Dharmadan)  
Member (Judicial)

30-8-1991

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