

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

**Original Application No.55/2006
This the 09th day of May 2008**

HON'BLE MR. M. KANTHAIAH, MEMBER (J)

Sri Ashok Kumar Sidhu, aged about 53 years S/O Late Sri Jagat Ram Sidhu C/O Pratap Singh Rawat, House No.191 Type-II, Akansha Paisar, Jankipuram, Lucknow.

...Applicant.

By Advocate: Shri A. Moin.

Versus.

1. Union of India through Secretary, Ministry of Human Resource Development (Department of Youth Affairs and Sports) New Delhi.
2. Finance Officer, Pay & Accounts Office (Sports) Shastri Bhawan, New Delhi.
3. Assistant Programme Advisor, Department of Youth Affairs and Sports, Kendriya Bhawan Aliganj Lucknow.
4. Drawing & Disbursing Officer, Department of Youth Affairs and Sports, Kendriya Bhawan, Aliganj, Lucknow.

.... Respondents.

By Advocate: Shri K.K. Shukla for Dr. Neelam Shukla.

ORDER

BY HON'BLE MR. M. KANTHAIAH, MEMBER (J)

The applicant has filed OA under Section 19 of Administrative Tribunal Act, 1985 with a prayer to quash the impugned order

Annexure-1 dated 24.01.2006 and Annexure-4 dated 19.01.2006 passed by Respondent No.3 and also order dated 09.03.2005 (Annexure-A-3) and to re-fix the pay of the applicant on the post of Youth Assistant in the Grade-I in the pay scale of Rs.1600-2660 w.e.f. 24.4.1984 with all consequential benefits including arrears of pay and also for refund of the recovered amount of the allowed amount with interest at the rate of 18% per annum.

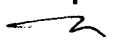
2. The respondents have filed Counter Affidavit denying the claim of the applicant and stated that the orders passed by the respondents are in consonance with the statutory rules and thus opposed.

3. The applicant has filed Rejoinder Affidavit reiterating his pleas in the OA and denied the stand taken by the respondents in their Counter Affidavit.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The admitted facts of the case are that in the year 1987, the applicant was promoted as Youth Assistant Grade-I in the pay scale of Rs. 1600-2660 and his name finds place at Serial No. 2 and Annexure-2 is the copy of said order Dt. 18.03.1987. In pursuance of the order, the applicant was granted arrears of pay in the scale of Rs.1600-2660 w.e.f. 24.04.1984 along with allowances. Subsequently, the applicant was further promoted in June, 1992 as Youth Officer in the pay scale of Rs. 6500-10500 (Revised Pay Scale) and since then he has been working on the said post.

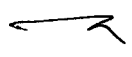


7. But suddenly by means of the impugned order Dt. 21.04.2006 (Annexure-A-1), the applicant was informed stating that the Ministry has taken decision on 25.09.2005 for re-fixation of the pay of the applicant and accordingly his pay was re-fixed w.e.f. 24.04.1984 and consequently ordered recovery for Rs.1,10,582/- from him w.e.f. October, 2005 in the pay at Rs. 9250/- per month in eleven installments and one more installment of Rs. 9270/- for total amount of Rs. 1,10,582/-. Annexure-A-1 is the copy of the said order. Earlier to this, Respondent No.1, issued order dated 09.03.2005 (Annexure-3) marking copy to Respondent No.3, stating that the pay fixation of the applicant has been done w.e.f. 24.04.1984 instead of the date of actual promotion i.e. 05.03.1987 and basing on the said orders Respondent No.3 passed the impugned order Dt. 24.01.2006 (Annexure-A-1 and 19.01.2006 Annexure-A-4) by which, the pay of the applicant was re-fixed both in Grade-1 and Grade-II in the post of Youth Assistant and Youth Officer respectively. Aggrieved by the said impugned order covered under Annexure-A-1, Annexure-A-3 and Annexure-A-4, the applicant has filed this application that no recovery can be made for excess payment made on account of wrong fixation of pay etc. without the fault or misrepresentation of the employee and further questioned the recovery which is sought to be made with retrospective effect from the salary of the applicant w.e.f. October, 2005.

7. It is also not in dispute that the applicant was on long leave since February, 2004 and joined on 21.09.2005 and due to which he

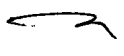
was not paid any salary at that time. In view of the orders of the learned Civil Judge (Junior Division), Chandigarh Dt. 12.12.2003, a recovery of Rs.30,000/- along with interest @ 9% was recovered in installments from the salary of the applicant and remitted to the court and the same has also been indicated in the impugned order Dt. 24.01.2006 (Annexure-A-1)

8. It is the case of the applicant that by means of order Dt. 18.03.1987 (Annexure-A-2), he was promoted to the post of Youth Assistant Grade-I w.e.f. 24.04.1984 in the pay scale of Rs. 1600-2660 and in pursuance of such order, he was also granted arrears of pay and allowances w.e.f. 24.04.1984. But subsequently, by means of impugned order Dt. 24.01.2006 (Annexure-A-1) and Annexure-4, the respondent authorities ordered for recovery of Rs. 1,10,582/- on the ground that the pay fixation has been done wrongly w.e.f. 24.04.1984 instead of the actual date of promotion i.e. 05.03.1987. It is also the case of the applicant that there was no misrepresentation or fraud played by him in fixation of his pay w.e.f. 24.04.1984, while granting of arrears of pay and further no recovery can be made from him for any excess payment arising on account of wrong fixation of pay as claimed by the respondents covered under Annexure-A-1 and Annexure-4. The applicant also further contend that if once, he was given retrospective promotion, he consequently entitled for all the benefits arising from retrospective promotion and in such circumstances the respondents are not justified in claiming recovery of amount on the ground of excess payment made to him.



9. The respondents mainly contends that the applicant was promoted vide order Dt. 18.03.1987 along with three others w.e.f. 24.04.1984 and allowed the arrears of pay and allowances on account of retrospective promotion, which is basically a procedural lapse, which the department subsequently noticed stating that retrospective promotion is not permissible in the General Guidelines and thus the same was rectified with prospective date and thus ordered for recovery of the amount of arrears of pay and allowances paid to the applicant inadvertently, in 12 installments on account of retrospective promotion, which was later rectified as prospectively. He also further stated that the government has every right to rectify an action not consistent with prescribed rules and guidelines. Thus, they contents that the department is justified in recovering the pay and allowances paid to the applicant from 24.4.1984 to 5.3.1987 for which period he did not render any service to his promotion post of Youth Assistant Grade-I and thus relied on Rule 17 (2) F.R. Rules.

10. Admittedly, the respondents have issued orders covered under Annexure-2 Dt. 18.3.1987 under which the applicant along with three others were promoted as temporary basis as Youth Assistant, Grade-I in the pay scale of Rs. 1600-2600. The said promotion order also indicates the date of promotion of such employees and also entitled to arrears of pay and allowances on their promotion. In respect of the applicant, he was promoted w.e.f. 24.4.1984. In pursuance of such orders, the respondents have promoted the applicant w.e.f. 24.4.1984 and also paid arrears of pay and allowances from such date. Thus



there was neither any misrepresentation nor fraud on the part of the applicant either in fixation of date of promotion or in making payment of arrears of pay and allowances w.e.f. 24.4.1984.

11. But by way of impugned order Annexure-1 Dt. 24.1.2006, the applicant was informed in respect of re-fixation of his pay w.e.f. 24.4.1984 and consequently ordered for recovery of Rs. 1,10,582/- w.e.f. 04-2005 by way of monthly installments of Rs. 9215/- per month in 11 installments and one more installment of Rs. 9217/-. In the said orders, the authorities informed the decision taken by the Ministry on 20.09.2005 under Annexure-3 in respect of re-fixation of the pay of the applicant, which was not communicated to the applicant at any time. From this, it is clear that the respondent have not given any opportunity to the applicant and no show cause notice was issued before refixing the pay of the applicant and also ordering for recovery of the amount of Rs. 1,10,582/- w.e.f. October 2005 by way of monthly installments under Annexure-1.

12. If there is any wrong or erroneous fixation of pay of an employee, the department is at liberty to correct the same and before taking any decision, it is the duty of the authorities to provide an opportunity to the concerned employee. Admittedly, refixing the pay of the employee reducing from earlier fixation and also ordering recovery of it on the ground of erroneous fixation is nothing but involving civil consequences and effecting the right of employee and in such circumstances taking unilateral decision without affording any opportunity of defence to the employee is improper and against the

principles of natural justice. Thus the applicant is justified in questioning the impugned order covered under Annexure-1 and Annexure-4.

In the result, OA is allowed quashing the impugned order covered under Annexure-1 and Annexure-4 passed by Respondent No.3 and also ordering refund of recovered amounts of the applicant with interest admissible at the rate of GPF deposits till the date of payment with a liberty to the respondents to take any action for rectification of date of promotion of applicant and also recovery of excess payment if any made to him as per Rules, after giving an opportunity and notice to the applicant. No costs.


(M. Kanthaiah)
Member (J)

09-05-08

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