

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA No. 168 of 2006**

Date of order: 6th September, 2007

C O R A M

Hon'ble Mr. Justice P.K.Sinha, Vice-Chairman
Hon'ble Mr. Amit Kushari, Member[Admn.]

Tripurari Kumar Sinha **Applicant.**

VIS.

Union of India & Ors. **Respondents.**

Counsel for the applicant : Shri S.K.Bariar

Counsel for the respondents : Shri S.C.Jha, ASC

O R D E R

Amit Kushari, Member[A] :-

The applicant was a Demonstration Officer in the office of Food and Nutrition Board in the Department of Women and Child Development in the revised grade of Rs. 5500-9000. When he completed 12 years of service in this grade on 9.8.1999, he got his first ACP promotion in the grade of Rs.8000-13500 which was the grade of Assistant Technical Adviser. There was no grade in between the grades of Rs. 5500-9000 and Rs.8000-13500 in the department. In the year 2002, the applicant got his second ACP promotion to the next higher grade of Rs.10,000-15,200 in the grade of

Deputy Technical Adviser. There was no other grade in between Rs. 8000-13500 and Rs. 10,000-15,200. The recommendations of the 5th Central Pay Commission were announced in the year 1997 but the department of Women and Child Development [Food Nutrition Board] did not implement the recommendations of the 5th Pay Commission fully till February, 2006. As per the recommendations of the 5th Pay Commission, an additional grade of Rs.6500-10500 was created in between the two grades of Rs.5500-9000 and Rs. 8000-13500 and this grade was called Demonstration Officer Gr. I. It was mentioned that 50 per cent of the cadre of Demonstration Officer should be in the higher grade and 50 per cent should be in the lower grade of Rs.5500-9000. While accepting the recommendations of 5th Pay Commission in the year 2006, the department gave it retrospective effect from 1.1.1996 and an intermediary scale of Rs. 6500-10500 was also created from that date. It was the contention of the respondents that in the year 1999 ~~the~~ this intermediary grade was notionally available and the applicant should have got his first ACP promotion in the grade of Rs. 6500-10500 instead of 8000-13500. The respondents also contend that the second ACP promotion given in the year 2002 should have been in the grade of Rs.8000-13500. The respondents, accordingly, calculated all the over-drawals made by the applicants from the year 1999

to 2006 and, thereafter ordered that all the necessary reversions should be made with back date and all the recoveries should be made which have arisen due to re-fixation. The respondents ordered the recovery without giving any opportunity to the applicant to defend his case which was against the principle of natural justice [Annexure-A/2].

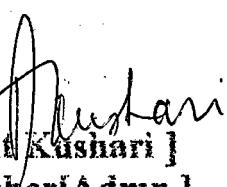
2. Shri S.K.Bariar, Id. counsel for the applicant pointed out that recovery which has been ordered is totally illegal because it is settled law that no recovery can be made from an employee , if the employee has not made any mis-representation or fraud and was in no way responsible for the over-drawals made. He brings to our notice the Apex Court Judgment in the case of Sahib Ram vs. State of Haryana and the judgment of Punjab and Haryana High Court in the case of Anoop Singh vs. State of Haryana, 2003 [1] ATJ HC 440. He also brought to our notice the recent Apex Court judgment in the case of Purushottam Lal Das vs. State of Bihar, 2007 [2] SLJ SC 68. In a similar situation when the overpayment has been objected to by the Audit. Apex Court has ruled that when there is no fault, misrepresentation or fraud played by applicants in their wrong promotion, recovery of overpayment shall not be made. The Id. counsel for the applicant also points out that the applicant was never given any

opportunity to represent his case and in a similar case, the Apex Court had held in the case of Shekhar Ghose vs. Union of India, 2007 [1] SCC [L&S] 247, that any order issued without accord of reasonable opportunity to show cause would be violative of Rule of law. The ld. counsel for the applicant also pointed out that the recommendation of 5th Pay Commission cannot be given effect from retrospective date for snatching away the benefits already granted to an employee. Retrospective effect can be given only for granting the dues/benefits to the employees. The ld. counsel for the applicant also brought to our notice a recent judgment of the Principal Bench of Central Administrative Tribunal in O.A. No. 477 of 2006 [Ashok Kr. Baru vs. U.O.I. and SLJ vs. U.O.I.] in which the Principal Bench of Central Administrative Tribunal has dealt with very similar cases of Demonstration Officers working in the Women and Child Development Department. The Principal Bench had opined in this case that "grant of pay scales to the applicants is not a mistake committed by the respondents and rather is a conscious decision in accordance with Rules. The acceptance of recommendations of 5th Central Pay Commission had not brought any change in this position, which could have been by way of amending the recruitment rules. Having not done

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so, the justification and the impugned orders issued by the respondents to correct their mistake is unfounded and misconceived." The Principal Bench of Central Administrative Tribunal has also opined that at this point of time unsettling the settled position to the detriment of applicants in their service conditions, that too without accord of prior reasonable opportunity to show cause, is not apt in law. The applicants are entitled to the pay scale of Rs. 8000-13500 w.e.f. 9.8.1999 with all consequential benefits of arrears and no recovery shall be effected from them on this account.

3. In view of these circumstances and various judicial pronouncements including that of the Principal Bench of Central Administrative Tribunal, we are of the view that the applicant should not be reverted to lower pay scale w.e.f. a back date and no consequential recovery should be made from him. The O.A. is, therefore, allowed. No costs.



[Amit Kushari]
Member[Admin.]

mps.



[P.K. Sinha]
Vice-Chairman