

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.732/99

Dated this the 23rd day of April 2003.

CORAM : Hon'ble Shri A.S.Sanghvi, Member (J)
Hon'ble Shri Shankar Prasad, Member (A)

Jangam Anant Amrutaling,
C-202 Om Anand, Tilak Nagar,
Near Tilak Nagar School,
Dombivli (East), Thane.

...Applicant

By Advocate Shri Suresh Kumar

vs.

1. Union of India
through Secretary,
Ministry of Health
& Family Welfare,
Nirman Bhavan,
New Delhi.
2. Director General,
Directorate General of
Health Services,
Nirman Bhavan,
New Delhi.
3. Director,
All India Institute of
Physical Medicine and
Rehabilitation,
Haji Ali Park,
Haji Ali, Mumbai.

...Respondents

None for the Respondents

O R D E R

{Per : Shri A.S.Sanghvi, Member (J)}

The applicant who is working as a Laboratory Technician is aggrieved by the re-fixation of his pay and the recovery ordered by the respondents. According to him, his pay was rightly fixed in the pay scale of Rs.1400-2300 in view of the recommendations of the IVth Pay Commission and that there was no reason for the respondents to re-fix his pay in the scale of Rs.1320-2040 and also order the recovery of the excess payment made to him.

2. The case of the applicant is that he was appointed as Laboratory Technician under the Respondent No.3 vide order dated 28.9.1984 in the scale of Rs.380-560. Consequent on the recommendations of the IVth Pay Commission he was placed in the scale of Rs.1400-2300 w.e.f. 1.1.1986. He had continued to draw the salary in the scale of Rs.1400-2300 till the re-fixation of his pay by the respondents vide orders dated 7.4.1997 and 6.5.1997. It was found while giving effect to the Vth Pay Commission recommendations that the scale of the applicant was wrongly fixed in the scale of Rs.1400-2300 and the Deputy Director (Admn.) vide letter dated 7.4.1997 directed the Respondent No.3 to correct the mistake and place the applicant in the scale of Rs.1320-2040 w.e.f. 1.1.1986. Pursuant to the directions given by the Health Ministry, the Respondent No.3 vide his order dated 6.5.1997 directed re-fixation of pay of the applicant in the pay scale of

Rs.1320-2040 being the replacement scale as per the recommendations of the IVth Pay Commission w.e.f. 4.1.1986 and also directed the recovery of the excess payment made to the applicant. These orders were challenged by the applicant in OA.No.267/98 before this Tribunal and vide order dated 11.6.1999 this Tribunal quashed and set aside the orders dated 7.4.1997, 6.5.1997 and 25.3.1998 on the ground that no show cause notice was given to the applicant prior to re-fixation of his pay. Liberty was however given to the administration to issue show cause notice to the applicant about the intended re-fixation of his pay w.e.f.1.1.1986 and intended action for recovery of the amount and calling upon the applicant's explanation and representation and to pass necessary orders as deem fit after the receipt of the representation. The respondents therefore issued show cause notice to the applicant on 23.6.1999 calling upon the applicant to show cause why his pay should not be re-fixed in the scale of Rs.1320-2040 w.e.f. 1.1.1986 and recovery of the excess payment/arrears should not be made from him. The applicant submitted his representation against the show cause notice and after due consideration of the representation of the applicant, the respondents have again passed the order re-fixing the pay of the applicant in the scale of Rs.1320-2040 and directed the recovery of the excess payment made in suitable instalments. Aggrieved by this order, the applicant has moved this OA.

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3. The main contention of the applicant is that he was not wrongly placed in the pay scale of Rs.1400-2300 but was given the scale in accordance with the recommendations of the IVth Pay Commission. According to him, the Laboratory staff who were recruited as Graduate in Science were recommended the pay scale of Rs.1400-2300 and as such he was correctly placed in the said pay scale. No question of refixing of his pay scale arises as his pay was rightly fixed in the pay scale of Rs.1400-2300. He has also taken exception of refixing his pay after a period of 11 years and has contended no recovery can be effected from his salary.

4. The respondents in the reply, however, have strongly come out with a case that the fixation of the pay of the applicant in the scale of Rs.1400-2300 was ^{an} administrative error and this does not give any right to the applicant to claim the same scale. According to them, the replacement scale of Rs.380-560 recommended by the IVth Pay Commission was Rs.1320-2040 and not Rs.1400-2300. It was by sheer inadvertance that the applicant was placed in the pay scale of Rs.1400-2300. They have also contended that the IVth Pay Commission specifically stated on page 203, para 7 of the recommendations that the pay scale of Rs.1400-2300 is meant for the post of Laboratory Assistant in Directorate of Marketing and Inspection and does not apply to Medical Laboratory Technology Technician under Ministry of Health and Family Welfare. The applicant was therefore not entitled to be placed in the scale of Rs.1400-2300 and it was open to the

administration to rectify the mistake when the same was discovered. The Vth Pay Commission had upgraded this post and given the pay scale of Rs.4500-7000. The applicant has already been placed in that upgraded scale of Rs.4500-7000 but he was not entitled to the scale of Rs.1400-2300. According to the respondents, since it was a mistake committed by the administration, it was always open for the administration to rectify mistake committed and recover the excess amount paid. They have maintained that the order of the re-fixation and recovery passed by them are just, valid and legal and have prayed that the OA. be dismissed with cost.

5. We have heard the learned counsel of both the parties and duly considered the rival contentions.

6. It is undisputed position that the applicant was appointed as a Laboratory Technician in the scale of Rs.380-560 w.e.f. 28.9.1984. The contention of the applicant is that the IVth Pay Commission had recommended the revision of the pay scale for the post of Laboratory Technician and the pay scale of Rs.1400-2300 was given to the Laboratory Technician. According to him, the respondents had rightly placed him in the pay scale of Rs.1400-2300 and as such there was no justification to re-fix his pay in the scale of Rs.1320-2040. He has placed reliance on a letter dated 3.12.1986 written by one Ravi Datt from Ministry of Health and Family Welfare to Dr.Indira Kapoor, Officer Incharge, F.W.I.R.C., Mumbai. In this letter, it was pointed out

to Dr.Kapoor that the pay scale adopted by her was not correct. The categories of the posts concerning various Ministries/ Departments of the Govt. of India which have not been shown in the relevant portion of the report have been dealt with in Chapter 8 of the Pay Commission's report. The letter further goes on to say that you are therefore advised to consult Chapter 8 of the IVth Pay Commission Report while determining the fixation of pay of various categories of the posts in your institution. It further state that the correct pay scales of these posts given in chapter 8 of the Pay Commission Report are as under. One of the post mentioned in the letter was that of Laboratory Technician having existing pay scale of Rs.380-560 and the revised pay scale mentioned was Rs.1400-2300. It appears that relying on this letter from an officer from the Ministry of Health and Family Welfare, the Respondent No.3 had placed the applicant in the pay scale of Rs.1400-2300. However, when we look to the Chapter 8 to the IVth Pay Commission Report, it becomes quite evident that some mistake was committed by the office of the Ministry of Health and Family Welfare. The corresponding replacement scale of the scale of Rs.380-560 recommended by the IVth Pay Commission was Rs.1320-2040 and not Rs.1400-2300. It is not the case of the applicant also that the post of Laboratory Technician was recommended to be upgraded by the IVth Pay Commission and consequent to such recommendation the Government has upgraded this post. When the post was not upgraded, it is difficult to accept the averment of the applicant that the IVth Pay Commission had recommended the replacement of

Rs.1400-2300 for the post carrying scale of Rs.380-560. Chapter 8 of the IVth Pay Commission Report nowhere recommends upgradation of the post of Laboratory Technician in the Ministry of Health and Family Welfare. On the contrary, it has made clear distinction at page 203 of the Report where it has suggested the scale of Rs.1400-2300 for the Laboratory Technician in the Directorate of Marketing and Inspection. It is clearly stated therein that this scale will be meant for the post of Laboratory Assistant in Directorate of Marketing and Inspection and does not apply to Laboratory Technician in the Ministry of Health and Family Welfare. Under the circumstances, the submission made by the applicant that the IVth Pay Commission had recommended the replacement scale of Rs.1400-2300 is not well founded. It appears that it was by inadvertance or on a pure mistake, the applicant was placed in the scale of Rs.1400-2300 and he had continued to draw the pay in this scale which was wrongly given to him. The mistake appears to have been discovered while fixing the pay of the applicant in the revised pay scale recommended by the Vth Pay Commission. Since this was a pure case of administrative error, it was always open to the administration to rectify that error after giving opportunity to the applicant to show cause. The applicant has been afforded that opportunity after the direction given by this Tribunal and after considering his representation in this regard, the respondents have passed the order re-fixing his pay in the scale of Rs.1320-2040. We do not see any error committed by the respondents in doing so. The averment of the applicant that the Laboratory staff who were recruited as direct recruits with qualification Graduate in

Science were recommended the scale of Rs.1400-2300 is not supported by any of the recommendations of the IVth Pay Commission. The IVth Pay Commission has not recommended the pay scale of Rs.1400-2300 for the Laboratory Technicians working in the Ministry of Health and Family Welfare, and possessing qualification of Graduate in Science. Under the circumstances, we do not find any justification in the say of the applicant that he ought to have been placed in the pay scale of Rs.1400-2300 and was rightly placed in that scale and that the orders passed by the respondents refixing his pay scale and the scale of Rs.1320-2040 are illegal, unjust and invalid and requires to be quashed and set aside. We, therefore, do not see any reason to interfere with the orders passed by the respondents refixing the scale of the applicant.

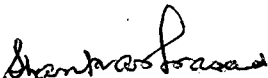
7. However, so far the question of recovery of the excess payment made to the applicant is concerned, it can not be said that the recovery of the excess payment made to him is justified. It is quite obvious from the letter dated 3.12.1986 (Ex.A-11) of Ravi Datt from the Ministry of Health and Family Welfare that Ministry itself had misinterpreted the recommendations of the IVth Pay Commission and if anybody was to be blamed for giving wrong pay scale to the applicant, it was the Ministry of Health and Family Welfare and not the applicant. Since the pay scale was given to the applicant due to the erroneous interpretation of the recommendations of the IVth Pay Commission by the Ministry of Health and Family Welfare, he cannot be blamed for the same.

In the case of Shyam Babu Verma & Ors. vs. Union of India & Ors. reported in 1994 SCC (L&S) 683, higher pay scale was erroneously given to the applicant since 1973 and the error was rectified in the year 1984. The Supreme Court while considering the question of recovery of the excess amount paid to the petitioner on account of replacement in the erroneous pay scale laid down that no recovery can be allowed to be made. It is observed by the Supreme Court in Para 11 of the judgement as under :-

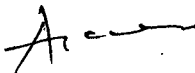
"11. Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the 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."

8. These observations of the Supreme Court apply with full force to the instant case also. Following these directions of Supreme Court, in the instant case also we direct the respondents not to recover any excess amount paid to the applicant and if any amount has already been recovered in consequence of the orders passed after re-fixation of his pay scale in the scale of Rs.1320-2040, the same shall be refunded to the applicant and

this exercise be carried out within three months from the date of receipt of a copy of this order. If the same is not refunded in time, the same shall be payable with interest at the rate of 9% p.a. from the date of expiry of the date till the refund is made. The rest of the prayers of the applicant are rejected. OA. stands disposed of. No order as to costs.


(SHANKAR PRASAD)

MEMBER (A)


(A.S. SANGHVI)

MEMBER (J)

mrj.