

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Dated this the 20th day of February, 2002

Coram: Hon'ble Mr. Justice Ashok Agarwal - Chairman  
Hon'ble Mrs. Shanta Shastri - Member (A)

O.A. 630 OF 2001

Kanhayalal Gehani,  
S/o Shri Takhatram Gehani,  
aged 53 years,  
Assistant Engineer (Electrical),  
CPWD, Mumbai.  
R/o B-5, Meghana Building,  
D.D. Road, Behind Municipal General  
Hospital, Mulund (West), Mumbai.  
(By Advocate Shri S.P. Kulkarni)

- Applicant

Versus

1. Union of India  
through the Executive Engineer  
(Electrical), CPWD,  
Government of India,  
Mumbai Central, Electrical Division - I,  
1st Floor, Botawala Chambers, Sir P.M. Road,  
Fort, Post Mumbai 400 001.
2. The Superintending Engineer (Electricals),  
CPWD, MCEC,  
2nd Floor, New C.G.O. Building,  
M.K. Road, Churchgate,  
Mumbai.  
(By Advocate Shri V.S. Masurkar)

- Respondents

ORAL ORDER

By Hon'ble Mrs. Shanta Shastri, Member (A) -

The applicant entered the service in CPWD as Junior Engineer in 1972, was promoted in 1991. The respondents had issued an O.M. dated 27.3.1991 providing for grant of two higher grade pay scales to the Junior Engineers i.e. Rs.1640-2300/- on completion of five years of service on the post of Junior Engineer as on 1.1.1996 or later, and Rs.2000-3500/- on completion of 15 years of service as Junior Engineer as on 1.1.1999 or later. The grant of pay scale Rs.1640-2300/- is

non-functional. The pay fixation being governed by FR-22-I (a) (2). The grant of pay scales of Rs. 2000-3500/- is on personal promotional basis and the pay fixation is governed by FR 22-I (a) (2). The applicant was accordingly placed in the higher pay scale in 1640-2900/- w.e.f. 1.1.1986 and in the next higher pay scale w.e.f. 1.1.1991. After the applicant's pay had been fixed, the respondents detected in the year 2000 that the applicant's pay had been fixed wrongly by giving him a notional increment of Rs.75/- instead of Rs.60/-. The respondents therefore issued a memo on 19.4.2000 and thereafter passed the final office order on 20.11.2000 refixing the pay of the applicant. The applicant was also required to refund the excess payments made to him from 1991 onwards in the pay fixation. The applicant represented against the same requesting for waiving of the recovery of the overpayment made to him. The request was rejected on 13.11.2000. The recovery of Rs. 28,704/- was worked out upto 30.4.2000.

2. The applicant has therefore approached this Tribunal assailing the action of the respondents in reducing his pay after nine years and ordering recoveries from his pay as arbitrary and illegal. He has sought also to restore this reduced pay to status-quo ante to the pre-reduced stage and to protect the pay already drawn by him with a direction to the respondents not to recover the excess payments as shown by the respondents.

3. The applicant submits that his pay has been reduced as per the revised pay fixation. He contends that it was none of his fault that his pay was fixed wrongly. He is therefore not

liable to be penalised for it and therefore no recovery should be made from him. In this connection the applicant is relying on the judgment of the Hon'ble Supreme Court in the case of Shyam Babu Verma & others Vs. Union of India and others, (1994) 2 SCC 521. In the said judgment it was held that the higher pay scale erroneously given to the petitioners therein was not due to any fault of the petitioners and, therefore, it shall only be just and proper not to recover any excess amount already paid to them. The applicant has also produced a copy of the judgment in OA 641/96, decided by Jaipur Bench of the Tribunal in the matter of T.C.Chandnani Vs. Union of India and others decided on 9.12..1999. Again the Tribunal held that no recovery can be made due to wrong fixation of pay scale and any amount already recovered should be refunded. However, the Tribunal gave liberty to the authorities to pass appropriate orders for fixation of pay after giving an opportunity to the applicant to show cause. The applicant has also referred to the judgment of the Ernakulam Bench of the Tribunal in OA 981/95 (K.R.Pillai Vs. Union of India & others) decided on 4.10.1996 holding that no recovery shall be made from the applicant due to wrong pay fixation, not due to the fault of the applicant.

5. The learned counsel for the respondents submitted that the pay having been fixed wrongly and having been detected has to be refixed. It is a mistake to be corrected. However, unlike in some of the cases cited by the learned counsel for the applicant, in the present case, the applicant was given due notice before reducing or refixing his pay and therefore he is liable to refund the excess amount.

6. We have given careful consideration to the contentions of the learned counsel on both sides. In our considered view, while the genuine mistake can be corrected, all the same it is not fair to the applicant who himself is not responsible for the wrong pay fixation to order recovery after a period of nine years. Following therefore the judgment in the case of Shyam Babu Verma (supra) we hold that the applicant is not required to refund excess payments made to him already. Accordingly, we quash and set aside the orders dated 13.11.2000 to the extent of the direction regarding recovery of excess payment of Rs.28,704/from the applicant.

7. In the result, the OA is allowed to the extent of quashing the order of recovery of excess payment. No costs.

*Shanta*  
(Shanta Shastry)  
Member (A)

*Ashok Agarwal*  
(Ashok Agarwal)  
Chairman

mb

Order/Judgement despatched  
to Applicant/Respondent (s)  
on 7/3/2002

(R)