

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 438/98.

Date of Decision: 13.1.1999

Dr. Ashok Tatoba Khade,

.. Applicant

Shri S.P. Kulkarni.

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri R.K. Shetty.

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman,

The Hon'ble Shri D.S. Bawaja, Member(A).

(1) To be referred to the Reporter or not ? *W*

(2) Whether it needs to be circulated to
other Benches of the Tribunal ? *W*

R. G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 438/98.

Wednesday THIS THE, 13th DAY OF Jan. 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

Dr. Ashok Tatoba Khade,
4-A, Matru-shraddha,
Near Saibaba Mandir,
Badlapur (West),
Kulgaon,
District : Thane - 421 503.
(By Advocate Shri S.P.Kulkarni)

...Applicant.

V/s.

1. Director General-Cum-Chairman,
(Ordnance Factory),
Ordnance Factory Board,
Indian Ordnance Factories,
Department of Defence Production,
G.O.I. Ministry of Defence,
10/A, Auckland Road,
Calcutta - 700 001.
2. The General Manager,
Ordnance Factory,
Indian Ordnance Factories,
Department of Defence Production,
Ministry of Defence, G.O.I.,
Ordnance Estate, P.O. Ambarnath,
O.E. Ambarnath, Dist.Thane - 421 502.
3. The Secretary,
Ministry of Defence,
Government of India,
Raksha Bhawan,
New Delhi - 110 001.
4. The Secretary,
Department of Production & Supplies,
Ministry of Defence, Raksha Bhawan,
New Delhi - 110 001.
(By Advocate Shri R.K.Shetty)

...Respondents.

O R D E R (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative
Tribunals Act, 1985. The respondents have filed their reply. We have heard

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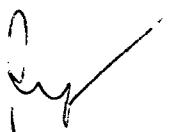


the learned counsels appearing on both sides.

2. The applicant was appointed as a Medical Officer on short term basis in the Ordnance Factory Hospital at Ambarnath. The first appointment was from 29.8.1994 to 31.12.1994. The said period of appointment came to be extended from time to time and he is still in service even now. He was earlier granted the minimum of pay in the pay scale of Rs.2,200-4,000. Now after the implementation of the Vth Pay Commission Report, the pay of the Medical Officers has been fixed in the pay scale of Rs.8,000-13,500. On the basis of this new scale, certain arrears were paid to the applicant to the extent of Rs.64,329/-. Subsequently, the Administration realised that erroneously excess payment has been made to the applicant and therefore, issued a letter dt. 8/13-5-1998 stating that excess amount of Rs. 64,329/- has been paid to the applicant and the applicant was called upon to re-pay that amount failing which the amount will be deducted from his future salary. Being aggrieved by that letter the applicant has approached this Tribunal for quashing the same and for other consequential reliefs. His case is that under the earlier appointment order he was entitled to the minimum of pay scale of Rs.2,200-4,000 and accordingly in the new pay scale of Rs. 8,000-13,500 also he is entitled to a minimum of the pay scale from the date the Pay Commission Report was accepted by the Government of India. His case is therefore, that the demand of the Respondents for the alleged payment of excess amount is illegal, arbitrary and liable to be quashed. He has also alleged that on the basis of equal pay for equal work, he is entitled to get same pay scale as is granted to other Medical Officers.

2. The respondents in their reply have asserted that the applicant was on a contractual employment in a particular pay scale and a particular amount of pay and he is not entitled to the benefit of revision of pay on the basis of

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the Vth Pay Commission Report. It is also stated that the applicant was not selected through the regular channel viz. UPSC, but it is only a case of short term employment as per the contract. It is further stated that Government has now taken a policy decision of giving the minimum of the new revised pay scale even for short term Medical Officers w.e.f. 3.4.1998. It is therefore, stated that the excess payment made for the period from 1.1.1996 to 3.4.1998 has to be recovered from the applicant.

3. The learned counsel for the applicant has questioned the correctness and legality of the claim made by the respondents demanding alleged over-payment to the applicant. His contention is that from the date the Pay Commission Report was accepted by the Government, the applicant is entitled to the minimum of the revised pay scale. He therefore, submitted that whatever arrears were paid to the applicant was perfectly justified. His alternative argument is that the applicant is entitled to equal pay for equal work like other Medical Officers and even on this ground the respondents cannot say that over-payment is made. He cannot also further argue that the respondents' cannot demand payment of the alleged over-payment unless a show cause notice is issued to the applicant and the principles of natural justice are observed. On the other hand, the counsel for the respondents submitted that it is a case of recent payment and further over-payment is made erroneously by treating the applicant as a Doctor appointed under the revised scale, but after realising the mistake, the respondents have called upon the applicant to repay the excess amount and the action taken by the Administration is fully justified. As far as prescribing a particular cut off period is concerned, it was submitted that, it is a matter of policy which cannot be interfered with by a Court or Tribunal.

4. In our view, the argument about the equal pay for equal work strictly does not arise in the facts and circumstances of this case. The only question

for consideration is whether the recovery sought to be made from the applicant is justified or not. The applicant himself has produced the Government order regarding implementation of the Pay Commission Report which is at page 30 of the paper book. A perusal of that Rule shows that the Pay Commission Report will apply to all the regular employees and Rule 2(2) refers to categories of Government Servants to whom the Rule shall not apply. Six classes of employees are shown to whom the new Pay Rules will not apply. The relevant clause is (e), which reads as under :

"Persons employed on Contract except where the contract provides otherwise;"

There is serious dispute between the parties on the question whether applicant comes within this clause or not.

Admittedly, the applicant is not a regular employee. His process of selection was also not as per rules. According to Rules, a Doctor has to be appointed through UPSC. Since there was no selection through UPSC for some time, in the exigency of service the administration appointed certain Doctors on short term basis. One of the appointment orders is at page 22 of the paper book. It says that the applicant is appointed on short term basis for short period from 2.7.1997. The remuneration is shown as Rs.2,200/- p.m. which is the minimum in the pay scale of Rs.2,200-4,000. There is no clause in the appointment order that this pay is subject to revision due to any reason.

5. Therefore, the order, on the face of it, shows that it is purely a contractual appointment for a certain period, for a certain fixed amount. The fixed amount is the minimum in the pay scale with usual allowances. In our view, the applicant squarely comes within the sub-clause (e) extracted above. If once we reach that conclusion then the applicant as of right is not

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entitled to the benefit of the revision of pay scales unless the government passes an order extending that benefit to the applicant or similarly situated persons.

6. In fact, it is brought to our notice that the government has extended the benefit of new pay scales subject to payment of minimum pay in the new pay scale to short term Medical Officers w.e.f. 3.4.1998. The said order is at page 57 of the paper book.

21 The learned counsel for the applicant contended that the government cannot fix a cut off date arbitrarily and even for such short term Doctors the cut of date of 1.1.1996 as applicable to regular government employees should have been applied. He cited some authorities on the point regarding validity of fixing a cut off date.

It cannot be disputed that whenever government prescribes new pay scales or new benefits, it can fix a cut off date. Therefore, fixing of a cut off date has to be done in every case whenever new benefits or new pay scales are given. The question whether in the given case a particular cut off date is fixed arbitrarily or not is a matter depending upon the facts and circumstances of the case. But fixing a cut off date itself cannot be called as discrimination. Here the applicant is not a regular employee. He is not selected as per the normal rules of Recruitment. Therefore, the applicant on the face of it cannot claim parity with the regularly appointed Doctors who are appointed through UPSC. Therefore, people like applicant belong to a different class and they, therefore, cannot claim parity of employment along with regularly appointed people. Therefore, in these circumstances, we do not find merit in the contention of the applicant's counsel that cut off date regarding short term Doctors is arbitrary or illegal.


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7. Though we have found that the government has issued the order dt. 3.4.1998 fixing the pay of short term Doctors at Rs.8,000/- plus allowances w.e.f. 3.4.1998, so far as the applicant is concerned, we find even prior to this order there was an appointment order in his favour prescribing minimum of Rs.8,000/- in the pay scale of Rs.8,000-13,500. Therefore, notwithstanding the general government order by virtue of this order of contractual employment dt.31.12.1997, the applicant is entitled to get Rs.8,000/- p.m. plus usual allowances w.e.f. 1.1.1998. But, it appears that the administration has already made over-payment to the applicant from 1.1.1996 till 31.12.1997. In our view, this excess payment for this period will have to be adjusted or refunded by the applicant.

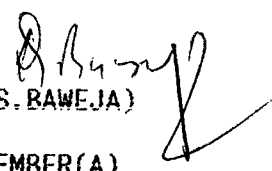
8. We are also not impressed by the argument of the learned counsel for the applicant that before demanding recovery, the administration should have issued a show cause notice to the applicant. This is a case where there is an Arithemathical calculation of arrears paid to the applicant. There is no complicated questions of law or fact involved. Inspite of the order of appointment fixing certain amount, by mistake, some excess payment is made to the applicant. The amount is demanded within a month or two after the payment. Hence, in these circumstances no injustice is caused to the applicant or no prejudice is caused to the applicant when the administration demanded the recovery without issuing a show cause notice. Therefore, in the facts and circumstances of the case, we are inclined to hold that there is no violation of principles of natural justice or at any rate no prejudice is caused to the applicant since it is case of calculating the arrears arithematically and nothing more.

9. In view of the above discussion, our finding is that excess payment

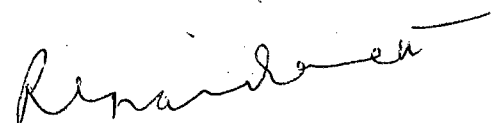
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has been made to the applicant for the period from 1.1.1996 to 31.12.1997. For this period, as per the earlier appointment order the applicant is entitled to only Rs.2,200/- for a particular month plus usual allowances. Whatever excess amount is paid, the applicant is liable to refund. Since the applicant is continuing in service and there is no immediate chance of UPSC candidate being selected in the near future, we feel that a sum of Rs. 2,500/- p.m. would be reasonable.

10. In the result, the application is allowed partly. It is declared that the applicant is liable to refund the over-payment made to him only for the period from 1.1.1996 to 31.12.1997. The respondents shall calculate the same and issue a fresh demand to the applicant and deduct Rs.2,500/- p.m. from the salary for the month of January,1999 payable on 1.2.1999. The respondents can start recovery at the rate of Rs.2,500/- p.m. towards the demand till the excess payment is fully recovered. If, however, the applicant resigns the job or the administration terminate his services for any other reason, then for whatever balance is due from the applicant, liberty to the respondents to approach the Civil Court for recovering the amount according to law. In the circumstances of the case, there will be no order as to costs.


(D.S. RAWEJA)

MEMBER(A)


(R.G. VAIDYANATHA)

VICE-CHAIRMAN