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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No. 530/93.

Dt. of Decision : 27-7-94.

Mr. D. Yadagiri

.. Applicant.

Vs

1. Surveyor General of India
Survey of India,
No-8, Hathibarkala Estate,
Dahradun, U.P.-
2. Additional Surveyor General
Survey Training Institute,
Survey of India, Uppal,
Hyderabad - 500 039.

.. Respondents.

Counsel for the Applicant : Mr. N. Ramamohana Rao

Counsel for the Respondents: Mr. N.R.Devaraj, Sr.CGSC.

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUD L.)

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O.A.No.530/93

Dt. 27.7.94

X As per Hon'ble Shri A.V.HARISADAN, Member (Judl.) X

The applicant prayed for the following reliefs:-

2 To direct the respondents to refix the pay of the applicant as per the Central Civil Services (Revised Pay) Rules, 1986 taking into account his basic pay as Rs.545/- as on 31.12.1985; and on the above basis also direct the respondents to effect payment of salary and allowances to the applicant without effecting any recovery therefrom.

The facts in this case are as follows:-

While the applicant was working as U.D.C. in the scale of pay of Rs.425-15-500-EB-20-700, he was stopped at the EB on 1.6.83. He was, however, promoted as Superintendent in the scale of Rs.1600-2300/- w.e.f. 21.3.92. On the commencement of the revised pay rules after the Government accepted the recommendations of the IV Pay Commission w.e.f. 1.1.86 the applicant's pay was fixed at Rs.1520/- taking into account his pay at Rs.500/- in the pre-revised scale. However, this fixation was later modified by the order dt. 9.12.87 refixing the applicant's pay at Rs.1600/- on the principle that once he was allowed to cross the EB the withheld increments are also to be added up. Later a Review Departmental Committee considered the case of the applicant for relaxation of the pay of the applicant in accordance with the OM of the Ministry of Finance Department of Expenditure, New Delhi dt.18.9.91 and that the Committee had found the applicant fit to

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cross the EB w.e.f. 1.6.85. A copy of this order was communicated to the applicant by order dt. 15.9.92 at Annexure A-2. However, aggrieved by the fact that pursuant to this order for refixing the applicant's pay he was granted only one increment and not all the withheld increments, the applicant made a representation on 2.12.92 to the Additional Surveyer General of India requesting that his pay may be refixed releasing all the withheld increments. This request of the applicant was turned down by the order dt. 22.3.93 at Annexure A-4. Thereafter, the applicant received another order dt. 24.5.93 annexure A-5 calling upon him to deposit forthwith a sum of Rs.3,346/- which is said to be the over-payment consequent on wrong fixation of pay. It is under these circumstances that the applicant had filed this application under Section 19 of the Administrative Tribunals Act for relief as aforesaid.

2. The respondents have filed a detailed reply statement. The claim of the applicant for release of the withheld increments has been resisted by the respondents on the ground that the release of the withheld increments on allowing the government servant to cross the EB on a later date is not automatic. Reliance is placed by the respondents to the following extract contained in the Government of India Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) No.29014/2/88-Estt.A dated 30.3.81.

"Where a Govt. servant held up at EB stage on account of unfitness is allowed to cross EB at a later date is a result of subsequent review, his pay shall normally be fixed at the stage immediately above the EB. In case the competent authority proposes to fix the pay at higher stage by taking into account the length of service the case shall be referred to the next higher authority for a decision."

It is contended that the competent authority referred the question of fixation of the applicant's pay to the Surveyer-General of India who is the next higher authority who passed the order dt. 24.2.93 annexure A-19 to the reply, after a consideration of the entire ACR of the applicant, finding ~~to~~ that the case of the applicant was not a fit one for fixation of the Govt. order No.2.6.below the F.K.25. Therefore, the respondents contend that as the release of the withheld increments is not made as a matter of course but on the decision of the next higher authority of the competent authority on consideration of the service records of the incumbent concerned, the action of the respondents in not acceding to the request of the applicant to refix his pay taking into account the length of service as also in ordering recovery of over-payments made on the basis of a wrong fixation is perfectly justified.

3. I have carefully gone through the entire pleading and the material papers annexed thereto and I have heard the arguments of learned counsel for both the parties at considerable length. Learned counsel for the applicant invited my attention to the following stipulation in the OM.No. G.No.7(28)E-III/91 of the Govt. of India, Ministry of Finance, Department of Expenditure dated 18.9.91.

"The matter has been examined and the President is now pleased to decide that cases of all Govt. servants who were held-up at E.B. in the pre-revised scales of pay prior to 1.1.86 may be placed before respective DPCs for review in terms of guidelines contained in Department of Personnel and Training O.M.No.29014/2/Estt(A) dt. 30.3.89.

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If the DPC recommends, that the Govt. servant is fit to cross EB, necessary increment(s) may be released in accordance with due process of rules, viz., the benefits of with-held increment(s) may be allowed from the date the Govt. servant is found fit to cross E.B."

4. Learned counsel for the applicant next invited my attention to the order dt. 15.9.92 at Annexure A-2 to show that it was pursuant to the instructions contained in the O.M. Dt. 18.9.91 that the case of the applicant was considered by the DPC for the EB and the Committee found him eligible to cross the EB w.e.f. 1.6.85. The learned counsel with considerable *tenacity* argued that if the case of the applicant for crossing the EB on a date prior to 1.1.86 as he was stopped at the EB prior to that date, was considered in accordance with the instructions contained in OM dt. 18.9.91. There is absolutely no justification to say that all the withheld increments would not be released to him because the O.M. dt. 18.9.91 in para 2 ~~is in~~ stipulates that on the DPC finding an employee fit to cross the EB the benefit of withheld increments should be allowed from the date when the employee is found fit to cross the EB. Learned counsel submits that the action of the respondents in holding that the applicant is entitled to get only one increment w.e.f. 1.6.85 is against the spirit of the Govt. OM dt. 18.9.91 and for that reason the order dt. 22.3.92 at Annexure A-4 is untenable and unjust. He further argued that if this position is accepted there is no warrant for recovery as is ordered in the order dt 24.3.93 at Annexure A-5.

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5. Sri N.R.Devraj, learned counsel of the respondents only invited my attention to the case in the reply that the stipulation in OM dt. 18.9.91 related only to cases where an employee was stopped at EB prior to 1.1.86 and the case on hand is not one like that. He also invited my attention to the communication issued by the Surveyer-General of India to the Additional Surveyer-General, Hyderabad, copy of the order is annexed at Annexure A-21 to the reply, in which it was stated that the case of the applicant was not covered by the OM dt. 18.9.91 but it was covered by the instructions contained in para 2.6 below FR 25. A mere reading of the letter dt. 15.9.92 Annexure A-2 to the OA, would reveal that the Review DPC did consider the case of the applicant for crossing EB which was withheld prior to 1.1.86 in accordance with Govt. of India, Ministry of Finance, Dept. of Expenditure OM 7(28)/E-III/91 dt. 18.9.91. Therefore, there is no meaning in contending that the case of the applicant was not one of the special cases which was required to be reviewed in accordance with the OM dt. 18.9.91. Therefore, the view taken by the Surveyer-General of India in his communication dt. 5.5.93 Annexure A-21 is absolutely unsustainable and unreasonable. As the case of the applicant was considered by a Review DPC only in accordance with the directions contained in the OM Government of India, Ministry of Finance, Department of Expenditure dt. 18.9.91, it is futile and baseless to say that a benefit directed to be given by that OM would not be given to the applicant. Hence there is no merit in the contention of the respondent that the applicant is not entitled to all the withheld increments. The applicant

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who is found to be entitled to the withheld increments w.e.f. 1.5.85 is not bound to refund the amount ordered to be refunded in the order at Annexure A-5.

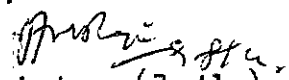
7. In the result, the application is allowed and the respondents are directed to refix the pay of the applicant as per the Central Civil Services (Revised Pay) Rules, 1985 taking into account his basic pay at Rs.545/- as on 31.12.85 and to effect payment of salary and allowances accordingly in future without effecting any recovery as proposed in the order at Annexure A-5 dt. 24.5.93.

No order as to costs.


(A.V. HARIDASAN)
Member (Judl.)

Dated: 27th July, 1994

(Dictated in Open Court)


Dy. Registrar (Judl.)

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Copy to:-

1. Surveyor General of India, Survey of India, No-8, Hathibarkala Estate, Dehradun, U.P.
2. Additional Surveyor General Survey Training Institute, Survey of India, Uppal, Hyderabad-039.
3. One copy to Sri. N.Rammohan Rao, advocate, CAT, Hyd.
4. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

Rsm/-

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9/8/94

OA-536743

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Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR.A.V.HARIDASAN:MEMBER(3)

AND

THE HON'BLE MR.A.B.GORTHY: MEMBER(1)

Dated:

27/1/94

ORDER/JUDGMENT.

M.../R.P./C.P.NO.

C.A.NO.

in
536743

T.A.NO.

(W.P.NO.)

Admitted and Interim Directions
Issued.

Allowed.

Disposed of with directions.

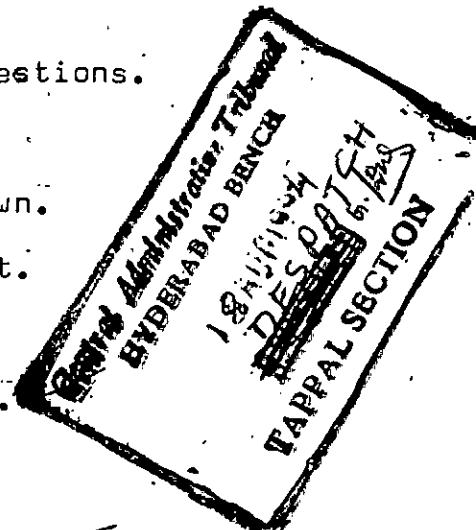
Dismissed.

Dismissed as Withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.



27/1/94