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O.A.No. 1436/94

Date of Order: 13.3.96

JUDGEMENT

I As per Hon'ble Shri R.Rangarajan, Member(Admn.) X

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There are two applicants in this OA. The first applicant was initially appointed as Signaller on 16.8.85 in the scale of Rs.110-200 and was subsequently promoted as Assistant Station Master in the scale of Rs.130-240. After completion of training he joined as A.S.M. w.e.f. 29.4.71. The scale of pay of Rs.130-240 was revised to that of Rs.330-560 w.e.f. 1.1.73 on account of the acceptance of the scale of pay of Third Pay Commission. It is stated that his date of increment in that scale was in the month of May every year. By Office Order No.G.P.676/1/6 dated 6.8.79 he was promoted to the grade of Rs.425-640. Though the promotion was ordered in August 1979 it was effective retrospectively w.e.f. 1.1.79 in terms of the above quoted letter.

2. The pay on promotion to a post having higher responsibilities has to be fixed under FR 22 'C' which was the relevant rule at that time. As per that rule he has to be given one increment in the lower scale and after giving that increment if there is no stage for fixing his pay in that stage in the higher grade his pay should be fixed immediately in the next higher stage of the promoted cadre. As the applicant was drawing an amount of Rs.404/- in the scale of Rs.330-560 as he has to be given an increment of Rs.12/- in the lower grade of Rs.330-560 and his pay as per FR 22 'C' has to be fixed at the appropriate stage in Rs.425-700. But it is stated for the respondents that it is erroneously fixed at a stage of Rs.440/- instead of at the stage of Rs.425/- and hence a show-cause notice No.G.P.524/1/Fixation/Vol.I dated 25.3.94 was

~~Issued fixing his pay at the stage of Rs.425/- in the scale~~

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of pay of Rs.425-700 instead of Rs.440/- as fixed earlier. He was given an opportunity to explain his case if he has any points to be made in regard to the reduction in pay. He has replied the showcause notice by his representation dated 7.4.94. After a perusal of the representation to the show-cause notice his pay was fixed at the stage of Rs.425/- w.e.f. 1.1.79 and the excess payment made was sought to be recovered by the impugned order dated 11.10.94.

3. This OA is filed for setting aside the impugned order No.G/P/524/1/Fixation/Vol.I dated 11.10.94 by holding it arbitrary, illegal and unjust and for a consequential direction to the respondents to refrain from acting any further on the basis of the impugned order and for a further

4. The case of the second applicant is also similar. But the learned counsel for the applicant submitted that in the second applicant will get his pay and no over payment is involved he is not pressing the case of the second applicant.

5. Hence the OA is restricted to the fixation of the pay of the first applicant and recovery of the excess payment made to him due to revision in the fixation by the impugned letter.

6. Rule FR 22'C' is clear—that one increment has to be given in the lower scale and his pay at the appropriate stage has to be fixed in the promoted cadre if an employee has to shoulder higher responsibilities on account of promotion. Hence when the first applicant was promoted w.e.f. 1.1.79 his pay in the grade of Rs.425-700 has to be fixed at Rs.425/- only but not at Rs.440/-. The learned counsel for the applicant



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submitted that when the promotion order was issued in August 1979 his pay had already been increased to Rs416/- in the grade of Rs330-560 as he was granted an increment in the Month of May 1979 in the lower grade of Rs.330-560. Hence his fixation of pay should be with respect to the pay which he was drawing at the time of issue of the order and not with respect to the pay he was drawing as on 1.1.79. The applicant has not produced any record to show that he had asked for fixation of pay in the higher grade after he was granted an increment, in the month of May 1979. Learned ~~standing~~ ^{new} counsel submitted that the applicant was ~~not~~ given an opportunity to ask for fixation of pay after he was granted the increment in the lower scale as per O.M.No.G.I.M.H.A., Dept of Per.&A.R., O.M.No.F.7/1/80-Estt.P.I., dated 26.9.1981. and O.M.No.13/21/82-Estt.P.I., dated 28.1.1985. But the rules as existed has to be followed and any rule issued later if it is with retrospective effect has to indicate the date from which such O.M. will come into play. In absence of any date it has to be held the pay has to be fixed on the basis of rule as it was in the existence in the year 1979 and later on cannot be quoted for giving extra advantage to the applicant even if it is with retrospective effect. In view of the fact that the applicant cannot now ask for fixation of pay from August 1979 when the order was issued fixing his pay with effect from 1.1.1979. However, the applicant may approach concerned if he has a case.

7. The second issue is in regard to the recovery from the refixation of pay at the stage of Rs.425/- instead of Rs.440/- w.e.f. 1.1.1979. This was done in the year 1979 fixing his pay at Rs.440/- and the revision order refixing his pay at Rs.425/- was issued in 1994. The higher

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fixation in the year 1979 was done by a wrong construction of the rules for which the applicant was not responsible. It was an error committed by the department. Hence the applicant cannot be penalised for the errors or omissions of the department. In regard to recovery in such a circumstances the observation of the Appex Court in Sahib Ram V The State of Hayrana and others reported in JT 1995(1)S.C.24 is relevant. In that case the employee who was a Librarian, was given the scale of Rs.700-1600 as per UGC's pay scale though he did not possess the required educational qualification. The relaxation of the educational qualification was given by the Principal of the College erroneously. When the error was detected the department therein took action to reduce his pay and recover the excess amount to be paid. The High Court of Haryana upheld the recovery of the excess amount. However, the Supreme Court an appeal set aside ~~in~~ regard to the recovery of the excess amount. The observation of the Appex Court is also relevant to this case which reads as below:-

" The Principal erred in granting him the relaxation. Since the date of relaxation the applicant had been paid his salary on revised scale. However, it is not on account that the benefit or privilege made by the appellant to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant".

8. In the present case also the fixation of pay was done erroneously by the department and the appellant is not responsible for such fixation. Hence I am of the opinion that the date he was paid as per the refixation in terms of the impugned order should not be made.

9. In the result, the following direction is given:-

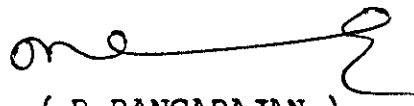


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The applicant should be paid only as per the revision as indicated in the order dated 11.10.94 from a prospective date after the date of the impugned order. Recovery of excess payment made till that date as per revision should not be effected.

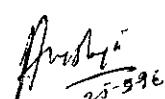
10. The O.A. is ordered accordingly. No costs.


(R.RANGARAJAN)
Member (Admn.)

Dated : 13th March, 1996

(Dictated in Open Court)

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R. Ranga Raju
HON'BLE SHRI A. S. GORTHI : MEMBER(A)

HON'BLE SHRI

DATED: 13.3.91

M.A. NO./R.A./C.A. NO.

IN

C.A. NO.

1436/91

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED AS WITHDRAWN~~

~~ORDERED/REJECTED~~

~~NO ORDER AS TO COSTS~~

* * *

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
श्रेष्ठ/DESPATCH

29 MAR 1991

हैदराबाद न्यायालय
HYDERABAD BENCH