

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 3-06-04

Original Application No.04/2001.

P. C. Sharma S/o Late Shri Sharwan Lalji Sharma, aged about 63 years, R/o C-2, Amba wari, Jaipur.

... Applicant.

v e r s u s

1. Union of India through the General Provident Fund Commissioner, Hudco Bishala, 14 Bhikaji Cama Place, New Delhi.
2. The Chairman, Central Board of Trustees, Employees Provident Fund Organisation, Shram Shakti Bhawan, Raphique Marg, New Delhi.
3. The Regional Provident Fund Commissioner, Nidhi Bhawan, Jyoti Nagar, Jaipur.
4. Sr. Administrative Officer, National Academy for Training & Research in Social Security, E.P.F. Organisation, 30-31, Institutional Area, Janak Puri, New Delhi.
5. The Manager, State Bank of India, Sanganeri Gate, Jaipur.

... Respondents.

Mr. A. N. Gupta counsel for the applicant.
Mr. N. K. Jain counsel for respondent No.1 to 4.
Mr. S. S. Poonia counsel for respondent No.5.

CORAM

Hon'ble Mr. M. L. Chauhan, Judicial Member.

49

: O R D E R :

(per Hon'ble Mr. M. L. Chauhan)

In this OA, the applicant has challenged the order dated 16.08.2000 (Annexure A-VI) passed by the Deputy Director, National Academy for Training & Research in Social Security, NATRSS, for short), Ministry of Labour, Govt. of India, New Delhi, and order dated 31.10.2000 (Annexure A-VII) passed by the Assistant P. F. Commissioner (Admn.), Employees Provident Fund Organisation, Ministry of Labour, Govt. of India, Jyoti Nagar, Jaipur, whereby the pension which had already been granted to the applicant has been reduced w.e.f. 01.11.1996.

2. The facts of the case are that the applicant was initially appointed on the post of Assistant Provident Fund Commissioner (Gr.I) in the E.P.F. Organisation, Govt. of India, Ministry of Labour, in the year 1975. Thereafter the applicant was promoted to the post of Additional Central Provident Fund Commissioner. However, the applicant ~~had~~ retired on 31.10.1996 from the post of Director, NATRSS, on expiry of extension of one year in service. After completion of all the requisite formalities, Pension Payment Order dated 20.11.1996 was issued. Subsequently, the applicant was also given the benefit of revised rate of pension consequent upon the implementation of 5th Pay Commission. However, vide letter dated 16.08.2000 (Annexure A-VII), pension of the applicant was revised consequent upon the withdrawal of functional pay scale for the Additional Central P.F. Commissioner. It was further stated in that letter that revised rate of pension may be communicated to the Bankers of the applicant for making payment at the revised rates. Consequently, letter dated 31.10.2000 was issued by the Assistant P.F. Commissioner (Admn.) addressed to the Manager, State Bank of India, Sanganeri Gate, Jaipur, whereby it was communicated that excess amount may be recovered from the pension at the rate of Rs. 1300/- per month. It is these orders which are under challenge in this OA.

3. The grievance of the applicant is that such orders

have been passed without assigning any reason and without affording any opportunity to the applicant. In any case if any family pension was to be reduced, the same would have been reduced only after issuance of the notice. Further contention raised by the applicant as can be seen from the OA is that the impugned orders Annexure A-VI and A-VII have been issued with retrospective effect i.e. w.e.f. 01.11.1996, hence the same are liable to be quashed and set aside. Besides this, the applicant has pleaded that the reduction in pension is going to cause hardship to the applicant and it is on these grounds the applicant has filed this OA thereby praying that the impugned order dated 16.08.2000 (Annexure A-VI) and order dated 31.10.2000 (Annexure A-VII) be quashed and set aside and appropriate direction be issued to respondent No.5, not to recover or deduct any amount of the pension as mentioned in order dated 31.10.2000 (Annexure A-VII) and if any amount is recovered during the pendency of this OA, the same be ordered to be refunded alongwith interest.

3.1 It may be stated here that when the matter was listed before this Tribunal on 09.01.2001 this Tribunal granted the interim relief regarding stay of the recovery till the next date of hearing. From the order sheet dated 02.05.2001 it appears that OA No.463/2000 involving the same issue was pending before the CAT, Principal Bench, New Delhi, and the Principal Bench vide its order dated 23.03.2001 passed in PT 74/2001 in OA No.4/2001 directed that it would be in the interest of justice to stay further proceedings in this OA till the decision of OA No.463/2000 pending before the Principal Bench. It was further observed that Jaipur Bench may also consider extending the interim order till the disposal of this OA. Accordingly, this Tribunal confirmed the interim stay order dated 09.01.2001 till further orders. It was further observed that the case be listed again on the outcome of the decision in OA No.463/2000.

4. Since the Principal Bench has already dismissed the OA No.463/2000, accordingly the case was taken up for hearing on different dates.

5. At this stage, we may also notice the stand taken by the respondents in this OA. In reply it has been stated that the

402

benefit of the functional pay scale of Rs.16400-20000/- was extended to all incumbents of the post of Additional Central P.F. Commissioner and FA&CAO alongwith other officers including the applicant who was holding the said post and has not retired. According to respondents the said functional pay scale was granted to the aforesaid categories on the basis of recommendation of Sub-Committee. According to the respondents, this recommendation was beyond the jurisdiction of the sub-Committee appointed by the Central Board in view of the powers vested under para 22-A of the P.F. Scheme of 1952, which stipulates that the power of all appointments vested in the Central Board under sub-section (3) of Section 5-D of the Act shall be exercised by the Board in relation to posts carrying the maximum scale of pay of Rs.4500-5700. Since the pre-revised scale of Rs.4500-5700 was revised to Rs.14300-18300/- as such it was not permissible for the Central Board to grant functional scale of Rs.16400-20000/- to the post of Additional Provident Fund Commissioner and FA&CAO, in Employees Provident Fund Organisation, so long as it is not approved by the Central Board. The functional pay scale of Additional Central Provident Fund Commissioner and FA&CAO i.e. Rs.16400-20000 was implemented in Employees Provident Fund Organisation w.e.f. 13.08.1999 on provisional basis subject to the condition that scales will be finalised after the approval of the Central Government (Ministry of Labour) is received and the Government of India did not grant the functional pay scale to these posts and, therefore, the said scale was withdrawn. The direction of the Central Government (Ministry of Labour) is very much legal and valid in view of the provisions of the P.F. Act of 1952 and the P.F. Scheme of 1952.

5.1 Regarding availing of reasonable opportunity and issuance of show cause notice, it has been stated that no reasonable opportunity was required to be given as the payment has been made by an administrative order in anticipation of the approval of the competent authority, therefore, the withdrawal of the same in view of not approving the functional scale by the competent authority and subsequently recovery of the same without giving notice is valid and there is no such requirement of giving notice before effecting the recovery from the petitioner. The applicant has filed rejoinder thereby reiterating the submissions made in the OA. The applicant has

also submitted written arguments which are taken on record.

6. I heard the learned counsel for the parties and gone through the material placed on record.

7. Before deciding the point in issue it is necessary to take notice of certain statutory provisions. The backdrop of the case is that the Central Board of Trustees Employees Provident Fund (for short, Central Board) is a Corporate Body set up under Section 5A of the Employees' Provident Fund and Misc. Provisions Act, 1952. The Central Board is responsible for the implementation and administration of Provident Fund and related schemes framed under the P.F. Act of 1952 by the Central Government. Under Section 5(D) 1 of the P.F. Act of 1952, the Central Government is empowered to appoint a Central Provident Fund Commissioner of the Central Board. Under Section 5(D)(2) of the P.F. Act of 1952, the Central Government is also empowered to appoint Financial Advisor and Chief Accounts Officer to assist the Central Provident Fund Commissioner in his discharging of his duties. Under Section 5(D)(3) the Central Board has been empowered to appoint as many Additional Central Provident Fund Commissioners, Deputy Provident Fund Commissioners, Regional Provident Fund Commissioners, Assistant Provident Fund Commissioners and such other officers and employees as it may consider necessary for the efficient administration of the Schemes.

7.1. Under Section 5(D) (6) of the P.F. Act of 1952, the method of recruitment, salary, allowances, etc. of the Central Provident Fund Commissioner and Financial Advisor and Chief Accounts Officers are required to be such as may be specified by the Central Government. Accordingly, the Central Government has prescribed pay scales of Rs.18400-22400/- and Rs.14300-18300/- for CPFC and FA & CAO respectively. These posts are filled by the Central Government with approval of the Central Cabinet Committee on Appointments (ACC). Thus posts of CPFC and FA and CAO are outside purview of the Central Board. At this stage, it will also be useful to notice provisions contained in Section 5D(7)(a) and 5D(7)(b) the PF Act of 1952, which are in the following terms :-

"5D(7)(a) : The method of recruitment, salary and allowances, discipline and other conditions of service of the Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay;

Provided that where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.

5D(7)(b) ; In determining the corresponding scales of pay of officers and employees under clause (a), the Central Board shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Central Board shall refer the matter to the Central Government whose decision thereon shall be final."

8. Accordingly, after the pay scale of the Central Government Employees were revised w.e.f. 1.1.1996, same corresponding scales were introduced in Employees Provident Fund Schemes also, as per the approval of the Executive Committee of the Central Board in its 24th Meeting. Accordingly the pay scale of the petitioner was also revised as in Pre-revised Rs.4500-5700 and in revised scale Rs.14300-18300. From the material placed on record it can also be seen that after revising the pay scale, the committee decided to appoint a sub-committee to consider the grievances of the anomalies as a result of implementation of revised pay scales. The sub-Committee recommended the functional pay of Rs.16400-20000 for the post of Additional Central Provident Fund Commissioner and FA and CAO. The Employees Provident Fund Organisation granted the functional pay scale of Rs.16400-20000 to the aforesaid categories on the basis of recommendation made by the sub-Committee w.e.f. 13.08.1999 though on provisional basis subject to condition that the scale will be finalised after the approval of the Central Government, Ministry of Labour, is received without any authority of law. At this stage, it will be useful to quote Para 22-A of the P.F. Scheme of 1952, which reads as under :-

"22-A Appointment of officers and Employees of the Central Board : The powers to all appointments vested in the Central Board under sub-Section (3) of Section 5-D of the Act shall be exercised by the Board in relation to posts carrying the maximum scale of pay of Rs.4500-5700."

9. Thus, in view of the aforesaid provision it was not permissible for the Employees Provident Fund Organisation to grant functional pay scale of Rs.16400-20000 without the approval of Central Government. Such action on the part of the organisation is without any authority of law and as such void ab initio. Such a scale could have been granted to the aforesaid category of the applicant only with the approval of the Central Government as per provisions of P.F. Act of 1952. The Central Government has not granted any such approval and as such the applicant was not entitled to receive the pay scale of Rs.16400-20000 w.e.f. 1.11.1996.

10. At this stage it may also be stated that the fact that Provident Fund Organisation was not competent to grant functional pay scale of Rs.16400-20000 in terms of Para 22-A of P.F. Scheme 1952 and it was only the Central Government which could have grant this scale in view of the Provisions contained in P.F. Act 1952 is not in issue in this case. Even otherwise also, the Principal Bench in OA No.463/2000 decided on 17.09.2001 in the case of K. B. Yadav and Others vs. Secretary, Ministry of Labour, has held that the Additional Provident Fund Commissioner who was in the pay scale of Rs.4500-5700 were entitled to the corresponding pay scale of the Officers and employees of the Central Government which was drawing corresponding pay scale of Rs.14300-18300/-. In case the Central Board wanted to grant revised pay scale higher than Rs.14300-18300, the matter should have been referred to the Central Government for approval under provision of Section 5D(7)(a) of the P.F. Act of 1952. Thus, the fact that the applicant was legally entitled to the revised scale of Rs.14300-18300/- has not been disputed even by the applicant in this OA. His grievance is that it was not permissible for the Revisional Provident Fund Commissioner to issue impugned order of recovery without issuing show cause notice which is a sine-qua-non of the principle of natural justice. In the written arguments, the respondents have also raised a issue that pension once

authorised/finalised cannot be permitted to be reduced as per the provisions contained in CCS (CCA) Rules 1972 which are applicable to the applicant and such amount cannot be reduced from pension. At this stage, it may be stated that this contention raised by the applicant has not been specifically pleaded in this OA. Only contention raised and pleaded in this OA is violation of principles of natural justice while effecting recovery and reducing the pension. It is also pleaded that such recovery has been effected retrospectively. As such I do not think it necessary to consider the new submissions made by the applicant in his written arguments which is out side the scope of the case set up by the applicant in this OA.

11. Now let us examine the contention raised by the applicant in the OA that there is a violation of principles of natural justice and the recovery could not have been effected from the retrospective date.

12. As already stated above, it is not the case of the applicant that he was legally entitled to the scale of Rs.16400-20000. I had already held in the earlier part of the order that it was not within the authority of the Central Board to grant the pay scale higher than the post carrying pay scale of Rs.4500-5700 (revised Rs.14300-18300), in view of the provisions contained in Para 22-A of P.F. Scheme of 1952 and the higher scale could have been granted only after approval by the Central Government. In fact no such higher scale of Rs.16400-20000/- was granted/approved by the Central Government. Under these circumstances, the action of the Central Board in granting the functional scale of the post of the applicant and also the post of FA&CAO to Rs.16400-20000/- even on provisional basis which was made subject to the approval of the Central Government, which approval was never received, was not proper. How the Central Board has released the pay scale before the approval in that behalf was received from the Central Government. Admittedly, the Central Board acted without any authority of law and such a action on their part is void-ab-initio. Once it is held that the original order granting scale of Rs.16400-20000 to the category of applicant by the Central Board is held to be without any authority of law and even the applicant has not disputed this position, the benefit of such scale cannot be

permitted to the applicant and other similarly situated persons simply on the ground that the Central Board has granted such scale and in case the same is withdrawn, it will cause hardship to the applicant. According to me, when the initial order is null and void and ineffective and not valid, the question of observation of natural justice would not arise. This is what the Apex Court has held in the case of Kendriya Vidyalaya Sangathan and Others vs. Ajay Kumar Das and others 2002 SCC (L&S) 582. In that case, the services of one Dr. K. C. Rakesh, Assistant Commissioner of Regional Office Guwahati was terminated. He succeeded in obtaining an interim order and taking advantage thereof he made appointment of certain persons to the post of LDC. The writ petition against his termination finally dismissed and the interim stay was vacated. The Hon'ble High Court also observed that all the appointments made by Dr. K. C. Rakesh after termination be treated null and void and ineffective. The persons so appointed by Dr. K. C. Rakesh as LDC filed OA before the CAT after their termination of service pursuant to High Court order thereby contending that they were not a party before the Hon'ble High Court. CAT set aside the order on the ground that the employees so appointed as LDC were not party to the writ proceedings and that termination order was passed without observing the principles of natural justice. Hon'ble the High Court upheld the CAT's order. Matter went to the Apex Court and the Apex Court set aside the order thereby holding that if the appointing authority itself did not have power to make appointment by reason of termination of his services, it is futile to contend that the respondents should have been served with notices in that regard on the pretext that the order of termination of Dr. K. C. Rakesh's services had not been served upon him, it cannot be contended that the appointments of the respondents would be valid. Thus, the Apex Court has categorically held that where the authority has no power to make appointment, there is no need to give notices to the employees who were employed pursuant to such void orders. Same is the case here. The ratio as laid down by the Apex Court in this case is fully attractive in the instant case.

13. As regards to the second contention raised by the learned counsel for the applicant that the recovery from pension has been effected from retrospective date that too without

lal

issuance of notice, Suffice it to say, that the initial order, ^{extending} benefit of functional pay scale of Rs.16400-20000 to the category of the applicant and also to FA&CAO was ex-facie illegal, without any authority of law and void ab-initio. Thus, the said order was no order in the eyes of law. On the basis of such order it cannot be said that the applicant was entitled to the pay scale of Rs.16400-20000 and his vested right has been taken away without following the principles of natural justice. Had this been the case where the higher functional pay scale was granted by the authority who has power to grant such scale, the matter would have been otherwise and in that situation this Tribunal would have come to the conclusion that no recovery could be made pursuant to such wrong order. In view of the various decision of the Apex Court whereby it has been held that where the pay scale/ emoluments have been given to the person on account of administrative error for which he is not responsible, the authorities are precluded from effecting recovery. But this is not the case here. As already stated above, it is not the case of the applicant that the Board was competent to grant/sanction the functional pay scale of Rs.16400-20000 to the category of the applicant. In fact the issue has already been decided by the Principal Bench in OA No.463/2000 whereby it has been held that it was not permissible for the Central Board to grant functional pay scale of Rs.16400-20000/- to the category of the applicant and also the FA&CAO. On the basis of this admitted position what more opportunity was required to be given to the applicant before effecting recovery of excess amount from the pension of the applicant. Issuance of the show cause notice in such a situation would have been useless formality when the applicant has no legal authority to receive the pay scale of Rs.16400-20000 and also pensionary benefits on the basis of said scale. It cannot be said that the prejudice has been caused to the applicant and his vested rights are taken away without affording any opportunity to him. Rather it is a case where Central Board has committed a fraud by granting higher functional scale of Rs.16400-20000 to the category of the applicant and also to FA&CAO without any authority of law. The applicant being beneficiary of such fraudulent act cannot be permitted to argue that since the board has granted such pay scale though without the authority of law, same cannot be recovered from his pensionary benefits. I do not subscribe to

l/s

such contention raised by the applicant. To say least, such act on the part of Board is not only against public morality and quality of good governance but also amount to corrupt practice and fraud on power. Public money cannot be squandered in a manner as they think as if they could get away into every possible irregularity and malpractice. Such a discarded attitude adopted by the powers that may be has to be ruthlessly discarded so that visible and invisible operators and manipulators do not thrive. Transparency has to be part of working at all levels. This being a case of 'Fraud on power' as such every action based on such fraudulent order has to be held as illegal and void ab-initio. As such no fault can be found in the action of respondents thereby effecting recovery pursuant to order dt.16.08.2000 (Annexure A-VI) and order dated 31.10.2000 (Annexure A-VII).

14. At this stage, it may be useful to quote the decision of the Apex Court though on different facts. In the case of Union of India vs. M. Bhaskaran, 1995 Supp (4) SCC 100, the Apex Court held that where a person secured appointment by fraudulent means and if once such fraud is detected, the appointment order it self which was found to be tainted and vitiated by fraud and cheating on the part of the employee, was liable to the recalled and was atleast voidable at the option of the employer concerned. Similarly in the case of Jammu and Kashmir Public Service Commission vs. Farhat Rasool and Ors., 1996 (1) ATJ 280, the Apex Court had held that wherein employment was obtained by playing fraud by the respondent by giving wrong information as to his eligibility, benefit of which fraud cannot be allowed to the respondent and the appeal of the appellant was allowed. Similarly Punjab and Haryana High Court in the case of Naveen Kumar vs. State of Punjab and Ors., 2002 (3) ATJ 550, has held that where the appointment of public servant is void, ab-initio, in such a situation the principle of natural justice are not required to be fulfilled. In this way, the petitioner virtually becomes a usurper and order of termination was upheld. Similar is the case here. In the instant case, higher pay scale was granted by the Central Board without any authority of law as such the order granting such higher pay scale is void, ab-initio, and without any authority of law and in such a situation the principles of natural justice are not required to be

followed.

15. Learned counsel for the respondents has argued that the recovery can also be made from the pensionary benefits and for that purpose learned counsel for the respondents has cited the decision of the Hon'ble Supreme Court in the case of V. Gangaram vs. Regional Joint Director AIR 1997 Supreme Court 2776 whereby the recovery on account of excess payment was directed to be made from the pension. Learned counsel for the respondents has further argued that to the similar effect is the decision of the Rajasthan High Court in the case of Alam Ali vs. State of Rajasthan reported in 2000 Lab. I.C. 862. Since in the earlier part of the order I have already held that the applicant has not raised this issue in his OA, as such no finding on this aspect is warranted.

16. Learned counsel for the applicant has submitted that the decision rendered by the Principal Bench in OA NO.463/2000 is not applicable in the instant case as the permissibility of pension after its authorization and recovery of excess amount from pension was not involved in that case and as such the respondents cannot draw any assistance from that decision. I agree with the submission made by the learned counsel for the applicant. In that case the issue involved was whether the respondents therein was justified to draw the pay scale of Rs.16400-20000. The CAT, Principal Bench, New Delhi, held that the applicants were entitled to the pay scale of Rs.14300-18300 and in case Central Board wanted to grant revised pay scale of ACPFC higher than Rs.14300-18300/- the matter should have been referred to the Central Government for approval under the proviso of Section 5D(7)(a) of the Act. After recording this finding the Principal Bench declined to interfere with the impugned order. Thus in OA No.463/2000 it has been held that the applicant therein are entitled to the scale of Rs.14300-18300 and not to the scale of Rs.16400-20000. To this extent, the ratio of the judgement delivered by the Principal Bench is applicable in the instant case. Once applicant is held to be entitled to the pay scale of Rs.14300-18300, he is not entitled to pension/revised pensionary benefits on the basis of higher scale of pay of Rs.16400-20000/-.

16. In view of what has been stated above, the OA stands dismissed with no order as to costs. The Interim order granted on 09.01.2001 shall stand vacated.



(M. L. CHAUHAN)

MEMBER (J)