

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

14

O.A. No. 641/96  
T.A. No.

199

DATE OF DECISION 9.12.99

T.C.Chandnani

Petitioner

Mr.K.L.Thawani

Advocate for the Petitioner (s)

Versus

U.O.I & Ors.

Respondent

Mr.U.D.Sharma

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr.

S.K.Agarwal, Judicial Member

The Hon'ble Mr.

N.P.Nawani, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? No
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal? No

(N.P.Nawani)  
Member (A).

(S.K.Agarwal)  
Member (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.641/96

Date of order: 9/12/99

T.C.Chandnani, S/o S;hri Vassumal, R/o Sindhi Colony, Bani Park, Jaipur, working as UDC, NCC Directorate, D-56, Sawai Madho Singh Road, Bani Park, Jaipur.

...Applicant.

Vs.

1. The Union of India through the Secretary to the Govt. of India, Deptt of National Cadet Corps, Mini. of Defence, New Delhi.
2. Controller of Defence Accounts Southern Command, Pune.
3. Dy.Controller of Defence Accounts, Area Accounts Office, Southern Command, Khatipura Road, Jaipur.
4. Controller General of Defence Accounts, R.K.Puram, New Delhi.
5. Director General, National Cadet Corps, West Block, 4, R.K.Puram, New Delhi.
6. Deputy Director General, National Cadet Corps Directorate, D-56, Sawai Madho Singh Road, Jaipur.

...Respondents.

Mr.K.L.Thawani - Counsel for applicant.

Mr.U.D.Sharma - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash the orders at Annx.A1 and Annx.A2 and to direct the respondents not to recover any amount from the salary of the applicant and the amount recovered w.e.f. 1.4.96 be refunded to him. Further directions are also sought to pay the same salary to the applicant as he was receiving before the impugned orders at Annx.A1 and Annx.A2 were issued.

2. In brief the facts of the case as stated by the applicant are that he was initially appointed as LDC on 17.4.1961 and was promoted as UDC w.e.f. 1.7.81. It is stated that before promotion as UDC the applicant also worked as officiating UDC for 2 years one month and 25 days. This period was counted for fixation of pay of UDC cadre correctly and ultimately the applicant was last drawing Rs.1920/- w.e.f. 1.2.96 but the respondents by the impugned orders have reduced his pay as Rs.1470/- on 1.1.96 and changed his date of increment and accordingly issued orders for recovery of the excess amount paid to him Rs.9067/- which was subsequently modified to Rs.11439/-. It is also stated that aggrieved by these orders, the applicant made various representations but with no result. It is stated that the respondents have correctly fixed the pay of the applicant and stepped-up his pay in accordance with FR 22-C (now FR-22 (a)(I)). But

the respondents without adopting the lawful process have issued the impugned orders for reducing the pay of the applicant and revising the date of increment and to recover the excess amount paid. It is also stated that the applicant was rightly allowed two increments for officiating service of 2 years one month and 25 days, therefore effecting recovery from the salary of the applicant is arbitrary, illegal and unconstitutional. Therefore the applicant files this O.A for the relief as mentioned above.

3. Reply was filed. In the reply, it is admitted that the applicant was promoted as UDC w.e.f. 4.7.81 but it is stated that the applicant was allowed to officiate as UDC on short term basis on various occasions as mentioned in para 5 of the reply during the period 7.8.72 to 3.7.81 and on every occasion his pay was fixed on promotion to the post of UDC under FR 22(C) and he was paid higher pay during the period of such officiation. Therefore, this period of officiation should not have been counted for the purpose of fixation of pay of the applicant but due to over-sight and inadvertence the benefit was given to the applicant and the said error was rectified vide the impugned order dated 15.6.96. It is also stated that the benefit of stepping-up which was given to Shri G.M.Pansara was withdrawn. Therefore, the pay of the applicant was refixed accordingly as per rules and the applicant is not required to retain the amount which he had received erroneously. Therefore, it is stated that this O.A is devoid of any merit and liable to be dismissed.

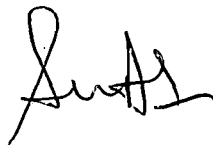
4. Heard the learned counsel for the parties and also perused the whole record.

5. The learned counsel for the applicant has argued that the pay of the applicant was correctly fixed on his promotion by taking into consideration the period of his officiation on promotion post. Therefore, refixing/reducing his pay and changing the date of increment and making recovery from the applicant is arbitrary, illegal and unconstitutional. He has also argued that no recovery can be made from the salary of the applicant. In support of his contentions he has referred to 1994 (27) ATC 121, Shyam Babu Vs. UOI; 1995(29) ATC 739, P.M.Saxena Vs. UOI; 1996(32) ATC 148 SC and 1995(31) ATC 786 SC.

6. On the otherhand, the learned counsel for the respondents has argued that the benefit of broken period of officiation was allowed to the applicant by inadvertence, therefore, there is nothing wrong in recovering the excess payment made to the applicant.

7. We have given thoughtful consideration to the rival contentions of both the parties and also perused the whole record.

8. Admittedly the orders at Annx.A1 and Annx.A2 were issued without following the principles of audi alteram partem meaning thereby that the impugned orders were issued without giving any opportunity to showcause to



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the applicant.

9. In Laxmichand Vs. UOI, 1998(1) SLR 599, it was held that if the order involves civil consequences and has been issued without affording opportunity of hearing to the applicant, such an order cannot be passed without complying with audi alteram partem, ie, parties should be given the opportunity to meet his case before an adverse decision is taken.

10. It is also the admitted fact that the respondents had fixed the salary of the applicant on promotion suo motto and there was no misrepresentation on the part of the applicant in getting the pay fixed.

11. In Shyam Babu Verma & Ors. Vs. UOI & Ors., (1994) 2 SCC 521, the Third Pay Commission had recommended two scales of pay for the post of Pharmacist and accordingly, the petitioners were allowed the higher scale w.e.f. 1.1.1973 though they were entitled to the lower scale. The pay scale of the applicants was reduced in 1984. It was held that the petitioners received the higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them.

12. In Sahib Ram Vs. State of Haryana & Ors., 1995 Supp(1) SCC 18, upgraded pay scale as given to the appellant due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee and the Govt was restrained from recovering the overpayment already made.

13. In Collector of Madras & Anr. Vs. K.Rajamanickam, (1995) 2 SCC 98, the respondent was continued in service beyond the date of superannuation under a wrong decision of the Court. It was held that the period of service beyond the date of superannuation should not be counted. However, recovery of any amount paid during that period was prohibited.

14. In UOI & Ors Vs. M.Bhaskar & Ors., (1996) 4 SCC 416, while setting aside the judgments of various Tribunals in regard to scale of pay of pre-1997 Traffic/Commercial Apprentices making them entitled to the pay scale of Rs.1600-2660, it was held that the recovery of the amount already paid because of the judgments of various Tribunals would cause hardship to the respondents appellants concerned and therefore, the respondents (UOI) were directed not to recover the amount already paid.

15. In UOI & Ors. Vs. Ram Gopal Agarwal & Ors., (1998) 2 SCC 589, the ration money allowance was paid to nongazetted combatised staff of Central Reserve Police Force (CRPF) at par with comatised staff under Court's order. While setting aside the various orders of the Tribunals, appeals filed by the Govt were allowed and it was held that the recovery would result in great hardship and the amount already paid to them in terms of the order of this Court or by the order of the Tribunals as aforesaid would not be recovered.

16. In State of Haryana Vs. Om Prakash & Anr., (1998) 8 SCC 733, by

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virtue of interim order of the Hon'ble Supreme Court, exworkman was paid back wages but finally found to be not entitled to the same. Taking note of his economic condition, the Hon'ble Supreme Court directed that in case he had withdrawn that amount, the same should not be recovered from him.

17. In view of the legal position as referred above and the facts and circumstances of this case, we are of the considered view that the orders at Annx.A1 & A2 are issued without following the principles of audi alteram partem and no recovery can be made in pursuance of such orders because there was no misrepresentation on the part of the applicant and the respondents had fixed the pay of the applicant suo motto. Therefore, the recovery from the applicant after such long lapse is not sustainable in law in view of the legal position as discussed above.

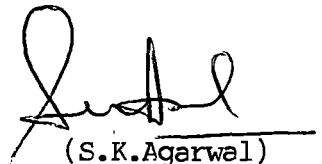
18. We, therefore, allow this O.A and quash the impugned orders Annx.A1 and Annx.A2 and direct the respondents not to make any recovery from the salary of the applicant in pursuance of these orders and if any recovery has already been made, the amount so recovered be refunded to the applicant. However, the respondents are free to pass appropriate orders for fixation of pay of the applicant after giving him an opportunity to show cause to the applicant. The whole exercise must be completed within 3 months from the date of receipt of a copy of this order.

19. No order as to costs.



(N.P. Nawani)

Member (A).



(S.K. Agarwal)

Member (J).