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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. 296/98

DATE OF DECISION 16.11.2000

Chhajju Lal Mali

Petitioner

Mr. C.B. Sharma

Advocate for the Petitioner (s)

Versus

Union of India & Others

Respondent

Mr. Hemant Gupta Proxy
for Mr. M. Rafiq

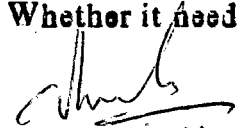
Advocate for the Respondent (s)

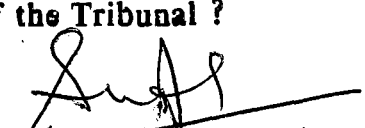
CORAM :

The Hon'ble Mr. S.K. Agarwal, Member (Judicial)

The Hon'ble Mr. N.P. Nawani, Member (Administrative)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(N.P. Nawani)
Member (A)


(S.K. Agarwal)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Order: 16.11.2000

OA 296/98

Chhaju Lal Mali son of Shri Arjunlal Mali aged about 51 yrs. resident of C-68A, J.P. Colony, Tonk Phatak, Jaipur and presently working as Laboratory Technician, P&T Dispensary No. 1, Jaipur.

.... Applicant.

Versus

1. Union of India through Secretary to the Govt. of India, Department of Posts, Ministry of Communications, New Delhi.
2. Chief Postmaster General Rajasthan Circle, Jaipur.
3. Senior Superintendent of Post Offices, Jaipur City Postal Division, Jaipur.
4. Senior Postmaster Jaipur G.P.O.

.... Respondents.

Mr. C.B. Sharma, Counsel for the applicant.
Mr. Hemant Gupta, Proxy counsel for
Mr. M. Rafiq, Counsel for the respondents.

CORAM:

Hon'ble Mr. S.K. Agarwal, Member (Judicial)
Hon'ble Mr. N.P. Nawani, Member (Administrative).

ORDER

(PER HON'BLE MR. N.P. NAWANI, MEMBER (ADMINISTRATIVE))

In this OA, the applicant prays that respondents be directed to fix the pay of the applicant in the scale of Rs. 5000-8000 or Rs. 5500-9000 as per recommendation of the Fifth Pay Commission (for short, Paycom) in view of the selec-

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tion post held by him prior to implementation of the recommendations of the Paycom. w.e.f. 1.1.96 with all consequential benefits.

2. We have heard the learned counsel for the parties and gone through all the material on record.

3. It appears from the averments made by the applicant that he was initially appointed as Laboratory Technician on 20.3.72 in the pay scale of Rs. 150-300 and subsequently allowed higher selection grade of Rs. 330-560 w.e.f. 18.5.84 by conversion of one post of Laboratory Technician under 20% vide order dated 11.5.83 (Annexures A-5 and A-6 refers). Since the said order of 18.5.84 stipulated promotion with immediate effect, the applicant was allowed selection grade in Rs. 425-640 from 18.5.84 or immediately thereafter. It appears that the applicant thereafter got a letter written by Shri Tariq Anwar, M.P., which was replied to by Secretary, Department of Post vide letter dated 18.11.97 (Annexure A-7) stating, inter-alia, that T.B.O.P. and B.C.R. schemes have been introduced for certain categories and posts of Pharmacists and other categories of dispensary staff and also available in CGHS under Ministry of Health and F.W. and no such Scheme of promotion is available to them and, therefore, it is not possible to extend these promotional schemes to the staff of P&T Dispensaries. It is also stated by the applicant that the respondent no. 1 vide his letter No. 5-2/88-PCC dated 24.2.88 (not annexed) clarified that on the recommendations of IV Paycom, the pay scale of Rs. 1400-2600 was given to Laboratory Technicians and he enjoyed the same till 31.12.95. It is claimed by the applicant that on implementation of the

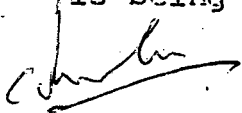
recommendations of the V Paycom, the pay of the applicant should have been fixed in the pay scale of Rs. 5000-8000 but the respondents allowed only the scale of Rs. 4500-7000 w.e.f. 1.1.96 and regarding this the applicant submitted a representation dated 27.6.98 (Annexure A-1) claiming that applicant's counterparts with similar duties and qualifications working in CGHS are getting pay scale of Rs. 5500-9000 while he is being given the pay scale of Rs. 4500-7000 which is illegal and unjustified. The respondents, however, instead of allowing his prayer calculated excess payment made during last 10 years to the extent of Rs. 10000/- on account of allowing scale of Rs. 1400-2600 and are going to reduce his pay-scale w.e.f. August, 1998 without giving him any chance of hearing. It is also been contended by the applicant that the respondent no. 1 had, on being approached, agreed to grant Time Bound Promotion Scheme as being allowed to other staff of Postal Department admitted that Scheme allowed to other staff cannot be applicable, as the same is not applicable to the staff of CGHS (Annexure A-7). It has also been contended that in 1988, other staff working in Rs. 1350-2200 have been allowed Rs. 1400-2600 on promotion in selection grade and, therefore, he is entitled to draw pay and allowance as being presently drawn and higher scale w.e.f. 1.1.96. Finally, it has been claimed that Lab Assistant is to assist in the laboratory work but Laboratory Technician is performing duties of Pathology tests independently (Annexure A-8).

4. In their reply, the respondents have denied the case of the applicant. It is stated that the pay of the applicant was fixed at Rs. 485/- in the scale of Rs. 425-640 on promotion vide letter dated 18.5.84 and the scale was replaced by Rs. 1400-2300 as per recommendations of the Vth Paycom. It

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has been denied that the replacement scale should have been 1400-2600, though, it is stated, the matter is pending consideration with Postal Directorate. However, on 1.5.88, the applicant was allowed increment of Rs. 50/- instead of Rs. 40/- at the stage of Rs. 1600/- which caused over-payment to the tune of Rs. 10,724/- during the period from 1.5.88 to 31.7.98 and accordingly recovery has been started w.e.f. August, 1998 in easy instalments. Further, as per recommendations of the Paycom., the scale of Rs. 1400-2300 was replaced by Rs. 4500-125-7000 w.e.f. 1.1.96 and pay of the applicant was fixed at Rs. 6000/- on 1.1.96 with next date of increment 1.5.1996. It has also been denied that the applicant can seek parity with that of a separate organisation/department like CGHS. It is, therefore, claimed that recovery of excess payment made on account of grant of increment of Rs. 50/- on 1.5.88 instead of correct Rs. 40/- was correct and the action of the respondent is in no manner arbitrary, illegal, unjustified and against the principles of natural justice.

5. We have carefully considered the rival contentions. It appears to us that the applicant by weaving a maze of averments has tried to skirt the real issue and made an effort to obtain from this Tribunal something which actually relates to grant of replacement scales not only to him but the category of Laboratory Technicians in the Postal Department on the basis of recommendations of the IVth and Vth Paycom.s. w.e.f. 1.1.86 and 1.1.96 respectively. Nowhere has he stated that the recovery is being made on account of grant of a wrong increment of Rs. 50/- to him w.e.f. 1.5.1984, instead of the legitimate increment of Rs. 40/- and the excess amount paid during the period of 1.5.1984 to 31.7.1998, namely Rs. 10,724/- is being recovered from him w.e.f. the pay of August, 1998.



Whatever relief the applicant could get in this OA, if at all, he would have still got if he had limited himself to the question of recovery being made from his pay but he choose to bring in, in a roundabout manner, a entirely different question of alleged wrong replacement of pay scale of Laboratory Technicians on implementation of recommendations of the IVth and Vth Paycom.s. In any case, the question of improper grant of replacement scales on the basis of recommendations of the paycoms. w.e.f. 1.1.36 and 1.1.96 is not only time barred but unless there is any patent illegality, this matter remains entirely within the domain of administrative functions and not within the realm of judicial review. Since it has also been stated by the respondents that the question of modifying the replacement scale given to the applicant is under consideration, there is an additional reason for our not going into this question. At yet another portion in his OA, the applicant also talks of Time Bound Promotion, which actually relate to One Time Bound Promotion and Binniel Cadre Review Schemes applicable to certain categories of staff of Department of Telecom, as has come to our notice in certain other OAs and it is clear from Annexure A-7 that the applicant himself, or with his other colleagues, was also trying to obtain the benefits of OTEP and BCR Schemes for himself or the category of Laboratory Technicians. Thus, the OA also appears to be ^{as lacking} ~~lacking~~ in clarity and can also be said to be suffering from the vice of multiple reliefs.

6. Having said all this, the fact remain, that the respondents did not give any notice to the applicant when they decided, after a lapse of around 10 years, to start recovery from the pay of the applicant on account of wrong amount of annual increment, while fixing the pay of the applicant w.e.f.

1.5.1988. Thus, they just sprung a surprise on the applicant and did not give him an opportunity to have his say. There was, thus, gross violation of the principles of natural justice. It is also not contended by the respondents that the wrong fixation of pay w.e.f. 1.5.1988, which continued till 31.7.1998, was on account of any misrepresentation or fraud on the part of the applicant. The theory of legitimate expectations of income comes into play in cases like this. The applicant continued to consider whatever pay and allowances he was ^{being paid} during this period of ten years as his legitimate income and must have spent it. It cannot, therefore, be sustained in law that recovery of the amount spent over a decade back can now be recovered from the applicant without even giving him a notice. We find that under an interim order issued by this Tribunal on 9.9.98 and retained vide order dated 18.11.98, respondents were directed not to make any recovery from the pay of the applicant and we presume that except recoveries made from 1.8.1998 to September, 1998, no further recoveries were made from the applicant.

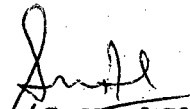
7. We, accordingly, partly accept this OA and direct the respondents not to make any recovery from the pay of the applicant for the period from 1.5.1988 to 31.7.1998. Whatever amount has already been recovered from him for this period shall be refunded to him within two months of the date of receipt of copy of this order. This will, however, not preclude the respondents from issuing a show-cause notice to the applicant and after considering his reply, issue fresh orders for recovery of excess payment in easy instalments for the relevant period w.e.f. 1.8.98.

if there was a mistake in fixation of the pay of the applicant but as already directed hereinbefore such recoveries, if required, to be made only from 1.8.1993 in easy instalments

8. In the circumstances, there will not order as to costs.



(N.P. NAWANI)
MEMBER (A)



(S.K. AGARWAL)
MEMBER (J)