

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 28th day of February, 2005

ORIGINAL APPLICATION NO.550/2002

CORAM :

HON'BLE MR.V.K.MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR.M.L.CHAUHAN, MEMBER (J)

K.C.Bakliwal
S/o Shri Poonam Chand Bakliwal,
R/o 14/38, Saraogi Mohalla,
Ajmer.

By Advocate : Shri Hemant Gupta

... Applicant

Versus

1. Union of India
Through Secretary,
Ministry of HRD,
Central Secretariat,
New Delhi.
2. Director,
National Council of Educational Research
& Training,
N.I.E. Campus,
Shri Aurobindo Marg,
New Delhi.
3. Sr.Accounts Officer,
N.C.E.R.T.,
New Delhi.
4. Principal,
Regional Institute of Education,
Ajmer.
5. Administrative Officer,
Regional Institute of Education,
Ajmer.

By Advocate : Shri Kapil Mathur

... Respondents

ORDER

PER HON'BLE MR.M.L.CHAUHAN

The applicant was initially appointed as
LDC (Cashier) in the Regional Institute of

12

Education, Ajmer. The applicant was promoted to the post of Assistant in the pay scale of Rs.425-800 w.e.f. 1.10.1980 and his pay on the promoted post of Assistant as on 1.10.1980 was wrongly fixed. Subsequently, it came to the notice of the respondents that the pay of the applicant has been wrongly fixed and as such vide impugned order dated 21.8.2002 (Annexure A/1) the pay of the applicant was refixed w.e.f. 1.10.1980. The applicant vide his representation dated 23.8.2002 (Annexure A/2) raised objections against his refixation of pay on the verge of his retirement, followed by reminder dated 9.9.2002 (Annexure A/3). It is further stated that meanwhile on 23.8.2002 the applicant sought intervention of respondent No.1 to look into the matter drawing his attention to Rule-59(1) (b) (iii) of the Central Civil Services (Pension) Rules, 1972, which envisages the verification of the correctness of emoluments of an employee for a period not exceeding 24 months only preceding the date of retirement of a government servant and not for any period prior to the date. It is the case of the applicant that in spite of repeated representations the respondents have chosen not to reply and the applicant then sent a notice dated 28.10.2002 to respondent No.4 with a copy to respondent No.2 seeking refund of Rs.63,518/-, which was illegally withheld by the respondents. It is on this basis that the applicant has filed this OA thereby praying for the following relief;

"i) that the applicant, therefore, humbly prays that the impugned order dated 21.8.2000 by which the salary of the applicant has been refixed after 22 years from the earlier refixation dated 1.10.1980 and the letter dated 6.9.2002 by which a sum of Rs.49,946/- has been

W.P.

deducted from the retiral benefits of the applicant may be declared illegal and arbitrary and therefore be quashed.

ii) The applicant be paid his pension on the basis of his average emoluments calculated after considering 24 months pay preceding his retirement which he was drawing prior to illegal refixation vide order dated 21.8.2002.

iii) The sum of Rs.63,518/- which as per the applicant has been deducted be refunded to the applicant along with interest @ 12% per annum."

2. Notice of this application was given to the respondents who have filed their reply, in which it has been stated that the amount was paid to the applicant in excess, as such, the same was rightly recovered and his pay was properly fixed. It is further stated that the applicant being an Accounts Officer Of the Institution, it was in fact his primary duty to point out that incorrect fixation has been allowed to him, which should be corrected and the correct figure should have been informed by him to the office. It is further stated that the fixation process was also gone through by him as he was working as Accounts Officer and, therefore, it gives a smell that deliberately the applicant remained silent when the incorrect fixation was given effect to allowing him illegal gratification against the rules. When the illegality committed by the officials inadvertently came to the knowledge of the authorities, directions were issued for refixation and to pay the due amount which is payable to the applicant under the rules.

3. The applicant has also filed rejoinder. In the rejoinder the fact that the applicant was working as Accounts Officer at the time of

incorrect fixation has been denied and it has been stated that the applicant was posted only on the post of Accounts Clerk/Assistant, which is the lowest post in the hierarchy and above him there were other senior officers like Junior Accountant, Senior Accountant, Accounts Officer, Administrative Officer and Principal etc. and the pay fixation was subject to internal and external audit. Thus, the applicant was not responsible for his pay fixation. The applicant has placed reliance on the decision of Hon'ble Supreme Court in the case of Sahib Ram v. State of Haryana, 1991 Suppl.(1) SCC 18.

4. The respondents have filed reply to the rejoinder, in which it has been stated that the applicant has admitted that his fixation of pay made on 1.10.1980 was correct. Therefore, the respondents have every right to correct the mistake as soon as it comes to their notice. The applicant has no right to get anything more than what he deserves for. Rule-59(1)(b)(iii) of C.C.S.(Pension) Rules, 1972 is irrelevant in the matter. Regarding role of the applicant in the matter, in para-3 of reply to rejoinder, the respondents have made the following averments;

"That the submissions made in para-4.7 of the rejoinder are not admitted. The answering respondents have not mentioned in their reply that applicant was working as an Accounts Officer at the time of fixation of his pay as on 1.10.1980. In 1980, there was no post of Junior Accountant in the Institute. The Senior Accountant was being appointed on deputation basis. The post was vacant at that time. The Accounts Officer was also being appointed on deputation basis for short period. In fact, the applicant was the only person who could advise the

administration in financial matters. However, his statement in the rejoinder that applicant was working only in the lowest post in the hierarchy is not correct. The post of Junior Accountant was created and he was appointed on that post from 20.4.1982. In a very short period, he was appointed as Senior Accountant from 6.7.1988 on regular basis by discontinuing appointment of Accountant on deputation basis. Later on, the applicant was promoted as Accounts Officer w.e.f. 4.7.1994. Being well versed in accounts, it was his primary duty to point out that the fixation has been done erroneously. Not only this, he had concealed the error knowingly until his service book was sent to headquarters for internal audit. The applicant cannot escape from the responsibility by merely saying that he was not Accounts Officer at the time of fixation of his pay. For more than eight years he functioned as Accounts Officer and was responsible for pay fixation and scrutiny of pay fixation done in the past. How is it possible that he did not examine his own case. The fact is that he concealed deliberately till it was noticed in the internal audit a few months before his superannuation."

5. We have heard learned counsel for the parties and gone through the material placed on record.

6. Now the only question which requires our determination in this case is whether the pay of the applicant and recovery of overpayment made by the respondents was justified in the facts and circumstances of the case and as to whether it is not a case where the applicant continued to draw the overpayment without his fault. At this stage, we may notice the various decisions of the Apex Court which may have bearing in the case. The Apex Court in the cases of V.Gangaram v. Regional Joint Director & Ors., 1997 SCC (L&S) 1652, Union of India and others v. Sujatha Vedachalam (Smt.) & Anr., 2000 (L&S) 882, & O.K. Udayasankaran &

11

Ors. V. Union of India & Ors., 1996 (2) SC SLJ 5, has permitted the recovery of amount paid in excess and in some cases in instalments. The case of Sujatha Vedachalam was that of suppression of facts and in the case of O.K.Udayasankaran, the Hon Apex Court upheld the order of the High Court and agreeing with the High Court made recovery of the excess amount in reasonable instalments with a view to avoid undue hardship to the concerned employee. In the case of V.Gangaram, which was a case where the appellant, a retired employee, was not entitled to four increments successively claimed. He was found entitled to only two increments. It was in this context that it was held that the excess amount from 1985 was liable to be recovered from the pension payable to the appellant and the recovery for the period prior to 1985 was waived as the department itself had adopted the said approach. There is another set of cases where the Apex Court has taken the view that excess amount erroneously paid without the fault of the employee should not be recovered. Such view has been taken by the Apex Court in the case of Shyam Babu Verma & Ors. v. Union of India & Ors., (1994) 27 ATC 121, whereby in para-11 of the judgement the Apex Court has held as follows :

"11. Although we have held that the petitioner's were entitled only to pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. 1.1.1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from 1.1.1973, it shall only be just and proper not to recover any excess amount which has

already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.

This principle of law was reiterated by the Apex Court in the subsequent decision in the case of **Sahib Ram v. State of Haryana** (supra). In that case, the appellant, Sahib Ram, was appointed as a Librarian in Government College. He did not possess the required educational qualifications and, therefore, he was not entitled to the relaxation. The Principle of the College herein granted him the relaxation. Since the date of the relaxation, Sahib Ram had been paid his salary on revised scale, the Apex Court found that it was not on account of any misrepresentation made by Sahib Ram that the benefit of higher pay scale was given to him but by wrong construction made by the Principle for which he (Sahib Ram) could not be held to be at fault. Under the circumstances, the Hon'ble Supreme Court held that the amount paid till date may not be recovered from the appellant. There is also another decision of the Apex Court in the case of **Gabriel Saver Fernades & Ors. V. The State of Karnataka & Ors.**, 1994 (5) SLR 625, wherein a direction was issued that it would be appropriate that the government may not recover from the employees the salary which they had already received though they were not eligible to the scale of pay of Rs.90-200."

Recently, the Apex Court in the case of **P.H.Reddy & Ors. V. National Institute of Rural Development & Ors.**, 2002 (2) ATJ 208, which is a decision rendered by a Bench of Hon'ble three Judges of the Apex Court, has held that the authorities were entitled to refix the pay if the same is erroneously fixed earlier, but, no recovery can be made from the employee concerned. To be precise and accurate we would do better to extract the observations of the Apex Court which runs as follows :

III

"..... the employees-appellants, who had been in receipt of a higher amount on account of erroneous fixation by the authority should not be asked to repay the excess pay drawn, and therefore, that part of directions of the appropriate authority requiring reimbursement of the excess amount is annulled.

7. Thus, from the law laid down by the Apex Court, the general rule of law is that where excess amount has been paid erroneously to an employee, and in the payment of which he had no role to play, or committed no misrepresentation or fraud, in that event (even though the pay and the emoluments had been reduced as a result of refixation/revision of pay scales), the amount so overpaid cannot be recovered from him, unless there are certain glaring facts and circumstances to take a different view.

8. Thus, on the bases of principle of law, as enunciated by the Apex Court and as stated above, now let us examine the matter whether the applicant has made out a case for the grant of relief.

9. As already stated above, the Apex Court has taken a consistent view that the authorities are entitled to refix the pay if the same is erroneously fixed earlier. In the instant case also, it is not the case of the applicant that his pay has been wrongly refixed. Thus, the applicant is not entitled to any relief whereby his pay has been refixed. The main grievance of the applicant in this case is that the recovery on account of wrong fixation could not have been affected from him as the higher pay was granted to him due to no fault of him. On the other hand, stand taken

by the respondents is that the excess amount has been paid erroneously to the applicant in the payment of which the applicant had the definite role to play as the applicant was working as Accounts Officer at the time of fixation of his pay as on 1.10.1980. It is stated that in 1980 there was no post of Junior Accountant in the department and the Senior Accountant was being appointed on deputation basis, which post was vacant at that time. It is further stated that the Accounts Officer was also being appointed on deputation basis for a short period. In fact, the applicant was the only person who could advise the administration in financial matters. The post of Junior Accountant was created and he was appointed on that post from 20.4.1982. In a very short period, he was appointed as Senior Accountant from 6.7.1988 on regular basis by discontinuing appointment of Accountant on deputation basis. Later on, the applicant was promoted as Accounts Officer with effect from 4.7.1994. The respondents have categorically stated that being well versed in accounts, it was the primary duty of the applicant to point out that the fixation has been done erroneously. Not only this, the applicant had concealed the error knowingly until his service book was sent to headquarters for internal audit. The applicant cannot escape from the responsibility by merely saying that he was not Accounts Officer at the time of fixation of his pay. For more than eight years he functioned as Accounts Officer and he was responsible for the fixation and scrutiny of pay fixation done in the past. In view of the stand taken by the respondents, which has not been refuted by the applicant, we are of the view that it is not a case where the applicant had no role to play in

fixation of his pay and the payment was made to him erroneously without any fault of the applicant. As such, we are of the view that the ratio as laid down by the Apex Court in the cases of the Sahib Ram (supra), P.H.Reddy (supra) and Shyam Babu (supra) is not attracted in the instant case.

10. Now let us examine another contention of the applicant that in view of the provisions contained in Rule-59(1)(b)(iii) it was not permissible for the respondents to refix his pay. At this stage, it would be useful to quote Rule-59(1)(b)(iii) of, the C.C.S. (Pension) Rules, 1972 which reads in the following terms :

"(iii) calculation of average emoluments.—For the purpose of calculation of average emoluments, the Head of Office shall verify from the service book the correctness of the emoluments drawn or to be drawn during the last 10 months of service. In order to ensure that the emoluments during the last 10 months of service, have been correctly shown in the service book the Head of Office may verify the correctness of emoluments for the period of 24 months only preceding the date of retirement of a Government servant, and not for any period prior to that date."

11. At the outset, it may be stated that Rule-59 is contained in Chapter-VIII which deals with 'determination and authorisation of the amount of pension and gratuity'. In this chapter Rule56 to 74 have been enumerated. Rule-56 deals with 'preparation of list of government servants due for retirement', Rule-57 deals with 'intimation to the Directorate of Estates regarding issue of "No Demand Certificate", and Rule-58 deals with 'preparation of pension papers'. Rule-59 deals

with 'Stages for the completion of pension papers' and in this rule three stages have been enumerated. First stage consists of 'verification of service', second stage consists of 'making good omission in the service book' and 3rd stage stipulates that 'as soon as second stage is completed, the Head of Office shall take the action enumerated therein. Rule 59(1) (b) (iii) speaks of second stage which makes good omission in the service book. Thereafter there is Rule-60, which speaks about 'completion of pension papers' and Rule-61 consists of 'forwarding of pension papers to Accounts Officer' etc etc. Thus, from what has been stated above, it is quite evident that the rules contained in Chapter-VIII are of procedural nature and set out the procedure for verification of service book so that an employee can get pension on due date. This is not a substantive provision. The substantive provision is contained in FRSR, which deals as to how the pay of a person has to be regulated on his initial appointment and subsequently on promotion. The pension rule deals only with the matter how pension is to be calculated and paid on the basis of pay/emoluments which has to be fixed under FRSR. It is in the exercise of powers conferred under FRSR, the competent authority has taken decision to refix the pay of the applicant vide impugned order (Annexure A/1), which action could have been legally taken by the competent authority. Further, the Supreme Court in the aforesaid cases has categorically stated that the authorities are entitled to refix the pay if the same is erroneously fixed earlier. Thus, the contention of the learned counsel for the applicant that the authority could not have refixed applicant's pay in view of the

provisions contained in the Rule-59(i)(b)(iii) of the C.C.S.(Pension) Rules is wholly misconceived as the same is not attracted in the instant case. The pay of the applicant was admittedly refixed prior to retirement of applicant on superannuation and it was on account of refixation of his pay that the applicant was paid pension accordingly and correction was made in his service book, which course was permissible for the competent authority under law. Thus, the applicant cannot take any assistance from Rule-59(i)(b)(iii), which is not attracted in the instant case. It is not a case of the nature where the average emoluments for the last 10 months of service were verified by the Head of Office and on account of such verification the applicant was paid pension and subsequently the authority had taken action thereby reducing the pension of the applicant by taking into account the emoluments for a period beyond 24 months preceding the date of retirement. Otherwise also, we are of the view that it was the responsibility of the applicant to sort out any shortcoming in the service record and fixation of pay which has been done erroneously. The applicant cannot escape from this responsibility. As being an Accounts Officer it was his duty and responsibility for pay fixation and scrutiny of pay fixation done in the past and coordinate with the head of office to sort out any shortcoming in the service record. Thus, according to us, it is a case where the applicant has drawn higher pay scale fraudulently and it is well settled law that fraud vitiates entire things. As such, we are of the view that the applicant cannot be allowed the benefit of fraud committed by him to the public exchequer in the garb of Rule

59(1)(b)(iii) even if for argument's sake it is held that the said rule is applicable. Thus he cannot be permitted to draw excess payment.

12. For the foregoing reasons, we are of the view that the applicant is not entitled to any relief. Accordingly, the OA is dismissed with no order as to costs.



(M.L.CHAUHAN)

MEMBER (J)



(V.K.MAJOTRA)

VICE CHAIRMAN

28.2.05