

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 493 of 2005

Jaipur, the 13th day of April 2005

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. A.K. BHANDARI, ADMINISTRATIVE MEMBER

Kamal Kishore S/o Shri Natthi Lal, aged about 44 years,
Resident of 38, Gopal Vihar, Malviya Nagar Jaipur. O/of. Asstt.
Geophy. (Inst.) G.S.I, W.R. Jaipur.

....Applicant

By Advocate: Mr. Prahalad Singh

VERSUS

1. The Union of India Ministry of Coal and Mines, Department of Mines, Government of India, Shastri Bhawan, New Delhi through its secretary.
2. The Secretary, Pay Commission Implementation Cell, Ministry of Finance, Government of India, New Delhi.
3. The Director General, Geological Survey of India, 27, Jawahar Lal Nehru Road, Kolkata.
4. The Dy. Director General, Western Region, Geological Survey of India, 15-16, Jhalana Doongari Industrial Area, Jaipur.

....Respondents.

By Advocate : Tej Prakash Sharma

ORDER

Per MR. J.K. KAUSHIK, JUDICIAL MEMBER

Shri Kamal Kishore has filed this Original Application under

Section 19 of the Administrative Tribunal Act and has sought for

the following reliefs:-

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"This Hon'ble Tribunal may kindly be pleased to call for the entire record relating to the case and after examining the same be pleased to allow this Original Application and quash and set aside the impugned order dated 15.09.2003 and the original order of fixation dated 8.10.1999 may kindly be restored and if any recovery is made during the pendency of the Original Application, the same may kindly be made good to the Applicant with interest at the rate of 24 per annum from the said date the said recovery is made till the actual date of payments."

2. The facts of this case are that the applicant came to be initially appointed to the post of Senior Technical Assistant dated 22.10.1984 in the pay scale of Rs. 550—900. He enjoyed his promotion to the post of Assistant Geophysicist (Instrumentation) in 1994 w.e.f. 25.10.1994 in the pay scale of Rs. 2000-3500 which came to be revised to Rs. 6500-10500 under the 5th Central Pay Commission. The Government of India vide letter dated 20.8.1999 upgraded the pay scale of Rs. 6500-10500 to Rs. 7500-12000 in respect of Assistant Geologist/Assistant Geophysicist and Assistant Geochemist of Geological Survey of India. The applicant was allowed due benefits of pay fixation of Rs. 7500-12000 and also given due payment of arrears w.e.f. 1.1.96. He was given a new fixation of pay vide letter dated 8.10.1999 at Annexure A/3. And since then he has been drawing his pay in the revised pay scale. Further facts of the case are that the all of a sudden without any notice and without any opportunity of hearing, the fixation of the applicant was ordered to be withdrawn vide letter dated 15.09.2003 wherein the revised fixation has been ordered to be given. No reason has been indicated for withdrawal of the said pay scale in the order or otherwise, the recommendation of the

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5th Pay Commission has been reproduced. He was curious enough to know the reason for withdrawal and he was told that the word 'etc.' used after the posts mentioned in para 76.14 of the recommendation of the 5th Central Pay Commission did not appear in the Department of Mines . The Original Application has been grounded on numerous grounds mentioned in Para 5 and its sub paras. The primary of them being that there is a violation of Article 14 of the Constitution of India. and the order has been passed without assigning any reason or affording any opportunity of hearing.

3. The respondents did not chose to file the reply to the Original Application and has filed the M.A. for taking certain documents on records vide M.A. No. 284/2005 to which a reply was filed by the applicant. The documents which have been filed related to the subsequent correspondence in the subject. It has been mentioned in the documents that the upgraded pay scale has been allowed w.e.f. 1.1.1996 notionally and the actual benefits prospectively that is from 28.07.2004 i.e. from the date of the approval of Ministry of Finance. It has been averred in the M.A. that the prayer of the respondents in the M.A. for dismissal of the O.A. cannot be entertained inasmuch as they have not filed any reply to the very Original Application.

4. We have heard the learned counsel for both the parties and have very carefully perused the pleadings and records of this case. While the learned counsel for the applicant has reiterated the facts and grounds raised in the pleadings of the

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applicant. The learned counsel for the respondents has submitted that the very original application has been rendered infructuous inasmuch as the scale has already been ordered to be submitted w.e.f. 1.1.1996 itself. He was confronted with the question as to whether the impugned order has been withdrawn or the respondents intend to withdraw the same. On this, the learned counsel for the respondents was not in a position to make any assertions. It was pointed out by the learned counsel for the applicant that the orders which are subsequently passed by the respondents direct that the upgradation has been done on notional basis from 1.1.1996 whereas actual arrears have been said to be payable only from a prospective rate and this may entail making of recoveries from the applicant without any reason or rhythm, which otherwise also could not have been done; there being no mis-representation on the part of applicant in getting the said payment. On this the learned counsel for the respondents submitted that the cut off rate has been provided since on that date only the approval of the Ministry of Finance was sought.

5. We have considered rival submissions put forth on behalf of both the parties. As far as factual aspects of the matter is concerned in absence of any pleadings from the side of respondents. The version of the applicant has to be taken as true. Therefore, it remains a fact that the impugned order came to be passed without affording any opportunity of hearing to the applicant prior to passing of the impugned order. He has not been given any show cause notice before passing the

said order. It is true that the applicant was given the higher fixation including arrears on the upgradation of this scale w.e.f 1.1.1996 which he has been enjoying up till the date of the passing of the impugned order. The impugned order visited the applicant on the severe consequences and there can be no two opinion about this. As far the legal aspects of the matter is concerned, we have absolutely no difficulty in holding that there has been a clear breach of the principles of natural justice and the Hon'ble Apex Court has moved a little ahead in this aspect. We may refer to the case of H. L. Trehan and others. Appellants v. Union of India and others AIR 1989 SUPREME COURT 568, which is illustrative and instructive in this respect. The contents of relevant portion from Para 11 are extracted as under:-

11. xxx It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Government servant without complying with the rules of natural justice by giving the Government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a Government servant will offend against the provision of Art. 14 of the Constitution."

Applying the aforesaid principle of law to the facts of the instant case, We can safely construe the impugned order as arbitrary and in infraction of Article 14 of the Constitution of India and therefore, the same cannot be sustained.

6. Now advertig to another aspect of the matter as regards

the cut off date. The recommendations of the 5th Pay Commission have been implemented w.e.f. 01.01.1996. This is a case of up-gradation of the scale and no functional change in the duties and responsibilities is involved; rather one would get higher pay scale while doing the same work. The very concept of notional fixation is misapplied in the instant case, therefore, we find force in the contention of the learned counsel for the applicants and the action of the respondents shall have to be declared as illegal, arbitrary and inoperative. Otherwise also, there is no intellegible differentia in providing such a cut of date and also we have not been apprised with any nexus of the same with the object sought to be achieved. We are unable to endorse the action of the respondents and have no hesitation in holding the same as arbitrary and inoperative on all counts.

8. The upshot of the aforesaid discussion is that Original Application has ample merits and substance. The same stands allowed accordingly. The impugned order is hereby quashed and the applicant shall have entitled of all consequential benefits including refund of any amounts which may have been recovered in pursuance with impugned order. The interim order already issued is made absolute. No costs.


(A.K. BHANDARI)
ADMN MEMBER


(J.K. KAUSHIK)
JUDICIAL MEMBER

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