

Q

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No.134 of 2005

Jabalpur, this the 28th day of November, 2006.

**Hon'ble Dr.G.C.Srivastava,Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member**

Maniklal Karmakar, S/o S.N.Karmakar, aged about 43 years, R/o 8/55, Jhanda Chowk, Laxmi Nagar, Raipur (Chhattisgarh)

-Applicant

(By Advocate – Shri Ranbir Singh)

V E R S U S

1. Union of India, Ministry of Finance, Deptt. of Economic Affairs, Through Additional Secretary (Budget Division), New Delhi.
2. National Savings Commissioner, 4th Floor, C.G.O. Complex, "A" Block, Seminary Hills, Nagpur (Maharashtra).
3. Regional Director, National Savings (Govt. of India), West Wing, New Secretariat Building, Opposite V.C.A.Ground, Civil Lines, Nagpur (Maharashtra).

-Respondents

(By Advocate – Shri S.A.Dharmadhikari)

O R D E R

By A.K.Gaur, JM.-

By means of this Original Application, the applicant has sought for the following main relief :-

"(i)...to set aside the order dated 28-12-2004 (Annexure A-1) and the respondents may kindly be directed to place the application (sic –applicant) the scale of pay of Rs.5000-150-8000/-.

W/

(ii)...to direct the respondents to remove the anomaly by placing the applicant in the scale of pay of Rs.4000-100-6000 and/or set aside the memorandum dated 13.10.98 (Annexure A-9)".

2. The brief facts of the case are that the applicant was initially appointed as Veterinary Stockman in Dandakaranya Development Authority (for short 'DDA') with effect from 2.6.1979. He was later on confirmed in the said department. Due to closure of his parent department, he was rendered surplus. As such vide order dated 5.3.1986 he was redeployed as Stockman (Junior) in the capacity of Lower Division Clerk (for short 'LDC') in the office of the Regional Director, National Savings, Govt. of India, Madhya Pradesh East Region, Raipur. According to the applicant, at the time of his appointment in DDA, he was working in the pay scale of Rs.975-1540 and as such his pay in the National Savings Organization (for short 'NSO') was fixed in the said scale, although the scale of LDC was Rs.950-1500. It is submitted on behalf of the applicant that as per the recommendations of the 5th Central Pay Commission, his pay was to be fixed in the pay scale on which he was holding the substantive post and, therefore, he was entitled for fixing his pay in the pay scale of Rs.4000-100-6000. A copy of the notification reflecting the revised pay scale of Rs.4000-6000 of the post of stockman (on which he was working in the DDA) has been filed by the applicant as annexure A-2. The respondents vide order dated 30.12.1997 (annexure A-3) revised the pay scale of the applicant from Rs.975-1540 to Rs.4000-6000. However, the scale of pay of the applicant was reduced from Rs.4000-100-6000 to Rs.3200-85-4900. The grievance of the applicant is that the said reduction of pay scale has been done without affording him any opportunity of hearing or show cause

W

3

notice. In this context, the applicant has placed reliance on the decision of Hon'ble Supreme Court in the case of **Divisional Suptd., Eastern Railway & ors Vs. L.N.Keshri & others**, 1974 SCC(L&S) 435. Aggrieved by this, the applicant had earlier approached this Tribunal by filing an OA No.203 of 2002 which was disposed of vide order dated 10.9.2004 with a direction to the applicant to submit a detailed representation to the respondents within a period of 15 days, and the respondents were directed to decide the same by passing a speaking, detailed and reasoned order. In compliance with the said direction the applicant had submitted his representation on 22.9.2004 (annexure A-7) and the same has been rejected vide impugned order dated 28.12.2004 (annexure A-1). Hence this Original Application.

3. Denying the allegations contained in the OA, the respondents have submitted that the applicant has wrongly stated in his OA that he was redeployed as Stockman (junior) in the capacity of LDC under the respondents. In fact, vide order dated 5.3.1986 the applicant was redeployed as LDC and not as Stockman as claimed by him. With his joining as LDC on 4.4.1986, the applicant ceased to have any claim, whatsoever to the post of stockman as that post stood abolished. On his redeployment, the applicant was allowed the protection of his earlier scale of pay of Rs.260-430 (revised Rs.975-1540) even though the scale of the post of LDC was Rs.260-400 (Revised Rs.950-1500). Consequent to the recommendations of the 5th CPC the Regional Director, National Savings, Raipur fixed the pay of the applicant in the revised scale of Rs.4000-6000 due to oversight. The revised replacement scale of the old scale of Rs.975-1540 held by the applicant was Rs.3200-4900. On realizing that the pay of the applicant has been wrongly fixed in the pay scale of

M

Rs.4000-6000 instead of the pay scale of Rs.3200-4900, the Regional Director, National Savings, Raipur rectified the mistake. The respondents have stated that the fixation of pay in the scale of Rs.3200-4000 was by no means a penal action, nor did it cast any stigma on the applicant, hence opportunity of defence or hearing to the applicant in this case was not mandatory.

4. The respondents have further submitted that the applicant was granted the scale of Rs.4000-6000 as 1st financial upgradation under the Assured Career Progression (for short 'ACP') Scheme vide order dated 15.11.1999, as he was holding the pay scale of Rs.3200-4900 while working as LDC.

5. We have heard Shri Ranbir Singh, learned counsel for the applicant and Shri S.A.Dharmadhikari, learned counsel for the respondents.

6. We find that after his redeployment under the respondents, the applicant's pay scale was protected and he was placed in the higher pay scale of Rs.975-1540, though the pay scale of the post of LDC was only Rs.950-1500. The replacement scale under the CCS (Revised Pay) Rules, 1997 for the scale of Rs.975-1540 was that of Rs.3200-4900. Due to a mistake committed by the officials of the respondents, the pay of the applicant was wrongly fixed in the pay scale of Rs.4000-6000 vide order dated 30.12.1997, which has been rectified and the applicant has been rightly placed in the pay scale of Rs.3200-4900 on revision of pay scale in terms of the recommendations of the 5th CPC.

7. We have also carefully seen the records and perused the pleadings.

8. We are of the considered view that at the time of revision of pay scale in the year 1997 consequent to the recommendations of the 5th CPC, the applicant does not have even the remotest

✓

connection of claim of the post of Stockman, against which the applicant was declared surplus in 1986.

9. The learned counsel for the applicant has placed reliance on the decision of L.N.Keshri (supra), which is not at all applicable to the facts of the present case. In the said case, L.N.Keshri was appointed and later confirmed in a higher scale whereas the applicant in the present case was appointed as well as confirmed in the scale of Rs.975-1540 (revised Rs.3200-4900-).

10. We also find that in compliance with the directions of the Tribunal in aforementioned OA 203/2002, the respondents have fully examined the case of the applicant and vide their reasoned order dated 28.11.2004 they have rightly rejected the claim of the applicant.

11. We have also noticed that Explanation 3 of Rule 5 of CCS (Revised Pay) Rules,1997 cited by the applicant is also not at all applicable to the facts of the present case, as the said explanation relates to exercising of option for retention of the existing scale in respect of post held by a person in an officiating capacity on a regular basis for the purpose of regulation of pay in that scale under FR 22.

12. We further find that since the applicant has rightly been placed in the scale of Rs.3200-4900 under CCS(Revised Pay)Rules,1997, as stated above, his further placement in the scale of Rs.4000-6000 on 1st financial upgradation under the ACP scheme has also been done rightly.

✓

13. In this view of the matter, we do not find any merit in this Original Application and the same is liable to be dismissed.

14 In the result, the Original Application is dismissed, however, without any order as to costs.

(A.K.Gaur)
Judicial Member

(Dr.G.C.Srivastava)
Vice Chairman

rkv

Ranbir Singh Ad
Bilaspur
S. D. Dharmarukari
Adm 230

Passed
on 30/11/06
S2