

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**JABALPUR BENCH,**  
**JABALPUR**

**Original Application No. 902 of 2005**

Jabalpur, this the 30<sup>th</sup> day of August, 2006

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

Anuj Pratap Singh,  
S/o. Late Shri Ram Raj Singh,  
Age - 66 years, Occu-Pensioner,  
R/o. 410, Scheme No. 59,  
Near New Sabzi Mandi,  
Indore (MP) 452014.

..... **Applicant**

**(Applicant in person)**

**V e r s u s**

1. The State of M.P. through the Principal Secretary, Forest Department, Mantralaya, Vallabh Bhawan, Bhopal.
2. The Union of India, Through the Secretary, Ministry of Environment and Forest Paryawaran, Bhawan, C.G.O. Complex, New Delhi.

..... **Respondents**

**(By Advocate – Shri Anand Pathak)**

**O R D E R**

**By A.K. Gaur, Judicial Member –**

By filing this Original Application the applicant has claimed the following relief:

“a) That the respondents order dated 15.7.04 annexure A-5 alongwith statement of fixation of pay be quashed as the same is not in accordance with principles of natural justice. Rules and law mentioned in paragraph 5 grounds for relief.

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b) That the respondent state be directed to pass a fresh order of revision of pay in the scale of Rs. 14300-18300 taking pay Rs. 5150/- as on 1.1.1996 as per annexure A-1 in the scale of Rs. 4100-5300 as per settled law i.e. once a particular advantage has been conferred the same can not be taken away without following principle of natural justice.

c) Respondent's be directed to pay the arrears of pay and retrial benefits alongwith interest as per provisions of law,

d) The applicant be awarded cost of the petition,

e) The applicant be granted such other relief which the Hon'ble Tribunal thinks just and proper in the circumstances of the case."

2. The applicant was recruited in Madhya Pradesh Superior Forest Service as Assistant Conservator of Forest after being selected by the Madhya Pradesh Public Service Commission in an open competition. After successful training he was appointed as Assistant Conservator of Forest and joined the said post on 4.4.1965. The applicant was appointed to the Indian Forest Service (in short IFS) with effect from 27.11.1995. He retired on 30.11.1997 after attaining the age of superannuation. It is submitted that on the induction into the IFS the applicant's pay was revised vide order dated 28.6.1996. His basic pay on 27.11.1995 and 1.1.1996 was fixed at Rs. 5,000/-and 5,150/-respectively. At the time of retirement the basic pay of the applicant was Rs. 5,300/-. The revision of pay scale came into force with effect from 1.1.1996 by coming into force of Vth Pay Commission. It is submitted on behalf of the applicant that while giving the benefit of revised pay scale the respondent (state) have fixed the pay of the applicant vide order dated 23.5.1998 reducing his basic pay to Rs. 5,000/- instead of Rs. 5,150/- as on 1.1.1996 in the pay scale of Rs. 12,000-16,500/- instead of Rs. 14,300-18,300/-. Aggrieved by the said act of the respondents the applicant made representation on 24.6.1998 against the said erroneous fixation of

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his pay and also submitted reminder on 12.10.1998 which was rejected on 12.11.1998. The applicant had filed OA No. 91/2003 for redressal of his grievances in this Tribunal and it was mainly submitted by the applicant that once he has retired his fixation of pay into IFS had attained finality and the same would not have been reduced under any pretext in view of the provisions of the pension rules. In the aforesaid OA, though the respondents' counsel appeared in the case but on the date of hearing he was not present and the Tribunal accordingly invoked the provisions of Rule 16 of CAT (Procedure) Rules, 1987 and passed the order in the absence of the counsel for the respondents. This Tribunal vide its order dated 20.4.2004 passed the following order:

“5. In the facts and circumstances of the case, the O.A. is partly allowed and the impugned orders dated 23.5.1996 (sic 23.5.1998) alongwith Annexure A-3 are quashed. The case is remanded back to the respondents to consider the case of the applicant in accordance with relevant rules and law and pass a speaking, detailed and reasoned order within a period of three months from the date of receipt of a copy of this order under intimation to the applicant. No costs.”

In compliance of the order of this Tribunal the respondent No. 1 passed the order dated 15.7.2004 (Annexure A-5). It is submitted by the applicant that although answering respondents have complied with the order and direction dated 20.4.2004 but the same were passed in violation of Rule 9(2)(b) of the Central Civil Services (Pension) Rules, 1972.

3. The whole thrust of submission on behalf of the applicant is that once his fixation of pay into IFS had attained finality the same could not have been reduced under any pretext in view of the provisions of Rule 9(2)(b) of the Pension Rules. For a convenient perusal, Rule 9(2)(b) is reproduced hereunder:

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(2)(a) .....

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment,-

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.”

4. By means of filing detailed reply the plea taken by the applicant in his OA was denied by the respondents on all material points. The respondents in their reply has submitted that the order dated 15.7.2004 has been passed in compliance with the Tribunal's order and in this order it is clearly mentioned that applicant's pay was erroneously fixed at Rs. 5,150/- and when this error came into light the erroneous order was cancelled and a revised order dated 28.5.1998 was passed. In order dated 28.5.1998 and order dated 15.7.2004 it is clearly observed that the applicant is entitled for pay scale of Rs. 3700-5000/- (revised pay scale of Rs. 12000-16500/-). He is not entitled for pay scale of Rs. 4100-5300/- (revised pay scale of Rs. 14300-18300/-). Rule 9(2)(b) of Central Civil Service (Pension) Rules does not apply in the case of fixation of pay of the applicant. Rule 9 of Central Civil Services (Pension) Rules, 1972 deals with the institution of departmental and judicial proceedings instituted after retirement of a government servant. It is also mentioned therein that on induction to IFS the applicant's pay scale was Rs. 3700-125-4700-150-5000/- and the revised pay scale

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has come into force with effect from 1.1.1996 and after coming into force of Vth Pay Commission his pay was fixed in the pay scale of Rs. 12000-16500/- . The applicant is demanding the pay scale of Rs. 14300-18300/- for which he is not at all entitled. In the order passed on 15.7.2004 the competent authority has clearly mentioned that on 1.1.1996 the basic pay of the applicant was Rs. 5,000/- which was not the enhancement to the pay fixed in IFS pay scale and in that condition the provisions of pay rule clause 4 does not apply. It is further mentioned that the applicant's pay was erroneously fixed in the pay scale of Rs. 4100-5300/- by order dated 28.6.1996 and when this error came into light the order dated 1.1.1996 and 17.10.1997 were revised by the order dated 23.5.1998. The order dated 23.5.1998 has been filed as Annexure R-4. It is also mentioned in the order dated 15.7.2004 that applicant's pay is revised in the pay scale of Rs. 3700-5000/- according to the provisions of IFS Pay Rule 1968 and his revised pay scale as on 1.1.1996 is Rs. 12,000-16500/-.

5. We have heard the applicant in person and Shri Anand Pathak for the respondents in this case.

6. The learned counsel for the respondents has argued that there is no illegality in the order dated 15.7.2004 passed by the respondent No. 1. It was also argued that when error in the fixation of pay came into light the previous erroneous order was revised by order dated 23.5.1995 which was also intimated to the applicant. Subsequently, the respondent No. 1 has passed the detailed and reasoned order regarding pay fixation of the applicant. We have noted the arguments advanced by the learned counsel for the respondents and we are of the view that the correction in erroneous fixation of pay on compliance of the Tribunal's order does not come within the purview of Rule 9(2)(b) of the Pension Rule. Rule

9(2)(b) of the Central Civil Services (Pension) Rule is applicable in the case the departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment. The contrary argument advanced by the learned counsel for the applicant holds no force. We have also noticed that in the present case erroneous fixation of pay of the applicant has been corrected in pursuance of the order and direction of this Tribunal by a reasoned and speaking order and the same call for no interference by this Tribunal. The contention of the applicant that natural justice have not been followed in passing the impugned order has not force as any erroneous order can always be rectified and in the present case the applicant had been erroneously granted an enhancement in the pay which have been rectified by the order in question.

7. The applicant has also argued that he received the higher pay scale due to no fault of his and the same may not be recovered from him. The counsel for the applicant has also relied upon the decision rendered in Shyam Babu Verma & Ors. Vs. Union of India & Ors., 1994 (2) SCC 521. In view of the said decision although the applicant was entitled only to the pay scale of Rs. 12,000-16,500/- in terms of pay fixation but due to no fault of his he was granted higher pay scale and for which he should not be blamed. In view of the decision rendered in Shyam Babu Verma (supra) it shall be just and proper to direct the respondents that if any excess amount has already been paid to him the same shall not be recovered, if not already recovered. Accordingly, we direct that no further steps should be taken to recover or to adjust any excess amount paid to the applicant due to fault of the respondents, as the applicant is no way responsible for the same. If the amount has already been recovered from the pay of the applicant our said

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direction and observation will not be given effect because in the OA no such prayer has been made by the applicant.

8. Thus, in our considered view there is no merit in this Original Application and the same deserves to be dismissed and it is accordingly dismissed. No costs.

**(A.K. Gaur)**  
**Judicial Member**

G.C. Srivastava  
**(Dr. G.C. Srivastava)**  
**Vice Chairman**

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| पृष्ठांकन सं ओ/न्या.....                        | जवलपुर, दि.....                     |
| प्रतिलिपि अधो हितः—                             |                                     |
| (1) सद्धिय, उच्चा व्यायामय दार एसोशिएशन, जवलपुर |                                     |
| (2) आवेदक श्री/स्त्री/मुकु.....                 | के काउंसल                           |
| (3) प्रत्यार्थी श्री/स्त्री/मुकु.....           | के काउंसल                           |
| (4) वांपाल, कोटा, जवलपुर व्यायामीठ              |                                     |
| सूचना एवं आवश्यक कार्यवाही हेतु                 | 20/08/2014<br>सच रजिस्ट्रेशन<br>7.9 |

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