

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH  
CIRCUIT COURT SITTING AT INDORE

Original Application No. 122 of 2004

Indore, this the 29<sup>th</sup> day of April, 2005

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Ms. Sadhna Srivastava, Judicial Member

Sujit Kumar Dhar, S/o. late Shri A.K. Dhar,  
age 59 years, Working as Assistant Engineer  
(P-Civil) under Executive Engineer, Central  
Public Works Department, Bhopal Central  
Division-1 having office at 52-A "Nirman  
Sadan", Arera Hills, Bhopal, r/o. D-4/301,  
Paras City, E-3, Arera Colony, Bhopal.

... Applicant

(By Advocate - Shri S.K. Bhattacharya)

V e r s u s

1. Union of India, through the Chief Engineer, CPWD, Govt. of India, Central Zone, "Nirman Sadan", 52-A, Arera Hills, 52-A, Behind Govt. Press, Bhopal - 462011.
2. The Executive Engineer (HQ) CPWD, O/o CE (CZ), Nirman Sadan, 52-A, Arera Hills, Behind Govt. Press, Bhopal - 462011.
3. The Executive Engineer, Bhopal Central Division-1, CPWD, Nirman Sadan, 52-A, Arera Hills, Behind Govt. Press, Bhopal - 462011.

... Respondents

(By Advocate - Shri K.N. Pethia)

O R D E R

By Ms. Sadhna Srivastava, Judicial Member -

By filing this Original Application the applicant has challenged the order of recovery dated 24.1.2004.

2. The brief facts of the case are that the applicant was initially appointed as Junior Engineer under the respondents on 4.11.1964 and he was promoted to the post of Assistant Engineer in the year 1991. He was granted two higher grade of pay scale of Junior Engineer i.e. Rs. 1640-2900/- that too after completion of 5 years on the post of Junior Engineer on 1.1.1986 and after completion of 15 years the pay scale was fixed at Rs. 2000-3500/- under

FR-22-1(a)(i). The said order of pay fixation has been modified vide OM dated 3rd August, 1990 issued by the Ministry of Finance. In accordance with the recommendations of the Vth Central Pay Commission the pay of the applicant has been refixed and new pay scale of Rs. 6500-10500/- was sanctioned and the revised pay of the applicant was fixed as Rs. 8900/- with effect from 1.2.1996 vide order dated 27.10.1997. After completion of 24 years of service the applicant got further fixation of his pay scale in Rs. 10,000-15,200/- with effect from 9.8.1999 vide order dated 27.12.2000. The respondents detected in the <sup>year</sup> 2002 that the applicant's pay had been fixed wrongly. The respondents, therefore, issued memorandum dated 17.12.2002 and 19.2.2003 refixing the pay of the applicant. The applicant was also required to refund the excess payment made to him. <sup>against</sup> The applicant represented ~~the~~ same requesting for refunding of ~~the~~ recovery of over payment made against him. The respondents have issued the order of recovery for Rs. 40,023/- towards alleged erroneous pay fixation vide order dated 19.2.2003. Aggrieved by the order dated 19.2.2003 and 17.12.2002 the applicant filed OA No. 129/2003 before this Tribunal. After hearing both the parties, the Tribunal has disposed of the matter with the direction to the respondents to consider the case of the applicant afresh and pass appropriate order for refixation of pay scale of the applicant within a period of 4 months and before passing the final order, the show cause notice is to be issued after hearing the applicant, assign the reasons, for proper pay fixation of the applicant. This exercise should be completed within a period of four months from the date of receipt of the order. In compliance of the order of this Tribunal the respondents have passed the impugned order Annexure A-1 dated 24.1.2004. During the pendency of the OA the respondents has recalculated the amount of recovery which is now to be recovered from the applicant and the same is Rs. 12,677/-. The counsel for the respondents has submitted a Misc. Applica

tion in this respect and the same has been taken on record vide order dated 25.4.2005. The applicant has, therefore, approached this Tribunal assailing the action of the respondents regarding recovery of over payment from his pay. He has submitted that his pay has been reduced as per the revised pay fixation. He contended that it was not of his fault that his pay was fixed wrongly. He is, therefore, not liable to be penalised for it and therefore no recovery should be made from him.

3. Heard the learned counsel for the parties and carefully perused the pleadings and records.


4. In our opinion it is not fair to the applicant who himself is not responsible for wrong pay fixation to order recovery after a period of about 16 years. The matter is directly covered by the decision of the Hon'ble Supreme Court in the case of Saheb Ram Vs. State of Haryana, 1995 (1) SCC 18 as also the decision of Shyam Babu Verma Vs. Union of India 1994 (2) SCC 521 and Srinivasa Rao Vs. State of Andhra Pradesh, 1989 (2) SCC 290. If the excess payment is on account of an arithmetical mistake (say addition or multiplication), it can be recovered at any time. But where a particular payscale is applied or the benefit of a higher pay under a particular provision is given to an employee, and when fixation of such higher pay is not on account of any misrepresentation or fraud on the part of the employee, when the mistake is discovered, it can be rectified and pay can be refixed, but the excess payment should not be recovered from the employee.

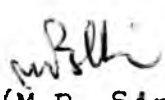
4.1. In the instant case admittedly the excess payment is not at the instance of the applicant, either on account of any mis-representation or fraud. The pay had earlier been fixed by applying a particular provision and subsequently

refixed because the audit has made some objections. In the circumstances, the question of recovery of the amount alleged to be paid in excess does not arise.

5. Accordingly, we quash and set aside the order of recovery dated 24.1.2004 (Annexure A-1). If any recovery has been made from the pay/retiral benefits of the applicant, the same shall be refunded back to the applicant within a period of two months from the date of receipt of a copy of this order.

6. Hence, the Original Application is allowed. No costs.

  
(Ms. Sadhna Sriyastava)  
Judicial Member


  
(M.P. Singh)  
Vice Chairman

"SA" पृष्ठकन सं ओ/न्या.....जबलपुर, दि.....

य लिखित अन्तर्गत -

- (1) सविन, उच्च न्यायालय जबलपुर
- (2) आवेदन, न्यायाधीश, जबलपुर के काउंसल
- (3) आवेदन, न्यायाधीश, जबलपुर के काउंसल
- (4) न्यायालय, जबलपुर, जबलपुर न्यायाधीश  
सूचना एवं आवश्यक कार्रवाई हेतु

उप रजिस्ट्रार

  
J.K. Bhattacharya  
N.R. Bhattacharya  
K.N. Bhattacharya  
BN 213

Issued  
On 5-5-08