

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 129 of 2003

Jabalpur, this the 26<sup>th</sup> day of September 2003.

Hon'ble Mr. G, Shanthappa, Judicial Member

Sujit Kumar Dhar S/o late Shri A.K. Bhar, 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 N.R. Bhavsar)

VERSUS

1. Union of India through the Chief Engineer, C.P.W.D. Govt, of India Central Zone, "Nirman Sadan", 52-A, Arera Hills, 52-A. Behind Govt. Press, Bhopal-4620011.
2. The Executive Engineer (HO) CPWD, O/O CE (CZ) "Nirman Sadan", 52-A, Arera Hills, Behind Govt. Press, Bhopal - 462011.
3. The Executive Engineer, Bhopal Central Division-1, C.P.W.D., "Nirman Sadan", 52-A, Arera Hills, Behind Govt. Press, Bhopal-462001.

RESPONDENTS

(By Advocate - Shri K.N. Pethia)

O R D E R

The applicant has filed this application seeking relief :-

(ii) .... the impugned recovery orders No. 15(44)/CE/287 dated 19/2/2003 at (Annexure-A-1) collectively be quashed forthwith by declaring that the applicant is not liable for payment of the amount of Rs. 40,023/- towards alleged erroneous pay fixation done by the department;

(iii) by way of consequential relief, the impugned orders No. 15(44)/CE(CZ)/2298 dated 17.12.2002 at Annexure-A-2 Collectively of revising pay scale of applicant and change of date of increment in pursuance of internal audit report be quashed and the respondents be directed to restore the original monitory benefits on due dates earlier fixed including the date of annual increment in favour of the applicant.

2. The advocate for the applicant has submitted that the applicant was initially appointed as Junior Engineer under the respondents on 4.11.1964 and he was promoted to the post of Asst. Engineer in the year 1991. The applicant will retire from his service on his superannuation period on 31.8.2004.
3. The applicant was granted two higher grade of pay scale of Junior Engineer i.e. Rs. 1640-2900 that to after completion of 5 years on the post of J.E. on 1.1.1986 as per (Annexure-A-7). After completion of 15 years the pay scale was fixed at Rs. 2000-3500 under FR 22-1(a)(1). The said order of pay fixation has been modified vide O.M. dated 3.8.90 issued by the Ministry of Finance which is annexed at Annexure-A-6-II.
4. In accordance with 5th pay 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 at Rs. 8900/- w.e.f. 1.1.1996 vide order dated 27.10.97 (Annexure-A-5). After completion of 24 years of service, the applicant got further fixation of his pay scale of Rs. 10000-15200 with effect from 9.8.99 vide order dated 27.12.2000 (Annexure-A-4).
5. The case of the applicant, that there is <sup>no</sup> wrong fixation of pay, the respondents have passed the impugned order for recovery of excess payment on the basis of wrong fixation of pay. The said order was passed on the basis of the audit report of the department. Admittedly the said order was passed without issuing the notice and without hearing the applicant. The advocate for the applicant has contended <sup>ed</sup> that the impugned order is not a speaking order and without issuing the notice and without hearing the applicant, The impugned order is against <sup>the</sup> Principle of Natural Justice, the impugned orders are not sustainable <sup>in</sup> to the eye of law.
- Life*

The same are liable to be quashed, consequently the recovery order is also illegal.


6. The respondents have filed their detailed objections, and produced some documents which are also similar documents produced by the applicant. The specific para of the reply is relevant for the purposes, to consider the case of the applicant. Para 3 of the reply on behalf of the respondents is as follows :-

3. That the fixation of pay was done wrongly on three accounts as per the Audit observation and, therefore, the amount paid in excess due to such, wrong fixation has been computed to be Rs.40,023/- and the recovery of the same was sought to be made.

The advocate for the respondents has admitted the fact, that the impugned orders are passed on the basis of the audit objection and without issuing the notice to the applicant. There was a mistake in fixation of pay of the applicant, now it is clarified under the impugned order and proper pay fixation is granted.

7. I have heard the arguments of the advocate for the applicant and advocate for the respondents.

8. The advocate for the applicant has submitted two citations in support of his case i.e.(1997) 35 ATC cases 57 Nathi Lal Vs. UOI & Ors. The said judgment has been given on the basis of the law laid down by the Hon'ble Supreme Court of India. The case of Sahib Ram Vs. State of Haryana reported in 1995 SCC(L&S) 248 and also State of Orissa Vs. Adwait Charan Mohanthy reported in 1995 SCC(L&S) 522 and (1995) 35 ATC 586 Ram Kripal Prasad Vs. Union of India and Ors. The said judgment relates to applying the principles of Natural Justice, while passing adverse order against the applicant. The said principles have been followed as per the law laid down by the Hon'ble Supreme Court is Bhagwan Shukla Vs. UOI (1994) 6 SCC 154. Before passing an adverse order against the applicant, the




authorities shall follow the principles, Rule of law i.e. Principles of natural justice. Without issuing the notice and without hearing aggrieved person, if such an order is passed it amounts an illegal order. The respondents have admitted this fact.

10. The respondents are also supporting impugned orders passed by the authority, stating that there is no illegality. It is further contended that the applicant was aware of the fact of wrong pay fixation, though he was aware, he did not bring it to the notice of the authorities. Hence no notice was necessary to rectify the mistake in wrong fixation of pay.

11. After hearing the advocate for the applicant and respondents and after perusal of the pleadings, the substantial question of law involved in this case is, Whether the impugned orders are sustainable in the eye of law ?

12. The respondents have accepted that the impugned orders are passed without issuing the notice. If there is any adverse order is to be passed against the applicant, the respondents shall issue notice, after hearing and affording a proper opportunity to the applicant, then the impugned orders are to be passed. The submission of the respondents is recorded. Hence the application is liable to be allowed and impugned orders in the said OA are quashed. It is further directed the respondents, to pass an order for <sup>proper</sup> fixation of pay of the applicant only after issuing the notice and hearing from the applicant.

13. It is further directed the respondents after passing the order, if the respondents found, if any excess amount was paid to the applicant arising out of wrong fixation, the same be recovered by the respondents. It would be open to the respondents to recover the same or to observe the same in the future monthly salary of the applicant spread over month by month before his retirement i.e. 31.8.2004.



14. The respondents are at liberty to re-fix the pay scale of the applicant in accordance with law. Though the observations made in this order will not have any binding effect to take an appropriate decision. Before passing final order, the show cause notice is to be issued after hearing the applicant, assign the reasons, for proper pay fixation of the applicant.

15. I direct the respondents to consider the case of the applicant afresh and pass, appropriate and considered order for re-fixation of pay scale of the applicant as mentioned above, within a period of 4 months from the date of receipt of this order. No order as to costs.

*G. Shangappa*  
(G. Shangappa)  
Judicial Member 26/9

पूरांकन सं ओ/न्या.....जबलपुर, दि.....

नियंत्रित/नियंत्रित न्यायपालिका:-

- (1) न्यायपालिका के अध्यक्ष/उप-अध्यक्ष, जबलपुर  
(2) न्यायपालिका के सदस्य/न्यायाधीश, जबलपुर  
(3) न्यायपालिका के सदस्य/न्यायाधीश, जबलपुर  
(4) न्यायपालिका के सदस्य/न्यायाधीश, जबलपुर

*N. R. Bhavsari, Bhopal*  
*P. N. Datta, Adl*

*Handed*  
*29/9/03*

*29.9.03*