

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT CAMP : INDORE

Original Application No.127 of 2002

Indore, this the 21st day of July, 2004

Hon'ble Shri M.P.Singh - Vice Chairman
Hon'ble Shri Madan Mohan - Judicial Member

Kishore Kumar Patel, S/o Late H.R.Patel,
Aged about 35 years, Working as Draftsman,
Customs & Central Excise Headquarters,
Indore (M.P.).

- APPLICANT

(By Advocate - Shri Ajay Raizada)

Versus

1. Union of India through Secretary,
Ministry of Finance, Department of Revenue,
New Delhi.

2. Commissioner, Customs & Central Excise,
Manibagh Palace, Indore.

3. Joint Commissioner (P&V), Central Excise
Headquarters, Indore.

4. Pay & Accounts Officer, Central Excise,
Indore

- RESPONDENTS

(By Advocate - Shri S.A.Dharmadhikari on behalf of
Shri P.Shankaran)

ORDER

By M.P.Singh, Vice Chairman -

By filing this Original Application, the applicant has claimed the following main reliefs --

"(i) To quash the order dated 6.2.2002.


(iii) To quash the order dated 19.2.02".

2. The brief facts of the case are that the applicant was appointed as Draftsman in the pay scale of Rs.1400-2300 vide order dated 24.10.1990 (Annexure-A-3) in the Customs & Central Excise and was promoted to the post of Inspector. Thereafter, in view of the circular dated 19.10.1994, the applicant was given the pay scale of Rs.1600-2660. Thereafter, the department passed another order by which the applicant

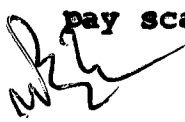
has been given the revised pay scale of Rs.5000-8000. After clarification received from the department, the applicant was placed in the pay scale of Rs.5500-9000(Annexure-A-7). This was done in view of the fact that he was in the pay scale of Rs.1600-2660, and that pay scale has been revised to Rs.5500-9000.

2.1 The applicant has received a letter dated 6.2.2002 it has been mentioned that as per wherein/the seniority list of Draftsman, issued by the Commissioner, Central Excise, Nagpur, both the Draftsman working in Nagpur and Indore Commissionerates are in the pay scale of Rs.4500-7000, and on this basis the applicant's pay has been revised. The contention of the applicant is that the circular dated 27.3.1998 is not applicable in the case of the applicant. The applicant has received another order dated 19.2.2002 (Annexure-A-14) by which recovery has been ordered. Hence he has filed this OA.

3. The respondents in their reply have stated that there was only one grade of Draftsman existing in the department in the pay scale of Rs.330-560. However, the Department of Expenditure vide their letter dated 13.3.1984 revised the pay scale of Draftsman from Rs.330-560 to Rs.425-700 and the existing Draftsmen were given the higher pay scale at par with the Draftsmen of CPWD. The pay scale of Rs.425-700 was later on revised to Rs.1400-2300 w.e.f.1.1.1986. The applicant was appointed as Draftsman in the pay scale of Rs.1400-2300 vide order dated 24.10.1990 against the vacancy occurred by promotion of Shri S.C.Badwania, Draftsman as Inspector in 1986. Subsequently, the Govt. of India, Ministry of Finance vide their order dated 19.10.1994 has further modified the scheme to give higher pay scale to Draftsmen irrespective of their recruitment qualifications, as initially the benefit was extended only to those Draftsmen having the same recruitment qualifications at par with Draftsmen of CPWD. According to the modified scheme the benefits were extended to all other



Draftsmen who did not have the requisite qualification of Diploma but they will be given the higher pay scale after requisite number of years of service. However, this scheme is not applicable to the Draftsmen working under the respondents, as the grade of Draftsman under the respondents was already upgraded at par with C.P.W.D. from 13.5.1982 and the higher grade was already given to all Draftsmen. Therefore, there is no provision for giving further upgradation to higher scale based on the modified scheme as discussed above. However, inadvertently, the pay of the applicant was upgraded to the scale of Rs.1600-2660 from 23.11.1994, After introducing the revised scale of pay from 1.1.1996 after implementation of V Pay Commission, his pay was revised to the corresponding pay scale of Rs.5000-8000. However, the applicant represented that he is entitled to be placed in the revised scale of Rs.5500-9000 w.e.f. 1.1.1996 based on the recommendations of Vth Pay Commission under the authority as placed at Annexure-A-8. His representation was considered and his pay was thereafter revised in the pay scale of Rs.5500-9000 on 28.9.1998. However, this anomaly was later on noticed by the Pay and Accounts Office, Indore and raised objection about admissibility of the above pay scale to him vide their letter dated 30.8.2000 (Annexure-R-4). Thereafter, the case was further reviewed and it was found that the applicant has been given higher pay scale from 23.11.1994 for which he was not entitled under the existing instructions on the subject. The revised recruitment rules published as per Annexure-R-5 also show that the Draftsman under the respondents are entitled only the revised pay scale of Rs.4500-7000 as corresponding to the pay scale of Rs.1400-2300 and no other pay scale. Therefore, it was decided to revise his pay based on the pay scale entitled to him and the revised pay fixation order was issued on 6.2.2002 bringing him to the pay scale of Rs.4500-7000 and his pay re-fixed as shown in the




order at Annexure- A-10. In view of this, there is no illegality or arbitrariness or discrimination on the action taken by the respondents in correcting the mistake committed while fixing the pay of the applicant. The mistake once noticed cannot be perpetuated and should be corrected at once in order to avoid undue benefits to an employee for which he is not entitled under any circumstances. Hence, the OA is without any merit and is liable to be dismissed.

4. Heard both the learned counsel of parties and perused the records.

5. The learned counsel for the applicant has stated that the applicant has been granted the higher pay scale in view of the instructions issued by the Ministry of Finance vide circular dated 19.10.1994. He has also stated that the applicant was working in the pay scale of Rs.1600-2660 and on the recommendations of the Vth CPC, this scale was revised to Rs.5500-9000. The respondents without giving the applicant any notice have reduced his pay from the pay scale of Rs.5500-9000 to Rs.5000-8000. Moreover, the applicant was appointed as Draftsman. The learned counsel has submitted that while issuing the appointment order to the applicant, the respondents have not stated whether he was appointed as Draftsman Grade-II or Grade-III. Therefore, at this stage they cannot come with the plea that he was appointed in the grade of Draftsman Grade-II.

6. On the other hand, Shri Dharmadhikari on behalf of Shri P.Shankaran, learned counsel for respondents, has filed his written notes of arguments. The learned counsel has stated that the pay scale of Rs.5500-9000 was given erroneously which has been withdrawn after the same was noticed by the audit party and, therefore, there is no illegality and the payment made in excess to the applicant is required to be recovered from him.

7. We have given careful consideration to the arguments advanced on behalf of both the parties.



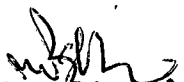
8. We find that the applicant was appointed in the year 1990 as a Draftsman in the pay scale of Rs.1400-2300. As per the Recruitment Rules the post of Draftsman in the department is required to be filled up in the pay scale of Rs.4500-7000. The pre-revised pay scale of Rs.4500-7000 before 1.1.1996 was Rs.1400-2300. However, we find that the applicant was recommended the pay scale of Rs.1600-2660 in the year 1994. The replacement pay scale of Rs.1600-2660 on the recommendations of the 5th CPC is Rs.5500-9000. In fact, on a careful study of the letter issued on 19.10.1994 by the Ministry of Finance, we find that it clearly shows that this has been issued with reference to the earlier letter dated 13.3.1984 issued by the Ministry of Finance, for granting the benefits to those Draftsman who did not possess the requisite qualifications prescribed in the recruitment rules i.e. Diploma and were not getting ~~three~~[&] promotions in pursuance of the Award given by the CPWD in the year 1984. On their representation, the Ministry of Finance has agreed to grant them the same benefits even without fulfilling the pre-condition of educational qualification but with the condition that they should have seven years service in that grade. The applicant has got unintended benefit by mistake as he had already fulfilled the requisite qualifications and there was no scale in the department lower than Rs.1400-2300 and he was recruited in that scale of Rs.1400-2300 on 24.10.1990 i.e. after the aforesaid order of the Ministry of Finance dated 13.3.1984 by which the pay scales of the Draftsman were upgraded. Therefore, he was not required to be given the higher pay scale of Rs.1600-2660 as he was already given the pay scale of Rs.1400-2300 in accordance with the recruitment rules which is the entry grade in the department. The applicant could be given the higher pay scale only either on his promotion or on upgradation of the post. It is an admitted position that the post of Draftsman in the department has not been upgraded

after 1990 i.e. after the appointment of the applicant. The letter dated 19.10.1994 only provides grant of benefits to those Draftsman who do not have the pay scale of Rs.1400-2300 and those who were working in the lower pay scale and could not be promoted to the pay scale of Rs.1400-2300 because of their not possessing the pre-requisite qualifications. As the applicant has already been appointed as Draftsman in the pay scale of Rs.1400-2300 as he was having the requisite qualification of Diploma, therefore, there was no question of further upgradation of his pay. However, based on the recommendations of the Vth CPC the applicant's pay has been upgraded in the pay scale of Rs.5000-8000 and the applicant has been granted that pay scale. Otherwise the replacement scale of Rs.1400-2300 is Rs.4500-7000. Therefore, we do not find any illegality in the action taken by the respondents to revert him to the pay scale of Rs.5000-8000.

9. The applicant was granted the pay scale of Rs.5000-8000 w.e.f. 1.1.1996. However, he has made a representation misrepresenting the facts and it was only then the respondents have fixed his pay in the pay scale of Rs.5500-9000. However, the mistake has been detected by the respondents and the same has been rectified by reverting him to the pay scale of Rs.5000-8000 and no illegality has been committed by the respondents. We are of the considered view that if the mistake has been committed by the respondents due to misrepresentation ^{by 2} of the facts of the applicant, the excess amount paid to the applicant can be recovered from him. In this view of the matter, we do not find any merit in this OA.

10. In the result, the OA is bereft of merits and is accordingly dismissed. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman