

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

Jaipur, the August, 23<sup>RD</sup> 2006

**ORIGINAL APPLICATION NO. 104/2006**

CORAM:

**HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN**

**HON'BLE MR. J.P. SHUKLA, MEMBER(ADMINISTRATIVE)**

Hem Raj Gupta son of Shri Shiv Charan Lal Gupta aged 52 years, resident of 85, Bank Colony, Mahesh Nagar, Jaipur at present working as Accounts Officer in the Office of the Accountant General (A&E) Rajasthan, Jaipur.

....Applicant

By Advocate: Mr. Anil Kumar Garg

Versus

1. The Union of India through Comptroller and Auditor General of India, New Delhi.
2. Accountant General (A&E) Rajasthan, Jaipur.

....Respondents

By Advocate : Mr. Gaurav Jain.

ORDER (ORAL)

The applicant has filed this OA assailing the order dated 16.02.2006 whereby certain recoveries have been made. The applicant alleges that he was initially appointed as

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Auditor with the respondents on 23.07.1974. He passed the SOG Examination 1986 as a result of which he was promoted to the Section Officer on 28.05.1987 and was further promoted to the post of Asstt. Accounts Officer vide order dated 01.01.1991. The applicant was later promoted to the post of Accounts Officer vide office order dated 03.09.2001. In terms of Headquarter letter dated 17.08.1987, the applicant was allowed retrospective promotion to functional grade of Sr. Accountant ~~of Sr. Accountant~~ w.e.f. 01.04.1987 in view of introduction of 80:20 Scheme. It is further stated that Sr. Accountant is lower than the post of Section Officer. Thus the applicant got promotion to the higher grade.

2. On promotion, the applicant has exercised his option for fixation of pay in time. The respondent No. 2 vide his letter dated 06.07.1988 sought some clarification from Respondent No. 1 in respect of revised options to be given after the implementation of 80:20 Scheme in case of promotion to higher post. The respondent No. 1 vide letter dated 29.08.1988 (Annexure A/4) clarified that there could not be any objection to acceptance of the option exercised by the applicant in terms of Para 2(b) of the O.M. dated 26.09.1981 for re-fixation of his pay in higher promoted post of Section officer with reference to his pay in the functional grade of Sr. Accountant. Thus the revised option exercised by the applicant was accepted and the pay of the applicant was fixed accordingly.

3. Now the respondent No. 2 all of a sudden after a lapse of 16 years vide letter dated 28.08.2003 (Annexure A/5) asked the applicant to offer revised options to the post of Section Officer, AAO and AO for fixation of his pay. The applicant vide his letter dated 19.09.2003 (Annexure A/6) stated that he cannot be forced to give another revised option since he had already given the option and if he is compelled to tender revised option it will lead to recovery of pay & allowances. Thus the applicant request for quashing of the impugned order.

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4. The respondents have contested the OA and have filed the reply. The respondents have submitted that the Headquarter office letter dated 08.07.2004 directed that the instructions contained in Headquarter circular dated 27.5.1985 have been superseded by the instructions contained in circular dated 07.06.2000 regarding fixation of pay in two quick successive promotions. Accordingly, the pay of the applicant has been revised resulting recovery from his salary. The Headquarter vide letter dated 15.3.1999 (Annexure R/6) has issued clarification that the benefit of option under saving clause FR 221(a) was not admissible in case of two successive promotions. So the recovery has been effected. The respondents pleaded that since it is the mistake on the part of the Department and that mistake can be rectified and recovery can be effected.

5. We have heard the learned counsel for the parties and have gone through the material placed on record. The short question in this case is whether the over-payment of wages made to the applicant, when there is no fault or misrepresentation on the part of the applicant and where is no complaint regarding any fraud getting higher fixation of pay, can be recovered. In our view, this preposition is well settled. As per the case of Shyam Baw Verma & others vs. Union of India, SLJ 1994 (2) 99 which is a decision rendered by three judges wherein also the applicants were given higher pay fixation in pay scale of Rs.330-560 instead of Rs.330-480. Hon'ble Supreme Court held that petitioners are entitled to the pay scale of Rs.330-480 but as they received the pay in the scale of Rs.330-560 due to no fault of their. Their scales has been reduced. Hon'ble Supreme Court further held that it was not just and proper to recover the excess payment which they have already received in the past.

6. However the respondents in the impugned order had relied upon the case of Union of India & Others vs. Smt.

Sujatha Vedachalam & Another, wherein the employee had requested for transfer which was accepted and it was directed that she will have to resign from her earlier post which <sup>she</sup> was holding and was to join as direct recruit to a lower post of clerk in the pay scale of Rs.950-1500/- . However, her pay was erroneously fixed at Rs.1250/- per month. The Department issued the order for refixation. The Tribunal quashed the order but in appeal, the Hon'ble supreme Court held that in case of excess payment, recovery can be made. This decision is reported in AIR 2000 SC 2709 which is rendered by two judges.

7. But the facts as appear in this case are fully covered by the earlier judgement of Shyam Babu Verma (Supra) which applies on all ~~fares~~ <sup>lower a</sup> in this case. Even otherwise the case of Sujatha Vedachalam (supra) is distinguishable as she herself agreed to be <sup>fixed</sup> at lower pay at time of her transfer. Moreover the judgement of Shyam Babu Verma also have not been over-ruled by Sujatha Vedachalam's case.

8. In this case, the pay of the applicant was fixed taking revised option for the first time when AG had referred the matter to CAG. It is only after obtaining approval from CAG, the applicant's revised option regarding two successive promotions had been accepted and his pay was revised. This was done somewhere in the month of August, 1988. So now after a period of 18 years on a different interpretation of FRs, the respondents ~~again~~ asked the applicant to pay back the excess wages, if any. As the applicant had not practiced any fraud or mis-represented any fact. The revised option was sought by the time of his second promotion in 80:20 Scheme which was his regular promotion as Assistant Accounts Officer. However, no grounds have been made to challenge the authority to revise the pay of the applicant. The OA is partly allowed. The respondents are restrained to effect any recovery from the applicant. However, as regards the rectification of error

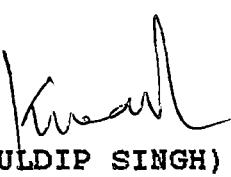


of pay fixation is concerned, the applicant has no right to claim higher pay on the basis of wrong fixation of pay. The Department can rectify the mistake and can reduce the pay. But no recovery shall be made, if any amount already recovered, that will also be refunded to applicant. OA is disposed of. No order as to costs.



(J.P. SHUKLA )

MEMBER (A)



(KULDIP SINGH)

VICE CHAIRMAN

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