

09.05.2007
OA 287/2006

Present: None for applicant.

Mr. Balveer Singh, proxy counsel for
Mr. Gaurav Jain, counsel for respondents.

This case has been listed before the Deputy Registrar due to non availability of Division Bench. Be listed before the Hon'ble Bench on 22.05.2007.


(GURMIT SINGH)
DEPUTY REGISTRAR


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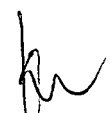
22-5-07

None present for applicant

Mr. Balveer Singh proxy counsel for
Mr. Gaurav Jain counsel for respondents

~~As~~ The DA stands
disposed of by a separate order.


(Tarsem Lal)
Administrative Member


(Kuldip Singh)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 22nd day of May, 2007

ORIGINAL APPLICATION No.287/2006

CORAM:

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER

Bharat Kumar Mathur,
s/o Shri Manmohan Mathur,
aged 56 years,
r/o 92/250, Agrawal Farm,
Mansarovar, Jaipur
at present working as Accounts Officer
in the office of Accountant General (A&E),
Rajasthan.

.. Applicant

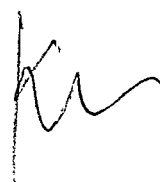
(By Advocate: -)

Versus

1. Union of India through
Comptroller and Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi.
2. Accountant General (A&E),
Rajasthan,
Jaipur

.. Respondents


(By Advocate: Shri Balveer Singh, proxy counsel for
Shri Gaurav Jain)



O R D E R (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 Auditor with the respondents on 07.02.1976. He passed the SOG Examination as a result of which he was promoted to Section Officer on 28.05.1987 and was further promoted to the post of Assistant Accounts Officer vide order dated 01.01.1991. The applicant was later promoted to the post of Accounts Officer. In terms of Headquarter letter dated 17.08.1987, the applicant was allowed retrospective promotion to functional grade 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/3) 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 refixation 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. The applicant was paid salary in accordance with the above pay fixation orders for sometime but later on in compliance of letter dated 7.6.2000 of respondent No.2, salary of the applicant was reduced by way of refixation order and the total amount of recovery was indicated as Rs.49358/-. Thus, the applicant requested for quashing of the impugned order.


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 instruction 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 promotion. Accordingly, the pay of the applicant has been revised resulting recovery from his salary. The Headquarter vide letter dated 15.3.1999 has issued clarification that the benefit of option under saving



clause FR 22 1(a)(i) 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 there is no complaint regarding any fraud getting higher fixation or pay, can be recovered. As per case Shyam Babu Verma and Ors. 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 the pay scale of Rs. 330-560 instead of Rs. 330-460. 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 scale 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 and Ors. Vs. Smt. Sujatha Vedachalam & Anr. 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 she 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 judgment of Shyam Babu Verma (supra) which applied on all fours in this case. Even otherwise, the case of Sujatha Vedachalam (supra) is distinguishable as she herself agreed to be fixed at lower pay at the time of her transfer. Moreover, the judgment of Shyma 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

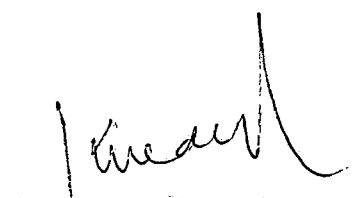


years on a different interpretation of FRs, the respondents asked the applicant to pay back the excess wages, if any. As the applicant had not practiced any fraud or misrepresented any fact. The revised option was sought by the time of his second promotion in 80:20 Scheme which was after his regular promotion as Assistant Accounts Officer. However, no grounds have been made to challenge the authority respondent to revise the pay of the applicant.

9. The OA is partly allowed. The respondents are restrained to effect 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 has already been recovered that will be refunded to applicant. The OA is disposed of accordingly with no order as to costs.


(TARSEM LAL)

Adm. Member


(KULDIP SINGH)

Vice Chairman

R/