

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET

ORDERS OF THE TRIBUNAL


02.04.2009


OA No. 116/2009

Mr. C.B. Sharma, Counsel for applicant.

Heard learned counsel for the applicant.

For the reasons dictated separately, the OA is disposed of.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 02nd day of April, 2009

ORIGINAL APPLICATION NO. 116/2009

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Dr. Manish Shrivastava son of Shri L.K. Shrivastava, aged around 34 years, resident of House No. 42/56/10, Mansarovar, Jaipur and at present working as Jr. Hydrogeologist, Central Ground Water Board, Western Region, Jaipur.

.....APPLICANT

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Union of India through Secretary to the Ministry of Water Resources, Government of India, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. The Secretary, Ministry of Finance, Government of India, North Block, New Delhi.
3. The Central Ground Water Board through Chairman, NH-IV, CGO Complex, Faridabad.
4. The Regional Director, Central Ground Water Board, Western Region, 6-A, Jhalana Doongri, Jaipur.

.....RESPONDENTS

(By Advocate : -----)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- (a) Quash and set aside the impugned orders dated 22.01.2009 (Annexure A/1), 03.02.2009 (Annexure A/2) and 24.02.2009 (Annexure A/3) passed by the respondents thereby lowering down the applicant in PB-II with grade pay Rs.4800/-.
- (b) Direct the respondents to pay to the applicant his salary and related allowances in pay scale Rs.9300-34800 in PB-II with grade pay of Rs.5400/- as allowed to him in pursuance of the order dated 18.09.2008 (Annexure A/4) and 29.09.2008 (Annexure A/5), with all consequential benefits.

- (c) Direct the respondents not to make any recovery from the salary of the applicant in pursuance to the impugned orders Annexure A/1 to A/3.
- (d) Pass any other orders as may be deemed just and proper the facts and circumstances of case including award of cost of this original application."

2. Briefly stated facts of the case are that the applicant was drawing pre revised pay scale of Rs.7500-12000/-. On account of revision of the pay scales by the Government, the pay of the applicant was fixed in the pay scale of Rs.9300-34800/- with grade pay of Rs.5400/-. However, subsequently, vide impugned order dated 03.02.2009 (Annexure A/2), the earlier order was withdrawn and now the applicant is getting the pay scale of Rs.9300-34800 with grade pay of Rs.4800/-. The grievance of the applicant is that it was not permissible for the respondents to pass impugned order at Annexure A/2 and to make recovery of the pay from the applicant as the respondents have sought clarification from the concerned department but the clarification has not been given so far.

3. We have heard the learned counsel for the applicant at admission stage. It may be stated that in exercise of the powers conferred by the proviso to Article 309, and Clause (5) of the Article 148 of the Constitution and after consultation with the Comptroller and Auditor General in relation to persons serving in the India Audit and Accounts Department, the President has made the Rules known as Central Civil Services (Revised Pay) Rules, 2008, which have come into force on 01.01.2006. Category of the Government employees to whom the rules apply find mention in Rule 2. Admittedly the applicant is covered under the category mentioned in Rule 2. Rule 3 contains the definition clause. The present scale has been defined in relation to any post/grade specified in column 2 of the First Scheduled to mean the scale of pay specified against that post in column 3 thereof. 'Pay in the pay band' has been defined to mean pay drawn in the running pay bands specified in column 5 of the First Scheduled. Similarly 'grade pay' has been defined as fixed amount corresponding to the pre-revised pay scales/posts. Rule 4 stipulates the scale of pay of post, which is in the following terms – "The pay band and grade pay or the pay scale, as applicable, of every post/grade specified in column 2 of the First Schedule shall be as specified against it in column 5 & 6 thereof." Pursuant to the

statutory Rules issued by the President of India, the First Schedule has indicated the Revised pay bands and Grade Pay for posts carrying pay scales in Group 'A', 'B', 'C' and 'D' except posts for which different revised scales are notified separately.


4. As can be seen from entry made in the First Schedule against the scale of Rs.7500-250-12000, revised pay structure has been mentioned as 9300-34800 with grade pay of Rs.4800. Admittedly, the applicant is drawing the revised pay scale in terms of the aforesaid Rule. Learned counsel for the applicant submits that since the applicant has put in more than four years of service in the pre-revised scale of Rs.7500-250-12000/-, as such he was entitled to the non functional upgrade pay scale, which is correspondent to the immediate next higher pay scale of the pre-revised pay scale i.e. 8000-275-13500/- for which post as per aforesaid schedule grade pay in Revised Pay Structure is Rs.5400 instead of Rs.4800/-.

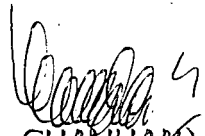
5. Learned counsel for the applicant has also drawn our attention to clarification dated 21.11.2008 (Annexure A/4), which also stipulates that an officer who has completed four years of service on 01.01.2006 or earlier will be given non functional upgradation w.e.f. 01.01.2006 from such date on which he completes four years in the pay scale of Rs.7500-12000/- (pre revised). In the light of clarification at Annexure A/4, admittedly the person who has completed four years of service on 01.01.2006 will be entitled to non-functional upgradation which in the pre-revised scale would be in the scale of Rs.8000-275-13500/- as corresponding revised pay scale of Rs.9300-34800 with grade pay of Rs.5400/- instead of 4800/-. Thus, according to the applicant, it is not permissible for the respondents to make recovery at this stage as the applicant has already put in more than four years of service in the pre-revised scale, thereby entitling him pay band of Rs.5400/- w.e.f. 01.01.2006 in the Revised pay structure.

6. We have given due consideration to the submission made by the learned counsel for the applicant. We are of the view that the matter can be disposed of at this stage as the Department is already seized of the matter and the question whether the applicant is entitled to the pay band of Rs.5400/- is under consideration of the Government. Thus according to

us, the present OA is premature. We wish to clarify that the matter regarding recovery of excess amount can be sorted out at the level of the respondents and for that purpose, the respondents may take into consideration the aforesaid fact, if need be excess recovery may be deferred till the case of the applicant is not considered in the light of the clarification dated 21.11.2008 (Annexure A/4).

7. With these observations, the OA is disposed of with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ