

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

25.04.2012

OA No. 288/2011

Mr. Dharmendra Jain, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

List it on 30.04.2012 for further orders.

IR to continue till the next date.

Anil Kumar

(Anil Kumar)
Member (A)

K. S. Rathore

(Justice K.S. Rathore)
Member (J)

ahq

30/04/2012 [OA No. 288/2011]
Mr. Dharmendra Jain, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Heard.
O.A. is disposed of by a separate
order on the separate sheets for the
reasons recorded therein.

Anil Kumar

[Anil Kumar]
Member (A)

K. S. Rathore
[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 30th day of April, 2012

ORIGINAL APPLICATION No. 288/2011

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Komal Singh Choudhary son of Late Shri Nukki Ram Choudhary, aged about 44 years, resident of 60-A, Vinoba Vihar, Malviya Nagar, Jaipur. Working as Youth Assistant Grade I, NSS Regional Centre, SB-12, Bhawani Singh Road, Bapu Nagar, Jaipur.

... Applicant

(By Advocate : Mr. Dharmendra Jain)

Versus

1. Union of India through Secretary, Youth Affairs & Sports (Department of Youth Affairs), Government of India, Shastri Bhawan, 'C' Wing, New Delhi.
2. Deputy Programme Advisor, Ministry of Youth Affairs & Sports, NSS Programme, Advisor's Cell, 12/11 Jammnagar House, New Delhi.
3. Assistant Programme Adviser, NSS Regional Centre, SB-12, Bhawani Singh Road, Bapu Nagar, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

The applicant has filed the present OA claiming for quashing the order dated 16.06.2011 (Annexure A/1).

2. Learned counsel for the applicant argued that the applicant was appointed as Stenographer Grade III vide order dated 17.06.1991. That on completion of 12 years of service, the applicant was granted the pay scale of Rs.5500-175-9000 under Assured Carrier Progression Scheme vide order dated 22.12.2003 and was fixed at Rs.5500/- w.e.f. 27.05.2003. He further argued that respondent no. 1 issued a

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corrigendum dated 06.02.2004 vide which the applicant was granted the pay scale of Rs.5000-150-8000/- instead of pay scale of Rs.5500-175-9000/- w.e.f. 27.05.2003 and fixed the pay of the applicant at Rs.5000/-. That the applicant was given promotion on the post of Youth Assistant Grade II vide order dated 24.02.2006. The so called promotion was in the scale of Rs.4500-125-7000/- whereas the applicant was getting the pay in the pay scale of Rs.5000-150-8000/- w.e.f. 27.05.2003. The pay of the applicant was fixed at Rs.5625/- after giving him the benefit of pay protection vide order dated 23.05.2006. He further submitted that as per the recommendations of the 6th Pay Commission, the pay of the applicant was fixed in the Pay band of Rs.9300-34800 with Grade Pay of Rs.4200/- and after the so called promotion of Youth Assistant Grade II w.e.f. 01.05.2006, the pay was fixed after giving the benefit of pay protection but on the basis of internal correspondence between the respondents, the respondent no. 1 suggested that the applicant should be given Grade Pay of Rs.2800/- and recovery of excess payment should be made. However, no such order was passed and the matter was referred to respondent no. 1 by respondent no. 3 vide letter dated 19.02.2009 (Annexure A/8). The applicant was promoted on the post of Assistant Grade I vide order dated 04.03.2011 in the pay scale of Rs.9300-34800 (pre-revised scale Rs.5500-175-9000/-) with grade pay of Rs.4200/-. The respondents vide their letter dated 16.06.2011 (Annexure A/1) has directed to respondent no. 3 to grant the grade pay of Rs.2800/- instead of Grade Pay of Rs.4200 and to recover the excess amount pay to the applicant due to the fixation in the pay scale of Assistant Grade II i.e. Rs.4500-125-7000/- w.e.f. 01.05.2006.

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3. He further argued that before passing the order dated 16.06.2011, no notice was issued to the applicant and hence the action of the respondents is illegal, arbitrary and against the principles of natural justice. That the pay of an employee cannot be reduced in the name of promotion. At the time of promotion on the post of Youth Assistant Grade II in the scale of Rs.4500-7000/- the applicant was getting the pay in the pay scale of Rs.5000-150-8000/-. However, the applicant accepted the promotion because his pay was protected. The order of fixation of pay was passed on 23.05.2006 (Annexure A/7). But the recovery is being made in the year 2011 after a lapse of five years. That the applicant did not give any wrong fact or misrepresented before the respondents at the time of fixation of pay on 23.05.2006 for giving protection of pay. Therefore, he is not responsible for the wrong fixation of his pay. Had his pay not protected at the relevant point of time, he would not have accepted the promotion. To support his arguments, he referred to the judgment of the Hon'ble Supreme Court in the case of **Syed Abdul Qadir & Others vs. State of Bihar & Others**, 2009(1) SCC (L&S) 744. The Hon'ble Supreme Court in Para Nos. 57, 58 and 59 has held as under:-

"57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, in a given case, it

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is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana [1995 SCC (L&S) 248] Shyam Babu Verma vs. Union of India [1994 SCC (L&S) 683] Union of India v. M. Bhaskar [1996 SCC (L&S) 967] V. Gangaram v. Director [1997 SCC (L&S) 1652] Col. B.J. Akkara (Retd.)v. Govt. of India [2007(1) SCC (L&S)529] Purshottam Lal Das v. State of Bihar [2007(1)SCC(L&S) 508] Punjab National Bank vs. Manjeet Singh [2007(1) SCC(L&S) 16] Bihar SEB v. Bijay Bhadur [2008 SCC (L&S) 394]

59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

4. On the contrary, learned counsel for the respondents argued that the case of the applicant for pay protection was examined by the Government of India but the same has not been found possible in view of the relevant rules and, therefore, the letter dated 16.06.2011 has been issued. He further argued that as per the Recruitment Rules, 50% posts of Youth Assistant Grade II are required to be filled amongst UDC/Stenographer Grade III. The applicant has already accepted the promotion on the post of Youth Assistant Grade II in the pay scale of Rs.4500-7000/-, therefore, he is not entitled for any pay protection as per the rules and his salary has been rightly fixed in the pay scale of Rs.4500-7000/-. He further argued that a corrigendum was issued on 06.02.2004 regarding pay scale of the applicant. Earlier the scale of Rs.5500-9000/- was wrongly mentioned in the order dated 22.12.2003, which was corrected as Rs.5000-8000/-. He further

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argued that the applicant is not entitled for the pay protection on the ground that he was drawing pay & allowances in the pay scale of Rs.5000-8000/- due to granting 1st ACP, which is the pay scale of Stenographer Grade II. The applicant had the option to opt for the channel of promotion on the post of Stenographer Grade II but he accepted promotion on the post of Youth Assistant Grade II and joined the same. Since the applicant has accepted the promotion to the post of Youth Assistant Grade II, knowing very well that it carries lower pay scale than the one which he has been granted ACP, therefore, there was no justification for protection of his pay. Vide order dated 16.06.2011 (Annexure A/1), the respondents have only rectified the mistake of allowing the pay protection. It is well settled that the mistake can be rectified at any time. Therefore, the action of the respondents is legal and justified. The competent authority had issued instructions to all regional centers including the Jaipur for granting grade pay of Rs.2800/- to all Youth Assistant Grade II dated 14.11.2008. The representation of the applicant was examined by the respondents in consultation with the Ministry of Finance, Department of Expenditure and the same was turned down. Therefore, there is no irregularity/illegality in issuing the order of recovery from the applicant.

5. Heard the learned counsel for the parties and perused the documents on record. It is not disputed between the parties that earlier the applicant's pay was protected vide order dated 23.05.2006 (Annexure A/7). It is also not disputed by the respondents that this pay protection order was issued either on the wrong fact given by the

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applicant or on the misrepresentation of facts by the applicant. Learned counsel for the applicant referred to the case of **Syed Abdul Qadir & Others vs. State of Bihar & Others**, 2009(1) SCC (L&S) 744 in which Hon'ble Supreme Court has held that this Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. In this case also, it is not the case of the respondents that excess amount was paid to the applicant on account of any misrepresentation or fraud on the part of the applicant. It appears that excess payment was made by the respondents by mistake. The respondents have themselves in their written statement as well as at the time of the arguments have admitted that a mistake can be corrected at any point of time. In view of the facts & circumstances of the present case, we direct the respondent to examine afresh the case of the applicant in view of the ratio decided by the Hon'ble Supreme Court in the case of **Syed Abdul Qadir & Others vs. State of Bihar & Others**, 2009(1) SCC (L&S) 744. They should also examine that if the applicant is not responsible for wrong fixation of his pay and subsequently for the recovery, then who in the Department is responsible for the wrong fixation of his pay because if the amount paid to the applicant cannot be recovered from him, then it should be recovered from the person/persons who are responsible for the wrong fixation of pay so that the Government

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should not suffer any financial loss. Till a decision is taken in this regard, no recovery shall be made from the applicant pursuant to the order dated 16.06.2011 (Annexure A/1).

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

Anil Kumar

(Anil Kumar)
Member (A)

AHQ

K.S. Rathore

(Justice K.S.Rathore)
Member (J)