

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO.3116/2014

Reserved on 09.03.2016
Pronounced on 18.03.2016

**HON'BLE MR SHEKHAR AGARWAL, MEMBER (A)
HON'BLE DR BRAHM AVTAR AGRAWAL, MEMBER (J)**

Nirdosh Kumar Sharma, aged 59 years,
S/o Late Sh. Mange Ram Sharma,
Working to the post of Junior Engineer(C.L.)
In Delhi Development Authority, Vikas Sadan,
New Delhi.
R/o 1941, Sector 4, Opp. Jiwan Jyoti School,
Gurgaon(Har).

...Applicant

(By Advocate: Mr. Yogesh Sharma)

VERSUS

1. Delhi Development Authority, through
The Commissioner (P),
Vikas Sadan, New Delhi.
2. The Deputy Director (CR),
Delhi Development Authority,
Vikas Sadan, New Delhi.

...Respondents

(By Advocate: Ms. Sriparna Chatterjee)

:ORDER:

HON'BLE DR BRAHM AVTAR AGRAWAL, MEMBER (J):

The applicant, a Junior Engineer in the Delhi Development Authority (DDA) since 20.09.1983, has filed the instant OA challenging the withdrawal of the second higher pay-scale granted to him w.e.f. 20.09.1998 under the DDA's Resolution

No.99/92 dated 18.08.1992. He accordingly prays that the DDA's orders dated 13.02.2014 (Annexure A2) and 29.04.2014 (Annexure A1), and its communication dated 22.08.2014 (Annexure A10) be set aside, that the said benefit be directed to be restored and that the applicant be considered for grant of second and third financial upgradations w.e.f. 20.09.2007 and 20.09.2013, respectively, under the ACPS/MACPS, with all consequential benefits.

2. As the respondents have categorically pleaded in their reply that grant of financial upgradations due under the ACPS/MACPS is under consideration, the controversy involved in the present OA can be said to be limited to the issue as to whether the grant of second higher pay-scale to the applicant w.e.f. 20.09.1998 was wrong and, therefore, its subsequent withdrawal legally sustainable.

3. We have heard the learned counsel for the parties, perused the pleadings as well as the rulings cited at the Bar, and given our thoughtful consideration to the matter.

4. The DDA's Resolution No.99/92 dated 18.08.1992 reads, *inter alia*, as under:

"Sub: Pay-scale of Junior Engineers (Civil/Elect.) and Section Officers (Horticulture).

The Government of India, Ministry of Urban Development vide their letter No.12014/2/87-EW-II dated 22.3.91 ... has decided as under:

- i) There will be two scales of pay for Jr. Engineers (Civil/Elect.)/Sectional Officers (Hort.) in the CPWD viz. Rs.1400-40-1800-EB-50-2300/- and Rs.1640-60-2600-EB-75-2900/- and the incumbents thereof will be designated as Jr. Engineers/Sectional Officers (Hort.) in the grade of Rs.1640-60-2600-EB-75-2900/-. The entry will be in the grade of Rs.1400-40-1800-EB-50-2300/-. The Junior Engineers/Sectional Officers (Hort.) on completion of 5 years service in the entry grade will be placed in the scale of Rs.1640-60-2600-EB-75-2900/- subject to the rejection of unfit. This higher grade will not be treated as a promotional one but will be non-functional and the benefit of FR 22 (I) (a) (1) will not be admissible while fixing the pay in the higher grade, as there will be no change in duties and responsibilities.
- ii) Jr. Engineers/Sectional Officers (Hort.) who could not be promoted to the post of Asstt. Engineer/Asstt. Director (Hort.) in the pay scale of Rs.2000-60-2300-EB-75-3200-100-3500/-, due to non availability of vacancies in the grade of Asstt. Engineers/Asstt. Directors (Hort.) will be allowed the scale of Asstt. Engineer/Asstt. Director (Hort.) i.e. Rs.2000-60-2300-EB-75-3200-100-3500 on personal basis, after completion of 15 years of total service as Jr. Engineer/Sectional Officer (Hort.) This personal promotion will be given on fitness basis. As and when regular vacancies in the cadre of Asstt. Engineers/Asstt. Directors (Hort.) arise, the JEs/SOs (Horticulture) enjoying personal promotion will be adjusted against vacancies subject to observance of normal procedure.
- iii) In the matter of pay fixation, the JEs/SOs (Hort.) allowed the personal scale of Rs.2000-60-2300-EB-75-3200-100-3500 will get the benefit of FR 22 (I) (a) (1).
- iv) On being granted personal promotion the JEs/SOs (Hort.) will continue to perform the same duties/functions of Jr. Engineers/Sectional Officers (Hort.).
- v) The orders regarding placement in the scale of Rs.1640-60-2600-EB-75-2900/- after five years of service will be effective from 1.1.86 while those relating to personal promotion after 15 years of service will be effective from 1.1.1991.

2. Consequent to the above orders of Govt. of India, the CPWD introduced the above revised scale vide their office memo No.A-11014/1/91/EC-IV dated 27.3.91 The benefit of revised pay scale was also given by Govt. of India, Ministry of Communications Telecom Commission to their Jr. Engineers (Civil/Elect.) vide their office order No.6-8/87-CSE dated 9.5.91 (Appendix 'M' page no.61-62).

3. A Committee comprising the senior officers of DDA was constituted vide this office order No.F.1(26)89/PB.II/Pt. dated 20.2.92 ... to consider the issue regarding revision of pay scale of

Jr. Engineers/Section Officers (Hort.) on the pattern of CPWD and also elicit views of the various associations of officers in the Engineering Wing of D.D.A.

4. The said Committee heard the various representatives of the Engineers Associations and examined the case of grant of scale of pay to the Junior Engineers/Section Officers (Hort.):-

- A. The sanction of scale from Rs.1400-40-1800-EB-50-2300/- to Rs.1640-60-2300-EB-75-2900/-on completion of 5 years service as Jr. Engineers with effect from 1.1.86.
- B. The scale of Rs.2000-60-2300-EB-75-3200-100-3500/- on completion of 15 years service as Junior Engineer/S.O. (Hort.)

5. After detailed discussion, the Committee recommended introduction of the scale of Rs.1640-60-2300-EB-75-2900/- on completion of 5 years service as Jr. Engineer/S.O. (Hort.) with effect from 1.1.86 as per Govt. of India's orders.

6. The Committee also considered the issue regarding sanction of scale of pay of Rs.2000-60-2300-EB-75-3200-100-3500/- to such Junior Engineers/Section Officer (Hort.) who may not be promoted to the post of Asstt. Engineer/Asstt. Director (Hort.) for want of vacant post. The Committee after deliberations and hearing the representatives of the various Engineers Associations, recommended that the scale of Rs.2000-60-2300-EB-75-3200-100-3500/- may be sanctioned to such Jr. Engineers/Section Officers (Hort.) who had completed 15 years of service as J.Es/S.Os (Hort.) on 1.1.91 and also who complete 15 years of service, subsequent to this date. This higher scale will be admissible on their being found fit and will be admissible on personal basis, subject to Vigilance clearance and having passed the departmental test in Accounts. Such of Jr. Engineers/Section Officers (Hort.) who have been sanctioned the benefit of the personal promotion, will be adjusted along with other eligible Jr. Engineers/Section Officers (Hort.) against the vacant posts of Asstt. Engineers/Asstt. Directors (Hort.) as per recruitment regulations prescribed for promotion to the post of Asstt. Engineers/Asstt. Directors (Hort.).

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12. The sanction of scale of Rs.1640-60-2300-EB-75-2900/- will not be treated as promotion but shall be non-functional and the benefit of FR 22C now FR-22(I) (a) (1) will not be admissible to them as it will not involve any change in their duties and responsibilities.

13. The sanction of scale of pay of Rs.2000-60-2300-EB-75-3200-100-3500/- will amount to personal promotion to the J.Es/S.Os (Hort.) and their pay will be fixed giving them the benefit of FR-22 (I) (a) (1) and will be admissible with effect from 1.1.91. The J.Es/S.Os (Hort.) having the benefit of personal promotion in the scale of pay of Rs.2000-60-2300-EB-

75-3200-100-3500/- will be adjusted against the posts of Asstt. Engineers/Asstt. Directors (Hort.), subject to observance of normal procedure, as and when such posts become vacant/available.

14. The Authority may consider and approve the sanction of pay scale of Rs.1640-60-2300-EB-75-2900/- to such of Junior Engineers (Civil/Elect.)/Section Officers (Hort.) who have completed 5 years of service as on 1.1.86 and who complete 5 years subsequently and the scale of pay of Rs.2000-60-2300-EB-75-3200-100-3500/- to such of Junior Engineers (Civil/Elect.)/Section Officers (Hort.) who complete 15 years of service as on 1.1.91 and subsequently.

R E S O L U T I O N

The Authority resolved that the proposals contained in para 12,13 and 14 of the Agenda Note be approved subject to the condition that the arrears due to revision of scale will be deposited in the respective G.P.F. Accounts.”

5. That after completion of five years' service the applicant was granted first higher pay-scale, i.e., Rs.1640-2900/-, w.e.f. 20.09.1988 is not in question. In question, as noted above, is the grant of second higher pay-scale, i.e., Rs.2000-3500/- (revised pay-scale Rs.6500-10500/-) w.e.f. 20.09.1998 on completion of 15 years' service. It has been, in this context, contended by the respondents that at the time when the case of the applicant was considered by the Group 'C' DPC (meeting on 10.02.1999) and he was assessed 'FIT' for second higher pay-scale, it was unaware of the fact that a charge sheet had been issued to the applicant on 19.05.1997 pursuant whereto penalty of stoppage of one increment without cumulative effect was imposed on him by an order dated 16.07.2002; this penalty became over on 31.08.2003. The said fact was noticed while processing the applicant's case for second financial upgradation on completion of

24 years of service under the ACPS; the reason was that no entry about the issuance of the charge sheet had been made in vigilance register and an erroneous vigilance clearance was issued. Thereupon, the Group 'C' DPC in its meeting held on 24.11.2008 reviewed the matter and recommended withdrawal of the aforesaid second higher pay-scale, i.e., Rs.2000-3500/- (revised pay-scale Rs.6500-10500/-) granted w.e.f. 20.09.1998. This DPC, however, assessed the applicant 'FIT' for grant of first financial upgradation to pay-scale of Rs.6500-10500/- under the ACPS w.e.f. 01.09.2003, i.e., the date following the date when the aforesaid penalty was over. The applicant was duly granted a personal hearing before issuance of the impugned order dated 13.02.2014 (Annexure A-2).

6. The DDA's Resolution No.99/92 dated 18.08.1992 makes it clear that grant of second higher pay-scale on completion of 15 years' service was subject to vigilance clearance. Vigilance clearance in the applicant's case was wrongly issued. And, on noticing the correct factual position, an unjust benefit accorded to the applicant was withdrawn. It is well-settled that an administrative error can at any time be corrected, of course, after affording an opportunity of hearing to the employee concerned, and this is what has been done in the instant case.

7. Further point to be considered in the present OA is as to whether the order of recovery, vide the impugned order dated

29.04.2014 (Annexure A-1), is legally sustainable in view of the judgment of the Hon'ble Supreme Court in **State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others** (2015) 4 SCC 334, based on which the DoP&T has also issued the OM No.18/03/2015-Estt. (Pay-I) dated 02.03.2016. The ratio of the said judgment is that an order of recovery of monetary benefits wrongly extended to an employee can only be interfered with where such recovery would be iniquitous, i.e., this would result in a hardship of a nature which would far outweigh the equitable balance of the employer's right to recover. The Hon'ble Supreme Court also listed the following few situations wherein recovery by employers would be impermissible in law:

- "(i) Recovery from the employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

8. It is the contention of the learned counsel for the applicant that the applicant is covered by the first of the situations listed above, as he belongs to Group 'C'. However, we feel that an

employee in the pay-scale meant for Group 'B' employees would not be covered by the said situation. Nor do we feel that recovery from the applicant would be iniquitous.

9. In view of the above, we are of the view that the instant OA is devoid of merits. The same is, therefore, dismissed. No order as to costs.

(Dr. B.A. Agrawal)
Member (J)

(Shekhar Agarwal)
Member (A)

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