

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA 1004/2018

This the 30th day of October, 2018

Hon'ble Mr. Pradeep Kumar, Member (A)

Sh. Mahavir Singh Dahiya,
1102, Trimuti CGHS (GH),
Sector-39, Gurugram-122003
Haryana

....Applicant

(By advocate: Mr. Mukesh Chander)

Versus

1. Union of India through
Secretary, Ministry of Labour,
Shram Shakti Bhawan
New Delhi-110001

2. The Director General,
ESI Corporation, C.I.G. Marg,
New Delhi-110002

....Respondents

(By advocate: Ms. Pragya Agarwal with Mr. V.K. Singh)

ORDER (ORAL)

Shri Mukesh Chander, appeared as counsel for the applicant and Ms. Pragya Agarwal, appeared as counsel for respondents.

2. The applicant was working as a Director, ESI Hospital organization, on adhoc basis in Sub-Regional Office, Gurgaon. While issuing orders for this posting, vide orders dated 05.05.2011, it was also indicated that he will draw scale PB-3 Rs. 15600-39100 with Grade pay of Rs. 7600/- on adhoc basis. Thereafter the salary

fixation in respect of applicant was to be formally proposed by the Deputy Director (Finance) working in the Sub-Regional office, Gurgaon and it was to be sent to the Head Quarters office located at Delhi for approval.

3. In the meanwhile the Head Quarters office vide its Memorandum dated 06.06.2017, issued policy directives in respect of pay fixation in respect of Joint Director, Director and Additional Commissioners. In respect of Directors, the pay scale indicated was PB-4 Rs. 37400-6700/- with GP- 8700/-. Further directions were also issued by Head Quarters office vide their letter dated 19th of September 2011, to fix the pay scales in respect of various officers in the grade of Joint Director, Director and Additional Director as this fixation was earlier kept in abeyance pending decision. Following this letter, the Deputy Director (Finance) Sub-Regional Office, Gurgaon, fixed the salary of the applicant in PB 4 i.e Rs. 37400-6700/- with Grade Pay- 8700/-.

4. Subsequently the applicant was transferred from Sub-Regional Office, Gurgaon, to Head Quarters office and the Last Pay Certificate was issued on 24.05.2013 showing his salary as PB-4 i.e Rs. 37400-6700/- with GP- 8700/-. Thereafter he was again transferred from HQ office to ESI Hospital, Basai Dara Pur and the Last Pay Certificate was again issued on 27.12.2013 showing his salary to be in PB-4 i.e. Rs. 37400-6700/- with GP- 8700/-. Thereafter the applicant retired on 30.04.2014. On retirement provisional pension orders were issued on 09.05.2014 instead of normal pension

payment orders. When questioned, the applicant mentioned that there was some case lodged against the applicant, which was still pending, because of which the provisional pension was issued.

5. Thereafter one complaint was received by the Respondents alleging that the salary fixation in respect of one other officer Shri Arvind Kumar, Director, who had since retired, was wrong. During investigation of that complaint, it came out that pay fixation in respect of the applicant also was incorrect and on this account certain excess payments have occurred, total amount being Rs. 1,26,577/-. With a view to avoid loss to public exchequer, the respondents issued a letter dated 26.12.2014 indicating that in respect of the said excess, recovery should be made in four installments amounting to Rs. 26,279/- each from the pension of the applicant from December 2014 to March 2015. These entire recoveries have since been made already.

6. It is towards this recovery that the applicant has a grievance and he had approached the Tribunal seeking refund of this excess payment on the plea that his salary fixation was done by the Finance Office namely Deputy Director (Finance) working in Sub-Regional Office Gurgaon and thereafter the Head Quarter Finance on their own and the applicant had not misrepresented anything at all at any stage.

7. The applicant also pleaded that in the judgment by Hon'ble Apex Court in State of Punjab & others etc. Vs. Rafiq Masih (White

Washer) etc., I (2015) SLT 179, the recoveries from retired employees or such employees who are due to retire within a period of one year, have been made impermissible. Accordingly, there is a need that the recovered amount should be repaid.

8. The Respondents pleaded that the applicant was very well aware on 05.05.2011 itself that his promotion to the Post of Regional Director (Grade A) was on Adhoc basis and it was in scale PB-3 Rs. 15600-39100 with Grade pay of Rs. 7600/-and as such regular pay scales, which were subsequently advised by the Head Office on 06.06.2011, were not applicable to him. There was a mistake in grant of this regular scale. The respondents also pleaded that the applicant was a very senior officer working as a Director and he was well aware about it.

9. The respondents also pleaded that this wrong fixation had actually come to light almost immediately after his retirement and they had issued a letter dated 27.06.2014 indicating the correct fixation. The applicant however pleaded that this letter was wrongly addressed and this was never received by him at relevant point of time. It was only subsequently that he received it in response to a query on RTI.

10. The respondents also brought attention to a judgment by Hon'ble Apex Court in Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors. SLP (C) NO. 30858/2011, wherein the Hon'ble Apex Court had permitted recoveries under certain conditions and

even though this judgment was discussed in Rafiq Masih (Supra) the same was never over ruled. Thus, the underlying conditions to effect recoveries continue to hold good and as such the respondents are well within their rights to make recoveries which have been found to be paid in excess and especially so as the applicant was a senior officer who ought to have been in the know of things at the relevant point of time.

11. Matter has been heard at length. It is seen that the applicant was a senior officer who was very well aware in May 2011 that this promotion is on adhoc basis only. Subsequent to that, his pay fixation was done in a grade which was admissible for only those who are regularly posted as Director. Being a senior officer, he ought to have raised alarm. Thereafter Last Pay Certificates were also issued to him twice. He ought to have raised alarm at these stage also. However, he opted to remain silent.

12. It may be true that the applicant may not have misrepresented anything at all or may not have played any role in his pay fixation. However this Court is of the considered opinion that senior officers are required to keep themselves fully aware about the situation and least of all about their own pay fixation. They cannot have the liberty to unduly enrich themselves, a situation that has originally arisen as they had chosen to keep mum about an error which has occurred in their own pay fixation. It will be a very bad example for their subordinates.

13. It is the pleading of the applicant that in circumstances when there is no misrepresentation, recoveries shall never be admissible from all retired employees including senior officers. This Tribunal does not accept this reasoning. Once it is known that the applicant was a senior officer and he was well aware that this promotion was on adhoc basis, it was enjoined upon him as his bounden duty to bring this error to the notice of the respondents to make correction at the relevant point of time itself. Looked from another angle, his adhoc promotion order indicated his pay to be PB-3 plus Grade Pay Rs. 7600/-, warning flag ought to have been raised by him when he was given PB-4 plus GP Rs. 8700/-, by this difference alone. In the event however, no such things was done by the applicant.

14. Subsequently when it had come to light that total amount of excess payment was Rs. 1,26,577/- recoveries were ordered in four installments. This has already been recovered fully since long in the period December 2014 to March 2015 itself. The OA is time barred on this count also.

15. In view of the forgoing, this Tribunal does not feel that there is any necessity or justification to interfere with the recoveries already completed or the fixation of pension. The OA is dismissed as being devoid of merit. No costs.

(Pradeep Kumar)
Member (A)

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