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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application Nos.180/00142/2015

Tuesday, this the 12th day of February, 2019

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member**

A.P.Easwaran, employed as Executive Engineer in the office of Calicut Project Division, Central Public Works Department Calicut, Pin – 673 601, residing at No.14, GPRA Quarters, Calicut, Pin -673 003 **Applicant**

(By Advocate – Mr. Asok M. Cherian)

V e r s u s

1. Union of India represented by the Secretary to Government of India, Ministry of Urban Development
Government of India, Nirman Bhavan, New Delhi -110 001
2. Ministry of Finance, Government of India
Represented by its Secretary, New Delhi- 110 11
3. The Director General of Works
Central Public Works Department (CPWD)
Nirman Bhavan, New Delhi – 110 011
4. Director of Works (S&W)
Central Public Works Department (CPWD)
Nirman Bhavan, New Delhi – 110 011
5. Deputy Controller of Accounts (South Zone)
Internal Audit Wing, Central Public Works Department
Sasthri Bhavan, Chennai, Pin 600 006
6. Executive Engineer III, Calicut Project Zone
Central Public Works Department
Calicut, Pin 673 003
7. The Executive Engineer, Kasargod Project Division
Central Public Works Department,
Kasargod-671 121 **Respondents**

(By Advocate – Mr. P.G. Jayan)

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This Original Application having been heard and reserved for orders on 4.2.2019, the Tribunal on 12.2.2019 delivered the following:

ORDER

Per: Mr.Ashish Kalia, Judicial Member

Original Application No.180/00142/2015 is filed by Shri.A.P.Easwaran, Executive Engineer against Annexure A-5 audit slip. He seeks the following reliefs: -

- “i. Call for the records leading to Annexure A5 and set aside the same.
- ii. Declare that fixation of pay of the applicant at Rs.8000/- in scale Rs.7500-12000 with effect from 1.1.1996 and the arrears of salary paid to the applicant by Annexure A3 bill is in accordance with law and the same is unassailable.
- iii. Direct respondents not to cause any recovery from the applicant pursuant to Annexure A5.
- iv. Issue any other orders, declaration or direction appropriate in the circumstances of the case. ”

2. The brief facts of the case are as under:

Applicant is presently working as an Executive Engineer in the Central Public Works Department (CPWD for short). While working as Assistant Engineer in CPWD in pre-revised scale Rs.2000-3500, the 4th respondent by a decision of 13.5.1998 granted a higher pay scale of Rs.7500-12000 to the 50% of the strength of Assistant Engineers with effect from 1.1.1996. Though applicant came within the purview of the 50% of the Assistant

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Engineers eligible for the higher scale of Rs.7500-12000, his pay was erroneously fixed at Rs.7300/- in the scale of Rs.6500-10500 with effect from 1.1.1996. Aggrieved by the action of the respondents', applicant jointly with other similarly placed persons filed Original Application No.3576/2011 before the Principal Bench of this Tribunal. By order dated 29.9.2011 the Principal Bench disposed of the O.A on 29.9.2011 directing respondents therein to verify from original records as to whether the applicants were identically placed to the applicants in O.A No.299/CH/2007 and if so to extend the same benefits as had been extended to the applicants in the aforementioned O.A (Annexure A-1).

3. An appeal was filed and the same was upheld by the Hon'ble Delhi High Court. An SLP filed against the judgment of the Delhi High Court also had been dismissed. The grievance of the applicants in the aforesaid Original Applications, including the applicant herein, was that instead of fixing their pay in Scale Rs.7500-12000 with effect from 1.1.1996 their pay was wrongly fixed in scale Rs.6500-10500. In compliance of the Annexure A-1 order, respondent no.3 issued order dated 4.5.2012 granting pay scale of Rs.7500-12000 to the applicant along with other similarly placed persons with effect from 1.1.1996 (Annexure A-2).

4. Consequently, applicant's pay was fixed at Rs.8000/- in scale Rs.7500-12000 instead of his pay fixed at Rs.7300/- in scale Rs.6500-10500 with effect from 1.1.1996 and he was paid Rs.3,55,008/-. Applicant is now served with a copy of audit objection vide Annexure A-5 which states that

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the pay of the applicant ought to have been fixed in scale Rs.7500-12000 in relation to fixation of his pay at Rs.7300/- in scale Rs.6500-10500 and if so done his pay ought to have been fixed at the minimum of scale Rs.7500-12000 as on 1.1.1996. Hence the respondents are proceeding to recover the excess pay allegedly drawn by the applicant.

5. Notices were issued and the respondents entered appearance through their counsel and filed a detailed reply statement. It is submitted therein that the Director General vide office order dated 4.5.2012 had granted the pay scale of Rs.7500-12000 to the 50% of senior most Assistant Engineers with effect from 1.1.1996 onwards (Annexure R-1). Applicant was included in the list of Assistant Engineers eligible for the new scale of Rs.7500-12000. It is further submitted that applicant was further placed in the pay scale of Rs.7500-250-12000 with effect from 1.1.1996. As per the revised pay rules 1997, the pay of Sh.A.P.Eswaran was to be fixed in the pre-revised scale (4th CPC) of Rs.2000-60-2300-75-3200-100-3500.

6. Then it shall be fixed in the revised (5th CPC) scale of Rs.6500-200-10500. On grant of higher scale of Rs.7500-250-12000 to 50% of Assistant Engineers the pay has to be fixed in the higher pay scale of Rs.7500-250-12500, under Rule FR 22(1)(a)(2). This has been clarified by the Director General, Central PWD, New Delhi vide Annexure R3 letter dated 31.10.2013. Fixation of pay under FR(22) a(2) shall be resorted when the new post does not involve such assumption of duties and responsibilities of greater importance.

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7. In such cases, the employee shall draw as initial pay, at the stage of the time scale which is equal to his pay in respect of the old post held by him on regular basis. If there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis. When the minimum pay of the time scale of the new post is higher than his pay in respect of the post held by him regularly, he shall draw the minimum as initial pay. It is further submitted that the basic pay of the applicant was Rs.7300/- in the scale of Rs.6500-200-10000 on 1.1.1996. When it was decided to grant a higher scale of Rs.7500-250-12000 to 50% of Assistant Engineers with effect from 1.1.1996, his pay was fixed in the old pre-revised scale of Rs.2000-60-2300-75-3200-100-3500. Then it was fixed in revised scale of 6500-200-10500. On grant of higher scale of Rs.7500-250-12000, the pay was to be fixed under FR22(1)(a)(2) as detailed above. As he was drawing a basic pay of Rs.7300/- which is less than Rs.7500/- the minimum of the new scale, the new pay should have been fixed at Rs.7500/- only. However, the basic pay was fixed erroneously as Rs.8000/-. In view of the audit objections raised by the Internal Audit Wing, respondents issued office order dated 14.12.2015 refixing the pay of the official vide Annexure R-7 and the applicant was directed to remit the excess amount drawn by him.

8. Heard Mr.V.K.Prasad representing Mr.Asok M.Cherian, learned counsel for the applicant and Mr.P.G.Jayan, ACGSC, learned counsel for the respondents. Perused the records.

9. The basic contention raised by the applicant in the present Original

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Application is that his pay was fixed in the scale of pay of Rs.7500-12000 as on 1.1.1996, but the respondents have wrongly fixed the same in the pay scale of Rs.6500-10000. Due to the audit objection, respondents re-fixed the pay and ordered recovery from the salary of the applicant. The respondents submitted that pay of the applicant ought to have been fixed in the scale of Rs.7500-12000 instead of fixation of his pay at Rs.7300/- in the pay scale of Rs.6500-10500. As he has not touched the pay scale of Rs.7500-12000, applicant's pay to be fixed at Rs.7500/- as on 1.1.1996. Annexure A-5 reads thus:

“ As per the office order No.8/25/2011. E.III Dt.26.8.2011 the Director General, Central P.W.D., New Delhi has granted the pay scale of Rs.7500-12000 to the 50% of senior most Assistant Engineers w.e.f 1.1.1996 onwards. As such on the analogy of the above decision no.2 of the revised Pay Rules 1997 the pay should first be fixed with reference to the pay drawn in the pre-revised scale of Rs.2000-60-2300-75-3200-100-3500 in the revised scale of 6500-200-10500 and then the pay has to be fixed in the higher pay scale of Rs.7500-250-12000 under Rule F.R 22(i)(a)(2) as clarified by the Director General, Central P.W.D., New Delhi letter No.8/25/2011 – E.C.III dated 31.10.2013.

6. Shri.A.P.Eswaran, Executive Engineer was granted the pay scale of Rs.7500-250-12000 w.e.f 01.01.1996. As such the pay of the above official has to be fixed and regularised as below:

Pay as on 1.1.1996 in the pre-revised scale of Rs.2000-3500	-	Rs.2375/-
Pay to be fixed in the replacement scale recommended by the 5 th Pay Commission in 6500-200-10500	-	Rs.7300/-
Pay to be refixed in the upgraded Pay scale of Rs.7500-200-12000 Granted to 50% of AEs on 1.1.1996 onwards. Under F.R 22(1)(a)(2)]	Rs.7500/-
]	
]	With
		D.N.I.01.01.2007”

10. Since the applicant's pay scale has been upgraded on the same basis which does not involve higher duties and responsibilities of greater importance, his pay shall be fixed at minimum of the pay scale i.e; Rs.7500/-. But in the present case, the pay of the applicant has been erroneously fixed at Rs.8000/-, which is not justifiable. In view of the above discussion, we find no merit in the Original Application. Respondents are entitled to re-fix the pay of the applicant.

11. The Original Application is dismissed. No costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures

Annexure A-1 - A true copy of the Order of the Principal Bench of Central Administrative Tribunal in O.A No.3576/2011 dated 29.9.2011.

Annexure A-2 - A true copy of the Order No.8/52/2011-EC-III dated 4.5.2012 issued by the office of the 3rd respondent

Annexure A-3 - A true copy of the Bill No.60/2012-13 dated 12.07.2012, in accordance with Annexure A2 order of the 3rd respondent and OM in F.No.10/02/2011-E.III/A dated 19.3.2012 of the 2nd respondent

Annexure A-4 - A true copy of the letter of the 6th respondent dated 21.1.2015 addressed to the 7th respondent

Annexure A-5 - A true copy of the audit slip issued by the 5th respondent which was forwarded to the applicant along with a copy of Annexure A4 letter

Annexure R1 - True copy of the order No.8/52/2011 E-III dated 4.5.2012

Annexure R2 - True Extract of FR 22(2)(ii)

Annexure R3 - True copy of the letter No.8/25/2011-EC-III dated 31.10.2013

Annexure R4 - True copy of the Office Order No.8/25/2011-EC-III dated 27.11.2015

Annexure R5 - True copy of the letter No.S.F.No.20/TDS Range/2012-13 dated 12.7.2012

Annexure R6 - True copy of the objection of the Internal Audit wing CPWD, Chennai

Annexure R7 - True copy of the office order No.19/2015-16 dated 14.12.2015

Annexure R8 - True copy of the letter No.DCA/IAW/CHE/Pay Fixation/2015-2016/469 dated 26.10.2015

Annexure R9 - True copy of the office Memorandum F.No.18/26/2011-Estt(Pay-I) dated 6.2.2014

Annexure R10 - True copy of the under taking filed by the applicant

Annexure R11 - True copy of the letter No.8(1)/CHCD/2016/1006 dated 22.3.2016

Annexure R12 - True copy of the letter No.9(1)/RTI/SR/ES/2016
dated 22.3.2016

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