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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.527/2003

New Delhi, this the 13th day of February, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

C.S.Arora
s/o Shri B.L.Arora
r/o 382, Asiad Village
New Delhi - 110 049.

... Applicant

(By Advocate: Sh. D.C.Vohra)

Versus

1. Union of India through
The Secretary
Ministry of Home Affairs
North Block
New Delhi - 110 011.

2. Registrar General of India
Ministry of Home Affairs
Government of India
2A Mansingh Road
New Delhi - 110 011.

3. Dr. M. Vijayanunni
IAS(KL-1969)
(In personal capacity)
Former Registrar General of India
c/o Department of Personnel &
Training
North Block, Central Sectt.
New Delhi - 110 011.
(Permanent Address:
TC - 17/2176 Poojapurra
Trivandram 695012)

... Respondents

(By Advocate: Sh. M.K.Bhardwaj for Sh. A.K.Bhardwaj)

O R D E R

Justice V.S. Aggarwal:-

The applicant seeks quashing of the order of 6.9.2001, which is alleged to be over ruled the order of this Tribunal dated 5.11.1998 wherein the applicant had challenged the order of 27.3.1997 downgrading his pay scale from Rs.5100-6300 to Rs.4500-5700 (pre-revised) without even issued a notice to show cause. It further prays for a direction to the

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respondents to restore the pre-revised pay scale of Rs.5100-6300 w.e.f. 25.3.1997 with full consequential benefits.

2. Some of the relevant facts in this regard can be delineated. The applicant joined as Director (EDP) in the office of the Registrar General of India. His selection was made through the Union Public Service Commission in the scale of Rs.4500-5700. He had been confirmed against the post after the satisfactory completion of his probation period. The appointment letter dated 12.11.1987 (operative part) reads:

"The President is pleased to offer Shri Chander Shekhar Arora temporary appointment to the post of Director (EDP) in the office of the Registrar General, India in the scale of pay of Rs.4500-150-5700 (revised) plus dearness and other allowances at the rates admissible under and subject to the conditions laid down in the rules and orders governing the grant of such allowances in force from time to time. Shri Arora will be allowed to draw an initial pay of Rs.4500/- in the above scale of pay.

2. The other terms and conditions of appointment are as follows:

i) The post is a temporary one and his claim for substantive appointment will be considered in accordance with the rules in force.

ii) He will be on probation for a period of two years which may be extended at the discretion of the competent authority. Failure to complete the period of probation to the satisfaction of the competent authority will render him liable to discharge from service/reversion to his substantive post, on which he may be holding a lien."

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3. In consultation with the Union Public Service Commission, he was appointed on a substantive capacity on 2.5.1991 and the operative part of the said order is:

"On the recommendations of the Departmental Promotion Commission and in consultation with the Union Public Service Commission, the President is pleased to appoint Shri C.S.Arora, who is presently officiating as Director (Electronic Data Processing) in the Office of the Registrar General, India, New Delhi in substantive capacity to the same post with effect from 25.3.1990."

4. The post of Director was upgraded vide order of 5.7.1994 to the scale of Rs.5100-6300. He was initially appointed for a period of six months on ad hoc basis and the said order is:

"The President is pleased to upgrade the post of Director (Electronic Data Processing) in the office of the Registrar General, India from the existing pay scale of rs.4500-150-5700 to the pay scale of Rs.5100-6300 with immediate effect.

The President is further pleased to appoint with immediate effect Shri C.S.Arora, the present regular incumbent of the post in the newly created upgraded post on ad-hoc basis for a period of 6 months pending filling up of the post on a regular basis according to the Recruitment Rules to be framed for the new post."

5. The applicant pleads that with a bona fide belief that the applicant was entitled to his regular appointment against the upgraded post, which was part of a rationalisation process in the entire set up of the office of the Registrar General of India and being Head of the Division, he was entitled to hold the solitary post referred to above. He had filed Original Application No.805/1995 therein this Tribunal had on 21.11.1995 passed the following interim order:

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"The matter came up for interim direction. We heard the learned counsel for the parties relating to direction dated 26/9/95 in this regard. We are of the view that as the applicant is presently holding the post of Director (EDP) on an ad hoc basis, it is only fair that he should be allowed to continue on that post subject to the following conditions:

- a) so long as the post exists
- b) until respondents framed the rules to fill the post.
- c) until the post is filled up on regular basis.

subject to the outcome of the OA in its turn. DASTI."

6. While the applicant was functioning in the upgraded post of Director in the said scale, the respondents made a proposal to the Fifth Central Pay Commission that post of the Director (EDP) be downgraded to its original level and the Fifth Central Pay Commission accepted the proposal with the rider that the present incumbent of the post would continue to hold it with its present pay scale as personal to him. The recommendations of the Fifth Central Pay Commission in this regard are:

"Electronic data processing division (EDP) (a) The existing scale of pay of Director (EDP) Rs.5100-6300 is personal to the present incumbent. The Director (EDP) is also head of the Division as such RGI is of the opinion that he should also be in the scale of Rs.4500-5700. We accordingly recommend that the post should revert to the scale of Rs.4500-5700 after the present incumbent vacates it and it should be redesignated as Dy. RG (EDP)."

7. Pending final decision of the report of the Fifth Central Pay Commission, the Government had placed temporary ban on any change in the pay scale, but during the operation of the ban, the respondents downgraded the post of Director (EDP). The applicant

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filed the Contempt Petition No.104/1997 in Original Application No.805/1995 which was dismissed by this Tribunal. The Government of India had accepted the recommendations of the Fifth Central Pay Commission and applicant contends that he was given the replacement scale of Rs.14300-18300 which was corresponding to the pre-revised pay scale of Rs.4500-5700 instead the pay scale of Rs.16400-20000 which is a corresponding pre-revised Scale of Rs.5100-6300. The applicant had filed Original Application No.1659/1997. It had come up for final hearing on 5.11.1998. The application was allowed. The applicant was allowed the arrears with interest. The operative part of the aforesaid order of this Tribunal is:

"4. It appears that the aforesaid recommendation for downgrading the pay scale of the post of Director (EDP) from Rs.5100-6300 to Rs.4500-5700 made by the 3rd respondent was also sent to the Fifth Pay Commission for the purpose of its consideration. In paragraphs 55.101 and 55.102 of its final report, the Fifth Pay Commission agreed with the aforesaid recommendation of 3rd respondent but in order to give protection to the applicant it was said that "the present incumbent may, however, retain his present scale as personal to him" and further advised to redesignate the post of Director (EDP) with pay scale of Rs.4500-5700 as the post of Deputy Director (EDP). It was reiterated that "The existing scale of pay of Rs.5100-6300 is personal to the present incumbent....". For all these reasons we are of the view that the 3rd respondent was ill-advised to recommend abolition of the pay scale of Rs.5100-6300 for the post of Director (EDP) and to revive the abandoned pay scale of Rs.4500-5700 of the said post. Accordingly, we are of further view that the 1st respondent committed an error in mechanically accepting the aforesaid recommendation of the 3rd respondent for restoring the abandoned pay scale of the post and for reverting the applicant to that old pay scale without application of mind. This O.A., therefore, deserves to be allowed.

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5. While parting, it may be added that the pay scale once revised and given to an employee to his advantage cannot be reduced in an arbitrary manner. The decision taken and implemented in the year 1994 by the Government after acceptance and approval of the proposal dated 7.6.1994 of the Financial Adviser (Home), made after obtaining consent of the Ministry of Finance, by the Home Minister, was in effect not for creation of, or for upgradation of the post of Director (EDP). It was in fact a decision to upgrade the pay scale of an already existing isolated post of Director (EDP). Since the post was open to direct recruits and the pay scale was revised and upgraded, it was naturally considered necessary to amend or revise the Recruitment Rules suitably with reference to eligibility conditions for the post. Where was the question of ad hoc promotion, when there was no post available in the scale of Rs.4500-5700? This explains the direction for framing new Recruitment Rules for the post with an upgraded pay scale of Rs.5100-6300 and the observation of the Financial Adviser that: "Evidently, this post should be manned by the same incumbent even after the revision of the pay scale." And that is why it appears that the Fifth Pay Commission recommended creation of a new post of Deputy Director (EDP) with a pay scale of Rs.4500-5700 while allowing the applicant to retain the pay scale of Rs.5100-6300 as personal to him, if the post of Director was intended to be abolished. Under the circumstances, we cannot be said to be interfering with any policy matter of the Government involving any expenditure, or violating the ratio of the decision of the Supreme Court in the Union of India v. Shri Tejram Parashramji Bombhate, JT 1991 (2) S.C. 572; Commr., Corpn. of Madras v. Madras Corpn. Teachers' Mandram, (1997) 1 SCC 253; or Govt. of Orissa v. Shri Haraprasad Das, 1997 (7) SCALE 137.

6. For the foregoing reasons, this O.A. succeeds and it is hereby allowed. The two impugned orders dated 25.3.97, Annexures A-1 and A-2 of the respondents are quashed to the extent they relate to and affect the salary drawn by the applicant immediately before their implementation. As a necessary consequence, the applicant shall be entitled to arrears of difference of his pay that may be worked out on the basis of restoration of his pay scale of Rs.5100-6300 from that of Rs.4500-5700. The respondents are directed to pay the arrears within a period of two months

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from the date of receipt of a copy of this order. If no such payment is made within the time specified, the applicant shall be entitled to interest @12% per annum from the date of this order and till the date of payment. The respondents shall also pay cost of this litigation to the applicant. Counsel fee is fixed at Rs.1000/- (Rupees one thousand only)."

8. The respondents had challenged the order passed by this Tribunal and the operation of the Judgement was stayed.

9. There was some controversy about the nature of the decision that had been taken. A statement was made before the High Court in Civil Writ Petition No.229/99 that the decision regarding the pay scale of the respondent (applicant in the present application) in the office of Registrar General of India is under active consideration by the Government but no final decision had been taken. Keeping in view this statement, the Writ Petition was disposed of stating that no further proceedings were necessary.

10. Miscellaneous Application for execution of the order passed by this Tribunal on 5.11.1998 had been filed and this Tribunal had passed an order on 7.1.2002. Needless to mention that this Tribunal had recorded that the decision of this Tribunal could not have been modified and still holds good. Instead of implementing of the Judgement, the respondents had challenged the same by filing CWP No.2515/2002. It was decided by the Delhi High Court after examining the sequence of events and felt that the earlier order passed by the Delhi High Court was not correct and in the meantime another order of 6.9.2001 had been passed. Unless that order is set-aside by a competent

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Court of law, it remains valid. The Delhi High Court thereupon had remitted the matter back giving liberty to the applicant to question the order 6.9.2001 before this Tribunal. The operative part of the Judgement of the Delhi High Court reads:

"A bare perusal of the aforementioned judgment would clearly go to show that the court proceeded on the basis that despite the order of the Tribunal the matter was and/or could be under consideration of the Central Government. In that view of the matter, we are of the opinion that the interest of justice would be subserved if we direct that the order of the Tribunal be set aside and the matter be remitted to the learned Tribunal. In meantime, as indicated hereinbefore, the Central Government has also passed an order on 6th September 2001. Unless the said order is set aside by a competent court of law the same remains valid. Both orders namely the said order dated 6th September 2001 as also the judgement impugned in this writ petition cannot stand together. The afore-mentioned order dated 6th September 2001 in the eye of law remains valid unless and until the validity or legality thereof is challenged in the court of competent jurisdiction. In that view of the matter, we are of the opinion that the respondent herein must be given a liberty to question the said order dated 6th September 2001 so that the Central Administrative Tribunal while deciding the matter before him can also take into consideration the subsequent event as indicated hereinbefore and consider the legality or validity of the aforementioned order dated 6th September 2001. For the view we have taken the impugned judgment and order has also been set aside. We would like to observe that, keeping in view the fact that owing to mistake of this Court, the matter is pending for a long time, the learned Tribunal should consider the desirability of disposing of the matter as expeditiously as possible. Dr. Vohra states that an Original Application questioning the aforementioned order dated 6th September 2001 shall be filed as expeditiously as possible. We request the learned Tribunal to consider both the applications and pass a common order. We would, however, observe that, in the event, the respondent herein succeeds that learned Tribunal will consider the

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desirability of adequately compensating the respondent by way of grant of interest or otherwise."

11. It is on the strength of these facts that the applicant contends that respondents cannot downgrade the pay scale of the applicant by changing the conditions of the applicant's service. By an administrative decision the Judgement of this Tribunal could not be defeated or reversed and therefore, the above said reliefs have been claimed.

12. The application has been contested. Respondents plead that post of Director (EDP) is not an upgraded post of Director (EDP) but was a newly created post. It had to be filled according to the recruitment rules. The recommendations of the Fifth Central Pay Commission were not binding. It is denied that the pay of the applicant had been reduced in any manner and the impugned order was, therefore, justified because applicant is stated to have never been appointed to the upgraded post. The impugned order reads:

"In para 70.8 of its report, the Vth Central Pay Commission made the following recommendation for the post of Director (Electronic Data Processing) in the office of RGI:

"The existing scale of pay of Director (EDP) Rs.5100-6300 is personal to the present incumbent. The Director (EDP) is also head of the Division as such RGI is of the opinion that he should also be in the scale of Rs.4500-5700. We accordingly recommend that the post should revert to the scale of Rs.4500-5700 after the present incumbent vacates it and it should be redesignated as Dy. RG (EDP)"

2. The above recommendation of the Pay Commission has been examined by Govt. carefully. As regards the observation of the 5th Central Pay Commission that the existing scale of pay

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of the post of Director (EDP) Rs.5100-6300 is personal to the present incumbent, it may be mentioned that the present incumbent of the post was never appointed to the upgraded post on the regular basis. his appointment to the upgraded post in the pay scale of Rs.5100-6300 was only on ad-hoc basis as a stop gap arrangement pending filling up the post on regular basis after formulating its Recruitment Rules, etc. However, on a subsequent review, the Govt. decided to downgrade the post to its original and substantive pay scale of Rs.4500-5700 and consequently reverted the incumbent to his substantive post in the pay scale of Rs.4500-5700. Therefore the pay scale of Rs.5100-6300 allowed to the incumbent previously on a purely temporary basis can not be protected and made personal to him as erroneously observed by the 5th Central Pay Commission.

The Government also accepts the recommendation of the 5th Central Pay Commission that the post of Director (EDP) shall be in the pay scale of Rs.4500-5700, since there is no functional justification for upgradation of pay scale of this post. Accordingly, the present incumbent to the post shall continue in the pay scale of Rs.4500-5700.

This issues with the approval of Ministry of Finance (Implementation Cell) vide their UO No.70/14/2000-IC dated 28.08.2001."

13. We have heard the parties counsel and have seen the relevant records. The learned counsel for the applicant in the first instance contended that the pay of the applicant had been reduced without putting the applicant to a notice to show cause and in support of his plea relied upon the decisions of the Supreme Court in the case of State of Orissa v. Dr. (Miss) Binapani Dei & Ors., AIR 1967 SC 1269; M.Gopalakrishna Naidu v. State of Madhya Pradesh, AIR 1968 SC 240; Mahabir Prasad v. State of Uttar Pradesh, AIR 1970 SC 1302 and H.L.Trehan & Ors. v. Union of India, 1988 (2) Scale 1376.

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14. We do not dispute the propositions in law that when an order as a civil consequence and affects the rights of an individual, namely, his pay is reduced, a notice to show cause must be issued. However, the facts of the present case cannot be lost sight of. The principles of natural justice referred to will have a little application in the present case. Herein, it is not that the pay of the applicant which is being reduced but it was the scale of the post is reduced. It is an administrative decision and consequently there is no ground so as to contend or permitted to be urged that it affects his rights, there is a notice to show cause must be issued.

15. Certain facts were also asserted to contend that there was totally mala fide in the action of the respondents. Mala fide is a question on fact. It has to be established by the person. The alleged mala fides can be inferred in the facts and circumstances of a particular case.

16. On the earlier occasion, when this matter come up for hearing before this Tribunal in OA 1659/97, this Tribunal had held that mala fides had not been established. This Tribunal had recorded that there was no sufficient material to warrant to a conclusion of malafides. In the meantime, it appears that while this Judgement had been pronounced, the impugned order had been passed. It further appears that even when the Fifth Central Pay Commission report was under consideration, the respondents had pointed out that present post should be downgraded. It was a decision which does not appear to have been simply

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directed at the applicant. There are vague allegations against the particular officer. There is no sufficient material to establish the same. Therefore, we find that there is no ground to conclude that in the facts of the present case, malafides can be attributed on that ground and the impugned order could be set-aside.

17. As already pointed above, while the matter was before the Fifth Central Pay Commission, the State had pointed that the scale of the present post should remain at Rs.4500-5700. We have already reproduced above the recommendations of the Fifth Central Pay Commission. It had recommended that scale should be reduced as suggested but so far as the present incumbent is concerned he may be continued in the higher pay scale of Rs.5100-6300. These were recommendations of the Fifth Central Pay Commission. Vide this impugned order, the said recommendation has not been accepted. The recommendations of the Pay Commission are not binding. Therefore, Government has a right not to accept the same. On that count, therefore, much reliance cannot be placed on the recommendations of the Fifth Central Pay Commission.

18. The position in law is well settled that the State can prescribe the scales and can even in an appropriate case reduce the pay scales. It has already been noted above that in the facts of the case, mala fides have not been established and, therefore, it cannot be termed as that the applicant has vested right to the said scale.

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19. The last submission in this regard made by the learned counsel for the applicant was that by virtue of the impugned order the judicial verdict could not be upset. In support of his argument he relied upon the decision of the Supreme Court in the State of Haryana & Others v. Ram Kumar & Others, (2002) 9 SCC 703.

20. It is a settled principle as referred to above that a judicial order cannot be upset by an executive order. In the present case it be so stated. We have already referred to above sequence of events. This Tribunal on 5.11.1998 while disposing of the OA 1659/1997 had held that the applicant was entitled to the higher scale. At the risk of ~~reputation~~ ^{repetition} we again mention that the Writ Petition had been filed, the Delhi High Court disposed of the same that since the matter is under active consideration of the Government, no useful purpose was going to be served to keep the proceedings pending. The said decision of the Delhi High Court was being interpreted differently by the applicant and the respondents. Resultantly, the Delhi High Court permitted this Tribunal to go into the matter afresh.

21. If the order is arbitrary, mala fide and suffers from extraneous consideration, interference by the Tribunal would be called for. However, in the present case before us, as already referred to above, the Fifth Central Pay Commission had permitted downgrading of the post to Rs.4500-5700 but permitted the incumbent to hold the post on the earlier scale.

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22. By the impugned order, the said recommendation that it should be accepted as personal to the applicant, has not been accepted. The State has a right not to accept a particular recommendation. This decision, which is the impugned order, has come into being after the earlier decision of this Tribunal, while disposing of OA 1659/1997 dated 5.11.1998.

23. In the sequence of events, it is obvious that the decision will operative prospectively. We do not dispute the right of the State to do so.

24. When the earlier OA was allowed, there were two orders which were set aside dated 25.3.1997, we do not intend to interfere in that order of this Tribunal which has become final till it is quashed by an appropriate forum. But once the recommendations of the Fifth Central Pay Commission has not been accepted, and the impugned order was issued on 6.9.2001 from that date the applicant will not be entitled to the higher pay scale.

25. Consequently, we dispose of the present application holding:

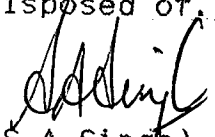
(a) The applicant would be paid at the higher scale upto to 5.9.2001.

(b) From 6.9.2001 when a decision vide impugned orders so taken, the applicant will not be entitled to the higher pay scale.



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26. The Original Application is accordingly
disposed of. No costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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