

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1873/2003

New Delhi this the 21st day of November, 2003

Hon'ble Shri Sarweshwar Jha, Member (A)
Hon'ble Shri Bharat Bhushan, Member (P)

Ravinder Kumar, Driver (Staff car),
Son of Late Shri Parsinda Ram,
Resident of ESI Hospital Staff
Quarters, NOIDA.

..Applicant

(By Advocate Shri S.C.Rana)

VERSUS

1. Director (Medical) Delhi,
Directorate Medical Delhi,
ESI Scheme Hospital Complex,
Basai Darapur, Ring Road,
New Delhi.
2. Director (Medical),
Through Deputy Director (Admn.),
ESI Hospital, Sector 24,
NOIDA (UP)

..Respondents

(By Advocate Ms Anantmala Potdar)

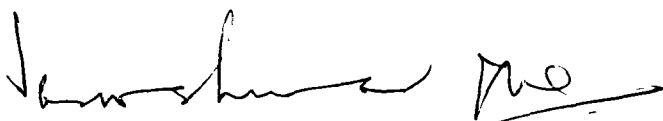
O R D E R (ORAL)

(Hon'ble Shri Sarweshwar Jha, Member (A)

Heard.

2. The applicant has preferred this Original Application against the order of the respondents dated 10/17.6.2003 whereby it has been ordered that overpayment made to him by virtue of the order dated 8.10.1998 be recovered in 50 instalments at the rate of Rs.600/- per month.

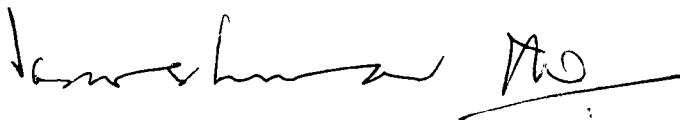
3. The applicant had approached the Tribunal earlier by filing OA 1791/2001 which had been partly allowed vide order dated 30.12.2002 and the decision of the respondents to recover overpayment made to the applicant had been quashed and set aside. The respondents had also been directed to accord a reasonable opportunity to the applicant by issuing a



show cause notice and thereafter take an appropriate decision in accordance with law within a period of three months from the date of receipt of a copy of the Tribunal's order.

4. It is observed that the applicant was afforded an opportunity to show cause by the order of the respondents dated 10/13.3.2003 to which the applicant filed his reply vide his letter dated 28.3.2003. Considering the reply of the applicant, the respondents have finally issued the impugned order as has already been referred to above.

5. It is observed that the applicant has laid emphasis on two aspects of the matter; firstly, he has submitted that the recovery was ordered to be made from him for no fault of his and also without any misrepresentation of facts by him. In this connection, he has cited the decisions of the Hon'ble Apex Court in **Sahib Ram Vs State of Haryana and others** reported in 1995 SCC (L&S) 248, in which the Hon'ble Apex Court had held that as the excess payment made to the applicant in that case was due to upgradation of pay scale as a result of wrong construction made by the authority concerned without any misrepresentation by the employee, recovery could not be made. Secondly, he has submitted that the upgradation which was granted to him by the respondent No.2 was done under his valid authority in pursuance of the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training O.M. No. 35034/3/99 Estt.(D) dated 1.6.1998 and which has also been referred to in the Office Order of the Directorate (Medical), NOIDA dated 8.10.1998 (Annexure A-2). Vide the said order the applicant

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was given the benefit of fixation of pay at Rs.4000 with the next date of increment falling on 1.7.1998. At this stage, the learned counsel for the applicant states that this order was issued by the Deputy Director (A) with the sanction/approval of the Director (Medical) NOIDA and a copy of the same was also endorsed to the Director (Medical) Delhi. Reference has also been made in this regard to the order of the Deputy Director (A) dated 13.6.2001/3.9.2001 whereby the applicant has been promoted on regular basis in the pay scale of Rs.4000-100-6000 w.e.f. 18.8.2000 with next increment falling due on 1.8.2001.

6. The applicant has referred to the number of vacancies in Staff Car Driver Grade II already existing with the respondents all over the country and the fact that they have not cared to fill these posts on regular basis so far. The fact that the two respondents, namely, 1 and 2 had some confusion about the authority vested in each other and which could have caused disadvantage to the applicant has been emphasized by the learned counsell for the applicant during the course of arguments. He has finally prayed that while the recovery to be made from the applicant is not in order in the light of the decision of the Hon'ble Apex Court, as referred to hereinabove, reducing the basic pay by withholding three increments in the process would amount to dual punishment. He has further submitted that through cancellation of three increments as a result of the order of the respondents he will be losing three years' benefit for future promotion.



7. The respondents in their reply have, however, highlighted the fact that the applicant received upgradation/promotion to the higher scale of pay with the order of respondent No.2 who, according to them, is not the competent authority to grant the same. They have elaborated this fact while issuing the order dated 10/17.6.2003 in reply to the Original Application. They do not seem to have commented on the contents of the order which has been referred to by the respondent No.2 in their Office Order dated 8.10.1998 (Ann.A.2). We wanted to know whether the respondent No.2 had the necessary authority by virtue of the DOP&T'S OM referred to in the said order. There is, however, nothing available on record in this regard.


8. On consideration of the submissions of both the sides and also after having perused the material on record, we are of the considered opinion that while most of the aspects of the case had already been decided by the Tribunal in OA 1791/2001, the only aspect requiring decision now is whether the respondent No.2 has the valid authority to have granted the benefit of upgradation of pay to the applicant. We have considered this aspect of the matter and find that there is merit in what has been submitted by the learned counsel for the applicant that the applicant would suffer loss as a result of cancellation of the three increments which were earlier granted to him, particularly for the fact that he had no hand in the same having been granted to him. Keeping in view the decisions of the Hon'ble Apex Court in this regard which have been referred to hereinabove, we do

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not consider the cancellation of the three increments by the respondents proper which had been granted to him by way of upgradation of his pay. The question whether the respondent No 2. is the necessary authority to grant the upgradation or not has to be sorted out between the two respondents and the benefit of upgradation of pay that has already been granted earlier to the applicant cannot be withdrawn at a later stage. We accordingly direct that no further recovery of over payment from the applicant shall be made due to upgradation having been granted to him by the respondent No.2. As regards the question whether the upgradation to the applicant has been rightly granted by the respondent No.2, it is directed that the matter would be sorted out between the two respondents themselves and who would pass a speaking and reasoned order with reference to the relevant instruction, including those referred to by the respondents in the order dated 8.10.1998, within three months from the date of receipt of a copy of this order.

10. After the above order was dictated the learned counsel for the applicant has submitted that necessary orders regarding releasing of the three increments which have been withheld by the respondents may be ordered; otherwise, it will adversely affect the applicant's future promotion. Keeping in view the fact that the respondents have been directed to sort out the matter between them, the respondents are directed, subject to the above observations, to restore the three withheld increments to the applicants forthwith.


(Bharat Bhushan)
Member (J)


(Sarveshwar Jha)
Member (A)

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