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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2562/2003

This the 4th day of November, 2004.

**HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)**

Smt. Ruby Bhattacharya,
Retd. Asstt. Infomration & Library Officer,
Office of the Dev. Commissioner (Handicrafts),
Ministry of Textiles, Govt. of India,
New Delhi, R/O K-2008 (First Floor),
C.R.Park, New Delhi-110019.

... Applicant

(By Shri Gyan Prakash, Advocate)

versus

1. Union of India through
Secretary (Textiles),
Ministry of Textile, Udyog Bhawan,
Rafi Marg, New Delhi-110001.
2. Development Commissioner (Handicrafts),
Office of the Development Commissioner (Handicrafts),
7, West Block, R.K.Puram,
New Delhi-110066.
3. Secretary,
Ministry of Finance,
Department of Expenditure,
North Block, New Delhi-110001.
4. Secretary, Deptt. Of Pension,
Lok Nayak Bhawan, Khan Market,
New Delhi. ... Respondents

(By Shri K. R. Sachdeva, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Vice-Chairman (A) :

This is the second round of litigation before this Tribunal regarding the alleged wrong fixation of pay and pension and other retirement benefits of the applicant after her retirement. Applicant had joined as T.A. (Library), a Group 'C'

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non-gazetted post in the pay scale of Rs.425-750 on 28.8.1968. Thereafter she was appointed as Technical Officer (Library) in scale Rs.550-900/1640-2900 w.e.f. 1.10.1983. It has been averred that vide Annexure-2 dated 8.10.1990 her post was upgraded as Assistant Library & Information Officer (Group 'B' gazetted) in the scale of Rs.2000-3500 from her earlier post of Technical Officer (Library) [pay scale Rs.1640-2900]. Vide order dated 15.1.1996 (Annexure-3) the Library in the office of Development Commissioner (Handicrafts) was categorized as Category-II and the post of Technical Officer (Library) [Rs.1640-2900] held by the applicant was upgraded and re-designated as Assistant Library and Information Officer in the pay scale of Rs.2000-3500 w.e.f. 1.10.1993 and her pay was fixed at Rs.2825/- w.e.f. 1.10.1993. Later on vide order dated 16.7.2001 (Annexure A-2) applicant's basic salary was reduced from Rs.2825/- to Rs.2675/- w.e.f. 1.10.1993 with subsequent reduction in the subsequent years. Her pension was fixed on 14.8.2001 (Annexure-7) on the basis of the reduced level of her salary.

2. The earlier OA No.2195/2001 was disposed of by order dated 19.8.2002 directing the respondents to examine applicant's representation of 27.12.2001 on merit and in the light of relevant rules, instructions and judicial pronouncements on the subject and to dispose of the same with detailed and speaking order. Applicant was provided liberty to approach the Tribunal again on remaining aggrieved. Applicant's representation has been rejected vide Annexure A-1 dated 22.10.2002 which has been challenged in the present OA.

3. The learned counsel of applicant contended that all posts in scale of Rs.1640-2900 including that of Technical Officer (Library) had been designated as Senior Library and Information Assistant. On re-categorization of Libraries, applicant's Library was categorized in Category-VI and as such applicant was re-designated as Assistant Library and Information Officer in the scale of Rs.2000-3500 w.e.f. 1.10.1993 vide Annexure-3 dated 15.1.1996. As such, the applicant had assumed duties and responsibilities of a higher post and her pay was required

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to be fixed under FR 22(C) (old) or FR 22(1)(a)(1) or FR 23 and FR 22(1)(a)(2).

The learned counsel explained that applicant had assumed higher duties and responsibilities inasmuch as while as Technical Officer (Library) she was reporting to an Assistant Director, on the re-designated post of Assistant Library & Information Officer, which is a Group 'B' gazetted post, she was equivalent to an Assistant Director herself and does not report to him. In the present post, she has been performing the supervisory duties.

4. The learned counsel further stated that the respondents have withdrawn the benefit accorded to her earlier vide Annexure a-2 dated 16.7.2001 and effected recovery of the so called excess payment without providing any opportunity to the applicant to show cause. The learned counsel relied upon 2000 SCC (L&S) 57: *Gajanan L. Pernekar v State of Goa & Anr.*, and 1994 SCC (L&S) 683: *Shyam Babu Verma & Ors. v Union of India & Ors.*, contending that the earlier orders should not have been recalled without providing an opportunity of showing cause and particularly when the applicant had not received the higher scale due to any fault of hers.

5. On the other hand, the learned counsel of the respondents contended that appointment of the applicant on the new post did not involve assumption of duties and responsibilities of greater importance. As such, pay of the applicant had been fixed at a higher stage erroneously. The respondents are within their rights to correct the basic pay drawn by the applicant on the date of retirement and also work out correct pension accordingly. The learned counsel submitted that there is nothing wrong with the action of the respondents and the impugned orders. According to the learned counsel, the change in the basic pay of the applicant on 1.10.1993 had its effect in subsequent years reducing the basic pay of the applicant to Rs.9500/- instead of Rs.9700/- as per order dated 31.12.1999 (Annexure-5). Ultimately, after granting benefit of Assured Career Progression Scheme to applicant from 9.8.1999 in scale Rs.10000-325-15200 her pay got

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fixed at Rs.10325/- due to an annual increment on 1.8.2000. Applicant retired on 30.6.2001 and her pension was calculated with applicant's basic pay of Rs.10325/- which she would have normally received on that date. The pension papers of the applicant were forwarded to Pay & Accounts Officer vide letter dated 4.6.2001 (Annexure-CC). The said officer on examination of the pension case of the applicant brought wrong pay fixation of the applicant to the notice of the respondents. Thereafter vide letter dated 27.6.2001 (Annexure-CA) the matter was taken up with the Pay & Accounts Officer and ultimately the pay/pension were corrected. According to the respondents, an amount of Rs.35655/- has been recovered, as the same had been over-paid to the applicant on account of erroneous pay fixation, vide order dated 15.1.1996.

6. We have considered the rival contentions.

7. Despite specific direction during the course of adjudication, no documentary evidence has been adduced on behalf of the applicant to establish that applicant was required to perform higher duties and responsibilities on re-designation of the post of Technical Officer (Library) as Assistant Library and Information Officer. Statement of the learned counsel of the applicant that applicant had started performing supervisory duties and was equivalent to the post of Assistant Director on re-designation of the post of Technical Officer (Library), unsupported by any documentary evidence, cannot be accepted at its face value. In this background it is not obligatory that applicant's pay would be fixed under FR 22(C) (old) or FR 22(1)(a)(1) or FR 23 and FR 22(1)(a)(2) as claimed on behalf of the applicant.

8. Thus, the issue boils down to this whether respondents were within their powers to reduce applicant's pay with consequences of withdrawing the earlier pay fixation giving benefit of the provisions of FRs stated above without providing an opportunity of showing cause, and whether the respondents could



effect the recovery of the so called over-payment made to the applicant on the basis of withdrawal of the earlier pay fixation.

9. In terms of Rule 63 of the CCS (Pension) Rules, 1972, Government dues can be recovered from a Government servant. This provision reads as follows :

“63. Intimation of the particulars of Government dues to the Accounts Officer

(1) The Head of Office, after ascertaining and assessing the Government dues as in Rule 71, shall furnish the particulars thereof to the Accounts Officer at least two months before the date of retirement of a Government servant so that the dues are recovered out of the gratuity before its payment is authorized.

(2) If, after, the particulars of Government dues have been intimated to the Accounts Officer under sub-rule (1), any additional Government dues come to the notice of the Head of Office, such dues shall be promptly reported to the Accounts Officer.”

However, normally, cases of payment made in pursuance of even erroneous orders cannot be recovered without affording an opportunity of showing cause. In the present case, respondents have recalled the earlier orders of higher fixation of pay and have also effected recovery of the so called excess amount paid on the basis of erroneous fixation of pay without providing an opportunity of showing cause. Ordinarily, such an action on the part of the respondents cannot be endorsed. However, in the present case, applicant has had full opportunity to establish discharge of higher duties and functions. Applicant has failed to establish the same. As such, no prejudice seems to have been caused to the applicant in recall of the earlier orders of pay fixation on re-designation of the post of Technical Officer (Library) as Assistant Library and Information Officer. However, in view of the fact that applicant has since retired, respondents' action regarding recovery of the so called excess amount paid to the applicant on account of erroneous fixation of pay cannot be supported as the applicant had received the higher scale due to no fault of hers and further that she has since

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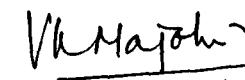
retired. Thus, it shall only be just and proper not to recover any excess amount already paid to her. The ratio in the case of *Shyam Babu Verma* (supra) shall come to the aid of the applicant and as such, we hold that no steps should be taken to recover or to adjust any excess amount paid to the applicant due to the fault of the respondents, and that if any recovery has been made, the same should be refunded to the applicant within a period of three months from the date of communication of these orders.

10. In the facts and circumstances of the case discussed above, it is held that applicant is not entitled to any other relief excepting that as stated above.

11. OA is disposed of accordingly.


(Shanker Raju)

Member (J)


(V. K. Majotra) 4.11.04
Vice-Chairman (A)

/as/