

L. Narahari Vs. the Controller of Defence

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Court : Central Administrative Tribunal CAT

Decided On : Aug-25-2000

Judge : G R Rao, G a S.K.

Appellant : L. Narahari

Respondent : The Controller of Defence

Judgement :

1. The applicant was promoted to the post of Selection Grade Auditor (SGA) with effect from 2.7.1979 in the pay scale of Rs. 425-15-560-EB-20-640. At the time when the applicant was so promoted, the post of SGA was a functional post. Therefore, in terms of the provisions of the erstwhile FR 22-C, now FR 22(1) (a) (1), the pay of the applicant in the post of SGA was fixed taking into account his basic pay in the ordinary grade of Auditor as on 1.7.1979, which was Rs. 464/-, allowing him an increment in the ordinary grade thereon and thereafter fixing his pay in the SGA grade with effect from 2.7.1979 corresponding to the next higher stage available in the scale of pay for the SOA grade which was Rs. 425- 15-560-EB-20-640, Thus, his basic pay came to be fixed in SGA grade in the wake of his promotion to the post with effect from 2.7.1979 at Rs. 485/-. Subsequently, the scale of pay of the SGA came to be revised with effect from 1.1.1980 to Rs. 425-15-500-560-20-700 and the post was converted into a non-functional post with effect from that date. However, in order to protect those, whose pay had already been fixed on promotion as SGA earlier treating that post as a functional post in terms of the erstwhile FR 22-C, the Government of India, Ministry of Finance,

Defence Division, New Delhi, under their letter dated 1.1.1980, seen as attached to the communication dated 7.3.1980 from the respondents at Annexure-A14, issued certain instructions. Under item No. (iv) of the Ministry of Finance letter dated 1.1.1980, mentioned above, it is provided as follows: "In respect of persons who have been promoted to Selection Grade on or after 1st August, 1976 and in whose cases pay fixation has been done with reference to FR 22- C, their pay will be refixed and regulated in the manner indicated above. The difference in pay so fixed and the pay already drawn being treated as personal pay to be absorbed in future increases in pay. In other words no recoveries of over payments made, if any, in the earlier scale of pay of Rs. 425-640 will be effected as a consequence to the revised mode of fixation with effect from 1st August, 1976." (Emphasis supplied) 2. We see from the pay details attached to Annexure-A4 of the O. A dated 5.9.1998 that apart from fixing his pay with effect from 2.7.1979 at Rs. 485/- in the manner described above, the pay of the applicant was fixed at the next higher level of Rs. 500/- with effect from 1.1.1980 when the revised scale of pay of Rs. 425-15-700 came into force, and that based on the latter fixation of pay, his pay came to be fixed at Rs. 515/- on 1.1.1981 and that thereafter he was given annual increments on the first of each succeeding year. It is also noticed from the same pay details that thereafter his pay was fixed with effect from 1.1.1986, when the scale of pay of the SGA was revised in the process of implementation of the IV Central Pay Commission. It is obvious from these pay details that further fixations of pay in respect of the applicant were based on the initial fixation of his pay at Rs. 500/ p.m. with effect from 1.1.1980.

3. The applicant was given a notice proposing to refix his pay and pension and to deduct the excess payment from his pension on the ground that the option of fixation of pay after accrual of increment in the lower grade was applicable only to those SGAs who were appointed to the SGA grade, in the pay scale of Rs. 425-700 with effect from the date 1.8.1976, and not to those who had been promoted to SGA's grade earlier with the pay scale of Rs. 425-640. That notice dated 5.9.1998 is seen at Annexure-A4 of the present O.A.4. The applicant had challenged that communication at Annexure-A4 of the present O.A. proposing to refix his pay with effect from 2.7.79 and his pension as well as to recover the excess payment made from his pension in O.A. No. 1019/98 before the Bangalore

Bench of the CAT. In the order dated 10.6.1999 of this Bench, the O.A was allowed, the notice at Annexure-A4 of the present O.A was quashed and the applicant was permitted to give a fresh representation putting forth all his grounds against the proposed action within one month. It was further directed there that after such representation was made, the second respondent therein would consider the same objectively and pass appropriate order in accordance with Rules and Regulations and without being guided by a decision already stated to have been taken by the Headquarters. We observe that the second respondent therein is the first respondent in the present O.A. Thereafter, the applicant gave a detailed representation seen at Annexure-A10 dated 23.6.1999. There he justified the fixation of his pay as on 2.7.1979 at Rs. 485/- on the grounds that before his promotion as SGA, his pay in the ordinary grade was Rs. 464/-, that under the then FR 22-C, he was granted one increment in that ordinary grade taking his pay to Rs. 476/- and finally that since no stage was available in the scale of pay of SGA exactly corresponding to Rs. 476/-, the next stage in the scale of pay of SGA being Rs. 485/-, his pay came to be fixed at Rs. 485/- with effect from 2.7.1979. Since the post of SGA at that point of time was still a functional post, the applicant pointed out that the fixation of his pay with effect from 2.7.1979 at Rs. 485/- was done correctly under the erstwhile FR 22-C. We observe that the provisions of FR 22-C, now FR 22(1)(a)(i), are to the same effect. The applicant also pointed out in that representation that as per the letter of the Ministry of Finance dated 1.1.1980, quoted by us above, the same pay of Rs. 485/- with effect from 2.7.1979 was required to be protected, if necessary, by fixing his pay notionally in the revised scale of pay for the SG As at the stage of Rs. 470/- and allowing Rs. 15/- as the personal pay.

However, we notice that the matter of fixation of his pay further in the revised scale of pay of the SGA at Rs. 500/- with effect from 1.1.1980 has not been dealt with by the applicant in that representation at Annexure-A10. Thereafter, the first respondent passed the impugned order dated 29.12.1999 in a detailed fashion justifying the refixation of pay of the applicant, which is seen as Annexure-A of the communication at Annexure-A11. We find from that annexure that the first respondent has fixed the pay of the applicant at Rs. 485/- with effect from 2.7.1979 as was done originally but fixed his pay at Rs. 500/- only with effect from 1.7.1980,

that is, after he completed one year as SGA having earlier got his pay at Rs. 485/- with effect from 2.7.1979 in that grade, instead of continuing the benefit of refixation of his pay at Rs. 500/- with effect from 1.1.1980 as was done originally. In the said Annexure-A of Annexure-A11, we find that subsequent increments in the scale of pay as a SGA have been granted in favour of the applicant on 1 st of July of every succeeding year based on fixation of his pay at Rs. 500/- with effect from 1.7.1980. His pay in the revised scale of pay of Rs. 1400-2600 has also been fixed now with effect from 1.1.986 in accordance with the recommendations of the IVth Central Pay Commission taking into account the revised fixation of his pay at Rs. 500/- with effect from 1,7.1980, mentioned above.

5. It is evident in the light of the materials placed before us and the arguments advanced by the learned Counsel appearing for the parties that the only substantive dispute relates to the refixation of the pay of the applicant at the level of Rs. 500/- with effect from 1.7.1980 as per the impugned order in the scale of pay of the SGA, when that scale of pay was revised from 425-640 to Rs. 425-700, instead of fixing it at the same level of Rs, 500/- with effect from 1.1.1980 which was done earlier. Subsequent fixations of pay in the revised scale of pay of the SGA in the wake of the recommendations of Third Central Pay Commission and further consequent upon the promotion of the applicant to a higher post in the impugned order have followed as a natural consequence thereof. We are, therefore, required to consider essentially as to whether the action of the respondents in refixing the pay of the applicant in the SGA grade at Rs. 500/- with effect from 1.7.1980, and not with effect from 1.1.1980 as was done earlier, can be sustained. In this context it is useful, in our opinion, to quote the provisions of FR 22(I)(a)(1) and those of FR 22(I)(a)(2). They are as follows: "F.R. 22(I)(a)(1)-- 'Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an

increment at the stage at which such pay has accrued or rupees twentyfive only, whichever is more.

F.R. 22(I)(a)(2)--When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis : Provided that where 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 the initial pay : Provided further that in a case where pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time-scale of the old post, in cases where pay is fixed at the higher stage, he shall get his next increment on completion of the period when an increment is earned in the time-scale of the new post." 6. It is obvious from the pay details furnished by the applicant that he was first granted the benefit of pay fixation under the erstwhile FR 22-C, (now FR. 22(I)(a)(i) when he was promoted to the then functional SGA grade by final allowing him an increment on the ordinary grade and thereafter fixing his pay at the next higher stage in the then scale of pay of the SGA and thus correctly fixing his pay with effect from 2.7.1979 at the level of Rs. 485/-. It is also seen from the same pay details that the applicant was once again given the benefit of another annual increment of Rs. 15/- when the pay scale of SGA was slightly enhanced from Rs. 425-640 to Rs. 425-700 with effect from 1.1.1980.

Since Rs. 485/- was a distinct stage available in the said slightly enhanced scale of pay of Rs. 425-700 and since with effect from 1.1.1980 the post of SGA had been declared as a non-functional post, correctly only the provisions of FR 22(I)(a)(2) could be applied and not FR 22(I)(a)(1). In other words there was no need to allow one more annual increment and add it to the pay of the applicant at the level of Rs. 485/ and thus fix it resultantly at the level of Rs. 500/- with effect from 1.1.1980. It is apparent that due to some error that is how the pay of the applicant came to be fixed at Rs. 500/- with effect from 1.1.1980 and subsequent fixations of his pay all followed as a natural consequence of that error.

7. The reliance on the provisions of the instructions of the Ministry of Finance dated 1.1.1980, cited by us above, on the part of the applicant in this context is clearly misconceived. It is so for the reason that those provisions only protect the earlier fixation of pay for officials like the applicant who had been promoted to the SGA grade prior to 1.1.1980 and who had obtained the benefit of the provisions of FR 22-C, relating to the fixation of pay at that post, to which they were promoted and which was a functional post, at that point of time.

Those provisions have nothing to do with the grant of a further annual increment and adding it to the pay of an official like the applicant with effect from 1.1.1980, who was already working as a SGA, while fixing his pay in the slightly revised scale of pay of the SGA, particularly when there was a stage exactly corresponding to the level at which the pay of the applicant had already been fixed, that is, Rs. 485/- with effect from 2.7.1979. We find that the impugned order seeks to rectify this error by refixing the pay of the applicant in the slightly revised scale of pay of SGA on 1.1.1980 effectively at the level of Rs. 485/- and then refixing his pay at Rs. 500/- with effect from 1.7.1980 when his next date of annual increment of Rs. 15/- became due, which is what is exactly prescribed under FR 22 (I) (a) (1). We, therefore, cannot find any fault with the action taken by the respondents in ordering the said refixation in the impugned order.

8. As regards the proposed recovery of the excess amounts paid on account of the original fixation from the applicant, who had retired from service even before the issue of the initial notice dated 5.9.1998 at Annexure-A4, the Hon'ble Supreme Court has clearly laid down the principle in a recent judgment, *Union of India and Ors. v. Rekha Majhi*, 2000 LAB I.C. 1468, of which a copy has been made available to us by the learned Counsel for the applicant, that the recovery of excess amount paid which is the result of an error on the part of the executive and not occasioned by any misleading representation made on the part of the official concerned cannot be recovered on legal grounds. Though in the facts and circumstances of that case, the Hon'ble Supreme Court also decided that recovery of the excess amount paid to the respondent therein was not justified even on equitable grounds. It is well established by now that when overpayment is made due to the conscious decision of a competent authority, even if the decision was

subsequently found to be erroneous, recovery cannot be effected from the dues payable to the concerned Government servant, except when such an error is rectified within a reasonable time. Here, we find that the wrong fixation of the pay of the applicant at Rs. 500/- with effect from 1.1.1980 has been rectified with all the attendant consequences, after a long period of 17 years, as seen in the impugned order, i.e., Annexure-A to the communication at Annexure-A11 of the O.A. It is not at all the case of the respondents that the said initial fixation of Rs. 500/- with effect from 1.1.1980 in favour of the applicant was done on the basis of any representation or application, misleading or otherwise, made in that behalf by the applicant. On the other hand, it is admitted to be an error committed by the authorities competent to fix his pay at that point of time. Further, we notice that in the said impugned order at Annexure-A11 no decision has been recorded for recovering the excess amount paid to the applicant on account of the earlier erroneous fixation of his pay, even though arguments have been advanced on both sides on this point. We, therefore, hold that the decision of the respondents communicated under the impugned order dated 29.12.1999 at Annexure-A11 cannot give them any right to recover the excess amount paid to the applicant in consequence of the aforesaid initial wrong fixation of his pay.

9. We also find that similarly in the impugned order there is no indication that in terms of the said order the pension and pensionary benefits being drawn by the applicant is required to be reduced. In the reply statement, however, it has been mentioned on behalf of the respondents that in a similar case it has been decided by the Hon'ble Supreme Court in V. Gangaram v. Regional Joint Director and Ors., (1997)6SCC 139 that recovery can be made from the pension if there is excess paid by way of wrong fixation of pay or by way of additional increments not due. The impugned order, as already observed by us, does not speak of any reduction in the pension of the applicant or any other pensionary benefits for the applicant. We are, therefore, not required to discuss and adjudicate that matter. In any case, we find from the facts of that case of V, Gangaram v. Regional Joint Director and Ors., (supra), relied upon by the respondents, that it is not at all clear whether the notice proposing the recovery was issued within a reasonable time and at least well before the applicant therein had retired. In this context we must observe that the earlier notice issued to the present applicant Dt. 5.9.1998, where it was

proposed to revise the pension of the applicant and to carry out necessary adjustments for the overpayment from his pension seen at Annexure-A4, was specifically quashed by our previous order dated 10.6.1999 in O.A. 1019/1998, referred to above by us.

10. In the light of the discussions made above, we are of the considered view that for the purpose of rectifying the initial error and incorporating the correct position, the impugned order dated 29.12.1999 seen at Annexure-A11 cannot be faulted. It is, therefore, upheld. However, as we have already made it clear, by virtue of that order the respondents cannot proceed against the applicant for recovery of any excess amount which have been paid to him resulting from the initial wrong fixation of his pay at the level of Rs, 500/- as an SGA with effect from 1.1.1980. It is similarly made clear that the same order at Annexure-A11 shall not by itself empower the respondents to make any reduction in the pension or any other pensionary benefits which has been drawn or being drawn by the respondents. If the respondents are competent otherwise as per law to initiate any such latter action, the applicant, if aggrieved by any order finally passed in that behalf, will be at liberty to approach this forum challenging the same.

11. With the above observations and directions the O.A. is disposed of.

No. costs.

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