

K.S. Vasan Vs. the Commandant and ors.

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Court : Central Administrative Tribunal CAT

Decided On : Feb-28-2002

Reported in : (2003)(2)SLJ18CAT

Judge : S A V., N Prusty

Appellant : K.S. Vasan

Respondent : The Commandant and ors.

Advocate for Def. : Mr. N. Amaresh, Mr. Amaresh

Advocate for Pet/Ap. : Mr. R. Srikanth

Judgement :

1. The applicant was initially appointed as Draughtsman Grade IV ect from 20.2.1964 in the scale of Rs. 110-180, promoted to grade III.Later on both the scales of pay of Draughtsman Grade III and Grade II were merged to one common scale of pay of Rs. 150-280. From 1.1.1973 on implementation of the recommendation of the III Pay Commission the scale of pay of Draughtsman in Central Government was equated to Rs. 330-560, which was further revised/equated to Rs. 1,200-2,040. The Government of India, Ministry of Defence, revised the pay scale of the Draughtsman on par with the pay scale of Draughtsmen in CPWD, and issued circular dated 15.9.1995 (Annexure A-1) and accordingly the circular for revision of pay scale was issued by the Air Headquarters vide letter dated 18.3.1996 (Annexure A-2). The benefit of revised

pay scale was also given to the applicant and his pay scale was also revised notionally with effect from 13.5.1982 and actually from 1.11.1983; The applicant was also given next promotion on 25.7.1989; as seen in the enclosure (at page 16, Sl. No. 20), to the order/letter dated 18.3.1996 (Annexure A-2). In compliance of the letter dated 15.9.1995 (Annexure A-1) and letter/order dated 18.3.1996 (Annexure A-2) the pay of the applicant was fixed by the Commandant, Air Force Technical College, Jalahalli, as per Part II dated 2.8.1997 (Annexure A-3), at Rs. 455.00 from 1.8.1982, Rs. 470/- from 1.8.1983 with financial benefit from 1.11.1983 in the scale of pay of Rs. 425-700. As per the revision of pay scale the applicant's pay was fixed at Rs. 1,520/- from 1.8.1986, Rs. 1,560 from 1.8.1987, Rs. 1,600 from 1.8.1988 and Rs. 1,640 from 1.8.1989. Accordingly after his promotion to Draughtsman Grade I with effect from 25.7.1989 the applicant's pay was fixed in the scale of pay of Rs. 1,600-2,660 with effect from 25.7.1989, as seen at page 19 of the Annexure A-3 dated 2.8.1997. As a result of the revised fixation of pay the arrears was also paid to the applicant. The Commandant, Headquarters Training Command, IAF, in his Part II 'A' Office Order dated 2.9.1998 unilaterally and arbitrarily cancelled the pay fixation made vide Part II 'A' Office Order dated 2.8.1997, without any notice to the applicant and without following the rules of natural justice in affording him a chance of hearing and refixed the applicant's pay in the scale of Rs. 1400-2300 with effect from August 1989-90 thus in content and effect, unilaterally reverted him back to Draughtsmen Grade II and fixed him in a lower scale as seen in Annexure A-4 dated 2.9.1998. As a result of fixation of applicant's pay in the lower scale, the arrears amounting to Rs. 32,737 already paid to the applicant earlier was sought to be recovered by adjustment in applicant's salary as seen in the communication dated 24.3.1999 addressed to the Chief Accounts Officer (Defence) (Annexure A-5). The applicant made a representation dated 28.4.1999 (Annexure A-6), against the reduction in rank and lower fixation of pay. But subsequently the Commandant vide order Part II (A) dated 1.5.1999, cancelled the order dated 2.9.1989 and stated that original order dated 2.8.1997 stands.

Thus the original promotion order given to the applicant was restored.

Again on 8.9.1999 another Part II order was issued which indicates that the promotion and pay fixation order in respect of the applicant was cancelled in toto and again he was designated as Draughtsman Grade II as seen at page 31 of Annexure A-8. Thereafter the applicant made a detailed representation (Annexure A-9), and he was informed vide communication dated 20.1.2000 (Annexure A-10) that the order dated 2.9.1998 was correct. In the meantime the department also covered the entire arrears amount of Rs. 32,737 paid to the applicant. As such both the reduction in the grade and scale of the applicant had been unilaterally done by the authorities without any notice to the applicant and without following the due process of law/principles of natural justice. Hence the applicant was compelled to prefer this O.A.2. The applicant has challenged the action of the respondents mainly on the ground that: the action of the respondents is cancelling the promotion given to the applicant and consequently cancellation of the pay fixation made and arrears paid and recovery of the entire amount of Rs. 32,737/- without any notice to the applicant are completely arbitrary and illegal. In view of the settled principles of law that any action that would adversely affect the accrued rights of an official, cannot be withdrawn or cancelled without following the principles of natural justice, the action taken by the respondents against the applicant is illegal and arbitrary: The department itself having promoted the applicant pursuant to the general direction of the Government of India and fixed his pay vide order dated 2.8.1997 no rationale for cancelling that order is forthcoming. As such the order of the respondents in reducing the grade and scale of pay of the applicant unilaterally, without any notice, without giving him a chance of hearing and as such without following the rules of natural justice; is not sustainable in the eye of law: As such the cumulative action of the respondents is violative of the basic cannons and principles of natural justice. Mr. R. Srikanth learned Counsel for the applicant in support of his contentions relied upon the decisions of the Hon'ble Apex Court in the case of Bhagwan Shukla v. Union of India, 1994 SCC (L&S) 1320=1995(2) SLJ 30 (SC) and Sahib Ram v. State of Haryana and Ors., 3. The respondents have filed their reply stating therein that the applicant was initially appointed as Draughtsman on 20.2.1964 (which was redesignated as Draughtsman grade III) and he was promoted to the grade of Senior Draughtsman with effect from 25.7.1989. Thereafter, when three grade

structure pay scales was implemented, the promotion of the applicant to the grade of Senior Draughtsman (redesignated as Draughtsman Grade II) had been ante-dated from 25.7.1989 to 13.5.1982 notionally and with financial benefit from 1.11.1983 on completion of stipulated length of service as per Ministry of Defence letter dated 15.9.1995 (Annexure A-I). The pay scale of the applicant was accordingly revised as that of Draughtsman Grade II. While redesignating him and fixing his pay scale - the applicant's case was shown as 'promotion' and his designation was also shown as Grade I inadvertently. His basic, pay was also fixed accordingly (in Grade I) and as such he had drawn the arrears of pay and allowance because of this erroneous pay fixation on the basis of letter dated 15.9.1995 (Annexure A-I). The above mistake came to light only when, he had his regular/normal promotion as Draughtsman Grade I from a later date with effect from 21.7.1998. Therefore, applicant's pay was refixed and earlier wrong fixation of pay was corrected. The applicant was informed about this change from time to time. As such no illegality or irregularity has been committed by the respondents in changing the designation of the applicant and in refixing his pay. Accordingly the excess paid amount of Rs. 32,737 to the applicant beyond his entitlement had to be recovered from the applicant also. The learned Counsel for the respondents in support of his contentions cited the decisions of the Hon'ble Supreme Court in the case of V. Gangaram v. Regional Joint Director and Ors., Union of India and Ors. v. Smt. Sujatha Vedachalam and Anr., reported in 2000 SCC (L&S) 881=2000 AIR SCW 2887 and State of Haryana and Anr. v. Kiamal Singh Saharwat and Ors., reported in (1999) 8 SCC 44=1999 AIR SCW 3824=2000(2) SLJ 19 (SC).

4. We have heard Mr. R. Srikanth, learned Counsel for the applicant and Mr. N. Amaresh, learned Counsel for the respondents. We have also gone through the pleadings, documents and the decisions cited in support of their case by learned Counsel for both the parties.

5. In the case of Bhagwan Shukla v. Union of India, (supra), the Hon'ble Apex Court has observed that - while altering the basic pay of an employee which has been fixed earlier by the competent authority and later on reduced on the ground of having been wrongly fixed, prior opportunity ought to have been afforded to the employee. The Hon'ble Court categorically held that - "The appellant has obviously

been visited with civil consequences but he had been granted no opportunity show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the (sic employee) concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25.7.1991, which was impugned before the Tribunal could not certainly be sustained..." As regards the recovery of the amount of excess payment, in the case of *Sahib Ram v. State of Haryana and Ors.*, (supra), the Hon'ble Supreme Court has been pleased to observe on the point of excess payment and recovery of the amount paid in excess - to the effect that the department is to be restrained from recovery of the payment already made. The Hon'ble Court categorically observed at para 5 of the judgment that: "Admittedly, the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault.

Under the circumstances the amount paid till date may not be recovered from the appellant." *V. Gangaram v. Regional Joint Director and Others*, by the Hon'ble Supreme Court, (supra), which was cited by the Counsel for the respondent and relied upon by them for justifying their action of recovery of the so called excess paid amount, shall not be applicable to this case since in that case--a School Teacher on improving his qualifications by BA, MA, B.Ed. and M.Ed. the authorities went on giving him the revision of pay scale, granting advance increments as and when he acquired the higher qualification, on the pay scale applicable at the relevant time. The applicant was only entitled to two increments. Whereas more than two increments were granted to him. Proceedings for recovery

was initiated in 1985. Hence the Hon'ble Court held that arrears paid prior to 1985 not to be recovered but the amount paid from 1985 liable to be recovered from him. But in the instant case the actual proceeding for reduction of the grade and scale of pay has not yet been initiated against the applicant in accordance with law. His higher grade and higher pay scale were fixed by the authorities by order dated 2.8.1997 following certain guidelines of the Ministry's letter dated 15.9.1995, in which applicant had no contribution in (such) so called wrong fixation. The applicant was allowed to draw the arrears and current salary upto September 1999. But his designation and salary have been reduced without any notice to show cause, without giving him a chance of hearing or following the rules of natural justice.

7. The next case relied upon the learned Counsel for the respondents is the case of Union of India v. Smt. Sujatha Vedachalam, (supra), wherein the Hon'ble Apex Court finally permitted the appellant for recovery by observing that "However, so far as recovery of excess pay paid to the respondent is concerned, the appellant may recover the said amount in easy instalments which may be spread over for fifteen years or till the date of retirement whichever is earlier". This order was passed by the Hon'ble Court keeping in view of the fact that on the request transfer of the respondent in the said case, one of the conditions of the transfer was that the respondent has to technically resign from the post which she was holding and she was to join as direct recruit to a lower post or draw in the pay scale of Rs. 950-1500. On acceptance of such terms and conditions the respondent was transferred. But after the transfer her pay was erroneously fixed at Rs. 1,250/- and after this mistake came to the light her pay was fixed at the stage of Rs. 1,070/-. On the basis of the terms and conditions accepted by her, while allowing her request for transfer. The order for recovery of the excess pay from the respondent was also passed. As such the facts and circumstances of the case relied upon by Mr. Amaresh, learned Counsel for the respondents being completely different from the present case of the applicant, the principles decided in that case shall not be applicable to this case at hand.

8. The case cited by the learned Counsel for the respondents is the case of State of Haryana and Anr. v. Kamal Singh Saharwat, (supra). In the said case the

Teachers in the State of Haryana were given pay scale of Lecturer on acquiring academic qualification prescribed for the post of Lecturer, without being appointed as a Lecturer, on a wrong interpretation of the direction of the Hon'ble High Court in a particular case. In the said case Hon'ble Apex Court has been pleased to hold that "the teachers are not entitled to higher scale of pay applicable to the post of Lecturer automatically on their acquiring post graduate qualification or such qualification as are prescribed for the post of Lecturer (para 23 of the judgment).

In paragraphs 38 and 40 of the judgment the Hon'ble Court has been pleased to observe that: "38. Thus it is seen, that there is no judgments of this Court holding that teachers acquiring post-graduate qualifications or qualifications prescribed for the post of Lecturers would automatically be entitled to scales of pay applicable to the Lecturers on acquiring such qualifications without being appointed as Lecturers in accordance with the rules." "40. Thus, the Full Bench had no occasion to consider the question whether the teachers would be entitled to the scales of pay applicable to the lecturers automatically on their acquiring postgraduate qualifications. It cannot by any stretch of imagination be contended that the ratio of the decision of the Full Bench was that those who had acquired postgraduate qualifications were automatically entitled to pay scales of lecturers..." "42. In the result, we have no hesitation to hold that the teachers are not entitled to claim higher pay on the scales of pay applicable to Lecturers on their acquiring postgraduate qualification without being appointed as lecturers. Learned Counsel for the State of Haryana has categorically stated that higher pay on the scales applicable to the Masters was already being paid to the teachers and that at any rate the Government has absolutely no objection to pay the same if they were entitled thereto in accordance with the law laid down by this Court. We have already referred to the fact that the only person to whom higher pay on the scales applicable to the lecturers was being paid was Kamal Singh Saharwat the first petitioner in C.W.P. 7122/88 before the High Court. At the time of grant of leave, this Court passed an order in the stay petition that if the State ultimately succeeds. Consequently, the State Government, appellant in Civil Appeal No. 4304/90 is entitled to recover back from Kamal Singh Saharwat the first respondent in the appeal whatever has been paid over and above his entitlement. It will be open to the Government to take appropriate proceedings, therefor, if it decides to recover

the excess after such a long lapse of time. Similarly, the State Government is entitled to recover from such other persons, if any, to whom excess payments have been made." In the above said case so far as applicant in Civil Appeal No. 4304/90- Kamal Singh Saharwat is concerned as per the direction of the Hon'ble Court he was allowed to draw the higher scale i.e., by virtue of the order in CWP 7122/88 of the High Court and also order of the Hon'ble Supreme Court at the time of grant of leave. Hence the Hon'ble Court directed that the State Government is entitled to recover back from Kamal Singh Saharwat whatever has been paid over and above his entitlement and further said that "it is open to the Govt. to take appropriate proceeding, therefor, if it is decided to recover the excess after such a long lapse of time". In view of the facts and circumstances of cited case being completely different from the present case the observations made and the principle decide in the case cannot be said to be applicable to the case at hand.

9. As such after going through the decisions of the Hon'ble Apex Court in all the three cases relied upon by the learned Counsel for the respondents, we are of the considered view that the observations made the directions given by the Hon'ble Court in those cases, are not applicable to the present case at hand in view of the fact that in the instant case pay scale of the employee was earlier fixed in the pre-revised scale of Rs. 425-700 in Grade I and revised scale of Rs. 1400-2300 and Rs. 1,600-2,660 as seen in Annexure A-3 and accordingly in the pay scale of Rs. 5000-150-8000 in Draughtsman Grade II with effect from 1.1.1996 and in the scale of Rs. 5500-175-9000 in Grade I after implementation of the recommendation of the 5th Pay Commission.

The higher grade and higher pay scale of the applicant was fixed following the guidelines mentioned in the Annexure A-1. The salary of the applicant was fixed by the authority in the higher grade/higher scale taking into consideration his length of service in accordance with law wherein the applicant had no contribution. The pay scale and grade of the applicant was revised/reduced by the respondents without any notice to him to show cause, without giving him a chance of hearing and as such without following the due process of law/rules of natural justice and in the process it is alleged that there was an excess payment of Rs. 32,737/-, which was also arbitrarily determined by the department behind the back of the applicant.

In view of the above facts the subject matter in dispute in the present case cannot be equated with the subject matter of the cases cited by the learned Counsel for the respondents in any manner and hence the principles decided in those cases by the Hon'ble Apex Court keeping in view the backdrop of those cases, cannot be made applicable to this case.

10. On the basis of the pleadings and documents filed by the respective parties, the admitted position in this case is that the applicant's grade and pay scale has been reduced by the respondents, and in the process the amount of excess payment has been recovered from the applicant unilaterally, arbitrarily, without any notice to show cause, without affording him any opportunity of personal hearing, as such without following the rules of natural justice, which is completely against the settled principle of law. The documents which was filed by the respondents along with the application dated 12.4.2001, marked as Annexures R-1 to R-5 also does not indicate regarding service of any notice to show case, prior to reduction in the scale and grade of the applicant.

11. In view of the discussions made above, keeping in view the submissions made by learned Counsels for both the parties and after going through the decisions relied upon by the respective parties, we are of the considered opinion that while reducing the scale of pay and grade of the applicant and while his valuable right was being infringed by the respondent, the applicant was entitled for a prior notice to show cause, reasonable opportunity of being heard in the matter and the matter ought to have been determined in the presence of the applicant following properly the settled principles of law/the rules of natural justice. The respondents have further illegally/unilaterally recovered the so called excess paid amount, without its proper determination in the presence of the applicant/ following the due process of law. As such the unilateral/illegal/unjust decision and action taken by the Department in the process of reduction in grade and scale of the applicant and the orders passed to that effect are not sustainable as per the settled principles of law and also the consequential order of recovery of the so called excess paid amount is not a fair one, keeping in view the principles decided by the Hon'ble Apex Court in the case of Bhagwan Shukla v. Union of India or Sahib Ram v. State of Haryana and are liable to be quashed and set aside. Hence the orders dated 8.9.1998 and

20.1.2000 passed by the respondents are quashed/set aside.

12. The respondents are directed to pay back/refund the entire recovered amount of Rs. 32,737/- towards excess payment and continue to pay the salary of the applicant in the pre-revised scale of Rs. 1400-2300 and Rs. 1600-2660 in the grade II and Grade I respectively as per the order under Annexure A-3 and pay the consequential benefits, also as per the recommendation of the 5th Pay Commission from the date of its implementation, in the scale of pay of Rs. 5500-175-9000 regularly as per his eligibility, as had been earlier determined, prior to the date of such reduction of his salary and grade with all arrears etc., within a period of one month from the date of receipt of a copy of this order. It is further directed that in case the department decides to take any steps for refixation of the pay/ reduction of the scale of pay grade of the applicant, then they are at liberty to do so on giving proper notice to show cause to the applicant, indicating therein the reasons in detail for such decision for reduction of pay and grade from the time so decided, within a period of one month from the date of receipt of the copy of the order. The applicant also shall be given an opportunity to file a reply to the said show cause within six weeks from the date of receipt of such notice. The respondents after giving an opportunity of being heard in the matter to the applicant and considering all the points raised by him in his reply to show cause notice and following the due process of law/rules of natural justice and keeping in view the contents of Annexure A-1, decisions of the Hon'ble Apex Court cited by the applicant on the point, shall pass a reasoned order thereon and communicate the same to the applicant.

13. The O.A. is accordingly allowed with the above observations directions. However, there shall not be any orders as to costs.

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