

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1160 OF 2012

DISTRICT : PUNE

Shri Vinayak Hari Patil,)
E-604, Laxmi Narayan Towers,)
Behind Nilayam Talkies,)
Sadashiv Peth, Pune 411 030.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Water Resources Project &)
Development Department,)
Mantralaya, Mumbai 400 032)
2. The Secretary,)
Finance Department [Accounts))
& Treasury], Mantralaya,)
Mumbai 400 032.)

3. The Superintending Engineer)
Koyna Design Circle, Pune.)...**Respondents**

Smt Punam Mahajan, learned advocate for the Applicant.

Ms Neelima Gohad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)
Shri R.B. Malik (Member) (J)

DATE : 12.08.2014

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Smt Punam Mahajan, learned advocate for the Applicant and Ms Neelima Gohad, learned Presenting Officer for the Respondents

2. This Original Application has been filed challenging the order dated 10.10.2012 cancelling earlier order of pay fixation of the Applicant which was issued on 9.9.1997 which fixed the pay of the Applicant at Rs. 2575/- w.e.f 1.7.1986 in the pay scale of Rs. 2200-4000. In other words, the Applicant is seeking restoration of order dated 9.9.1997 and also release of Rs. 3.25 lakhs

which have been deducted from his retiral benefits in accordance with the impugned order dated 10.10.2012.

3. The Applicant had earlier filed O.A no 1257/2010 where the Applicant had challenged order dated 9.11.2010 which has reduced his pay to Rs. 2350/- in the pay scale of Rs. 2200-4500 w.e.f 1.7.1986 from Rs. 2575/- fixed earlier by order dated 9.9.1997. This Tribunal quashed the order dated 9.11.2010 as well as order dated 19.3.2006 on the ground of violation of principles of natural justice as no show cause notice was issued to the Applicant, before the order was passed. The Respondents were given liberty to pass a fresh order after issuing a show cause notice to the Applicant. Now, after hearing the Applicant, the impugned order dated 10.10.2012 has been passed.

4. Learned Counsel for the Applicant argued that the Applicant was working as Sub Divisional Engineer (SDE) in the Irrigation Department (now Water Resources Department). Government decided to give Class-I status to S.D.E and their pay scale was upgraded from Rs. 2000-3500 to Rs. 2200-4000 w.e.f 1.1.1986. The G.R upgrading the post was issued on 14.12.1995. Though the G.R was made effective retrospectively w.e.f 1.1.1986, no arrears were to be given till 31.12.1995. By order dated 9.9.1997, Superintending Engineer, Krishna-Koyna Life Irrigation Project Circle, Sangli, fixed the pay of the

Applicant at Rs. 2575/- as on 1.7.1996 in the pay scale of Rs. 2200-4000. In 2004, objection was raised by the Pay Verification Unit, which was replied to by the Executive Engineer and the objection was dropped. Another objection raised by the Pay Verification Unit in 2005 was also dropped. On 19.3.2006, Pay Verification Unit raised objection that the pay of the Applicant should have been fixed at Rs. 2350/- as on 1.7.1996. Despite letters from the Chief Engineer that the pay fixation order dated 9.9.1997 was correct, Government passed the order on 9.11.2010 fixing the pay of the Applicant at Rs. 2350/- on 1.7.1996. Learned Counsel for the Applicant filed a chart showing the pay of the Applicant was reduced in the higher pay scale of Rs. 2200-4000 as compared to earlier pay scale of Rs. 2000-3500. Learned Counsel for the Applicant contended that after this Tribunal passed order dated 10.2.2013 in O.A no 1257 of 2010, the Respondent after giving hearing to the Applicant have passed the impugned order dated 10.10.2012, which is same as the earlier order dated 9.11.2010. Learned Counsel for the Applicant contended that even if it is held that the pay fixation order dated 9.9.1997 was issued in violation of some rule, Government has power to relax the rules if undue hardship is caused to an employee in a particular case. Rules were relaxed in case of Shri Chitpute by order dated 28.1.2008 and Shri Joglekar by order dated

30.10.2003. The Respondents' refusal to relax Pay rules is arbitrary and unreasonable.

5. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the impugned order is absolutely correct and as per relevant rules. The Applicant was promoted as Deputy Engineer on 6.5.1986. The Maharashtra Civil Services (Revised Pay) Rules, 1988 foot note 7 under Rule 7 *ibid*, provides that the pay of a person promoted after 1.1.1986, pay in the lower post in the revised scale will be fixed first and then fixed in the revised scale in the higher post under normal rules. Learned Presenting Officer argued that the Applicant was entitled to basic pay of Rs. 2350/- in the pay scale of Rs. 2200-4000 as on 1.7.1986. However, his pay was wrongly fixed as Rs. 2575/-. Learned Presenting Officer submitted that after 4th Pay Commission, pay scales of Government employees were revised w.e.f 1.1.1986. By G.R dated 14.12.1995, Government decided to re-revise the pay scale of Engineering cadre in the State. The Engineers who were promoted during the period from 1.1.1986 to 14.12.1995 were permitted to give their option for pay fixation in the pay scale of promotional post, but not about the date from which such re-revised pay scale should be made available to them. Learned Presenting Officer argued that the Superintending Engineer has fixed the pay of the Applicant at Rs. 2300/- on 1.7.1986 by order dated

17.7.1997. However, the same was cancelled and fresh order dated 9.9.1997 was passed fixing the pay at Rs. 2575/- on 1.7.1986. Pay Verification Unit objected and stated that it should have been Rs. 2350/- on 1.7.1986. The Applicant continued to draw salary on the basis of wrong pay fixation till his retirement on 30.5.2010 knowing that he was not entitled to the same. Learned Presenting Officer argued that cases of Shri Joglekar and Shri Chitpute were entirely different and there is no case for relaxation of rules in favour of the Applicant.

6. We find that the Respondents have filed a detailed affidavit in reply on 29.1.2013 explaining in detail as to how the pay of the Applicant was fixed which led to order dated 10.10.2012. It is mentioned in paragraph 3 of the affidavit in reply that the pay of the Applicant was fixed as per foot note 7 under Rule 7 of the Maharashtra Civil Services (Revised Pay) Rules, 1988. In the affidavit in rejoinder, the Applicant in para 2 has merely stated that contents of sub para 3 are not correct. In para 4.2 of the affidavit in reply of the Respondents it is mentioned that those Engineers who were promoted during the period 1.1.19986 to 14.12.1995 were permitted to submit their option for the pay fixation in the pay scale of promotional post and not about deciding the date from which such re-revised pay scale as per G.R dated 14.12.1995 should be made applicable to them.

Again, in his rejoinder the Applicant has stated that content of para 4.2 are not correct. Similarly, except some remarks on para 4.3, 4.7 & 4.8 the Applicant has simply denied the remarks in affidavit in reply of the Respondents. The Pay Verification Unit of the State Government is a specialized unit which verifies the pay of every Government servant with a view to ensure that correct pay is given to each and every Government servant. Normally, the pay fixed by such a unit can safely be presumed to be correct unless proved to the contrary. In the present case, the Respondents have stated that the pay of the Applicant was calculated at Rs. 2300/- by the Superintending Engineer, Krishna Koyna Life Irrigation Circle, Sangli on 1.7.1986 in the revised pay scale. This was cancelled and fixed by order dated 9.9.1997 at Rs. 2575/-, on the basis of wrong calculation. Pay Verification Unit found that the Applicant's pay should have been fixed at Rs. 2350/- on 1.7.1986. The Applicant challenged the order dated 9.11.2010 by filing Original Application in this Tribunal. After this Tribunal passed order in O.A no 1257/2010, quashing the order dated 9.11.2010, the impugned order dated 10.10.2012 was passed after giving full opportunity to the Applicant of being heard. This order mentions that the pay of the Applicant shall be Rs. 2350/- on 1.7.1986 in the scale of pay of Rs. 2200-4000. The Applicant's pay as per orders dated 9.9.1997 and 10.10.2012 are as follows:-

Sr. No.	Date	Pay as per order dated 9.9.1997	Pay as per order dated 10.10.2012
1.	01.07.1986	Rs. 2375	Rs. 2350
2.	01.07.1987	Rs. 2650	Rs. 2425
3.	01.07.1988	Rs. 2725	Rs. 2500
4.	01.07.1989	Rs. 2800	Rs. 2575
5.	01.07.1990	Rs. 2900	Rs. 2650
6.	01.07.1991	Rs. 3000	Rs. 2725
7.	01.07.1992	Rs. 3100	Rs. 2800
8.	01.07.1993	Rs. 3200	Rs. 2900
9.	01.07.1994	Rs. 3300	Rs. 3000
10.	01.07.1995	Rs. 3400	Rs. 3100

The Applicant has forcefully argued that his pay has been reduced after he was granted pay scale of Rs. 2200-4000 from earlier pay scale of Rs. 2000-3500. He has, however, failed to point out any flaw in the calculation made by the Respondents with reference to the rules/G.Rs etc. The case of the Respondents is that his earlier pay fixation was wrong. On the basis of material on record, we are unable to conclude that the order dated 10.10.2012 was passed wrongly by the Respondents. The Respondents have stated that the above pay fixation was notional as the new pay was applicbale from 1.1.1996 and no arrears were to be paid for the period 1.1.1986 to 31.12.1995. The Applicant, therefore, did not suffer any actual reduction in pay. Only after 1.1.1996, his pay was fixed on the basis of his pay of Rs. 3100/- instead of Rs. 3400/- fixed under order dated 9.9.1997.

7. The Applicant has claimed that the pay rules were relaxed in case of two employees Shri Joglekar and

Shri Chitupe. The circumstances in which Shri Chitupe was allowed to change his option have been explained in paragraph 7 of the affidavit in reply of the Respondents. In case of Shri Joglekar, objection of Pay Verification Unit was not found to be valid. The Applicant had not stated specifically that he may be given opportunity to change his option, as was done in Shri Chitupe's case. He wants his wrong fixation to be regularized by relaxing the rules. We agree that the Applicant's case cannot be considered at the same footing as Shri Chitupe or Shri Joglekar.

8. Learned Counsel for the Applicant has relied on the judgment of Hon'ble Supreme Court in **CHANDI PRASAD UNIYAL & ORS Vs. STATE OF UTTRAKHAN & ORS in CIVIL APPEAL NO 5899 OF 2012**. Learned Counsel stated that Supreme Court has analyzed the whole case law regarding recovery of excess payment made to a Government servant. In **SHYAM BABU VERMA's case [SHYAM BABU VERMA Vs. UNION OF INDIA (1994) 2 SCC 521]**, a three Judge Bench held that sudden deduction after several years of implementation of higher pay scale would affect the petitioners financially but also their seniority would be affected. In that case, the pay scale was sought to be reduced from Rs. 330-560 to Rs. 330-480. In **SAHIB RAM Vs. STATE OF HARYANA 1995 Supp (1) SCC 18**, a two Judge Bench noticed that the appellants did not possess the required educational qualification but were given relaxation in

qualification and higher pay scales. It was ordered that the excess payment should not be recovered on the principle of equal pay for equal work. In **YOGESHWAT PRASAD & ORS Vs. NATIONAL INSTITUTE OF EDUCATION PLANNING AND ADMINISTRATION & ORS (2010) 14 SCC 323**, a two Judge Bench took the view that the grant of higher pay could be recovered unless it was a case of misrepresentation or fraud. In **Col. B.J AKKARA (retd) vs. GOVERNMENT OF INDIA & ORS (2006) 11 SCC 709**, two Judge Bench held that restraining recovery back of excess payment, is granted by Court not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. But where the employee had knowledge that the payment received was in excess of what was due, Courts will not grant relief against recovery. In **SYED ABDUL QADIR vs. STATE OF BIHAR & ORS (2009) 3 SCC 475**, a three Judge Bench held that recovery should not be made as there was no misrepresentation or fraud on the part of the appellants who had retired. Reviewing all the aforementioned judgments, in **CHANDI PRASAD UNIYAL's** case Hon'ble Supreme Court held that in various judgments, Supreme Court has not laid down any proposition of law that if the State establish that there was misrepresentation or fraud, then only the amount could be recovered. Learned Counsel for the Applicant argued that High Court of

Gujarat has passed judgment in Special Civil Application no. 3097 of 2012 on 14.2.2013, where it has been held after reviewing all the above judgments of Hon. Supreme Court that the excess payment made due to wrong/irregular pay fixation can also be recovered except for few instances pointed out in Syed Abdul Qadir's case (supra) and in Col. B.J Akkara (retd) case (supra). In para 17.1 & 17.2 of the judgment, it is mentioned that:-

“17.1 The excess payment made due to wrong/irregular pay fixation can always be recovered except few instances pointed out in Syed Abdul Qadir case (supra) and in Col. B.J Akkara (retd.) case (supra). Thus excess payment can be recovered;

- a) If excess payment is received by misrepresentation or fraud [Yogeshwar Prasad (supra)]
- b) where the employee had knowledge that the payment received was in excess of what was due or wrongly paid [Col. B.J Akkara (retd.) (supra)]
- c) where the error is detected or corrected within a short time of wrong payment [Col. B.J Akkara (retd.) (supra)]
- d) a condition was superimposed that excess payment will be recovered [(Chandi Prasad Uniyal (supra)]

17.2 Whereas following may be instances for non recovery of excess payment of salary, subject to satisfaction of Court:

- a) No recovery after long period, [Shyam Babu Verma (Supra), a three Judge Bench judgment]
- b) Principle of equal pay for equal work, [Sahib Ram (supra)]
- c) In equity and in exercise of judicial discretion, to avoid hardship that will be caused if recovery is implemented [Col. B.J Akkara (retd.) (supra)]
- d) In the realm of judicial discretion, on the facts and circumstances of any particular case to avoid any hardship [Col. B.J Akkara (retd.) (supra)]
- e) Because of inaction, negligence and carelessness of the officials concerned, for which the appellants cannot be held responsible **[[three Judge Bench in Syed Abdul Qadir case (supra)]**
- f) If the beneficiaries had either retired or were on the verge of retirement and so as to avoid any hardship to them **[[three Judge Bench in Syed Abdul Qadir case (supra)]**

Learned Counsel for the Applicant argued that in the present case, there is no misrepresentation or fraud on the part of the Applicant, there was no recovery after long period and there will be hardship caused to the

Applicant. The Applicant has also retired. Considering these facts, no recovery is warranted.

9. We find that the Applicant was fully aware that he was getting excess pay, as the Pay Verification Unit has in 2006 itself objected to his pay fixation by order dated 9.9.1997. He, however, continued to draw the excess pay till retirement. He retired in the year 2012, six years after the anomaly was detected. It can, therefore, not be argued that he was on the verge of retirement when it was found out that he was receiving excess pay. The ground of hardship will not apply, as the Applicant retired as Group-A official unlike the appellants in Syed Abdul Qadir's case (supra). In Chandi Prasad Uniyal's case (supra) Hon'ble Supreme Court has observed:

“16. We are concerned with excess payment of public money which is often described as ‘tax payers money’ which belongs neither to the officers who have effected over payment nor that of the recipients”.

It is further observed that:

“Any amount paid/received with authority of law can always be recovered barring few exception of extreme hardships but not as a matter of right, in such situations law implies an obligation on such

payee to repay the money, otherwise it would amount to unjust enrichment.”

We hold that an officer at the level of Executive Engineer cannot be said to suffer extreme hardship if excess amount of Rs. 3.25 lakhs paid erroneously is recovered from him, about which he was fully aware that he was not entitled to receive the same.

10. Having regard to the aforesaid facts and circumstances of the case, the Original Application stands dismissed with no order as to costs.

Sd/-
(R.B. Malik)
Member (J)

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 12.08.2014
Dictation taken by : A.K. Nair.