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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 846/2002

New Delhi, this the 30th day of May, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri C.S. Chadha, Member(A).

1. Chain Das
B-112, Moti Bagh I,
New Delhi.
2. Mir Singh
46/2C, Gole Market
DIZ Area Sector II,
Gole Market,
New Delhi.
3. Rachpal Singh Gehlot,
Gali No. 2B/67, Vijay Enclave
Dabri, Palam,
New Delhi.
4. Hukum Singh
V&PO Sankhkol,
Via Bhadurgarh,
Distt. Jhajjar
(Haryana)
5. Anand Mohan Goswami,
495, Sector IX,
R.K. Puram
New Delhi.
6. Ghanshyam Dubey,
1/492, Vikas Nagar,
Barahi Road, Bahadurgarh,
Distt. Jhajjar (Haryana).
7. Sunder Singh Rawat,
Qr. No. 956, Sector 7,
M.B. Road,
Pushp Vihar,
New Delhi.
8. Surendra Singh Rawat,
148, Lancers Road,
Near Jawahar Market,
Mall Road,
Delhi.
9. Shyam Singh Bisht,
WB-190, Shakarpur,
Delhi

.... Applicants

(By Advocates Shri G.S. Chaman with Shri H.K. Gupta)

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Versus

Union of India, through

1. Secretary
Ministry of External Affairs,
South Block,
New Delhi.
2. Regional Passport Officer,
Hudco, Trikoot No.3,
Bhikaji Cama Place,
New Delhi.
3. Secretary
Ministry of Personnel,
Public Grievances
& Pension, North Block
New Delhi

. . . Respondents

(By Advocate Shri N.S.Mehta, senior counsel)

ORDER (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

This application has been filed by nine applicants who are all ex-servicemen re-employed in the office of Respondent Nos.1 and 2. They have prayed for the following main reliefs:

"(i) x x x x x x

(ii) to direct the respondents not to deduct revised military pension from applicants' revised pay as on 1.1.1996 and also from the pay of the applicants as on their date of appointment on re-employment; and

(iii) to direct the respondents to give them financial benefit of the grant of ACP w.e.f. 9.8.1999 and fix pay of applicants No.1 & 2 under FR 22 (c) on their promotion as UDC w.e.f. 1.11.1999 without deduction of enhanced pension therefrom and pay arrears".

2. We have heard Shri G.S.Chaman, learned counsel for the applicants and Shri N.S.Mehta, learned senior counsel for the respondents and perused the relevant documents on record.

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3. During the hearing of the case, learned counsel for the applicants has submitted that he does not press the relief mentioned in paragraph 8 (iii) which was for grant of financial benefits under the ACP Scheme, as the same has already been received by the applicants.

4. While hearing the case, we had observed that the relevant facts and reliefs prayed for in the present application are similar to the case of **Brij Mohan Vs. Union of India & Ors.** (OA 3234/2001) which was decided by the same Bench on 27.5.2003 (copy placed on record). The relevant portions of the order dated 27.5.2003 in OA 3234/2001 read as follows:

"4. It is, therefore, quite clear that upto 1.1.96 ignorable part of the pension was constantly raised but after 1.1.96 due to modification in Rule 2(2)(g) of the CCS(RP) Rules, 1997, the applicant did not remain entitled to ignoring any part of his pension because he had already taken the benefit of past service while getting his pay fixed on entry into civilian service. From this position it is clear that he got excess payment only after 1.1.96 and not prior to that. Even after 1.1.96 received excess payment fortuitously for no fault of his own. In accordance with the Supreme Court decision in the case of **Shyam Babu Verma Vs. UOI** (1994) 2 SCC 521, payment made in excess to the entitlement of any civilian servant due to the fault of the office cannot be recovered after a gap of several years because it would amount to undue hardship to the civil servant. In other words, even if wrong payment had been made the same shall not be recovered for the past period prior to its detection. In the present case, the mistake was detected only when the applicant retired. We are therefore, of the opinion that despite fortuitous payment made to the applicant, excess payment cannot be recovered in terms of the Supreme Court decision (*supra*). Therefore, it would be in the fitness of things that the recovery order against the applicant amounting to Rs.1,39,113/- should be quashed and recovery of Rs.40,000/- already made should be returned to him. We therefore quash the said recovery order. The question of payment of interest on the wrongly recovered money was considered by us and we feel that it would not be in the interest of justice to award interest to the applicant because

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in any case the applicant got fortuitous amount and recovery of Rs.40,000/- made from his salary/pension already should be returned to him.

5. Learned counsel for the respondents further pleads that the applicant cannot get the benefit of this wrong fixation after 1.1.96 till the date of his superannuation for the purpose of calculation of pension as well. We agree with this contention of the learned counsel for the respondents in view of the benefit that the applicant got is being allowed to be retained by him but the same fortuitous benefit cannot be perpetuated in sanctioning excess pension than entitled to him. Therefore we direct that his pension with effect from 30.9.2000 should be in accordance with the extant rules and therefore his pay should be refixed after 1.1.1996 in accordance with the existing rules and his pension accordingly refixed.

6. Execution of this order should be completed by the respondents within three months from the date of this order served on them."

5. In the supplementary rejoinder filed by the applicants, they have stated that the DOP&T O.M. is the one dated 19.11.1997 in place of the O.M. dated 7.11.1997 which is the O.M. relied upon by the respondents also. The respondents have stated in the counter affidavit that the refixation of pay of the applicants has been made in accordance with Rule 16 (1) of the CCS (Fixation of Pay of Re-employed Pensioners) Orders 1986 and RP(Rules) 1997 and by O.M. dated 19.11.1997, the provisions of the CCS (Revised Pay) Rules, 1997 have also been extended to such persons who were in re-employment on 1.1.1996, subject to the conditions prescribed therein. In terms of our previous order dated 27.5.2003 in OA 3234/2001, the principle of refixation of pay of the applicants who have been re-employed after 1.1.1996 cannot be faulted. Therefore, the pay of the applicants who are re-employed ex-servicemen has to be governed in terms of the DOP&T O.M. dated 19.11.1997.

6. It is noticed from the facts and the reply affidavit filed by the respondents that certain details, including whether previous service benefits have been availed of by the applicants, have not been furnished by them. The necessary facts shall be furnished by the applicants as expeditiously as possible and in any case within two months from the date of receipt of a copy of this order to the respondents so that further action can be taken by them in accordance with the relevant Rules and instructions.

7. It is seen from the impugned Office Order dated 15.3.2002 that in the case of applicant No.1 Shri Chain Dass, consequent upon re-refixation of his pay, it was ordered that a sum of Rs.1,04,384/- on account of excess payment of pay and allowances was to be recovered from his pensionary benefits by the respondents. Out of this amount, a sum of Rs.56,188/- has been adjusted in DCRG claim and the balance amount was to be recovered from his other pensionary benefits, like commuted value of pension. He had made a representation against the order of recovery.

8. In view of our previous order dated 27.5.2003 in OA 3234/2001 quoted in para 4 above, we consider that in the circumstances of the case, as the earlier wrong fixation of pay was not due to any fault of the applicant but due to respondents' own action or inaction to follow the Rules correctly, the ^{over Rs.} _{payment} cannot be recovered, in terms of the judgement of the Hon'ble Supreme Court in Shyam Babu Verma's case (supra) after

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the applicant had retired from service. In the circumstances, we direct the respondents that the amount of Rs. 56,188/- which has been recovered shall be returned to applicant No.1 within three months from the date of receipt of a copy of the order. However, in the circumstances of the case, we make it clear that no interest shall be payable on this amount. The respondents shall be entitled to refix the pension of applicant No.1 after his retirement in accordance with the relevant Rules.

9. In the case of other applicants who were still in service at the time of refixation of their pay, the excess payment made to them can be recovered by the respondents in easy instalments from their future pay which shall also be done in accordance with the relevant instructions issued by the Government of India from time to time.

10. For the reasons given above, the OA is partly allowed in terms of paras 6,8 & 9 above. In the circumstances, liberty is granted to the respondents to take action to fix responsibility on the concerned officers who had earlier wrongly fixed the pay/pension of the applicants in contravention of the relevant Rules and instructions. They may also order any recovery of Government loss from the pay of these officials as deemed fit, in accordance with the relevant Financial Rules. No order as to costs.


(C.S. Chadha)
Member(A)


(Smt. Lakshmi Swaminathan)
Vice Chairman(J)