

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 427/2002

New Delhi, this the 28th day of October, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

K.C. Bangalia, S/o Late Shri Ramji Lal,
R/o SRS 244, Peeragarhi,
Delhi - 110087

... Applicant

(By Advocate : Shri S.C. Saxena)

Versus

Union of India through

1. The Secretary,
Ministry of Defence,
South Block, New Delhi
2. The Controlller General of Defence Accounts,
West Block - V, R.K. Puram,
New Delhi
3. The Controller of Defence Accounts (PD),
Belvadare, Meerut Cantt.

... Respondents

(By Advocate : Shri R.N. Singh for Shri R.V. Sinha)

O R D E R (Oral)

By S.A.T. Rizvi, Member (A) :

The applicant, an auditor in the office of the respondent No.3 was, after the Fifth Central Pay Commission's recommendations had been enforced, placed in the revised pay scale of Rs.4000-100-6000 w.e.f. 1.1.1996. Prior to 1.1.1996, he was running in the pay scale of Rs.1200-30-1560-EB-40-2040. He was to cross Efficiency Bar (EB) at the stage of Rs.1560/- in the erstwhile pay scale of Rs.1200-2040/- w.e.f. 1.11.1989, and as a result his pay in the aforesaid previous pay scale was to go up to Rs.1600/- w.e.f. 1.11.1989. Consistently with the aforesaid position, the applicant's pay was fixed at Rs.5600/- in the aforesaid revised pay scale w.e.f. 1.1.1996 vide Annexure-B dated 21.6.2000.

By ^{subsequent} authority issued by the same office on 6.2.2000 (Annexure-C), the applicant's pay has ^{however,} been refixed at Rs.4800/- w.e.f. 1.1.1996. This was done without first issuing a show cause notice to the applicant. On a representation made against the aforesaid refixation of the applicant's pay, the respondents have rejected his claim vide orders dated 22.11.2001 (Annexure-A). Hence the grievance.

2. The respondents have contested the OA by filing a reply. Thereafter a rejoinder has been filed on behalf of the applicant.

3. We have considered the submissions made by the learned counsel on either side and have perused the material placed on record, and find no merit in the present OA. We are, therefore, inclined, for the following reasons, to dismiss the present OA.

4. The applicant was to cross the EB admittedly as on 1.11.1989. The same was not allowed without the applicant's agitating the matter before any judicial forum in good time. He filed an OA, being OA No. 2957/2001, belatedly seeking a remedy in the matter, by taking the ground that no show cause notice was served on him before his pay was refixed at Rs.4800/- as above. That OA was disposed of on 30.10.2001 (Annexure-F) with a direction to the respondents to consider the representation filed by the applicant and to pass a reasoned and a speaking order thereon. The impugned order dated 22.11.2001 (Annexure-A) has been passed in pursuance of the aforesaid direction

issued by this Tribunal. While passing the aforesaid order, the aspect of limitation was not considered by the Tribunal.

5. In the impugned order dated 22.11.2001, which is a detailed and a speaking order, the respondents have taken the ground that the applicant's EB at the stage of Rs.1560/- in the erstwhile pay scale of Rs.1200-2040 was with-held on account of ^{the} pendency of a disciplinary case against him. The applicant's pay was fixed, on this basis, at Rs.4800/- w.e.f. 1.1.1996 by an order issued on 2.12.1997. However, subsequently due to an inadvertent mistake, increments were allowed to the applicant above the EB stage without the EB having been permitted to be crossed by him. Thus, his pay in the old pay scale was taken as Rs.1840/- per month and accordingly in the revised pay scale the applicant's pay was fixed at the stage of Rs.5600/- vide orders dated 21.6.2000 (Annexure-B). After it came to the respondents' notice that the applicant has not been allowed to cross the EB, his pay was reduced to the original level of Rs.4800/- vide orders issued on 6.2.2001 (Annexure-C). While reducing the applicant's pay as above, his pay in the old pay scale was correctly taken as Rs.1560/- as on 1.11.1988. After his pay had been reduced as above, the applicant was informed vide respondents' office letter dated 12.2.2001 addressed to ZO (PB), Delhi Cantt with a copy to the applicant.

6. Insofar as the pendency of a disciplinary case is concerned, it has been brought to our notice that a case

2


was registered against the applicant by the CBI way back in 1988 and a formal charge sheet was filed in the Court on 27.11.1991. The applicant was convicted by the Court and was consequently removed from service. Though the departmental charge sheet dated 10.10.1990 was served on him on 1.11.1990, yet the fact of the matter is that a criminal case duly registered by the CBI was already under investigation as on 1.11.1989, on which date the applicant was to cross the EB. The respondents have pointed out that the applicant was found guilty of dis-honestly and fraudulently misappropriating public money in a number of cases while making payments to the pensioners. The applicant was convicted by the Court of Special Session Judge on 7.12.1999 and was removed from service w.e.f. 16.6.2000. The applicant's case for crossing EB was considered but the recommendations made by the DPC in that regard were kept in a sealed cover in terms of the DOP&T's OM dated 30.3.1989.

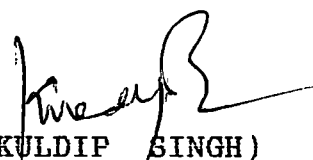
7. In support of the action taken, the respondents have also placed reliance on DOP&T's OM dated 6.4.1979 (R-1) which provides for ^{the} ~~the~~ situation in which increments are allowed above the EB stage inadvertently. We have perused the aforesaid OM and find that the same lays down that the increments granted above the EB by mistake should be with-held at once, and that if the officer concerned is not found fit to cross the EB from the due date, the amount paid to him by way of increments not due to him should be recovered in easy instalments. This is what the respondents have done vide impugned order dated 22.11.2001. Furthermore, it has been argued on behalf of

the respondents that in dealing with the applicant's case for crossing of the EB, the respondents have proceeded in accordance with the DOP&T's OM dated 30.3.1989 (Annexure R-IV), and therefore, on this basis also no fault can be found with the action taken by the respondents.

8. The sum and substance of the observations contained in the preceding paragraphs is that firstly the present OA is wholly time barred as the grievance arose way back in 1989 but the application came up before this Tribunal in the first instance highly belatedly in 2001. Secondly, it is established beyond doubt that a criminal investigation was under way against the applicant as on 1.11.1989 which is the date on which he stood to cross the Efficiency Bar. It is also established that besides the criminal action taken against the applicant, a departmental charge sheet was also served on him in October/November 1990. He was convicted by the Law Court and was consequently removed from service in the departmental proceedings conducted against him. In the face of these facts and circumstances, and having regard to the rules relied upon by the respondents, we have not been able to find any fault with the impugned order dated 22.11.2001 (Annexure 0-A). The same is in order and has been validly passed.

9. In the light of the foregoing, the OA is found to be devoid of merit and is dismissed. There shall, however, be no order as to costs.


(S.A.T. RIZVI)
Member (A)


(KULDIP SINGH)
Member (J)

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