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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2484 OF 2002

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

HON'BLE SHRI SHANKER RAJU, JUDICIAL MEMBER
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

S.K. Jaggi
S/o Late Sant Ram Jaggi
R/o-B-182, New Ashok Nagar,
Delhi.

....Applicant

(By Advocate : Shri A.K. Trivedi)

Versus

1. Union of India
Through It's Secretary,
Ministry of Defence,
South Block, New Delhi.
2. The Director General of EME
(EME-Civ-1), Master General of
Ordnance Branch, Army Headquarters,
DHQ, P.O., New Delhi.
3. The Commander
Headquarters, Base Workshop,
Group EME, Meerut Cantt.
4. The Commandant
510, Army Base Workshop,
Post Box No.30, Meerut Cantt.

.....Respondents

(By Advocate : Shri K.R. Sachdeva)

ORDER (ORAL)

SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER:

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed by the applicant claiming the following reliefs:-

"(a) Quash/set aside the impugned orders dated 25/4/2002 and 27/6/2000, also order dated 26/4/2000 after calling for same. declaring as illegal, unjust arbitrary and violative of principles of natural justice.

(b) Direct the respondents to restore the pay of the applicant to Rs.6500/- wef 1.1.96 Rs.7300/- wef 9/2/1998 and pension to Rs.3445/- w.e.f.1.4.1998 and

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refund the recoveries amounting to Rs.12324/- alongwith interest @ 18% till the date of refund.

(c) Direct the respondents to pay interest @ 18% on Rs.1,85,155/- (Retiral benefits) due to delayed payment wef 1/4/98 till the date of payment and also to pay leave encashment for 1 day.

(e) Award cost;"

2. The applicant was drawing pay of Rs.2100/- in the old pay scale of Rs.1600-2600/- as Office Superintendent Grade I prior to implementation of Vth Central Pay Commission recommendations w.e.f.1.1.1996. The Office Superintendent Grade I were earlier placed in the pay scale of Rs.5000-8000/- which was later treated as non-applicable being superseded by higher pay scale of Rs.5500-9000/- as per Government of India's order dated 18.11.1997. The applicant was allowed pay of Rs.6500/- per month w.e.f. 1.1.1996 in the pay scale of Rs.5000-8000. After re-consideration, the pay of Rs.5000-8000 was made applicable to Office Superintendent Grade II (it is designated as Assistant). The applicant was allowed higher pay scale of Rs.5500-9000 as Office Superintendent Grade I and his pay was fixed at Rs.6375/- (in place of Rs.6500/- as fixed earlier in the pay scale of Rs.5000-8000). The applicant though assigned higher pay scale has been fixed at lower stage. This has resulted into impugned order by which the applicant has been informed that his representation has been rejected. Not only that he will be liable to recovery of the excess payment made but also reduction in pension and pensionary benefits.

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3. It is stated by the learned counsel of the applicant that the order of refixation reducing the pay of the applicant as well as his pension is liable to be quashed and set aside as no notice was issued to the applicant for reducing his pay w.e.f.1.1.1996. It is also stated that reduction in pension is also against the rules as the same has not been passed by competent authority after following the prescribed procedure. The applicant has placed reliance on the decision of the Hon'ble Supreme Court in the case of Shyam Babu Verma and Ors. Vs. Union of India and Ors. (SLJ 1994 (2) SC 99) stating that arrears of pay allegedly paid in excess could not be recovered as the same was not on account of mis-representation or fraud on the part of the applicant.

4. The respondents have opposed the prayer of the applicant. It has been admitted by the respondents that pay fixation in the higher pay scale of Rs.5500-9000 w.e.f.1.1.1996 has put the applicant in disadvantage but the respondents have to follow the rules and prescribed procedure and correct pension as applicable to the applicant has to be fixed. The respondents have further stated that pay fixation case of the applicant is based on audit report of AAO, Delhi Cantt. dated 26.4.1999. According to the respondents, it is not a case that the pension or pay is being reduced after retirement of the applicant. It is only correction of mistake. Regarding finalisation of delay in pensionary matters, it is

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stated that the applicant himself is to be partly blamed. The applicant had earlier requested for pre-mature retirement w.e.f.30.9.1997, but later on he had withdrawn his request. The applicant retired on 31.3.1998 and he has been paid leave encashment of 150 days earned leave standing to his credit on 31.3.1998.

5. The applicant has reiterated the same claims as made in the OA in the rejoinder filed by him. According to the applicant, higher pay scale should have normally brought him higher pay fixation but the anomaly has not been settled by the respondents. Therefore, he has filed this OA claiming the reliefs as stated earlier.

6. We have heard the learned counsel of the parties and perused the materials available on record.

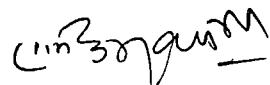
7. There is no dispute that the scale of Rs.5500-9000 was applicable to the post of Office Superintendent Grade -I held by the applicant as on 1.1.1996. On account of incorrect information, the respondents have fixed the pay of the applicant on 1.1.1996 at Rs.6500/- per month which has been refixed to Rs.6375/- after receipt of audit note. The case of the applicant is that the pay fixation and consequential reduction in pension cannot be made after retirement is not based on proper appreciation of the rules. However, it is settled legal position that any pecuniary consequences should not follow on account of any order passed without giving the

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employee concerned an opportunity of being heard. In this case, the pay fixation of higher stage was not on account of misrepresentation or fraud by the applicant. Therefore, the excess payment made cannot be recovered in view of the decision of the Hon'ble Supreme Court in the case of Shyam Babu Verma and Ors. (supra).

8. In this view of the matter, the recovery of over-payment on account of wrong pay fixation is quashed and set aside. If the same has already been made, the respondents are directed to refund the same to the applicant with simple interest at the rate of 6% per annum. Similar will be the case so far pension is concerned, if any recovery on account of over-payment of pension or pensionary benefits have been made, the respondents are directed to refund the same to the applicant with simple interest at the rate of 6% per annum. However, the applicant's pay and pension etc. may be refixed after allowing him an opportunity of being heard and after considering the objection(s) raised by him, which will be only from the prospective date when this decision of recovery of over-payment has come to his notice on account of audit objection.

9. In view of what is stated in the preceding paragraph, this OA is partly allowed without any order as to costs.



(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

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(SHANKER RAJU)
JUDICIAL MEMBER