

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/00485/2013 & Pronounced on : 18.02.2020
OA No.290/00486/2013 (Reserved on : 21.01.2020

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

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(i)OA No.290/00485/2013

Laxmi Chand son of Shri Mam Chand, aged 50 years, MCM in the Office of Garrison Engineer, MES, Sri Ganganagar, R/o 1111, Agrasen Nagar, Sri Ganganagar.

...APPLICANT

BY ADVOCATE : Mr. Vijay Mehta.

VERSUS

1. Union of India, through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer, MES, Sri Ganganagar.
3. Garrison Engineer, MES, Sri Ganganagar.

RESPONDENTS

BY ADVOCATE: Mr. Rameshwar Dave, for R1 to R3

(ii) OA No.290/00486/2013

Mahaveer Prasad son of Shri Jag Ram, aged 56 years, MCM in the office of Garrison Engineer, MES, Sri Ganganagar. R/o 243/3, MES Quarters, Sri Ganganagar.

...APPLICANT

BY ADVOCATE : Mr. Vijay Mehta.

VERSUS

1. Union of India, through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer, MES, Sri Ganganagar.
3. Garrison Engineer, MES, Sri Ganganagar.

RESPONDENTS

BY ADVOCATE: Mr. Rameshwar Dave, for R1 to R3

ORDER

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Hon'ble Smt. Archana Nigam, Member (A):-

1. These two Original Applications have been filed for the similar issue and also praying for similar reliefs. Thus, a common order is being passed for these two OAs. For the purpose of reference, we are taking the facts of OA No.290/00485/2013 titled Laxmi Chand Vs. UOI & Ors.
2. The applicant in this Original Application, has prayed for the following relief:

"The applicant prays that the impugned order Annexure A1 may kindly be quashed and the respondents may kindly be restrained from reducing the present salary amounting to Rs.15080/- with Grade Pay of Rs.4200/-. The respondents may kindly be restrained from reducing salary of the applicant from Rs.13530/- to Rs.13090/- as on 01.07.2010. The respondents may kindly be directed to continue to pay the applicant present salary of Rs.15080/- and Grade Pay of Rs.4200/- per month with further increments as and when they become due. The respondents may kindly be restrained from making any recovery from the applicant. Recovery, if any, made after the filing of OA may kindly be ordered to be refunded to the applicant. Any other order, as deemed fit, giving relief to the applicant may also be passed. Costs may also be awarded to the applicants."

3. The brief facts, as narrated in OA No.290/00485/2013, are that the applicant is presently working under respondent no.3 i.e. Garrison

Engineer, MES, Sri Ganganagar and is posted at Sri Ganganagar on the post of MCM. The applicant was granted 2nd MACP w.e.f. 01.02.2008 in pay scale of Rs.5000-8000 vide order dated 19.02.2008 (Annexure A2). The recommendations of 6th Pay Commission, respondent no.3 issued fixation of order at Annexure A4 revising the emoluments of the applicant from Rs.11530 in Grade Pay of Rs.2800/- to Rs.12410/- in Grade Pay of Rs.4200/- with effect from 01.07.2008. It is also stated that the next increment due on 01.07.2009, his emoluments shall be Rs.12910 in GP of Rs.4200/-. The said fixation, respondent no.3 issued PTO dated 28.03.2011 whereby the pay of the applicant was reduced to Rs.13090 as on 01.07.2010 whereas the applicant was drawing Rs.13230/- as his salary. The applicant submitted representation on 07.06.2011 (Annexure A5) to respondent no.2 against the action of the respondents. The respondents did not pass any order on the said representation and instead took steps to reduce the salary of the applicant and to make recovery.

4. It is further stated that the applicant challenged the action of the respondents by filing OA in this Tribunal. The Tribunal stayed the action of the respondents to effect reduction and recovery. The Tribunal vide its order dated 16.07.2013 passed in OA No.420/2011 directed the respondent department to pass reasoned and speaking order after giving opportunity to the applicant. With reference to the said order passed by this Tribunal, respondent no.3 issued show cause notice dated 06.08.2013 to the applicant. Respondent no.3 issued this notice after quoting MOD order dated 08.06.2011, option given by the applicant for giving benefits of 6th Pay Commission, PTO dated

15.09.2008 and 27.07.2009 and notifications dated 14.06.2010 and 06.04.2011.

5. It is also further stated that as per Annexure A7, the applicant was not entitled to be granted 2nd ACP w.e.f. 01.02.2008 and his fixation was made erroneously. In accordance with the modification vide MOD order dated 14.06.2010 the pay of the applicant has been fixed as Rs.10,700/- with GP of Rs.4200/- w.e.f. 01.01.2006. It is also stated in the notice that fixation made vide PTO dated 28.03.2011 and 13.08.2011 is correct. It is thus apparent that notice given without endorsing relevant documents amounts to merely a formality and does not fulfill the requirements of compliance of principles of natural justice. Respondent no.3 vide his order dated 20.09.2013 (Annexure A1) maintained that the pay fixed at Rs.13530/- as on 01.07.2010 was not correct and the same has now been fixed at Rs.13090/- w.e.f. 01.07.2010. Respondent no.3 held that the claim for fixation of pay in same pay band twice is not genuine and feasible as per rules in vogue.

6. It is evident that the pay has not been fixed by this order issued by Chief Engineer, South Western Command but pay scale of Rs.5000-8000 has been granted to him. The pay band of Rs.9300-34800 with GP of Rs.4200/- for MCM has been approved on 14.06.2010 but fixation of the applicant was made before 14.06.2010. It is admitted by the respondents that the Pay Band and Grade Pay were made applicable from 01.01.2006. The applicant was thus correctly fixed at Rs.13530/- as on 01.07.2010. It has wrongly been said that the pay of the applicant was correctly fixed at Rs.10700/- w.e.f. 01.01.2006 and after granting increments it come to Rs.13090/- w.e.f. 01.07.2008. It has

further been wrongly said in the order that the claim of the applicant for fixation twice is not genuine. It is stated that respondent no.3 has no jurisdiction and authority to pass order on the representation of the applicant (Annexure A5) and the competent authority is respondent no.2.

7. It is further stated that the fixation of the applicant was correctly made but now the respondents are cancelling the same and are reducing the salary of the applicant from Rs.13530 to Rs.13090 as on 01.07.2010 and are now taking steps to recover the amount allegedly paid to him wrongly. The applicant is presently getting salary of Rs.15080/- with GP of Rs.4200/-. He was paid this salary in the month of October, 2013. The applicant is entitled to get salary on the basis of his salary of Rs.13530/- as on 01.07.2010 which is presently Rs.15080 with GP of Rs.4200/-. The salary has yet not been reduced and no recovery has yet been effected but the respondents are bent upon to effect the reduction of pay from the salary for the month of November, 2013 to be paid at the end of this month and are also bent upon to effect recovery from the salary of November, 2013 and thereafter every month. Respondent no.3 without cancelling correct fixation of the salary of the applicant has re-fixed at Rs.10700 w.e.f. 01.01.2006. Hence this OA.

8. In the written statement filed on behalf of respondents, wherein it has been stated that the applicant has prayed for quashing the impugned order dated 20.09.2013 (Annexure A1) and restrain the respondent from reducing the present salary amounting to Rs.15080/- with GP of Rs.4200/- and also restrain the respondents from reducing

the salary of the applicant from 13530/- to Rs.13090/- as on 01.07.2010. The respondents may be directed to continue to pay the applicant present salary of Rs.15080/- with GP of Rs.4200 per month with further increments as and when they become due. The respondents may also be restrained from making any recovery from the applicant. The recovery, if any, made after filing of the OA may be ordered to be refunded to the applicant.

9. It is further stated that the pay of the applicant was re-fixed as per re-structuring policy issued vide Govt. of India, Ministry of Defence, letter dated 14.06.2010 (Annexure R1). Earlier the pay of the applicant was fixed as per Para 6.1 of the Govt. of India, DOPT OM dated 19.05.2009 (Annexure R2). The pay of the applicant was reduced due to the restructuring policy under which Grade Pay of MCM was revised from Rs.28900/- to Rs.4200/- and the policy came into force after receipt of letter dated 19.05.2009. The respondent department had issued reasonable speaking order to the applicant as per order of this Tribunal dated 16.07.2013 in OA No.420/2011. It is stated that the applicant is making a false statement before this Tribunal. The pay of the applicant earlier fixed @Rs.12410/- vide PTO dated 27.07.2009 (Annexure R3) was as per Para 6.1 of the Govt. of India, DOPT OM dated 19.05.2009 (Annexure R2). Thereafter the pay of the applicant was re-fixed @ Rs.10700/- with GP of Rs.4200/- as per restructuring policy issued vide letter dated 14.06.2010 (Annexure R1). The restructuring policy came into force after receipt of the letter dated 19.05.2009, hence, the pay of the applicant was revised.

10. It is also further stated that the applicant was granted 2nd MACP after completion of 24 years of regular service which was introduced in the 5th Pay Commission. The applicant was paid all the arrears as per 5th Pay Commission. Now the 6th Pay Commission has introduced on 01.09.2008 and the pay of the applicant was fixed vide PTO No.31/2010 dated 02.08.2010 (Annexure R5) as per 6th Pay Commission under which Pay Band of MCM was PB-1 (Rs.5200-20200) with GP of Rs.2800/-. Thereafter, the policy of Industrial Staff was revised on 14.06.2010 and Pay Band of MCM has been revised with PB-2 (Rs.9300-34800) with GP of Rs.4200/-. Accordingly, the pay of the applicant was revised w.e.f. 01.01.2006 with GP of Rs.4200/-.

11. It is also further stated that OA No.420 of 2011 has been finalized by this Tribunal with a direction to the answering respondents to issue show cause notice and thereafter issue a reasonable speaking order. Accordingly, the answering respondents had issued show cause notice and speaking order to the applicant. Thereafter, the action for recovery of excess pay paid to the applicant is correct. Respondent no.3 is disbursing authority to recover the pay.

12. In the rejoinder filed on behalf of the applicant, wherein it has been stated that the pay of the applicant was re-fixed as per restructuring policy dated 14.06.2010 (Annexure R1). The pay of the applicant was fixed as per Para 6.1 of OM dated 19.05.2009 (Annexure R2). The fixation orders filed as per Annexure A2 dated 14.02.2008, Annexure A3 dated 25.02.2008 and Annexure A4 order Annexure R3 dated 27.07.2009 do not speak about fixation having been made as per OM Annexure R1 dated 14.06.2010. There is no Para 6.1 in OM at

Annexure R2. Annexure A2 passed by the Chief Engineer, South West Command and orders Annexure A3 and Annexure A4 have been passed under the authority of the said Chief Engineer Annexure R1 has been passed by the lowest authority, namely the Garrison Engineer. The Garrison Engineer has no power to supersede the orders passed under the authority of the said Chief Engineer. The action of the respondents reducing the pay scale and making refixation is illegal and therefore non operative.

13. It is also further stated that the impugned action of the respondents is illegal and the OA deserves to be allowed. The impugned order has not been passed by competent authority. The Garrison Engineer is not competent authority in this regard. The impugned order has been passed on contradictory considerations. Document mentioned in the show cause notice were never supplied to the applicant. It is admitted position that the documents were not enclosed with the show cause notice. The show cause notice was thus reduced to be a formality. The action of the respondents is violative of the principles of natural justice. The applicant had been granted the benefits of ACP as per directions of the Command. The applicant had utilized the amount granted to him due to grant of said benefits. The benefits granted to him cannot be recovered as per decisions rendered by the Apex Court. The impugned order has been passed illegally and is untenable. Therefore, the OA deserves to be allowed with costs.

14. Heard Shri Vijay Mehta, learned counsel for the applicant and Shri Rameshwar Dave, learned counsel for the respondents and perused the pleading available on record.

15. The applicant's case has argued by his learned counsel Shri Vijay Mehta, is that the pay fixation done subsequent to the implementation of 6th Pay Commission whereby the respondent issued orders revising the emoluments to Rs.12410/- with Grade Pay of Rs.4200/- w.e.f. 01.07.2008 was correct and have also the approval of the competent audit authority. Despite this the respondents vide PTO dated 28.03.2017 reduced the pay of the applicant from Rs.13530-13090/-.

16. Challenging this re-fixation whereby pay has been reduced, the applicant filed a representation on 07.06.2011 (Annexure A5). However, the respondents did not pass any order thus compelling applicant to file an OA in this Tribunal. Thus, Tribunal stayed the action of the respondents to effect reduction and also not to affect any recovery. Vide its order dated 16.07.2013 passed in OA No.420/2011 this Tribunal stayed the effect of order dated 16.07.2013 on the ground that pay of the applicant had been reduced unilaterally without giving him an opportunity of being heard thereby violating his rights of natural justice. It is also his case that not assigning any reasons for the reduction in emoluments amounts to violation of fair procedure. It is observed that the respondent department was compelled to issue notice to the applicant in compliance of the orders of the Tribunal. But this notice is incomplete in so much as it does not provide to the applicant, the orders on the basis of which the reduction and re-fixation has been done. It therefore remains a mere formality.

17. OA No.420/2011 had been finalized by this Tribunal with a direction to show cause notice and thereafter also a issue a reasonable speaking order. It is the case of the applicant that speaking order

which has been issued on 20.09.2013 (Annexure A1) by Garrison Engineer, who is the lowest authority. The GE as submitted by the applicant has no power to supersede the orders passed earlier under the authority of the said Chief Engineer.

18. In support of his arguments, the learned counsel relies upon series of judgments specially upon the judgments passed by the Hon'ble Supreme Court are as follows:-

- (i) In case of Shyam Babu Verma & Ors. Vs. UOI & Ors., in WP (C) No.12897 to 12899 of 1984, decided on 08.02.1994, reported (1994) 2 SCC 521.
- (ii) In the case of State of Orissa Vs. Dr. (Miss) Binapani Dei in Civil Appeal No.499 of 1965, decided on 07.02.1965 reported 1967 (15) SC 209.
- (iii) In the case of Shri B.D. Gupta Vs. State of Haryana in Civil Appeal No.2129 of 1969, decided on 18.09.1972 reported AIR 1972 SC 2472 (V 59 C 476).
- (iv) In the case of D.K. Yadav Vs. M/s J. M. A. Industries Ltd., in C.A. No.166 (NL) of 1983, decided on 07.05.1993 reported 1993 (67)SC 111.

19. Based on the above case law, the applicant seeks quashing of the impugned order and prays for respondents to be restrained from reducing the salary of the applicant from Rs.13530-13090/- as on 01.07.2010. He also prays that respondents be restrained from making any recovery from the applicant and recovery if any made be refunded to the applicant.

20. Per contra, the learned counsel for the respondents drew the attention of the Tribunal to Para c & d of the order dated 20.09.2013 (Speaking order issued by the Garrison Engineer placed at Annexure A1). Learned counsel submitted that as per Para c the pay of the applicant was fixed as per Para 6.1 of Govt. of India DOPT letter

No.35034/3/2008-Estt.(D), dated 19.05.2009. Learned counsel also drew our attention to Para (f) where it has been stated:-

“(d) Whereas pay band of MCM in PB-2 Rs.9300-34800 with Grade Pay of Rs.4200/- had been approved on 14.06.2010, which is after fixation of pay as per Para 6.1 of Govt. of India, DOPT, New Delhi letter No.35034/3/2008-Estt. (D), dated 19.05.2009. On 30.08.2009, pay band of MCM was in PB-1 (5200-20200) with Grade Pay of Rs.2800/-. But, you were granted 2nd ACP wef 01Feb 2008 in the pre-revised scale of Rs.5000-150-8000 and your pay was fixed as Rs.13530/- as on 01.07.2010.”

Submitted during hearing that excess payment was made as pay fixation was erroneously done on the basis of Annexure A1 whereas the provisions of Annexure R1, should have regulated the pay fixation in the case of the present applicant.

21. Respondents also drew attention to undertaking given by the applicant to refund excess payment made as a result of incorrect fixation of pay by the respondent department. ***Admittedly, the respondents have made an error in the fixation of pay in the same pay band and same grade pay twice.***

22. Closing his arguments during hearing, learned counsel for the applicant pointed out that the clarification given by the respondents at Para C of the speaking order referring to Para 6.1 of the Govt. of India, DOPT letter dated 19.05.2009 could not be correct as there is no Para 6.1 in the said letter. This only indicates the irresponsible manner in which the matter of pay fixation of the applicant has been done by the respondent department.

23. We have very carefully gone through the arguments of both the learned counsels as well as the documents placed on record. While

giving our thoughtful consideration to the orders passed by the respondents, earlier orders of this Tribunal and contentions raised by the parties, we are constrained to take note of the fact that there has, indeed been a lack of due diligence, in the manner in which the pay fixation has been done. *We also wish to observe that it is a fact that there has been an error on the part of the respondents which has been admitted by them; it is important to note that this error has not been attributed to any concealment of facts or fraud by the applicant.*

Mere fact of issue of Notice and consequent Speaking order by respondents is not sufficient to show compliance with fair procedure as these actions were not done suo motu by respondent but under orders of this tribunal.

24. This is the classic case which highlights the apathy and lack of responsibility shown by the respondent department. Given that the Ministry of Defence (respondent) is expected to take care of the Welfare of Soldiers who are in the service of our Nation, it is not asking too much that such matters be given due care by the concerned authorities.

25. In the case of D.K. Yadav quoted *ibid*, the Hon'ble Apex Court has directed as reproduced below:-

"It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and be given him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice."

Again in the case of Bhagwan Shukla Vs. UOI & Ors. passed by the Hon'ble Apex Court in Civil Appeal No.5447 of 1994, decided on 05.08.1994, the relevant portion held as under:-

"The appellant has obviously been visited with civil consequences but he had been granted no opportunity to 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."

26. In the case of Shyam Babu Verma quoted *ibid*, the Hon'ble Apex Court has stated very clearly that in all cases where an applicant is in receipt of a higher scale due to no fault of this it shall only be just and proper not to recover any excess amount already paid to them.

27. In view of the discussions and after giving our thoughtful consideration to the judicial pronouncements in the matter, we are inclined to grant the relief as has been sought by the applicants in both the OAs.

28. Accordingly, the impugned orders at Annexure A1 dated 20.09.2013 is hereby quashed and set aside. Respondents are restrained from reducing the salary amounting to Rs. 13530/- to Rs.13090/- as on 01.07.2010 and to continue to pay the applicants their present salary of Rs.15080/- and Grade Pay of Rs.4200/- per month with further increments as and when become due to the applicant. Recovery, if any, made after the filing of the OA is also ordered to be refunded to the applicants.

29. Accordingly, these two OAs are allowed. There shall be no order as to costs.

(ARCHANA NIGAM)
MEMBER (A)
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(HINA P. SHAH)
MEMBER (J)