

CENTRAL ADMINISTRATIVE TRIBUNAL
(PRINCIPAL BENCH)
New Delhi

OA/TA No. 3294 OF 2001

S.C. Mittal v/s UOI

PART - I PERMANENT RECORD

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Order Sheet/Judgments

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Prepared by:	Checked by:
Signature & Date :	Signature & Date :
Name :	Name :
Designation :	Designation :

Item No.10

O.A. No.3294/2001

21st December 2001

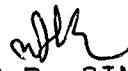
Present : Mrs. Meera Chhibber, learned counsel for the applicant

Shri R.N. Singh, learned counsel for the respondents

Learned counsel for the respondents seeks and is granted two weeks' time to file their reply. Thereafter two weeks' time is granted to the applicant to file his rejoinder.

List on 28.1.2002.

Interim order, if any, to continue till the next date of hearing.


(M.P. SINGH)
Member (A)

/ravi/

Not Admit
Counter not filed

40.
31-1-2002
OA 3294/2001

Present : Applicant in person.
Shri R.N.Singh, learned counsel for the
respondents.

Shri R.N. Singh, learned counsel states that
the counter has been filed yesterday and Shri
G.K.Aggarwal who is now counsel for the applicant in
place of Smt. Meera Chibber will be filing rejoinder
in one week's time.

2. List on 8-2-2002 for final hearing and
disposal. Interim relief, if any, to continue till
the next date.


(GOVINDAN S. TAMPI)
MEMBER (A)

/vks/

5/2/2002

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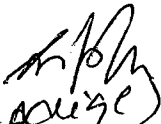
OA-3294/07

Whose name should be shown

Present: Shri G. Aggarwal for applicant
Shri R. Singh for respondents

Order 8/2/2002 for final

hearing as earlier directed. Meanwhile
interim order, if any to continue till
next date.


(S.R. Arora)
VCA

Gue

OA 3294/2001

08-2-2002

Present:- Sh G.K. Aggarwal for applicant
Sh R.V. Sankar and Sh. RNS for
respondents

Arguments heard & the case is
closed for orders by a ^{single} bench of Hon'ble
Sh Govindan S. Tampi, Member (A).

By order
Shri
2 CO, 12

Attest

14-2-2002

9/2/2002

Order pronounced today in
open court, OA disposed of and
allowed by a Bench of Hon'ble
Sh G S Tampi, M(A)

Order attached to B.O.
V Co. 12

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.3294/2001

New Delhi, this the 14th day of February, 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri S.C. Mittal,
S/o Late Shri Ram Prasad
R/o J-85 Saket
New Delhi

... Applicant

(By Advocate : Shri G.K. Agarwal)

versus

1. Director General (Works)
C.P.W.D.
Nirman Bhawan,
New Delhi
2. Shri J.L. Khusu,
Chief Engineer,
(O.D.Z.)
C.P./W.D.
Sewa Bhawan, R.K. Puram,
New Delhi
3. P.A.O. (NDZ)
C.P.W.D., I.P. Bhawan,
I.P. Estate,
New Delhi

... Respondents

(By Advocate : S/Shri R.V. Sinha & R.N. Singh)

O R D E R

Challenge in this OA is directed against the alleged illegal revision of pay of the applicant in 2001 but w.e.f. 1981

2. Heard Shri G.K. Agarwal, learned counsel for the applicant and S/Shri R.V. Sinha and R.N. Singh for the respondents.

3. The applicant who joined as Junior Engineer in CPWD in 1962 and has risen to the grade of Executive Engineer on 27.12.1995, in which capacity, he retired on

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superannuation on 31.12.2001. The applicant was drawing basic pay of Rs.12,275/- since December 2001. He had submitted duly filled pension papers, by July-August 2001, but was surprised to receive a letter on 24.9.2001, proposing the downward revision of his salary w.e.f. 1.11.1981, with recovery of amount paid in excess. As the downward revision of the salary after 20 years was illegal and improper, the applicant filed his representation on 26.9.2001, but without heeding to the above, his pay was refixed at Rs..11,950/- on 27.9.2001. Applicant's further representation was rejected on 9.10.2001 holding that FR 22 (c) 8 (b) was not applicable in his case, as he was promoted after 11.1.1993, but the respondents have minced out an sub-rule (3), which permitted it. He also pointed out that his case was justified vis-a-vis junior Shri Bhowmik. Therefore, his original fixation was correct. In spite of the above the respondents have acted incorrectly, making the applicant to suffer after 20 years, retrogressively, without considering the pleas put forth by him and without even indicating the amount to be recovered, when no such recovery was permissible. The respondents were seeking to penalise him on incorrect premises and the same was illegal.

4. During the oral submissions, Shri G.K. Agarwal, learned counsel for the applicant reiterated the above and pleaded that in terms of note 13 under FR 27, review/recovery was not permissible, and if at all it has to be only prospective and that after date of superannuation, noting survived. While fairly conceding that his pay was only in all stepped vis-a-vis another employee who was in fact not his junior. Shri Agarwal points out that his case was still protected vis-a-vis his junior Shri Bhowmik, 00a should therefore succeed, is the applicant's plea, or else it would

cause unjustified hardship on him. He has also relied upon the decision in the case of Shyam Babu Verma Vs. UOI & Others JT 1994 (1) SC 574 in support of his plea.

5. The plea on behalf of the applicant is stoutly repelled by the respondents. It is pointed out that the applicant, Shri S.C. Mittal was granted stepping up of pay w.e.f. 2.11.1981 on the pretext vide O.M. dated 5.11.1988 on the ground that his junior Shri Bikram Singh was drawing higher pay. However, seniority list of Constt. Engineers, published in December 1998, showed that Bikram Singh was in fact senior to the applicant. The applicant had been given a second stepping up of pay on 10.9.1998, which was also wrong. As there was no anomaly at all in the pay scale granted to the applicant, he was not entitled at all for the stepping up of pay, wrongly given to him. The Deptt's action was only to rectify the mistake and the same cannot at all be questioned. As the applicant had been given wrong fixation of pay it had to be rectified, which the Deptt. was trying to do. Respondents could take action to rectify mistakes when the mistake was noticed and the same was legal. The applicant cannot raise a plea that the excess amount collected by him earlier cannot be recovered from him at this belated stage, as the same has no legs to stand on. The applicant's case for re-fixation of pay vis-a-vis Shri Bhowmik, allegedly his junior, was a fresh case and can be considered, if his earlier pay fixations done on 5.1.1988 and 10.9.1997 are cancelled. As the re-fixation has been correctly and legally ordered, recovery has to follow. His retiral dues are liable to be released only after the Govt. dues representing excess amount paid as salary over the years, are recovered. As the recovery action has been taken correctly and after putting the applicant on notice, the same cannot be assailed, urge

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S/Shri Sinha and Singh. They also point out that having enjoyed the benefit for considerably long time, without being entitled to it, the applicant cannot at all raise the plea of hardship. O.A., in the above circumstances has to fail, according to the respondents.

6. Rival contentions and relevant papers have been carefully considered. Facts of the case are undisputed. The applicant's pay has been stepped up w.e.f. 2.11.1988 vide Deptt.'s O.M. No. 15 (441)/DCC VII/E-I/39 dated 5.1.1988, on the ground that one Shri Bikram Singh, junior to the applicant, was drawing higher pay. Thereafter, a second setting up was ordered on 10.9.1997. Only in 1998, it was found by the respondents that Shri Bikram Singh was not in fact the applicant's junior, leading to the impugned action. While the applicant assails this action as belated and harsh, the respondents describe it legal and justified. The applicant does not dispute the respondents' version that Bikram Singh was not his junior, but the respondents have not proved that the applicant had obtained the wrong fixation by way of his wrong-doing. It is also surprising that the respondents had to wait for more than ten years to find out that the individual in respect of whom, the applicant was given stepping up of pay, was not in fact his junior. That being the case, the respondents' action, even if regular, is highly belated and is hit by note No.13 under FR 27 which reads as below:

"Once fixation was done by competent authority in exercise of the discretion vested in it under FR 27 that authority was not competent under the law to reduce initial pay originally fixed, even when such pay was based on some data, which subsequently turned out to be incorrect"

7. The applicant's version, that the re-fixation, even if legal can only be prospective, and not retrospective, that too by as many as over ten years, also cannot be brushed

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aside, and his stand is fortified by the decision of the Hon'ble Supreme Court in Shyam Babu Vs. UOI referred (supra). Relevant portion of the said judgement is reproduced as under:

"Although we have held that the petitioners were entitled only to the pay scale of Rs. 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. 1.1.1973 and only after the period of 10 years, they became entitled to the pay scale of Rs. 330-560, but as they have received the scale of Rs. 330-560 since 1973, due to no fault of theirs, and that scale is being reduced in the year 1984 with effect from 1.1.1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners, due to the fault of the respondents, the petitioners being in no way responsible for the same." (Emphasis made).

7. Coupled with the above, is the applicant's claim that he was still entitled independently for stepping up of pay vis-a-vis, another junior Shri Bhowmik. Respondents state that the same would be considered, if the applicant makes a separate/fresh application, and after the present and impugned refixation is given effect to. To my mind, it would be an avoidable exercise in futility, as the applicant is liable to be granted the same facility, from the same period, which is being sought to be denied by the impugned orders. In the totality of the circumstances of the case, the applicant's case has force and has to be endorsed. It would mean that the proposed action for recovery would have to be interfered with Full relief to the applicant including the release of the pensionary dues held back.

8. In the above view of the matter, the application succeeds and is accordingly disposed of. The impugned orders

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No. 15/74/2001.Estt (ODZ) dated 27.9.2001 and dated 2.10.2001 are quashed and set aside with full consequential benefits. The interim order issued on 11.12.2001 is made absolute. The respondents are directed to release the retiral/pensionary dues to the applicant, within two months from the date of receipt of this order. No costs.

(Govindan S. Tampi)
Member (A)

Patwal/

(See rule 114)

OATA/RA/CP/MA/PT...3294...Of 2001.....

S. G mittel.

Applicant(s)

Versus

4. 0' 17"

..Respondent(s)

[illegible]

~~Certified that the file is complete in all respects~~

Signature of S.O

Signature of Deal. Hand