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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA. No. 557/2001

New Delhi, this the 16th day of September, 2005

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

1. A.K. Srivastava,
S/o late Shri Deo Dutt Lal,
Assistant Director,
Under Advanced Training Institute,
Udyog Nagar,
Kanpur.
2. Shri Ramesh Chand Purohit,
S/o late Shri Hari Narayan Purohit,
Retired Training Officer,
Under A.T.I., Udyog Nagar,
Kanpur.
3. Chhotey Lal,
S/o late Shri Ram Charan Lal,
A.D.I.,
Under Director A.T.I. Udyog Nagar,
Kanpur.
4. Shri Agya Ram,
S/o late Shri Kasturi Lal,
Retired as ATI,
Under Advance Training Institute,
Udyog Nagar,
Kanpur.
5. Bhawani Dutt Dubey,
S/o late Shri Ram Saran Dubey,
Retired as Assistant Director of Training,
Under Director, A.T.I. Udyog Nagar,
Kanpur.
6. Shri Amir Kazim,
S/o Sh. Mohd. Kazim,
Retd. A.D.T.
Under Director A.T.I., Udyog Nagar,
Kanpur.

... Applicants.

(By Advocate Shri B.S. Mainee)

Versus

Union of India: through

1. The Secretary,
Ministry of Labour,
Government of India,
Shramshakti Bhawan,
Rafi Marg,
New Delhi.

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2. The Director General,
Employment and Training,
Ministry of Labour,
Shramshakti Bhawan,
Rafi Marg,
New Delhi.
3. The Director,
Advanced Training Institute,
Udyog Nagar,
Kanpur.

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Respondents.

(By Advocate Shri Harpreet Singh proxy for Shri Madhav Panikar)

ORDER (ORAL)

By this O.A., applicants have sought quashing of the impugned order, with a direction to the respondents not to reduce the salary of applicants and/or not to make any recovery from the salaries/dues and in case the recoveries have been made, they should be refunded with interest.

2. This O.A. has been filed by as many as six persons, who have stated that they were appointed as Assistant Training Officers (ATOs), in the pay scale of Rs.650-950. While applicant Nos. 1 to 5 are still in service, applicant No. 6 had retired from service on 29.2.1996. It is stated by the applicants that the pay scale of ATOs prior to 4th Pay Commission was Rs.650-950 while that of Training Officers (TOs) was Rs.650-1200 but 4th Pay Commission recommended both the pay scales should be merged and placed in a higher pay scale of Rs.2000-3500 (Group B). Pursuant to the recommendations of the 4th Pay Commission, Notification dated 10.12.1987 was issued whereby sanction of the President was conveyed for upgradation of 136 posts of ATO to that of TO in the scale of Rs.2000-3500 w.e.f. 1.1.1986 in the DGET Headquarter Offices and the various field offices/institutes under the Training Directorate of the DGET. Consequently, 136 posts of ATO were declared as abolished (page 21). Thereafter, vide order dated 27.6.1988, applicants were promoted as TOs, in the scale of Rs.2000-3500 by giving them posting, as mentioned against their names (page 27).

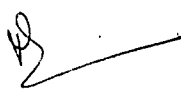
3. After applicants were promoted, their pay was fixed in 1989 and all the applicants were drawing the said pay, which was fixed by the respondents (page 36). Applicants were surprised to see the order dated 12.4.1996 wherein it was clarified that since the posts of ATO were merged with the posts of TO w.e.f. 1.1.1986, therefore, no benefit of



fixation of pay under FR 22-C (now FR 22 (I) (a) (i)) is admissible as it was a case of merger of two posts to the single grade of Rs.2000-3500. It was accordingly advised to make the recoveries of excess amount already paid to them (page 37). This letter was challenged by the applicants by filing OA 1255/96, which was disposed of vide order dated 28.3.2000 by quashing the order dated 12.4.1996. However, liberty was given to the respondents to proceed with the matter, in accordance with law, taking into account the observation of the Hon'ble Supreme Court in the case of **Bhagwan Shukla Vs. UOI & Ors.**

4. Pursuant to the said judgment, respondents issued memorandum dated 6.10.2000 stating therein the same thing that since posts of ATO were abolished and merged with the posts of TO w.e.f. 1.1.1986, no benefit of fixation of pay under FR 22 C (now FR 22 (I) (a) (i)) was admissible as it was a case of merger of two posts to the single grade of Rs.2000-3500. Hence, pay is to be refixed without giving the benefit of FR 22 C (now FR 22 (I) (a) (i)) and the excess amount already paid is proposed to be recovered. Therefore, applicant was called upon 'to show cause as to why the over payment made to him should not be recovered' (page 41). Applicants gave reply to the Memorandum followed by legal notice (pages 42 and 43) yet without considering the contentions raised by the counsel for applicants, respondents have issued order dated 10.01.2001 whereby it was once again ordered to recover the excess amount, if any, already paid to such of the officers (page 19). It is this order which has been challenged by the applicants in the present OA.

5. It is stated by the applicants' counsel that it was a regular promotion from the posts of ATO to TO, as is evident from the promotion order itself, as the order dated 27.6.1988 stated that the persons, who are promoted shall be on probation for two years and along with it, the applicants were imposed the liability to serve in any part of the country, which was not the case in the posts of ATO. He further submitted that the pay was fixed by the respondents themselves by granting them the benefit of FR 22 C rightly by treating it as promotion from lower post to the higher post without any misrepresentation having been made by the applicants. Moreover, at the time of holding DPC, respondents resorted to the criteria of outstanding, very good and good which is done in a normal promotion and also resorted to reservation. Therefore, it is



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wrong on the part of respondents now to make recoveries by stating that applicants would not be entitled to get the benefit of FR 22C. He further submitted that no misrepresentation was made by the applicants, therefore, there was no justification to recover the amount already paid to the applicants.

6. Respondents have opposed this OA by stating that applicants were not entitled to get the benefit of fixation of pay under FR 22C (now FR 22 (I) (a) (i)) as it was not a case of promotion but was a case of merger of two posts in the scale of Rs.2000-3500 since their pay was wrongly fixed by giving benefit of FR 22C and liberty was given to them by the Tribunal to proceed with the matter in accordance with law. They have, therefore, rightly issued the order of recovery of excess amount paid to them after issuing show cause notice to the applicants, which is the requirement in accordance with law. They have thus prayed that the O.A. may be dismissed.

7. I have heard both the counsel and perused the pleadings as well. From the perusal of Notification dated 10.12.1987, it is clear that 136 posts of ATO were sanctioned by the President to be upgraded to the posts of TO by merging both the posts and putting it in the scale of Rs.2000-3500 w.e.f. 1.1.1986 on the recommendations made by 4th Pay Commission. The very fact that 136 posts of ATO were abolished by the Notification dated 10.12.1987 as the said posts were upgraded as TO, obviously means all those who were holding the posts of ATO would automatically have been upgraded as TOs. Therefore, the question of promotion did not arise at all in this case. Simply because respondents followed the procedure of holding DPC, as stated by the counsel for applicants, it would not make it a promotion. At best, it can be stated respondents followed a wrong procedure. Moreover, even in the order dated 27.6.1988, it is clearly mentioned that applicants were promoted as TOs consequent upon upgradation of the posts of ATO, meaning thereby that applicants were placed in the scale of Rs.2000-3500 as a result of merger of both the posts and by way of upgradation from the posts of ATO to the posts of TO. In these circumstances, respondents have rightly stated that FR 22C (now FR 22 (I) (a) (i)) will not be attracted because it is not a case where person is promoted from the lower pay scale to the higher pay scale after fulfillment of the eligibility conditions, as prescribed in the recruitment rules but because both the posts were merged together on the

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recommendations of 4th Pay Commission and they were allowed the revised scale of Rs.2000-3500. In these circumstances, the order dated 10.1.2001, so far as it says that applicants would not be entitled to the benefit of fixation of pay under FR 22C (now FR 22 (I) (a) (i)) cannot be held to be bad in law. Accordingly, to that extent the order dated 10.1.2001 is upheld especially because when the applicants had filed 1st OA 1255/96 for quashing the order dated 12.4.1996. Though the same was quashed by the Tribunal but gave liberty to the respondents to proceed against the applicants by following due process of law. Thereafter, respondents issued show cause notice and after receiving their representations, they have rejected the claim of applicants by stating that they would not be entitled to get the benefit of fixation of pay under FR 22C (now FR 22 (I) (a) (i)) in the circumstances, as explained above.

8. However, as far as the order to recover the excess amount already paid to the applicants is concerned, it is not the case of respondents that applicants' pay was fixed in 1989, due to any misrepresentation made by the applicants. Admittedly, pay fixation is done by the Department itself and from the order of promotion, it is easily made out that respondents themselves were under a wrong notion and treated it as if, it was a normal promotion. Therefore, one can easily draw the conclusion that it was Department, which committed a mistake in fixing the pay of applicants wrongly by giving them the benefit of FR 22C (now FR 22 (I) (a) (i)). In these circumstances, the question that arises for our consideration is, whether recovery from the applicants in these circumstances is just and proper. This question need not detain us any long nor it calls for any adjudication because this point is fully covered by the judgments given by the Hon'ble Supreme Court in the case of **Shyam Babu Verma & Ors. Vs. Union of India & Ors.** reported in 1994 (Vol.2) SCC 521 wherein higher pay scale was given to the petitioners therein since 1973 erroneously, which was reduced in the year 1984 and excess amount was sought to be recovered from the petitioners. When the matter reached before the Hon'ble Supreme Court, it was held that since petitioners received the higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them. Similar view was taken by Hon'ble Supreme Court in the case of **Sahib Ram Vs. State of Haryana & Ors.** reported in 1995 Supp. (1) SCC 18. In this case also, upgraded pay scale was given to the petitioner due to

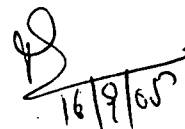
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wrong construction of relevant order by the authority concerned without any misrepresentation made by the employee. In such circumstances, recovery of the payment already made was restrained by Hon'ble Supreme Court.

9. If the facts of present case are seen in the backdrop of these two judgments, it is clear that the present case is fully covered by the above two judgments. Admittedly, applicants had not made any misrepresentation of facts before the Department and it was due to respondents own mistake that applicants' pay was wrongly fixed in the year 1989 by giving them benefit of FR 22C (now FR 22 (I) (a) (i)). In these circumstances, though respondents have a right to correct the mistake, but I am satisfied that it would not be proper for the respondents to recover the excess amount already paid to the applicants on account of wrong fixation of pay. Therefore, to this extent the order dated 10.1.2001 is quashed and set aside.

10. It is stated by the applicants that some of the applicants have already retired but their retrial dues have been withheld by the Department. Since we have held that no recovery can be made from the applicants on account of wrong fixation done by the respondents, respondents shall release the amount withheld by them on this account to those applicants, who have already retired. This shall be done within a period of three months from the date of receipt of copy of this order. It is, however, made clear that it will be open to the respondents to refix the pay of applicants correctly by denying the benefit of FR 22C (now FR 22 (I) (a) (i)) for the purpose of fixing the pensionary benefits. If any recoveries are already made from the applicants, who are still in service, the same shall be refunded to those applicants, within the same period of three months.

11. With the above directions, this O.A. is disposed of. No costs.


16/9/05

(MRS. MEERA CHHIBBER)
MEMBER(J)