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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.200/1995

New Delhi, this 12th day of January, 1996

Hon'ble Shri B.K. Singh, Member(A)

Ms. Srivastava
C-4/1, SFS Flats
Saket, New Delhi-110 017 .. Applicant

By Dr. D.C. Vohra, Advocate

versus

Union of India, through

1. The Secretary
Ministry of Defence, South Block, New Delhi
2. The Director General
Defence Research & Development Organisation
Sena Bhawan, New Delhi .. Respondents

By Shri M.K. Gupta, Advocate

ORDER

This OA No.200/95 is directed against the order No. RD/Para-2/8087/VI dated 13.10.94 (Annexure A-2). The admitted facts are these. That Ms. Srivastava (applicant) who was on deputation with the Institute of Secretariat Training & Management (ISTM) from 25.2.82 and remained there upto 24.2.87, was allowed one ad hoc increment after the implementation of the IV Pay Commission recommendations in the pre-revised pay under the fourth proviso of Rule 8. This increment is admissible to group 'C' and 'D' employees and is not admissible to group 'A' officers. Admittedly, she was a Group 'A' Officer and as such she was not entitled to any ad hoc increment and the question of grant of one more stagnation increment under the said proviso to Rule 8 therefore did not arise. The applicant after

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completion of the deputation period reverted to her parent department in 1987. She was originally an employee of the Defence Ministry and was working in Defence Research & Development Organisation (DRDO) at the time of her superannuation on 31.5.1991.

2. While on deputation, she was promoted to the grade of Scientist 'D' with effect from 7.1.86 and she resumed her duty as Scientist 'D' with effect from 14.5.87 after availing of the leave and completion of her deputation period. Accordingly, she was granted higher scale of pay with effect from 14.5.87. She represented against this and asked for notional fixation of pay with effect from 1.7.86, i.e. from the date of promotion. The Department of Personnel and Training as a special case approved the notional pay fixation from 1.7.86. She was granted further increment due and admissible. The fixation of pay and grant of benefit under next below rule (NBR) took place after her retirement from service, as a special case.

3. It is admitted that originally she was authorised pension/gratuity at basic pay of Rs.4850/ as obvious from the order placed at Annexure A-4 of the paper book. The fact that as Group 'A' officer she was not entitled to any ad hoc increment and that she was wrongly granted one ad hoc increment was detected some time in May/June, 1991. Accordingly she was informed about the revision of pay in August, 1991. It is also clear from the representation received from her, that she was fully aware that her pay was being revised. ISTM finally refixed her pay with effect from 1.1.86 and the pay was

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reduced from Rs.4000/- to Rs.3875/-, after withdrawing the increment of Rs.125/- wrongly allowed to her under 4th proviso to Rule 8 of the Revised Pay Fixation Rules in conformity with the recommendation of the 4th Pay Commission. As a result of refixation, the basic of the officer at the time of retirement stood at Rs.4700/- instead of Rs.4825/- on this basis the PPO and commutation of pension/gratuity etc. were released to her. The following recoveries were made from the payment made to her:

(a) Excess pay and allowances recovered from leave encashment ..	Rs.4152/-
(b) Other pensionary benefits i.e. gratuity Rs.2345 plus CVP Rs.1413/- ..	Rs.3748/-
(c) Pension (14 X 16) ..	Rs. 224/-
Total:	Rs.8134/-

4. Aggrieved by the refixation of pay and recoveries made, this OA has been filed on 24.1.95 seeking the following the reliefs:

(i) An order quashing the impugned orders dated 15.5.92, 5.6.92 and 13.10.94; and
 (ii) An order to the respondents to calculate all the terminal benefits admissible to her in terms of order dated 31.5.91 and on the basic of Rs.4850 and make payments thereof to her (including refund of Rs.11956 recovered from her) alongwith interest @ 12% p.a. from 1.8.91 till date of payment.

5. On notice, the respondents filed their reply contesting the applicant and grant of reliefs prayed for. Heard the learned counsel for the parties and perused the records of the case.



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6. A perusal of the order indicates that refixation of pay with effect from 1.1.86 was done by the Director, ISTM and as such he was a necessary party but was not impleaded as such. All the orders under challenge are a fall out of the order of refixation of pay. It is admitted that her pay before her retirement was fixed at Rs.4850 with effect from 1.5.91 vide Annexure A-3A of the paper book. It is further admitted that on that basis provisional pension papers were also prepared. It is also admitted by Annexure A-17 order dated 15.5.92, which was also endorsed to the applicant, that her pension stood refixed at Rs.2155/- with corresponding reduction in DCRG and with the direction ordering recovery of excess payment made to her. A copy of the Annexure A-19 dated 5.6.92 has also been endorsed to her. The revised pension payment order clearly mentions that the fact of change in the quantum of pension is due to refixation of her pay.

7. It is also admitted that the applicant made representation in this behalf on 26.5.92 (Annexure A-18) and she was informed by the impugned order (Annexure A-1) dated 13.10.94 that her request for waiver of recovery of excess payment of pay and allowances, capitalised value of commuted portion of pension, etc. has since been rejected.

8. The prayer in the OA is to quash the orders dated 15.5.92, 5.6.92 and 13.10.94 and for a direction to calculate the terminal benefits admissible to her on the basis of the basic pay of Rs.4850/- as on 1.5.91.

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9. The pension has since been reduced. She is drawing revised pension and recoveries have already been effected. It is clear from a perusal of the records that the action regarding refixation of pension etc. is a corollary of refixation of pay of Rs.4000 to rs.3875. This refixation of pay unfortunately is not under challenge before us and unless the same is challenged no relief can be granted. The refixation was done by the Director, ISTM who has also not been made a party in this OA, because the Respondents No.1 & 2 after refixation of pay with effect from 1.1.86 were under an obligation to refix the pension/gratuity and capitalised value of commuted pension, etc. and to recover the excess payment from leave encashment due to her.

10. The applicant made representation regarding recoveries made from her pensionary benefits on 26.5.92 (Annexure A-18) which leads to the presumption that she was fully aware of the refixation of pay done. She has not challenged the Annexure A-17 order dated 15.10.92 which was endorsed to her refixing her pension at Rs.2155 and Annexure A-19 order regarding recoveries made from her terminal benefits. In her representation dated 26.5.92 she has prayed for waiver of recovery and excess payment of pay and allowance and capitalised value of commuted portion of portion, which were not acceded to by the respondents. Refixation of pay order with effect from 1.1.86 was done by the Director, ISTM and he has not been made a party. It can not be treated

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to be a continuous cause of action. Revision of pension and the recoveries are a fall out of the orders dated 15.5.92 and 5.6.92 and these orders are not under challenge. Refixation of pay is not under challenge before this Tribunal and if the same is not under challenge the revision of pension and the excess amount paid in the form of terminal benefits, which is the consequence of the refixation, can not be challenged. There is also limitation involved in this case and no application for condonation of delay seems to have been filed. This Tribunal is not vested with any inherent power for condonation of delay unless a MA is filed and the Tribunal grants exemption on the point of limitation under Section 21 of the CAT Act. The period of limit has been specified in Section 21 of the CAT Act, 1985 which is one year if no representation/appeal is filed and one and half years if an appeal or representation has been filed. Repeated representations, as held by the Hon'ble Supreme Court in case of S.S.Rathore Vs. State of MP AIR 1990 SC 10, do not extend the period of limitation. The same view has been reiterated in case of UOI Vs. Ratan Chandra Samanta JT 1993(3)SC page 418. This view has been further reiterated with a greater force by a larger Bench of the Hon'ble Supreme Court in case of Secretary, Telecommunication Vs. Shri Ram Mahadu Gaikwad 1995 ATC 635 that the Tribunal can not adjudicate a matter if it involves limitation unless an MA is filed for condonation of delay and the Tribunal applies its mind to the merits and grants exemption. No MA has been filed in the instant case.

11. The applicant also seems to have acquiesced in refixation of her pay since in her representation she has only prayed for waiver of the recoveries and not challenged the order of the Director, ISTM and therefore estoppel also operates against her as held by the larger Bench of the Hon'ble Supreme Court in case of Om Prakash Shukla Vs. Akhleshwar Shukla AIR 1986 1043.

12. On merits also, the applicant has no case, since the revision of her pay is not under challenge and unless the same is quashed and set aside, she is not entitled to get any relief regarding redetermination of her retiral benefits on the basis of wrongly fixed pay of Rs.4850/-. It is evident that the provisions of 4th proviso of rule 8 is not applicable to her since ad hoc stagnation increment in the pre-revised scale is admissible only to Group C and D and not admissible to Group A Officer Admittedly the applicant was a Group A officer and as such she was not entitled to the grant one ad hoc increment in the pre-revised scale. The pay was refixed from Rs.4850 to Rs.4700 and also retirement benefits were accordingly revised and recoveries were made from her pension and leave encashment. She was allowed NBR from 1.7.86 as a special case. Further her representation was considered and rejected by the respondents and request for waiver of excess amount also was rejected. The rule position was clarified to the applicant vide letter dated 31.7.91, a copy of which is annexed as R-5 to the counter reply. The applicant

represented against that but the same was rejected. The judgements regarding show cause notice are not relevant.

A copy of the order dated 22.10.91/4.11.91 is enclosed with the counter reply and marked as Annexure R-8. This revision was necessitated on account of revision of pay by ISTM vide their order dated 22.10.91. Refixation of pay thus resulted in the revision of pension and her terminal benefits. Rule 70 of the CCS(Pension) Rules clearly provides that if a Government employee fails to comply with the notice regarding recoveries, the Head of Office is empowered to order in writing that such excess payment shall be adjusted. The representation filed by the applicant clearly shows that she had protested vehemently against the downward revision of pay as inequitus and unjust and after taking into consideration the representation made by her excess amount was ordered to be recovered under Rule 70 of the CCS(Pension) Rules, 1972. It is evident that the pension fixed was only provisional and therefore likely to be revised within 6 months if the orders were found wrong and incorrect. Wrong fixation of pay done in 1986 to which the applicant was not entitled has to be construed either as an oversight or a clerical error and in a such a situation revision is permissible. Rule 59(a)(iii) of CCS(Pension) Rules, 1972 provides the procedure for the purpose of calculation of average emoluments, in order to verify the calculation of emoluments. Head of office may verify for the period of 24 months preceding the date of retirement. In the instant case, wrong fixation of pay as on 1.1.86 came to light after provisional pension was sanctioned which

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necessitated revision of pay and pension. Thus, provision of Rule 59(b)(iii) will not apply in the instant case. The various judgements cited by the learned counsel for the applicant will not apply to the facts and circumstances of this case. Service of show cause notice and insistence on principles of natural justice will lead to all kinds of administrative complications.

13. In a Constitution Bench decision rendered a little earlier Justice Krishna Iyer had observed as under:

"Once we understand the soul of the rule as fairplay in action and it is so, we must hold that it extends to both the fields"; "Its essence is good conscience in a given situation; nothing more and nothing less." "Courts must be tempered by the thought, while compromise on principle is unprincipled, applied administrative law in modern complexities of government must be realistic and not academic. The myriad maybes and the diverse urgencies are live factors. Natural justice should not destroy administrative order by insisting on the impossible."

14. Thus it will be seen even constitution bench in Mahender Singh Gill Vs. Chief Electoral Commissioner 1978 1 SCC 405 was conscious that insistence on observation of the principles of natural justice even in case where clerical mistake occurs and revision becomes necessary, one can not insist on show cause to be issued. The refixation of pay was done because the applicant was wrongly given an ad hoc increment to which she was not entitled since she was a Group 'A' officer. That ad hoc increment was admissible to only Group 'C' and 'D' staff in pre-revised scale. It was a clear case of wrong fixation of pay and accordingly the same was revised by the Director ISTM and once the pay was

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revised, naturally capitalised value of commuted pension and other terminal benefits were revised which were provisionally granted to her. On merits also, the application fails.

15. The application is dismissed on grounds of limitation, estoppel and on merits also, leaving the parties to bear their own costs.

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(B.K. Singh)
Member(A)

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