

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1255/96

New Delhi this the 28th day of March 2000

HON'BLE MRS LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. V.K. MAJOTRA, MEMBER (A)

1. A.K. Srivastava
S/o late Shri Dev Dutt Lal
Srivastava, R/o Q.No. D-14 (New)
A.T.I, Campus Udyog Nagar,
Kanpur.
2. Amir Kasim
S/o late Shri Kastoori Lal
R/o D-15, ATI Campus
Udyog Nagar, Kanpur.
3. Agya Ram
S/o late Shri Kastoori Lal
R/o 55/2 Pili Colony
Govind Nagar, Kanpur.
4. B.D. Dubey
S/o late Shri Ram Saran Dubey
R/o 236/12, Shastri Nagar
Kanpur.
5. Chhote Lal
S/o late Shri Ram Charan Lal
R/o 15/5 Safed Colony
Dada Nagar, Kanpur
6. R.C. Purohit
S/o late Shri N.N. Purohit
R/o D-13 (New) ATI Campus
Udyog Nagar, Kanpur.

...Applicants

None present.

Versus

Union of India : through

1. The Secretary, Ministry of Labour,
Govt. of India, Shramshakrti BHawan,
New Delhi.
2. The Director General Employment & Training
Ministry of Labour, New Delhi.
3. The Director, Advanced Training Institute
Udyog Nagar, Kanpur

.. Respondents

None present.

ORDER (Oral)

By Mr. V.K. Majotra, Member (A)

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1. The applicants were appointed as Sr. appointed as Sr. Inspector/Junior Inspector/Asstt. Training Officer (ATO) during the year 1966. Applicants No. 1 to 5 were promoted as ATO between the years 1977 to 1982. The applicant No.6 was initially appointed as ATO. Applicant No. 6 has retired from service on 29.2.96. The pay scale of A.T.O. prior to 4th Central Pay Commission (CPC) was Rs. 650-965 and that of Training Officer (T.O) was Rs. 650-1200. The 4th C.P.C. recommended merger of the two pay scales of A.T.O. and T.O. into one scale namely Rs. 2000-3500 (Group-B). The respondents issued a notification dated 10.12.1987 sanctioning upgradation of 136 posts of A.T.Os to T.O.(Annexure A-4). According to the applicants, this upgradation was to take effect from 1.1.1986. However, the respondents issued office order No. 39 of 1988 on 27.6.1988 promoting 52 A.T.Os as T.O.in grade Rs. 2000-3500. The names of three applicants appear at Sr. Nos. 8, 12 and 28 (Annexure A-5). Vide order No. 10 of 1989 another batch of 13 A.T.Os were promoted as T.O.and the name of one of the applicants is at Sr. No. 5 (Annexure A-6). In respect of the remaining two applicants a similar promotion order was passed in 1989. The respondents fixed the pay of the applicants in the scale of Rs. 2000-3500 fixing their salary at Rs. 3300/- with

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effect from 25.1.1989. Copies of two of the office orders dated 3.5.1989 are at Annexure A-7. According to the applicant, similar office orders were issued in respect of other four applicants also but they have not attached the relevant office orders. Applicants have alleged that suddenly respondents had issued orders to make recoveries from the applicants of alleged over payment to them. Thus the applicants have assailed impugned order dated 12.4.96 issued by the Director General Employment & Training Respondent No.2 and order dated 9.5.96 issued by the Administrative Officer, Advanced Trained Institute Kanpur and order dated 15.5.96 issued by the Administrative Officer, Advanced Training Institute, Kanpur under which recoveries are being made from the dues of the applicants without affording any opportunity of hearing in violation of the principles of natural justice. The applicants have averred that they have been promoted on a regular basis on the recommendations of the Departmental Promotion Committee and have been drawing pay fixed under FR 22 (c) for more than 7 years. Recovery of amount ranging between Rs.15000/- and Rs. 20000/- from the applicants, adversely affects the applicant's civil right. The applicants have sought direction to the respondents not to reduce the pay of the applicants and not to recover any amount from their

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dues/salaries/gratuity. Vide order dated 6.6.96 this Tribunal had passed an order for maintainance of status-quo regarding the pay which has continued from time to time till date. Incidentally, learned counsel for the applicants Shri B.S. Mainee has relied on the judgment of the Hon'ble Supreme Court in Bhagwan Shukla Vs. U.O.I. 1995 (2) SLJ 30 while seeking an interim order.

2. In their written statement, respondents have argued that appointment of the applicants to the upgraded post of T.O. in fact is not promotion in the normal course; it is a case of adjustment consequent upon abolition/merger of the post of A.T.O with that of T.O. As such, the applicants are not entitled to fixation of their pay under F.R. 22.C (Now F.R. 22(I) (a) (i)). Thus their pay has to be fixed at the minimum of the scale of T.O. as if they have been appointed afresh. According to the respondents applicants were promoted as T.O. vide order 39 of 1988, order 10 of 1988 and order 47 of 1990 with effect from the dates they assumed the charge of the post of Training Officer and their pay was fixed under FR. 22-C. Subsequently in the year 1992 vide an order No. 62 dated 26.3.92 the applicants were promoted retrospectively from 1.1.86 against the vacancies of 1986 superseding the previous promotion orders. However, their pay was not fixed w.e.f. 1.1.1986. The matter of pay

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fixation in respect of the T.Os who were promoted/appointed against the upgraded posts of A.T.O. was taken up by the respondents with the Department of Personnel & Training which clarified that since the post of A.T.O. were abolished and merged with the post of T.O. w.e.f. 1.1.1986, 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. DOPT also advised to make recoveries of the over payment from the applicants. Respondents have, averred that while fixing the pay of the applicants a condition was imposed that such fixation was subject to Audit and undertaking was also obtained from the applicants clearly indicating that if any over payment was found to have been made later on to the applicants, the same would be recovered from them. In this view of the matter, according to the respondents they have not committed any mistake in issuing the impugned orders for denying the benefit of fixation under FR 22-C (Now FR.22 (I) (a) (i) and for effecting recovery of the excess amount paid to the applicants. Applicants have filed a rejoinder also.

3. We have perused the material available on record. Although the respondents had imposed a condition while according the benefit of fixation

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under FR.22-C (Now FR.22 (I) (a) (i) that such fixation would be subject to Audit and obtained an undertaking from the applicants that if any excess payment was found to have been made to them, the excess amount would be recovered from them, we find that these are not good enough grounds to deny the applicants, an opportunity to show cause why the fixation made under FR 22.C should not be maintained and why recoveries should not be effected. The ratio of Bhagwan Shukla Vs. U.O.I. and Others in 1995 (2) AISLJ 30 is very clear in such matters. The Hon'ble Supreme Court had held as follows:-

"We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs. 190/- p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs. 181/- p.m. from Rs. 190/- p.m. in 1991 retrospectively w.e.f. 18.12.1970. 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. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25.7.1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell

in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17.9.1993 as well as the order (memorandum) impugned before the Tribunal dated 25.7.1991 reducing the basic pay of the appellant from Rs. 190/- to Rs. 181/- w.e.f. 18.12.1970".

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4. The instant case is totally covered by the above observations of the Hon'ble Supreme Court in so far as no show cause notice has been given to the applicants and the respondents have proceeded to effect recovery on account of re-fixation of pay of the applicants.

5. In the light of the above discussion and reasons, the impugned orders are quashed and set aside with liberty to the respondents to proceed with the matter in accordance with law taking into account the observations of the Hon'ble Supreme Court in the case of Bhagwan Shukla Vs. U.O.I. & Ors. (supra). No order as to costs.

V.K. Majotra

(V.K. MAJOTRA)
MEMBER (A)

Lakshmi Swaminathan

(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

cc.