

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

(15)

O.A./XXX. No.1835/1996 Decided on:

29/2

D.R.P. Singh \_\_\_\_\_

....Applicant(s)

(By Shri K.C. Jain \_\_\_\_\_

Advocate)

Versus

U.O.I. & Others \_\_\_\_\_

....Respondent(s)

(By Shri R.P. Aggarwal \_\_\_\_\_

Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter *yes* or not?

2. Whether to be circulated to the other Benches of the Tribunal?

(K. MUTHUKUMAR)  
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No.1835 of 1996

NEW DELHI THIS THE 2 DAY OF JULY, 1997

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

(16)

D.R.P. Singh  
Office Superintendent Grade-II,  
Central Branch,  
Ordnance Depot,  
Shakur Basti,  
Delhi. ....Applicant

By Advocate Shri K.C. Jain

Versus

1. Union of India,  
through Secretary,  
Ministry of Defence,  
South Block,  
New Delhi.
2. Director General of  
Ordnance Services,  
AHQ, New Delhi.
3. Commandant,  
Ordnance Depot,  
Shakur Basti,  
Delhi.
4. Commandant,  
Central Ordnance Depot,  
Jabalpur (MP).
5. The Officer-in-charge,  
Army Ordnance Corps,  
Post Box No.3,  
Trimulgherry Post,  
Secunderabad-500015. ..Respondents

By Advocate Shri R.P. Aggarwal

ORDER

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Applicant's grievance is that the respondents have ordered refixation of his pay retrospectively from 1.7.1986 reducing his pay by one stage and this has resulted in their ordering the recovery of the pay excess drawn by him to the extent of Rs. 6,275/- for the period from 1.7.1986 onwards. By an interim order, the respondents were directed to suspend further recovery. The

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applicant contends that the respondents had erroneously fixed the pay earlier, consequent on his promotion to the grade of Office Superintendent and the wrong fixation was entirely due to the mistake of the respondents for which he was not responsible in any manner and asserts that ordering the recovery at this stage after a lapse of more than 10 years will be unjust and improper as he has already drawn the money in good faith. He also relies on certain decisions of this Tribunal in this behalf.

2. The respondents submit that the applicant on his promotion to the grade of Office Superintendent opted to have his pay fixed after getting increment in his lower post on 1.7.1986. While fixing the pay on promotion under FR 22-C after the drawal of the increment. The applicant joined his promoted post on 5.5.1986 and was to have been allowed fixation of pay at the stage of Rs.1640/- with effect from 1.7.1986 whereas the respondents had erroneously fixed the pay at Rs.1680/- w.e.f. 1.7.1986 which was detected on the basis of the complaint received by another official claiming parity with the fixation allowed to the applicant. When the matter was reexamined with reference to the records, it was found that the applicant's pay fixation was done erroneously and was also erroneously admitted in audit at that time. Accordingly, respondents issued a Part II order in July, 1993 revising the pay of the applicant. The applicant did not make any representation at that time but subsequent made a representation in November, 1995 (Annexure R-4) stating that a recovery of an amount of more than Rs.5,000/- would be involved and therefore, requested that the recovery should not be made till reasons for refixation were

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communicated. The respondents contend that the applicant was very much aware of the wrong fixation as early as in 1993 itself and, therefore, he was put to notice before the actual recovery commenced. They also submit that there had been no mala fide in the action of the respondents and this was a case of lapse on account of the wrong fixation inadvertently not detected in time. They also submit that the applicant was very much aware that his pay was wrongly fixed as he was drawing more pay than his counterparts and he could have also brought this wrong fixation to the notice of the respondents whereas on the other hand, he had continued to draw excess payments and once it was detected, he has now come forward and chosen to contest this recovery. They also submit that once a lapse is detected, it is obligatory on the part of the respondents to rectify the same after obtaining approval of the competent authority. They, therefore, assert that there has been no wilful action against the application and the application, therefore, deserves to be rejected.

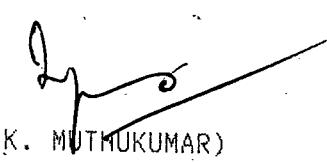
3. I have heard the learned counsel for the parties and have also perused the record.

4. It is an admitted fact that the wrong fixation was allowed to be made in the case of the applicant at the time when he was promoted in 1986, the applicant had opted for the pay in the higher post after his increment in the lower grade. It is fairly obvious that he was aware of the benefit of such fixation and he should have been aware of the rate of pay at which he would be entitled to on such refixation on promotion under the rules. When the respondents came to know of this wrong

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fixation after a lapse of time, they had notified it by their Part II order in July, 1993 itself and taking note of that, he represented only in November, 1995 and made representation that recovery might not be commenced till reason for refixation was communicated. The said reason was also communicated to him subsequently. It cannot be said that the impugned orders of refixation of pay and recovery of excess payments can be said to be illegal. It is no doubt true that there had been some administrative lapse. The applicant had sufficient knowledge of this even in 1993 and the decision relied upon by the applicant is not relevant here. Even at the time of original fixation of pay in the ordinary course, he should have had knowledge of pay to which he would be entitled consequent on his promotion and based on his option. Therefore, it cannot be said that he was put to any discriminatory treatment or any arbitrary action had been taken by the respondents. The excess payment in this case cannot be considered to be substantial and the respondent's have also ordered recovery in instalments. In the light of this, it will not be appropriate for the Tribunal to interfere in this matter.

5. In view of the above, there is no merit in the application. The application is, therefore, dismissed. There shall be no order as to costs.

  
(K. MUTHUKUMAR)  
MEMBER (A)

Rakesh