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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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OA.No.227 of 1994
MA.No.1470 of 1994

Dated New Delhi, this the 10th day of June, 1994

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

Shri Bhullan Singh
S/o Late Shri Ram Saran
R/o vill. Muradgrampur Pursi
(Kursi), P.O. Muradnagar
Dist. Ghaziabad(U.P.)-201206

... Applicant

By Advocate: Shri N. S. Verma

VERSUS

1. Union of India, through
The Secretary
Government of India
Ministry of Defence
NEW DELHI

2. The Chairman, and Director General
Ordnance Factories Board
10-A, Auckland Road
CALCUTTA

3. The General Manager
Ordnance Factory
Muradnagar
Dist. Ghaziabad

... Respondents

By Advocate: Shri V.S.R. Krishna

O R D E R

Shri B. K. Singh, M(A)

This OA No.227/94 Bhullan Singh as applicant and
LOI & Ors as Respondents has been filed against the
Order No.1129 dated 18.6.93 (Annexure - A.10) passed
by Shri S. R. Sridharan, IOFS, General Manager,
Ordnance Factory, Muradnagar refixing the pay of the
applicant after cancelling earlier F.O. Pt.II No.1069
dated 3.12.1987, F.O. Pt.II No.2560 dated 3.12.1987 &
F.O. Pt.II No.1948 dated 8.9.1987.



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10

2. The uncontroverted facts are that the applicant was re-employed as an LDC w.e.f. 12.5.81 in the pay scale of Rs.260-6-290-EB-6-326-8-366-EB-8-390-10-400 in the Ordnance Factory, Muradnagar, Dist. Ghaziabad. At the time of re-employment, he was drawing military pension of Rs.260 plus Pension equivalent of Gratuity, Rs.32.44 which was subsequently revised w.e.f. 1.1.86. The applicant opted to get his pay fixed after ignoring an amount of Rs.125 of his military pension in accordance with the Ministry of Defence O.M. No.2(7) 78/6664/D/(Civ-I) dated 30.6.78. His pay was fixed accordingly at Rs.260 w.e.f. 12.5.81. Subsequently, in accordance with the Ministry of Defence OM.No.2(1)/ 83/D(Civ-I) dated 8.2.83, he opted to get his pay fixed after ignoring his full military pension, and accordingly his ^{was} pay/fixed at Rs.358 w.e.f. 25.1.83 as per Ordnance Factory Board, Calcutta OM.No.293/OFM/A/NI/VI dated 6.2.87 received under their letter No.293/OM/A/ NI/VI dated 29.3.87 duly approved by the C.C. of A(Fys), Calcutta vide letter No.P/12/803/NG/PF dated 30.4.87.

3. Subsequently, the Controller General of Defence Accounts issued a clarification regarding fixation of pay of re-employed military pensioners as on 1.1.86. In this clarification it was stipulated that the pay of the re-employed military pensioners will be refixed at minimum of the re-employed pay scale. During the course of this correspondence, the case of one



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Shri B. S. Tyagi, LDC of the same factory was referred to Chief Controller of Accounts (Fys), Calcutta and it was clarified that the pay of Shri Tyagi be fixed at the minimum of the pay scale i.e. Rs.260 p.m. w.e.f. 25.1.83. Annexure R-III gives the details of the re-fixation of pay of re-employed military pensioners, on the basis of which the excess payment has been calculated and proposed to be recovered from the pay of the applicant. The Chief Controller General of Defence Accounts has quoted the circular of the Ministry of Defence OM.No.2(1)/83/D(Civ-I) dated 8.2.93 (Annexure A-IV) whereby it has been clarified that the re-fixation has been ordered in the light of the circular issued by the DoPT and also with the concurrence of the Ministry of Finance (Department of Expenditure) conveyed vide Secretary (Expenditure)'s Dy. No.286/SE/83 dated 4.2.83.

4. In the relief it has been prayed that the impugned order dated 18.6.93 (Annexure A-10) be cancelled and the respondents be directed to refund the amount recovered so far consequent upon re-fixation of pay as per Annexure A-10 and to grant all other consequential benefits.

5. On notice, the respondents filed their reply and contested the application and grant of reliefs prayed for by the applicant.

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6. I have carefully gone through the pleadings on record and heard the learned counsels for the parties. The main thrust of the arguments of the learned counsel for the applicant is that the recovery has been ordered without any opportunity being given to the applicant to show cause. He argued that it is the reduction in pay scale and as such a show cause was necessary before this could be done and in this connection the learned counsel for the applicant quoted the various rulings - Chand Singh Vs. U.O.I. & Ors. 1992(1) CAT p.315, Mohiuddin Keya Vs U.O.I. & Ors. 1992(2) CAT SLJ Madras p.564, Neelkanth Shah Vs U.O.I. 1987(3) CAT, Calcutta Bench p.307, Govind Sinha & Ors. Vs Garrison Engineer 1991(1) CAT, Guwahati Bench p.74, DRM, Danapur Vs N. Kesari & Ors. AIR 1974 SC p.1189, K. S. Sridharan & Ors Vs U.O.I. & Ors. 1991(2) SLJ p.230. The learned counsel for the applicant argued that the respondents have violated the principles of natural justice in as much as they did not serve a show cause notice on the applicant before reducing his pay scale. He further argued that the amount drawn by the applicant as a result of the original fixation of pay, has been consumed by him and he does not have any savings to meet the liability of the excess payment.

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He also argued that it is a case of genuine hardship since the entire salary of the applicant is being adjusted against the excess payment and he has nothing in hand as a result of which he and his family members are practically on the verge of starvation.

2 7. I have gone through the various rulings cited by the learned counsel for the applicant. The ratio established in the various rulings quoted by the learned counsel for the applicant is that where there is reduction in pay scale as a measure of punishment, the show cause is a must. If reduction in pay scale is by way of penalty or it is a punitive measure, then the principles of natural justice come into play since Article 311(2) of the Constitution gets attracted. This is not so in the instant case. It is not a reversion or of reduction in pay scale as a measure of punishment. It is only re-fixation and rectification of wrong fixation of pay and when the Audit detected during the course of audit of the accounts of the various units it was found that excess payment not only in the case of applicant but also in the case of other military pensioners had been done and accordingly an order was issued indicating the criteria ^{for} correct fixation of pay.

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These guidelines were based on the instructions of DoPT and Ministry of Finance (Department of Expenditure).

Thus, the contention of the learned counsel for the applicant is not tenable because it is not a case of reversion of the applicant as a punitive measure nor it is a case of reduction of the pay scale and therefore neither Article 311(2) gets attracted nor the provisions of CCS(CCA) Rules. It is a simple question of re-

fixation of pay, after the Audit, during the course of when it was audit of accounts found that a group of military pensioners had been made excess payment as a result of wrong fixation of pay. The impugned order only rectifies a particular situation where the applicant and other similarly situated persons were getting pay and emoluments beyond their entitlements.

6. On the basis of wrong fixation of pay, the applicant had been paid a sum of Rs.43,788.00 in excess of his entitlement and therefore an amount of Rs.3,900.00 on account of HRA arrears due to the applicant has been withheld and instalment of Rs.1,200 p.m. was ordered to be recovered from his salary commencing from November, 1993. I do not see any logic behind the contention of the learned counsel for the applicant that this action of recovery is arbitrary. The over-payment

made to the applicant from the exchequer has got to be recovered ~~xxxxx~~ notwithstanding ~~xxxxx~~ the hardship of the applicant and the arguments that he has consumed the amount drawn by him and therefore he is not in a position to pay, ~~is not taxable~~. The excess payment made to the applicant cannot be waived since there are no special circumstances to do so. The re-fixation done in accordance with the orders of the Audit authorities after the audit of the accounts, cannot be described as illegal or arbitrary. The applicant has himself opted for re-fixation of his pay after ignoring entire pension under Ministry of Defence letter No.2(1)/83/D(Civ-I) dated 8.2.83. Option once exercised is final in case of all military pensioners. Since this is based on his option and on the basis of the audited accounts which showed an excess payment of Rs.43,788/- against the applicant, the recovery had to be ordered ^{withholding of} along with the claims of the HRA to the tune of Rs.3,900/-. As stated above, there is no violation of the principles of natural justice since re-fixation of pay in accordance with the option of the applicant and also in accordance with the criteria laid down by Ministry of Finance and DoPT, cannot be treated as reduction in pay scale in the sense

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of reversion or penalty imposed on the applicant. The principles of natural justice stand excluded in this particular case.

9. During the course of arguments, the learned counsel for the respondents, Shri V. S. R. Krishna while rebutting the contention of the learned counsel for the applicant regarding non-observation of the principles of natural justice, described the order of the respondents as a simple case of re-fixation of pay in the light of the guidelines of the DoPT and Ministry of Finance (Department of Expenditure) and based on the option of the applicant to ignore the entire pension in fixation of his pay. The learned counsel for the respondents argued that the applicant had no vested right in excess payment and Government had the right to correct the wrong fixation of pay when the Audit detected the same. Correction of a mistake in pay fixation does not amount to any reduction in pay scale as a measure of punishment. It is the prerogative of the Government to recover any excess payment from the Government exchequer if it is detected during the audit of accounts. However, the learned counsel for the respondents conceded that the recovery of the entire salary towards the excess payment made was




17

drastic and hard and therefore he suggested via-media that the recovery be made to the extent of Rs.800/- from his pay so that he can draw atleast Rs.400/- plus other perks to which he may be entitled in order to sustain himself and his family.

10. It is, therefore, ordered that the respondents should recover an amount of Rs.800/- (rupees eight hundred) only as against Rs.1,200/- which is being recovered from his pay.

11. The applicant has no case on merits, and, therefore, with the above observations and direction, this OA is disposed of, leaving the parties to bear their own costs.


(B. K. Singh)
Member(A)

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