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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 249 of 1989.

New Delhi, this the 2nd day of May, 1994.

Hon'ble Mr Justice S.K.Dhaon, Vice Chairman
Hon'ble Mr B.N.Dhoudiyal, Member(A).

R.N. Sharma, son of Shri Amar Nath Sharma,
Resident of 52/3, Kabul Lines, Sadar Bazar,
Delhi Cantt., New Delhi. Applicant.

(through Mr Q.P. Sood, Advocate)

vs.

1. Union of India, through Secretary
Ministry of Defence, New Delhi.
2. D.G. EME, Army Head Quarters,
D.H.Q., A.Q. New Delhi.
3. C.D.A., Western Command, Chandigarh.
4. Commandant, HQ Technical Group EME
Delhi Cantt., New Delhi. Respondents.

O R D E R

B.N.Dhoudiyal, Member(A)

The applicant, Shri R.N. Sharma, who is working as Office Superintendent in E.M.E.Delhi Cantt. is aggrieved by order dated 2.1.1989 passed by C.D.A. Western Command, Chandigarh for reduction in the pay and consequent recovery from his salary.

2. While working as U.D.C. in the pay scale of Rs. 130-300 on 27.7.1970, his pay was stepped upto Rs. 155/- w.e.f. 1.3.1971 in comparison to his junior Shri K.L.Sehgal with the next date of increment as 27.7.1971 and he continued to draw these increments on due date. After the implementation of the 3rd Pay Commission's recommendations, his pay was fixed at Rs.350/- p.m. in the scale of Rs.330-560.

As he was also working as Cashier, he was given a special

pay of Rs.40/- per month w.e.f.1.10.1977. On his promotion as Office Superintendent on 31.7.1987, his pay was fixed at Rs.530/- p.m. after giving him the benefit of special pay of Rs.40/- p.m. Thereafter, w.e.f.1.1.1986 his pay was fixed at Rs.1720/- pm. in the scale of Rs.1400-2300 and after regular grant of increment, it was raised to Rs.1850/- per month w.e.f.1.7.1988. However, by the impugned order dated 2.1.1989 a recovery of Rs.8897/- was ordered on the ground that he had been over paid due to wrong fixation of pay. The main basis was that his next date of increment was due on 1.3.1972 and not on 27.7.1971 in terms of Government order dated 4.4.1966 reproduced as decision No.5 under Article 156-A C.S.R.I. and C.P.R.O./116/66 which clearly stipulates that the next date of increment of the Senior Officer will be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of pay. It has already been stated that Cashier's special pay cannot be taken into account for pay fixation but will only be protected subject to conditions laid down therein.

3. We have gone through the records of the case and heard the learned counsel for the applicant. It has been contended in the counter by the respondents that administrative orders can be reviewed with retrospective effect to correct the mistakes. The judgment of the Supreme Court in case of R.R.Verma vs. Union of India, AIR 1980 SC 146 has been cited. The mistake came to the notice of the respondents while considering the case for the stepping up of pay of one of the official senior the applicant in the same cadre namely Shri V.K.Nagpal, who was, at that time drawing less basic pay. It has also been contended

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that there are no instructions in the Financial Regulations or the Central Treasury Rules, which restrict the recovery of over-payment after a long period even though the Central Treasury Rules restrict recovery to the maximum of 1/3rd of the pay.

4. A perusal of Annexure R-3, filed by the respondents shows that in one of the Govt. of India's decision, appended to Article 156-A, notified by order dated 4.4.1956, the following provisions have been made:

" the order refixing the pay of the senior officer in accordance with the provisions of this decision shall be issued by the authorities mentioned in Rules 8 and 9 of the Central Civil Services (Classification Control and Appeal) Rules, 1965. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of pay"
(emphasis supplied)

However, another decision notified under order dated 22.1.1968, reads as follows:

" The orders refixing the pay of the senior official in accordance with the provisions of this decision shall be issued by the authorities mentioned in Rules 8 and 9 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The next increment of the senior official will be drawn on the date on which it would have fallen due but for the refixation of pay"
(emphasis supplied)

The contradictions in these two orders is clear but it can be rightfully claimed by the applicant that in his case the latter order issued on 22.1.1968 is applicable. As regards the protection of special pay of Cashier, decision No.6 to Article 156 of C.S.R., clearly stipulates that special pay of Cashier will be protected, if granted in lieu

of higher pay scale drawn in a lower post for the last three years for pay-fixation. In this case, the special pay of the Cashier so granted to the applicant was not in lieu of separate higher scale. However, in view of the position explained later, any such element has to be treated as personal pay ^{fw} at this later stage.

5. In any case, a definite procedure has been laid down in the Financial Regulations of the DSR, which provides that ordinarily, all personal claims should be audited finally within 12 months from the date of payment. The individual against whom the claim of recovery is made may request the Controller of Defence Accounts to withhold recovery pending submission of an appeal to the competent authority. When an appeal is submitted within two months, the matter has to be considered jointly by the Area or Sub Area Commander and the Controller of Defence Accounts. On receipt of individual's reply, the competent financial authority will decide whether the amount should be written off or whether recovery should be effected, and will inform the Controller of Defence Accounts and the individual concerned accordingly. No such proceeding was held in this case. The learned counsel for the applicant has drawn our attention to the decision of this Tribunal in case of Chamal Singh vs. Union of India and others, 1992(1) ATJ 567, in which case the matter has been discussed in detail and the following observations made by this Tribunal in the case of C. S. Bedi v. Union of India and another(ATR) 1988(2) CAT 510 were re-iterated:

"7. We have however, taken into account the fact that respondents took more than 7 years in detecting their mistake regarding

wrong fixation which resulted in over payment of more than Rs. 13000/- and even after waiver of 50% on compassionate ground, the applicant required to pay back more than Rs. 6000/- from his salary. When the applicant was given the benefit of revised pay, he was not aware that he would have to pay back the excess amount drawn and he spent the amount according to the pay scale that he enjoyed. Any deduct at the late stage definitely causes hardship to the applicant. It is also quite clear that the applicant was not responsible for the non-detection of the mistake of the Department for a long seven years."

6. In view of the facts and circumstances of this case, we hold that the applicant is entitled to succeed. The impugned order dated 2.1.89 passed by CDA, Western Command is hereby quashed and set aside. The reduction made in the salary of the applicant shall be restored and he will be entitled to draw Rs. 1850/- per month w.e.f. 1.7.1988.

7. The above orders shall be implemented within a period of one month from the date of receipt of the copy of this order.

8. Parties are left to bear their own costs.

B.N.Dhondiyal
(B.N.Dhondiyal)
Member(A)

S.K.Dhaon
(S.K.Dhaon)
Vice Chairman

/sds/