

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH, DELHI

O.A.NO. 1436 OF 1987

Date of Decision: 10-5-1988.

Shri C.S. Bedi.

..

Applicant

(Shri Umesh Misra, Advocate)

v.

Union of India and another. ..

Respondents.

(Sri P.H. Ramachandani, Senior Counsel)

CORAM:

The Hon'ble Mr. Justice K.S. Puttaswamy,
Vice-Chairman (J)

ORDER

This is an application made by the applicant under Section 19 of the Administrative Tribunals Act, 1985 (the Act).

2. Prior to 31-8-1963, the applicant was working as a civilian Upper Division Clerk (UDC) in the Armed Forces Headquarters, New Delhi. On 31-8-1963, the applicant was selected and appointed as a Technical Assistant (TA) in the office of the Joint Cipher Bureau, Ministry of Defence in the then time scale of Rs. 200-530. On this appointment, his basic pay was fixed at Rs. 250/-. On and from 31-8-1963 till about 15-9-1970, the applicant was working as TA on deputation basis and was repatriated thereafter to his parent department.

3. On his repatriation to his parent department, the competent officer by his order No. 93899/IV/CAO/R & R-I dated 16-9-1970 (Annexure-B) promoted and appointed the applicant along with 37 others with whose details we are not concerned as an 'Assistant' in an officiating capacity in the then time scale of Rs. 210-530 until further orders in the Armed Forces Headquarters, Civil Services.

On such promotion and appointment as an Assistant, his basic pay was fixed at Rs.360/- computing his basic pay at Rs.335/- he was drawing as TA and one increment of Rs.15/- in the time scale. On that basis, the further increments due to him from time to time were sanctioned in the time scale of Assistant and he drew the salaries so admissible from time to time.

4. On 14-10-1981 the applicant was promoted as an Assistant Civilian Staff Officer (ACSO) in the then time scale of Rs.650-1200 and his basic pay in that post as on that day was fixed with due regard to the pay he was drawing as an Assistant and its fixation of pay in that post. On and from 14-10-1981 to 30-6-1986 the applicant continued to draw the pay and other allowances admissible to him as ACSO without any hitch or problem either to himself or to Government.

5. But, as a bolt from the blue, the respondents in July, 1986 re-examined the pay fixed to the applicant on his repatriation to his parent department and his promotion as an Assistant from 16-9-1970 and on such a re-examination decided that the pay of the applicant had been erroneously fixed at Rs.360/- instead of at Rs.260/-. On that view, the Chief Administrative Officer (CAO) by his order No.26477/CAO/A-3(Adm.) dated 30-7-1986 (Annexure-A) had refixed the pay of the applicant as on 16-9-1970 and thereafter. This order which is material reads thus:

'A' - FIXATION OF PAY - Shri C.S.Bedi

Consequent on promotion to the grade of Assistant w.e.f. 16-9-1970 pay refixed as under:-

<u>Basic Pay</u>	<u>Personal Pay</u>
Rs.260/- w.e.f. 16-9-1970	Rs.100/-
Rs.270/- w.e.f. 16-9-1971	Rs.105/-
Rs.285/- w.e.f. 16-9-1972	Rs. 90/-
Rs.500/- w.e.f. 01-1-1973	Rs.100/-
	(Under CDS(RP) Rules '73).
Rs.515/- w.e.f. 01-9-1973	Rs. 85/-
Rs.530/- w.e.f. 01-9-1974	Rs. 70/-
Rs.545/- w.e.f. 01-9-1975	Rs. 55/-
Rs.560/- w.e.f. 01-9-1975	Rs. 40/-
Rs.580/- w.e.f. 01-9-1977	Rs.20/-

Rs. 600/- w.e.f. 01-9-1978 Rs. Nil.
Rs. 620/- w.e.f. 01-9-1979
Rs. 640/- w.e.f. 01-9-1980
Rs. 660/- w.e.f. 01-9-1981

Further on promotion to the grade of ACSO
w.e.f. 14-10-1981, pay refixed as follows:-

Rs. 710/- w.e.f. 14-10-1981
Rs. 740/- w.e.f. 01-10-82
Rs. 775/- w.e.f. 01-10-1983
Rs. 810/- w.e.f. 01-10-1984
Rs. 845/- w.e.f. 01-10-1985

With next date of increment to accrue on 01-10-1986.

This superseeds all the DO Pts-II issued so far on
the subject.

Authy:- CDA HQ No.P/II/20977 dated 28-7-1986."

On receipt of this order, the applicant made representations before
the respondents requesting them to revoke the same. But, Government
by its order No.A/26477/CAO/A-3(Admin) dated 14-8-1986 (Annexure-E)
had rejected the same. On 8-10-1987 the applicant has approached
this Tribunal challenging the said orders and for appropriate
directions.

6. The applicant has urged more than one ground in support
of his case. In their counter, the respondents have resisted this
application.

7. Sri Umesh Misra, learned Advocate has appeared for the
applicant. Sri P.H. Ramchandani, learned senior Counsel has appeared
for the respondents.

8. Sri Misra has contended that the impugned orders made
without notice and affording an opportunity of hearing to the appli-
cant to state his case were contrary to the principles of natural
justice, Art. 156A of the Central Civil Service Regulations and
that in any event having regard to the long lapse of time over which
payments had been made, the alleged excess recoveries were totally un-
justified illegal and inequitable. In support of his contention Sri
Misra has strongly relied on a Division Bench ruling of the Calcutta
Bench of this Tribunal in NILKANTHA SHAH v. UNION OF INDIA AND OTHERS
[1987(2) SLJ (CAT) 305] and the ruling of the Principal Bench in

BENI PRASAD v. UNION OF INDIA AND OTHERS (ATR 1987(2) CAT 205).

9. Sri Ramchandani refuting the contention of Sri Misra has urged that the very question~~s~~ raised in this case was seized by a Division Bench of this Tribunal in Application No.T.686/85 which^{I heard} heard the same in part and this case be referred and heard by that very Bench and in any event I should await the decision in that case. In the very nature of things, it is first necessary to examine this later contention of Sri Ramchandani.

10. Sri Misra has opposed the preliminary submissions of Sri Ramchandani and has maintained that the questions raised in this case were totally different and there is no necessity to refer this case to the Division Bench or await the decision of the Division Bench in T.No.686/85.

11. If the questions raised in the two cases are identical, then it is proper that both of them are heard by one and the same Bench and if that is not possible it is also proper that the later case should be taken up after the earlier case is decided by the Division Bench. But, that does not appear to be the position in the two cases. As I apprehend, this case can be decided on the facts of this case only without even attempting to decide on the true scope and ambit of Article 156A of the Civil Service Regulations and its applicability, if any, to the facts of this case. On this view, I find it difficult to uphold the preliminary request of Sri Ramchandani, which necessarily means that I have to examine and decide this case on merits. I, therefore, proceed to do so.

12. As early as on 16-9-1970 the competent authority had fixed the pay of the applicant at Rs.360/- on which basis his further fixations from time to time had been made. On the basis of those orders, the applicant had drawn the enhanced pay from time to time. The assertion of the applicant that before making the adverse order against him which undoubtedly results in serious civil consequences to him, he was not issued with a show cause notice and was not afforded

afforded an opportunity to state his case, is not denied by the respondents. The records also establish the same.

13. Before an authority proposes to rectify its orders which would result in serious civil consequences to the applicant, it cannot do so without issuing him a show cause notice setting out all the circumstances and affording him an opportunity of hearing to state his case which is one of the basic requirements of the principles of natural justice is now well settled. Without any doubt that had not been done by the authority. On this short ground itself, the orders made against the applicant are liable to be interfered with by me.

14. As noticed earlier, the pay of the applicant on his repatriation and promotion as Assistant was fixed w.e.f. 16-9-1970. From that date and onwards, the applicant had drawn his pay at the rate fixed on that date with increments and other benefits granted to him on that basis from time to time till 30-6-1986. From this it is clear that the applicant had enjoyed the benefit of the fixation of pay made in his favour on 16-9-1970 for more than 16 years.

15. I will even assume that there was a mistake in the fixation of pay of the applicant and that mistake came to the light of the authorities only in 1986 and that mistake is even rightly sought to be corrected by them. Whether in such circumstances, recoveries should be permitted or not came up for consideration before a Division Bench of the Calcutta Bench of this Tribunal in Nilkantha Shah's case where the delay was only 7 years as against 16 years in the present case. In upholding the claim in that case that in such cases recoveries should not be permitted, the Division Bench expressed thus:

" 7. We have, however, taken into account the fact that the respondents took more than seven years in detecting their mistake regarding wrong fixation which resulted in over payment of more than Rs.13,000/- and even after waiver of 50% on compassionate ground, the applicant is required to pay back

back more than Rs.6,000/- 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 deduction at this 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."

On this ratio which is binding on me, the applicant in this case is also entitled to succeed.

16. The applicant who joined service on 28-9-1945 has also retired from service on 30-11-1987 on attaining superannuation. Without any doubt the recoveries of heavy excess payments, even if they were really excess, either by actual recoveries or by adjustments from out of the terminal benefits payable to the applicant would undoubtedly cause him serious financial hardship and injury. On these facts also, that are peculiar, this is a fit case in which I should interfere with the impugned orders and direct the respondents to release all such amounts that are ultimately due to the applicant on his retirement.

17. On what I have expressed earlier, I consider it wholly unnecessary to deal with the scope and ambit of Art. 156A of the Civil Service Regulations and its applicability or otherwise to the case of the applicant. I leave that question open.

18. In the light of my above discussion, I make the following orders and directions:

- (a) I quash Orders No.26477/CAO/A-3(Adm.) dated 30-7-1986 (Annexure-A) and No.A/26477/CAO/A-3(Admin) dated 14-8-1986 (Annexure-E) of the respondents and direct the respondents not to make any recoveries from out of the salaries paid to him on the basis of fixation made on his repatriation on promotion as on 16-9-1970 and direct the respondents to make payment of all the terminal benefits that are admissible to him without effecting any recoveries from out of the salaries paid to him and payable to him till he retired from service.

19. Application is allowed. But, in the circumstances of the case, I direct the parties to bear their own costs.

K.S. Puttaswamy
(K.S. PUTTASWAMY)
VICE-CHAIRMAN (J) 72/5/58