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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 136 of 1987 198
~~TAXINEX~~

DATE OF DECISION 06.10.1989

T.R. Sharma & Ors. Applicant (s)

Shri R.K. Kamal Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

Shri O.N. Moolri Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice Kamleshwar Nath, Vice-Chairman.

The Hon'ble Ms. Usha Savara, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? yes
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? _____
4. To be circulated to all Benches of the Tribunal ? yes

JUDGEMENT

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Kamleshwar Nath,
Vice-Chairman)

This Application under Section 19 of the Central Administrative Tribunals Act, 1985 seeks direction to quash an order of recovery of excess paid salary and for restoration of original fixed salary.

The applicant No. 1, Shri T.R. Sharma and the applicant No. 2, Shri M.D. Malhotra, who were Hindi Officers Class II in the scale of Rs. 650-1000-EB-40.1200, were drawing the maximum of Rs.1200/-. The applicant No. 1 was promoted as Senior Hindi Officer on 3.5.82 and the applicant No. 2 was similarly promoted on 5.6.82 in the scale of Rs. 1100-50-1600. At the time of such promotion, the

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salaries of both the applicants were fixed at Rs.1200/- plus Special Pay of Rs.150/- i.e. Rs.1350/-.

The applicant No. 1 was regularised after scrutiny by the U.P.S.C on the post of Senior Hindi Officer on 18.12.82 when it was fixed at Rs.1400/-; the applicant No. 2 was never regularised. It seems that during the pendency of the case, the applicant No. 2 retired.

It appears that some-time in 1983, the department had occasion to examine the case of one T.P. Tuli also a Hindi Officer Class II promoted as Senior Hindi Officer, who was granted a pay of Rs. 1350/- on such promotion. It was found that Tuli had been made overpayment and that the proper salary should have been Rs.1250/-. Tuli had retired by then; even so, orders were passed for making recovery from him. The applicants' case is that as in the case of ~~T.P.~~ Tuli, ~~is~~ so also in their case the opposite parties reduced their pay and made recoveries. It is, however, urged that T.P. Tuli moved this Tribunal in O.A. No. 85 of 1986 decided on 17.4.1986 where this Tribunal struck down the reduction of the pay as well as recoveries. The applicants claimed that they are entitled to be given the same relief as was given to ~~T.P.~~ Tuli.

The opposite parties' case is that the pay of all these persons ~~had~~ been incorrectly fixed at the time when they were promoted as Senior Hindi Officer. According to them, all these persons who were at the maximum of the scale of Rs.650-1000-EB-40-1200 could be entitled to the salary of only Rs.1250/- in the scale of Rs.100-50-1600 on their promotion to the post of

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Senior Hindi Officer. It was urged that the ground of the so called Special Pay was erroneous and that in the case of F.P. Tuli, the decision was taken only on humanitarian grounds since he was about to retire. The opposite parties emphasise that the decision in Tuli's case could not alter the provisions as set out in the relevant codes.

We have heard learned counsel for both the parties at a considerable length. The first thing to be determined is the basis on which the pay was to be fixed on promotion as Senior Hindi Officer. We invited learned counsel for the parties to place the relevant rules on the subject. They have not been able to refer to any except F.R. 22C. We may mention that in para 6(i) of the Written Statement, it is mentioned that the pay was to be fixed in terms of Rule 2017-A (i) FR 22. Rule 2017 A has not been produced before us; FR 22 has been cited.

We find that the truly applicable provision is FR 22C. Third proviso lays down that where a Government servant is, immediately before his promotion or appointment to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by an amount equal to the last increment in the time-scale of the lower post. The maximum of the time scale of the applicants on the lower post was Rs.1200/-, and the last increment was Rs. ^{40/-}~~50/-~~. The pay, therefore, could have been fixed at Rs. ^{1240/-}~~1250/-~~ if that was a stage in the scale of the higher post. But that was ^{not}so.

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The next stage of Rs.1100-50-1600 was at Rs.1250/-. The correct pay admissible to the applicants on the date of their promotion as Senior Hindi Officer should, therefore, have been Rs.1250/- per month. It is not shown that there were any orders for grant of any Special Pay. In the absence of any other provisions, we hold that the applicants were not entitled to any pay in excess of Rs.1250/- on the date of their promotion as Senior Hindi Officers. It ^{goes} ~~was~~ without saying that in future they would have earned their increments in the scale of the higher post.

The real question, then, is whether the opposite parties were entitled to reduce the erroneously fixed salary of the applicants to the correct figure and whether they were entitled to make any recoveries. The applicants' contention is that the applicants have not been given any notice to show cause for reduction and since reduction involves financial loss, the order is invalid. The opposite parties contention is that it is a plain clerical error, which can be rectified without any opportunity to show cause. It has been held in the cases of C.S. Bedi Vs. Union of India, A.T.R. 1988(2)C.A.T 510 and Chander Bhan Vs. Union of India, 1987(3) A.T.C.432 that recovery of excess payment and reduction of salary without show cause notice is invalid. So far as it goes, the proposition must be followed; but we may add that in matters like this the principles of a subsequent opportunity ~~es~~ to show cause could be made equally applicable. It is well established that in the principle of financial propriety, no authority may incur expenditure unless ^{sanctioned by} General or ~~by~~ Special orders of the Government

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or authority^{to} which power has been duly delegated (vide General Financial Rule 6), and no expenditure may be incurred except on legitimate objects of public expenditure and a subordinate authority, including a delegate authority, could sanction expenditure only in those cases in which it is authorised to do so by any provisions of law for the time being in force (vide delegation of Financial Power Rule 4). It could be quite permissible in the circumstances to effect an immediate refixation of salary and order consequential recovery with an opportunity to the concerned Government servant to represent the matter and then take a final decision thereon. In the present case both the applicants made representations on 18.8.86 (Annexures AII and AIII), which were rejected by the opposite parties by an order dated 18.11.86 (Annexure AIV). What is important is that it is not shown that the refixation done by the opposite parties and the rejection of the representation is invalid or illegal. The necessity^{of} giving an opportunity to show cause is a rule of natural justice; and the rules of natural justice vary according to the facts of case to case. We should, therefore, think that the orders of refixation of salary and of making of recovery of excess payment are not fit to be struck down merely because the opposite parties have not given a precedent opportunity to show cause.

We may now refer to the decision in Tuli's case. Annexure AI is the judgement dated 17.4.1986. The judgement

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shows that on promotion to the senior scale of Senior Hindi Officer on 12.7.79 from the maximum of the lower scale of Rs.1200/-, his pay was fixed at Rs.1200 plus 150 Special Pay. He retired on 30.4.82 drawing the same pay. Recovery order seems to have been passed sometime in 1983. Tuli had claimed that his pay was to be fixed at Rs.1450/-, which the opposite party had fixed at Rs.1200 plus Rs.50/- Special Pay and made recoveries thereon and also reduced his pension. Learned Bench remarked that the applicant had no hand or complicity in getting the allowance of Rs.150/- (Special Pay) uninterruptedly for three years, which was also being given to others similarly situated, and that reduction was made without an opportunity to show cause. The Bench observed that in view of those, ⁱⁿ ~~at~~ that they called, mitigated ^{ing} ~~ed~~ circumstances, they had no hesitation in finding that the emoluments of Rs.1350/- should not be reduced on the eve of his retirement. Accordingly, the Bench restored the salary of Rs.1350/- and directed that his pension and D.C.R.G. should be computed on an unreduced emoluments. We may mention with respect, that the judgement does not lay down any principle of law; indeed, the learned counsel for the parties of that case did not invite the attention of the learned Bench to the applicable provisions of law to which we have adverted above. The basic consideration of the views ⁱⁿ ~~at~~ taken by the Bench seems to be that Tuli had enjoyed the additional payment of Rs.150/- uninterruptedly for three years in which he has no hand or complicity, while others similarly situated ⁱⁿ ~~at~~ were getting the same amount and that the reduction on the eve ⁱⁿ ~~at~~ of his retirement may not have been made.

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We have already pointed out that Tuli had retired on 30.4.82 and the refixation/recovery was ordered in 1983. That is why the opposite parties had ^{said that} ~~sought~~ the decision in Tuli's case was on humanitarian grounds. In the case before us, the refixation of salary as well as recovery were ordered rather promptly and at the time when both the applicants were in service. We do not think, therefore, that the decision in Tuli's case should be a precedent for the purposes of this case.

The learned counsel for the applicant has referred to three other cases. In the case of C.S. Bedi Vs. U.C.I. (Supra), the recovery was being made after 16 years. In the case of Smt. Pushpa Bhide Vs. Union of India, A.T.R. 1989(1) C.A.T.397, the applicant had been given benefit of selection grade on wrong fixation of seniority in 1976. This was sought to be reversed in 1985. The Bench on a consideration of the delay struck down the reversal on a principle of estoppel. It may be mentioned that Smt. Pushpa Bhide had also been wrongly promoted as Head ^{Mistress} ~~Master~~ in 1982; the Bench upheld her reversion from that post in 1985. The basis of the decision, therefore, in these cases, was delayed ^{on the part of the Department in} taking action for reversal/and consequential recoveries. The error once committed may ^{not} be permitted to continue for all times to come, ^{in our view}.

In the case of Chander Bhan Vs. Union of India (Supra), the decision rests only on the basis of a failure to show cause while directing reduction of salary. We have already expressed our opinion on that subject.

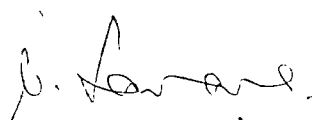
On a careful consideration of all the aspects and


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the submissions made before us, we noticed that the only consideration which appears to flow from the decisions is to protect an employee from recovery where it has been unduly delayed. Whether in a particular case there has been such delay will depend on the facts and circumstances of each case; and one of the Rules of estoppel relevant in this connection is that on account of the excess payment, the employee should have so changed his position to his own ^{detriment} ~~detriment~~ that it would be unfair to ask him to refund. Again, in our opinion, no ~~error~~ ~~order~~ can be permitted to continue in perpetuity, and the Tribunals cannot become instruments of perpetuation of incorrect action; while relief may be given in respect of the past events, there is no reason why true legal position may not be given effect to in the future.

In the case before us, the refixation was done in 1982 and the recovery seems to have been ordered along with T.P. Tuli sometime in 1983. We are satisfied that in this situation no rule of estoppel and no consideration of delay should apply. The applicants are not entitled to any relief and the application must fail.

The application is dismissed, parties shall bear their own costs.


(Usha Savara)
Member (A)


(Kamleshwar Nath)
Vice-Chairman

"SRD"