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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./XXX. No. 2166 of 1990 Decided on: 25.4.96

Shri P.S. JainApplicant(s)

(By Shri T.C. Aggarwal Advocate)

Versus

Union of IndiaRespondent(s)

(By Shri V.S.R. Krishna Advocate)

CORAM:

THE HON'BLE ~~SIR~~ MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

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

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

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


(K. MUTHUKUMAR)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2166 of 1990

New Delhi this the 15th day of April, 1996

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

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

Shri P.S. Jain
S/o Late Shri A.S. Jain,
R/o D-2, Hakikat Rai Road,
Adarsh Nagar,
Delhi-110 033.

...Applicant

By Advocate Shri T.C. Aggarwal

Versus

Union of India
through
Secretary,
Cabinet Secretariat,
Room No.8-B,
South Block,
New Delhi-110 001.

..Respondents

By Advocate Shri V.S.R. Krishna

ORDER

Hon'ble Mr. K. Muthukumar

The applicant in this case is aggrieved over the revision of his pay as per the impugned order at Annexure A-1 with effect from 1.1.1973 and has approached this Tribunal for quashing the same. He has also prayed for the refund of the recovery made from his retirement benefits. The recovery of overpayments was, however, stayed on the basis of the interim order passed on 26.10.1990.

2. The brief facts leading to the filing of this application are as follows. The applicant was a clerk in the Delhi Police and was later on promoted as a Sub-Inspector in March, 1962, and as Inspector with effect from 2.11.1970. In the

meanwhile, he was sent on deputation to the Cabinet Secretariat as Field Officer with effect from 16.1.1970 when he opted for the grade pay post. Consequent on the introduction of the revised pay scale on the basis of the 3rd Pay Commission, the respondents originally fixed the pay of the applicant at Rs.625/- in the scale of Rs.550-900 and consequent on his promotion, as Senior Field Officer with effect from 2.5.1974, his pay was fixed at Rs.710/- in the scale of Rs.650-1200. The respondents decided to absorb him in the Cabinet Secretariat as Senior Field Officer on permanent basis with effect from 1.3.1983. It is stated that the applicant was sent on special assignment abroad with effect from 1.6.83 and was repatriated from this special assignment on 18.7.1989 and he subsequently retired on superannuation on 31.7.1989. When he was in the Cabinet Secretariat, the respondents issued the impugned order refixing his pay at Rs.575/- on 1.1.1973 instead of the earlier fixation of pay at Rs.625/-. He represented against this by his letter dated 19.11.1987, Annexure A-2. He was asked to remit an amount of Rs.1104.40 towards the overpayments made consequent on the earlier wrong fixation of pay with effect from 1.1.1973 for the period during which he was in the non Gazetted post. The respondents have also adjusted from him cash equivalent of leave salary consequent on his retirement, a sum of Rs.6,470/- towards the overpayment for the period from 2.5.74 to 31.5.1983 (Annexure A-5). Being aggrieved by this refixation of pay ordered in 1983 in

supersession of his earlier fixation and also of the recovery of the overpaid amount, the applicant has approached this Tribunal with a prayer to quash the orders of the respondents refixing the pay with effect from 1.1.1973. There is also a prayer for pay and allowance for the work done during 18.7.89 to 31.7.89 which has also not been released alongwith gratuity with interest at 15% till the date of payment.

3. The respondents in their counter-reply have stated that in respect of a deputationist to the Cabinet Secretariat, according to the terms of the Home Ministry's order dated 10.05.1961, Annexure R-2, he will be entitled to a presumptive pay in their equivalent post in their parent cadre. The pay that was notified earlier by the parent department of the applicant, namely, the Delhi Police, consequent on the refixation of the pay with effect from 1.1.1973 was subject to audit verification. This could not be, however, got verified by the Audit earlier and while reviewing the Service Book of the applicant in April, 1985 with a view to have his pay fixed in the Cabinet Secretariat on permanent absorption basis, some doubt arose about correctness of his pay fixation done in 1979 whereby his pay was fixed at Rs.625/- in the scale of Rs.550-900 with effect from 1.1.1973 by the Delhi Police. The doubt related to the reckoning of the special pay and Metropolitan Allowance (MPA) drawn by the applicant while he was in Delhi Police before the deputation as pay for the purpose of refixation on 1.1.1973. Since in terms of the Ministry of Home

Affairs order, the applicant's pay in the scale of the deputation post to which he has opted has to be the presumptive pay in the equivalent cadre, fixation of pay as on 1.1.1973 when he was already on deputation in the deputation post by reckoning the special pay and MPA could not be in order and, therefore, the matter was taken up with the Delhi Police and fixation was, therefore, further verified and it was, therefore, found that he was entitled to a fixation of pay of Rs.575/- in the pay scale of Rs.550-900 in the deputation post on 1.1.1973 in stead of Rs.625/- as was fixed earlier and, therefore, the applicant was notified for the overpayments. Since the applicant was on an assignment abroad, the matter could not be pursued and on his return, the excess overpayments have to be adjusted from the leave encashment dues consequent on his retirement. The respondents have further stated that the pay and allowances for the period from 18.7.89 to 31.7.89 were being released at the time of filing the counter-reply. It has also been averred in the reply that the Government dues pertaining to the period of special assignment of the applicant from 1.6.73 to 18.7.89 has been worked out and it is stated that balance of DCRG would be remitted after adjusting the Government dues including overpayments of pay and allowances. The respondents maintains that in as much as the revised pay fixation was made correcting the wrong and irregular fixation done earlier, the recovery of the overpayments is in order and, therefore, have said that the applicant is not entitled to get any

relief.

4. The learned counsel for the applicant contended that there was no fault on the part of the applicant at any stage and any recovery of such huge amounts after a lapse of long time cannot be sustained. The respondents have also not considered his representation and have unilaterally adjusted the excess payment from the leave encashment dues of the applicant. He relies on several decisions of the Supreme Court as well as of the Tribunal and argued that the order of refixation of his pay and reducing his pay without affording any opportunity, would be violative of principles of natural justice - Bhagwan Shukla Vs. U.O.I. and Others, (1994) 28 ATC SC 258. Similarly, such belated recoveries due to mistake not attributable to the Government servant could not be sustained. Shyam Babu Vs. Union of India, 1994 (27) SC (ATC) 121 and U.O.I. Vs. S.K. Jaiswal, (1994) 27 SC(ATC) 561. The learned counsel also argued that in respect of Government dues no such claim for recovery of Government dues would arise if the claim is made belatedly after 3 years in terms of the Limitation act.

5. We have heard the learned counsel for the parties and have perused the records.

6. It is an admitted position that the applicant was informed of the revision of his pay as a result of refixation only in March, 1986, revising the earlier fixation which was made as early as in 1979 effective from 1.1.1973 and the applicant retired in 1989. It is also an admitted position that during the period from 1986 to 1989 the applicant was on a

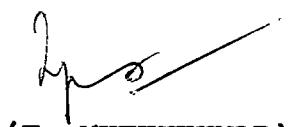
special assignment abroad when he was informed of the refixation of his pay. The applicant had submitted his representation and replies were also sent to him explaining the position. Initially in the reply dated 11.5.1988 to the applicant, he was informed of the total amount due from him, namely, Rs.6470/of which only Rs.1104/- was against the non-Gazetted period and similar recovery was to be effected for the Gazetted period and he was asked to remit the same by cheque. The applicant had represented that he was absorbed in the Cabinet Secretariat with effect from 1.3.1983 and, therefore, the mistake committed by the parent department in fixing the pay as on 1.1.1973 should not be held against him and he should not be subject to recovery after a lapse of almost 12 years for no fault of his. We have seen that while fixing the pay with effect from 1.1.1973 originally, Annexure R-6, the Deputy Commissioner of Police Special Branch had intimated the Cabinet Secretariat of the revised pay of Rs.625/- with effect from 1.1.73 with the date of next increment as 1.11.73 and subsequent increases his pay on 1.11.74, 1.11.75, 1.11.76, 1.11.77 and 1.11.78. Although it was stated in the aforesaid letter that the above fixation was subject to audit verification, no further communication has been addressed at all after such verification and the applicant had drawn the aforesaid pay and subsequent increases in good faith. The entire pay fixation statement, however, was sent to the respondents which clearly indicated the drawal of special pay and MPA under column - existing

emoluments as on 1.1.1973. Apparently it was not checked by the respondents (Cabinet Secretariat) whether in determining the presumptive pay in the parent department, the above special pay and MPA were to be taken into account or not. This was clearly failure on the part of the respondent to have this matter checked up in 1979 itself although the applicant was on deputation at that time and even for the purposes of determining the pay on deputation, the presumptive pay has to be taken into account in terms of Home Ministry's Circular dated 10.5.1961. It is, therefore, clear that there had been lapse on the part of the respondents in proper verification or the fixation of pay done in the parent department and this was sought to be rectified only in 1986, after a lapse of almost 9 years, during which period, the applicant has drawn this amount in good faith. Only in May, 1988, the applicant was informed of the total recovery for both the Gazetted and Non-Gazetted periods. It is also seen that the respondents have adjusted the overpayments in respect of the Gazetted period from the leave encashment dues of the applicant on his retirement. On the face of the facts submitted before us, it is fairly clear that the original fixation was wrongly done which was sought to be corrected and the applicant was not entitled to original fixation as was done at Rs.625/- w.e.f. 1.1.1973 and the revised fixation was done correctly. However, the fact remains that the refixation was done belatedly after almost 10 years effectively and the drawal of pay at the original rate of pay was allowed and the applicant had also

drawn it in good faith alongwith subsequent increases from time to time. It is well settled that belated recoveries on account of mistakes not attributable to the applicant, cannot be made particularly when the delay is more than 10 years effectively and the ratio of the decision of their Lordships in the case of Shyam Babu Verma (Supra) can be clearly invoked. Further there are several other judgments of the Tribunal which have held that belated recoveries on account of mistake of earlier fixation of pay from retiral benefits would be unjustified, e.g. Sunil Baran Mukherjee Vs. U.O.I., (1992) 21 ATC 80. Besides, we find that there is no specific provision in the CCS (Leave) Rules, 1972, for adjustment of overpayments from the cash equivalent of Earned Leave in the case of the Government servant on attaining the age of superannuation. There is, however, a provision only for withholding part or whole of cash equivalent of Earned Leave in the case of a Government servant who reitres from service while disciplinary or quasi proceedings are pending against him and if in the view of the competent authority, some money becomes recoverable from him on conclusion of the proceedings against him (vide Rule 39 (3)). The above provision is, however, not applicable in the present case.

7. In the conspectus of the above discussion, we are of the considered view that the applicant is entitled to the reliefs claimed in the application and the interim order of the Tribunal passed on 26.10.90 directing the respondents not to

effect any further recovery pursuant to the Memo dated 24.8.1990 is made absolute. The respondents are directed to refund to the applicant the recovery of overpayment from his leave encashment ~~done~~ and are also directed to settle the other dues relating to balance of payment of gratuity, if any alongwith interest thereon in accordance with the rules, within a period of 3 months from the date of receipt of a copy of this order. The application is disposed of on the above lines and there shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(Smt) LAKSHMI SWAMINATHAN
MEMBER (J)

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