

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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J.A. NO. 1072/1991

DATE OF DECISION..... 24.12.91

SHRI R.M. SINHA & OTHERS

...APPLICANTS

VS.

UNION OF INDIA & OTHERS

...RESPONDENTS

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SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANTS

...SHRI R.P. OBEROI

FOR THE RESPONDENTS

...SHRI K.S. DHINGRA,
SR. ADMN. OFFICER,
DEPARTMENTAL REPRESENTA-
TIVE.

1. Whether Reporters of local papers may be allowed to see the Judgement? y
2. To be referred to the Reporter or not? y

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicants in this case were at the relevant time working as Senior Scientific Assistants in the Directorate of Standardisation and Directorate of Manpower Development in the Department of Defence Research and Development, Ministry of Defence. The applicants felt aggrieved by the order dt.28.2.1991 issued by respondent No.2 by which the fixation

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of pay of the applicants was revised resulting in deduction of pay and consequential recovery from the applicants. The applicants in the Original Application have claimed the following reliefs :-

- (a) This Hon'ble Tribunal may be graciously pleased to issue appropriate directions, instructions and orders to the respondents directing them not to reduce the pay of the applicants by refixation as proposed in the impugned Daily Orders Part II dated 28.2.1991 issued by respondent No.2 (Annexure-I) or in any manner change the pay already shown in the statement of fixation of pay duly approved as per copies placed on record vide ANNEXURE-VIII (A, B & C).
- (b) This Hon'ble Tribunal be further pleased to quash that part of the DO Part II Order dated 28.2.1991 issued by respondent No.2 which relates to fixation of pay of applicants No.1 & 2.

2. The brief facts of the case are that the applicants were promoted as Senior Scientific Assistants as follows :- Applicant No.1 on 16.3.1981; applicant No.2 on 26.2.1985 and applicant No.3 on 13.9.1983. The pay scale of the post of Senior Scientific Assistant at the time of promotion was Rs.550-900. There was some dissatisfaction on the recommendations of the Third Central Pay Commission among the Scientific staff working in the various departments of the Ministry of Defence. The matter was referred to a Board of Arbitration as provided in the JCM Scheme because the matter could not be resolved amicably in the meeting of the JCM. The Board of Arbitration gave the award dt. 12.8.1985 accepting the demand of the staff

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and granted the pay scale of Rs.840-1040 and this award was to come into operation w.e.f. 22.9.1982. Some of the officers filed application under Section 19 for implementation of the said award (OA 952/1986) and the said application was disposed of on 10.8.1989. During the pendency of that application under Section 19, the Ministry of Defence issued orders on 11.9.1988 regarding acceptance of the award by it with the condition that these orders will take effect from 1.1.1988. The recommendations of the Fourth Central Pay Commission came into force w.e.f. 1.1.1986, and the replacement scale of Rs.840-1040 is Rs.2375-3500. During the pendency of the OA 952/1986 and consequent to issue of the order dt. 11.11.1988, respondent N_o.2 issued a list of Senior Scientific Assistants placed in the higher scale of pay of Rs.2375-3500 and the name of the applicants were included in that list (Annexure-III). Subsequently, the respondents issued orders dt. 7.11.1989 showing the refixation of pay of the applicants and they were also paid arrears of pay, allowances. Finally OA 952/1986 was disposed of with the direction that the award of the arbitration referred to above was to be given effect to from 22.9.1982 and the arrears etc. are to be paid with interest @ 10% p.a. The UOI filed SLP against the aforesaid order dt. 10.8.1989. The order of the Hon'ble Supreme Court

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admitting the SLP, stayed the granting of relief w.e.f. 22.9.1982. After this stay by the Hon'ble Supreme Court, the respondents issued an order dt. 20.9.1980 whereby the award was to be implemented w.e.f. 1.1.1988. Consequent to this, the impugned order dt. 28.2.1991 was issued re-fixing the pay of the applicants and also ordering recovery. Recovery ^{related to} / the amount paid on the basis of earlier fixation which ^{is} / in excess / ^{of the amount payable} under the revised re-fixation. The applicants have challenged this order on ^{the} / ground that the order has been passed without giving them a show cause notice. It is also stated that the respondents by their conduct are stopped from reducing the pay of the applicants which has been fixed by them with clear knowledge of rules and regulations.

3. The respondents contested the application and stated that the matter is fully covered by the decided cases of the New Bombay Bench in OA 33/1990 (Shri M.D.Sharma and Others Vs. UOI) and by the decision of the Bangalore Bench of the Central Administrative Tribunal in OA Nos.950 to 964, 998 to 1105/1989. In these cases, the decision of the New Bombay Bench as well as by the Bangalore Bench of the CAT has been taken against the decision of the OA 952/86.

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It is further stated that against the decision of OA 952/1986, SLP has been admitted by the Hon'ble Supreme Court and the applicant himself has filed the copy of the judgement (Annexure-VI). It is further stated that the application is premature. The respondents also stated that by mistake, the applicants were allowed the benefit of higher pay scale from a back date instead of 1.1.1988. At the time when the judgement in OA 952/1986 was passed, there was no resolution of the Lok Sabha. The Lok Sabha in its resolution approved the proposal of the Government to implement the award only w.e.f. 1.1.1988 and not from 22.9.1982. Relevant portion of the resolution passed by the Parliament is extracted below :-

"That this House approves the proposal of the Government to modify the date of implementation from 22.09.1982 as given by the Arbitration Board to 01.01.1988 in respect of Award dated 12.08.1985 in C.A. Reference Nos.9 & 10 of 1983 laid on the Table of Lok Sabha on 13.10.1989 regarding grant of higher pay scales to the Senior Scientific Assistants, Draftsmen, Store-Keeping Staff and Civilian Motor Drivers in Defence Establishments, in terms of para-21 of Scheme for Joint Consultative Machinery and Compulsory Arbitration as the high financial implications involves in acceptance of the Award were considered to affect the National Economy."

4. We have heard the learned counsel of the parties at length and have gone through the record of the case. The main thrust of the learned counsel for the applicants is

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that the principles of natural justice have been violated in as much as the pay of the applicants has been reduced without giving them a show cause notice. In this connection the learned counsel has relied on the case of Neel Kanth Shah Vs. UOI (1987 (3) SLJ page-306). In the case of Neel Kanth Shah, it was not a case based on an increment in pay on the basis of arbitration award from particular date. In the present case, dispute has been as to from what date the scale of pay of Rs.840-1040 is to be given effect to, either from 22.9.1982 or from 1.1.1988. The benefit has been given only after Original Application No.952/1986 was filed before the Principal Bench and then the Government decided to give the benefit of the arbitration award to the applicants. The order of the Hon'ble Supreme Court in the SLP (Annexure-VI) clearly shows that only that part of the judgement is stayed which gave effect to the implementation of the award w.e.f. 22.9.1982. The impugned order has been passed much after. The matter is still pending before the Hon'ble Supreme Court. So the facts of the instant case cannot be applied to the present case.

5. The learned counsel has laid more stress on the show cause notice being issued to the applicants and in this

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connection, referred to 1988 (2) ATR CAT 510 (C.S. Badi Vs. UOI & Anr.)). In the present case, it was not a case of any refixation of pay, but it was a case as to from what date, the benefit has to be given effect to; either it is from 1.1.1988 or from 22.9.1982. If a mistake has been made, then it can be corrected without notice because there is no clear cut order still that the award is to be given effect to from 22.9.1982. Thus in this case, there was no necessity to give show cause notice to the applicants. The learned counsel for the applicants also cited many other authorities on the point, but it is needless to refer to all of them. It is all the more so because the present case is fully covered by the two judgements; one by the New Bombay Bench given in OA 33/1990 dt. 27.8.1991 in the case of Sh.M.D. Soma & Ors. Vs. UOI & Ors. and the other by the Bangalore Bench of CAT decided on 31.1.1991 where the claim of similarly situated Senior Scientific Assistants was dismissed. Para-43 of the judgement of the Bangalore Bench is quoted below :-

"In view of the fact that the question with regard to the date of actual implementation of the Award is even now kept alive on account of the pendency of the appeal filed against judgement rendered by the Principal Bench of the Central Administrative Tribunal, before the Supreme Court and that the learned counsel for the applicant made a request that this case should be disposed of only after the decision of the Supreme Court, we think it proper to make it clear while disposing of the cases in the light of our above

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conclusion, that the applicants, if so desire to get the benefits of the ultimate decision that may be rendered by the Supreme Court in the appeal mentioned above, may take appropriate legal steps for getting the benefits to them also in terms of the clarification or the final conclusion of the Supreme Court. With this clarification, we dispose of all these applications. There will be no orders as to costs."

6. It is also an undisputed fact that the judgement in the case of OA 952/1986 was given before the resolution of the Parliament. The Hon'ble Supreme Court also stayed the implementation of the Award w.e.f. 22.9.1982. In view of this fact, the present application has no force.

7. The application is, therefore, dismissed leaving the parties to bear their own costs. However, it is made clear that the final decision by the Hon'ble Supreme Court in the SLP 14961/1989 will also govern the case of the present applicants.

J. P. Sharma
(J.P. SHARMA)
MEMBER (J)

24.12.91

D. K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A) 24/12/91