

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO. 3009/2004

New Delhi, this the 28th day of August, 2006

**HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

Ved Prakash Gupta,
S/o Shri Kunj Lal,
R/o House No.430, Laxmibai Nagar,
Delhi - 110 023
(By Advocate : Shri Arun Bhardwaj)

...APPLICANT

VERSUS

1. Union of India,
through Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi
2. The Director General of Works,
CPWD,
Nirman Bhawan, New Delhi
3. The Executive Engineer (Electrical),
ECD-V, CPWD,
Pushpa Bhawan,
New Delhi - 110 062
(By Advocate : Shri N.S. Dalal)

...RESPONDENTS

ORDER (Oral)

By Mukesh Kumar Gupta, Member (J):

By present OA, challenge has been made to Office Order dated 06.04.2004 directing to recover Rs.80,267/- from applicant consequent upon re-fixation of pay w.e.f. 01.01.1986 31.03.2004 as ordered vide order dated 24.03.2004 along with subsequent orders dated 30.06.2004 and 26.10.2004, which had been issued pursuant to aforesaid order dated 06.04.2004. He also seeks direction to Respondents to accept his option and re-fix his pay from date of his joining CPWD with benefit of subsequent upward revision of scale and consequential benefits, in terms of Hon'ble Supreme Court order dated

25.02.2004 in Civil Appeal Nos.10883-10892 of 1996, **Union of India & Ors vs Nek Ram & Ors.**

2. Factual matrix of the case is that he was appointed as Section Officer/Overseer in the State of Punjab. Thereafter, in 1971 he joined as Junior Engineer with Beas Construction Board. In the year 1985, Beas project was over and staff had been declared surplus. Accordingly, he was redeployed as Junior Engineer in CPWD on 15.04.1985. On 15.06.1985 he submitted his option for Central scale of pay in terms of DOP&T's OM dated 27.02.1985. In Beas project he was in the scale of Rs.700-1200/-, while in CPWD his pay was fixed in pay scale of Rs.425-700/- though his earlier pay was fully protected. On 22.12.1986, his pay was reduced from Rs.910/- to Rs.710/-, which was protested by him. On 10.01.1992 accepting his request, his pay was increased by Rs.200/- treating it as Dearness Pay, i.e. without allowances. On 24.03.2004, Respondents passed impugned order, reducing his pay as well as ordering recovery of Rs.80,267/-. He attained age of superannuation on 31.12.2004, during pendency of OA. It is contended that he had not been granted benefit of subsequent OM dated 20.10.1987 vide which fresh option was made available. Identical issues came up for consideration before Chandigarh Bench of this Tribunal in OA No. 784/PB/2001 – **Subash Chander & Ors vs. Union of India & Ors.**, which was allowed on 07.10.2002. Said order, in fact, followed earlier judgment dated 09.02.2000 in OA No. 253/CH/91 – **Bharat Bhushan & Ors vs Union of India & Ors.** It is contended that said judgments had been implemented by All India Radio, Chandigarh vide order dated 24.07.2003 as well as Ministry of Statistics & Programme

Implementation, National Sample Survey Organization order dated 20.11.2002. 20

3. Shri Arun Bhardwaj, learned counsel for applicant further contended that same issue had been agitated & carried before the Hon'ble Supreme Court vide Civil Appeal No.10883-10892 of 1996 ***Union of India & Ors. vs. Nek Ram & Ors*** and the Hon'ble apex Court upheld decision of Chandigarh Bench of the Tribunal. In said case, the officials were allowed to continue to get last emoluments in scale of pay drawn in Beas Construction Board, who have been redeployed in Central Govt. Offices/other organizations. Therefore, it was prayed that he would be satisfied if Respondents are directed to follow said judgments in his case also and he is allowed to exercise option in terms of DOP&T OM dated 20.10.1987 dealing with fixation of pay under CCS (Revised) Pay Rules, 1986 in respect of redeployed surplus staff of Beas Construction Board.

4. Respondents resisted the claim laid by filing their reply, stating that he was redeployed in CPWD as JE(E) on 15.04.1985 in pay scale of Rs.425-700/-. In the year 1973, pay scale in Punjab Government (as adopted by Beas Construction Board) in respect of applicant was Rs.200-450/-, which was revised to Rs.700-1200/- w.e.f. 01.01.1978. The Central Government scale during that period for post of J.E. in CPWD was Rs.425-700/-. Owing to difference in pay scale and dearness allowance etc under the Punjab Government, as compared to Central Govt. employees, it was not practicably possible to fix pay of employees of Beas Construction Board on point to point basis under the Central Government. The pay scale in vogue in Beas Construction Board since 1.1.1978 had been arrived at by merger of dearness allowance upto Consumer Price Index (CPI) points upto 320. As

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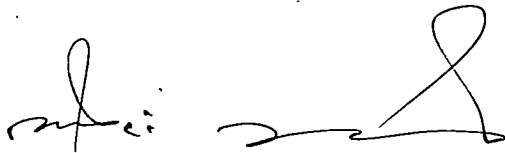
compared to it, pay scale in the Central Government departments was revised w.e.f. 1.1.1973 by merging dearness allowance element only upto 200 points of CPI. He exercised his option on 15.06.1985 to switch over to Central scale of pay w.e.f. 1.4.1985, i.e. date of his joining in CPWD. Further clarifications were issued by DOP&T vide OMs dated 20.10.1987 and 05.01.1988. It is in the light of these OMs, his pay had been fixed. His pay was fixed by E.E., Parliament Works Electric Division vide office order dated 10.01.1992 in pay scale of Rs.1400-2300/-, contrary to instructions of DOP&T. The internal audit party, which conducted internal inspection in November 2001, pointed out irregularities committed in his pay fixation and stated that element of D.A. of Rs.191.55 had been wrongly added twice, which resulted in wrong fixation of his pay. As such, the mistake committed has been rectified, which is permissible under the law, was stated in the reply.

5. We heard learned counsel for parties and perused pleadings on record carefully.

6. Shri Arun Bhardwaj, learned counsel pointed out that recoveries have been effected retrospectively, i.e. w.e.f. 1.1.1986, after a gap of almost 18 years, which is not permissible under the law. In any case, learned counsel contended that, as in similar circumstances, the Chandigarh Bench of this Tribunal had passed orders, as noticed hereinabove, which had been upheld by the Hon'ble Supreme Court on 25.02.2004 in **Union of India vs. Nek Ram** (supra), he be allowed option in terms of DOP&T OM dated 20.10.1987. Shri N.S. Dalal, learned counsel for Respondents, contended that if applicant seeks extension of aforesaid judgment, he should have withdrawn the OA and made a representation to concerned department. If such course of action is followed, learned counsel assured that his request will be

considered dispassionately and objectively. It was not denied by Respondents that aforementioned Judgment has attained finality, but ambiguity remains whether he would be entitled to the benefit of such judgment or not. Since the offer has come from Respondents that if a representation is made, as suggested hereinabove, it will be considered fairly & objectively and as applicant has already retired on attaining age of superannuation w.e.f. 31.12.2004, we dispose of present OA with direction that if applicant makes a comprehensive representation to Respondents, detailing each aspect, within a reasonable time, say four weeks, from the date of receipt of a copy of this order, Respondents should consider it keeping in view the law laid by Chandigarh Bench of this Tribunal, and as up held by the Hon'ble Supreme Court. This exercise shall be completed within a period of three months from the date of receipt of such a representation. We may also note the assurance given by learned counsel for Respondents that till such time a decision is taken on the representation to be made, remaining recovery, if any, will not be effected.

7. In view of the above observations, OA is disposed of. No costs.


(Mukesh Kumar Gupta)
Member (J)


(V.K. Majotra)
Vice Chairman (A)

28-8-06

/PKR/