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Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.1211/2004

With

O.A.No.1213/2004

New Delhi, this the 11th day of February, 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member(A)

O.A.1211/2004

N. Rajagopalan,
S/o Shri G.D. Bhatt,
Flat No.16, Plot No.115,
Kurmanchal Niketan,
I.P. Extension,
New Delhi-55

....Applicant

(By Advocate: Shri L.R. Luthra, proxy for Shri Rajinder Nischal)

O.A.1213/2004

Shri G.D. Bhatt,
Flat No.16, Plot No.115,
Kurmanchal Niketan,
I.P. Extension,
New Delhi-55

....Applicant

(By Advocate: Shri L.R. Luthra, proxy for Shri Rajinder Nischal)

Versus

1. Union of India,
Through Secretary,
Ministry of Disinvestment,
CGO Complex, Block 14,
New Delhi-3



2. Public Sector Disinvestment Commission,
Through its Member-Secretary,
Trikoot-I, Bhikaji Cama Place,
R.K. Puram, New Delhi

....Respondents

(By Advocate: Shri R.N. Singh, proxy for Shri R.V. Sinha)

Order(Oral)

Justice V.S. Aggarwal, Chairman

By this common order, we propose to dispose of two Original Applications namely O.A. No.1211/2004 and O.A.No.1213/2004. For the sake of convenience, we are taking the facts from O.A.No.1211/2004, in the case of N. Rajagopalan vs. Union of India.

2. The admitted facts are that the applicants had superannuated after serving the respondent no.1. Public Sector Disinvestment Commission (for short 'PCDC') had been formed. On 25.2.97, an order was issued that applicant is proposed to be appointed as Private Secretary in the PCDC on consolidated salary basis. His appointment was co-terminus with the tenure of Chairman, Disinvestment Commission. The said order reads:

"It is proposed to appoint Sh. N. Rajagopalan as Private Secretary in the Disinvestment Commission on consolidated salary basis, co-terminus with the tenure of Chairman, Disinvestment Commission (Sh. G.V. Ramakrishna) or till he desires his services, whichever is earlier. If these terms are acceptable to him, he is requested to furnish his willingness immediately.

Sd/-
(C.C. Unnikrishnan)
Under Secretary to the Govt. of India
Tel.No.436062"





The said offer was accepted by the applicant.

3. It was followed by an order dated 3.3.97 whereby the applicant's consolidated salary from 27.11.96 was fixed at Rs.7700/- per month.

4. It is a common case of the parties that though the consolidated salary was fixed at Rs.7700/- but thereafter, it had been reduced to Rs.5670/-.

5. It is these facts which prompted the applicants to file the present application in this Tribunal, contending that the fixation by virtue of which their salary had been reduced, cannot be sustained. They seek that they are entitled to the amount which was fixed by contract and arrears should be paid to them.

6. The plea of the respondents is that after the implementation of the recommendations of 5th Central Pay Commission, the consolidated salary of the applicants was re-fixed at Rs.5670/- in the revised pay scale of Rs.6500-10500/-.

7. We have no hesitation in rejecting the said contention. While giving resume of the facts, it had been made clear that applicants had been appointed on contractual basis. Thereafter, their consolidated salary was fixed at Rs.7700/-. In the absence of any fresh contract, the salary could not have been reduced. Since the salary had not been fixed in any pay scale and it was a consolidated amount based on a contract,



the recommendations of the 5th Central Pay Commission, in any case, had nothing to do with the same.

8. Furthermore, the salary has been reduced even without any notice to the applicants in this regard.

9. Taking stock of these facts, the order reducing the salary of the applicants cannot be sustained.

10. The respondents however pointed that salary was reduced in February, 1997 in case of N. Rajagopalan and in March, 1997 in the case of G.D. Bhatt and, therefore, the arrears have become time barred.

11. We do not dispute the said proposition but the ratio deci dendi of the Supreme Court decision in the case of M.R. Gupta vs. Union of India and others, (1995) 5 SCC 628 will come into play. Since it is a continuous cause, the petition cannot be taken to be barred by time. The relief necessarily has to be couched in terms of the language that the amount which was not legally recoverable, should be paid to the applicants.

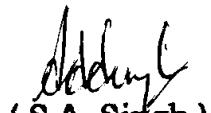
12. Resultantly, we dispose of the present petition directing that the applicants are entitled to the consolidated salary of Rs.7700/- per month. The reduction made is not justified. The applicants should be paid the arrears for a period of three years before filing of the present

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application, till they demitted the office.


(S.A. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

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