

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 1993/2004

New Delhi this the 1st day of March, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

Shri Kishan Lal,
S/O Shri Parshadi Lal,
R/O B-2B/90, Janakpuri,
New Delhi.

....Applicant

(By Advocate Shri S.C.Singhal)

VERSUS

1. Govt.of NCT of Delhi
Players Building, Secretariat,
New Delhi
2. Director of Education,
through Chief Secretary,
Govt.of NCT of Delhi,
Old Secretariat, Delhi.
3. Pay and Accounts Officer,
Office of Pay and Accounts No. XX,
MISC,
Govt. of NCT of Delhi,
DTC Depot, Maya Puri,
New Delhi.

...Respondents

(By Advocate Shri Vijay Pandita)

O R D E R (ORAL)

By this O.A. applicant has challenged the order whereby an amount of Rs, 88,098/- has been deducted from his gratuity without giving him any notice or putting him on show cause notice. He has thus sought a direction to the respondents to pay him the said amount of Rs. 88,098/- along with interest as applicable and to re-fix his pension as per the last drawn basic pay of Rs.10,700/-.



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2. It is submitted by the applicant that he was working as Language Teacher in 1985 and was drawing the maximum salary of Rs.750/-. He was given three stagnation increments @ Rs.25/- each, therefore, he was having the fixed salary of Rs. 825/- in 1997. Applicant was granted selection grade with retrospective effect and his pay was accordingly fixed. He was drawing the basic pay of Rs.10,700/- at the time he retired on 31.03.2004.

3. At the time of his retirement, an amount of Rs. 88,098/- was withdrawn, which is evident from page 15 as the gratuity amount sanctioned was Rs.2,78,933/- but after deducting Rs.88,098/- he was informed that the amount payable would be Rs.1,90,835/-.

4. It is submitted by the applicant that no show cause notice was given to him but orally he was informed that his pay was fixed wrongly on 1.4.1985. It is submitted by the applicant that they could not have re-fixed his pay after about 20 years or recover the amount from him, that too without giving him any show cause notice. He even gave a legal notice but no reply was given to it. Therefore, he had no other option but to file the present O.A.

5. Respondents on the other hand have submitted that at the time of his retirement, PAO-XX raised objection regarding the fixation of pay of Shri Kishan Lal (applicant) by stating that his pay was wrongly fixed at Rs. 845/- on 1.4.1985 even though the arrears bill of pay regarding the above mentioned was passed without raising any objection in 1997 and the amount of arrears was paid to the official concerned. Accordingly, his pay was re-fixed and his service book was resubmitted to the PAO but they again raised objection vide their letter dated 8.4.2004 and asked the Department to clarify as to how the Department had given the benefit of personal pay. Accordingly, the pay of official was fixed under the direction of the PAO and his pensionary benefits were released after withholding an amount of Rs.88098/- as advised by the PAO for adjustment of



recovery. They have also tried to show how applicant's pay was wrongly fixed. They have thus submitted that there is no merit in the O.A. The same may accordingly be dismissed.

6. We have heard both the counsel and perused the pleadings as well.

7. It is now too well settled that once the pay has been fixed by the Department without any misrepresentation made by the officer concerned and he has been paid the amount on the basis of said fixation of pay, the same cannot be recovered arbitrarily without giving show cause notice to the person concerned. In this connection, I would like to refer to the following judgments of the Hon'ble Supreme Court:

(1) Sahibram Vs. State of Haryana and Ors. (1995 (Supp.1) SCC 18). In this case, upgraded pay scale was given to the Librarians which was later on held to be not admissible to them, so the Department was making the recovery of excess payment, which was challenged by the appellant. Hon'ble Supreme Court held that Librarian, who was not passing the requisite educational qualifications, although appointed prior to the specified date, was not entitled to the benefit of relaxation yet since upgraded scale was given due to wrong construction of the order by the authority concerned without any misrepresentation by the employee, in such circumstances recovery of the payment already made was restrained.

(2) In the case of Shyam Babu Verma and Ors. Vs. Union of India & Ors. (1994 (2) SCC 521) wherein higher pay scale was erroneously given to the petitioners since 1973 and the same was reduced in 1984, it was held that since petitioners received the higher pay scale due to no fault of theirs, it would not be just and proper to recover the excess amount already paid to them.



- (3) In the case of State of Rajasthan Vs. R. Dayal & Ors. (1997 (10) SCC 419) where promotion was erroneously given to the respondents therein and they had already been given the benefit of the said promotional post by applying wrong eligibility criteria, though their appointment was quashed but Hon'ble Supreme Court held that the benefits already availed of by them should not be taken back except the seniority which was to be determined according to the revised panel.
- (4) In the case of Bhagwan Shukla Vs. Union of India and Ors. (JT 1994 (5) SC 253) where the pay of appellant therein was reduced without giving him any opportunity of being heard, the Tribunal had dismissed the O.A. but Hon'ble Supreme Court on appeal held as follows:

"The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a fragrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter".

The appeal was allowed and the order of the Tribunal was set aside.

The order dated 25.7.1991 reducing the basic pay of the appellant from Rs. 190/- to Rs. 181/- w.e.f. 18.12.1970 was also quashed.

8. In view of the above judgments, it is clear that since the pay of the applicant had already been fixed by the Department itself and he had already been paid the arrears also after the PAO had given its concurrence in 1997, naturally at the fag end of his career his pay could not have been reduced



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arbitrarily without giving him show cause notice. Therefore, the action of the respondents in withholding the amount of Rs.88098/- from his gratuity is held to be wrong and bad in law. However, since these are the facts which can only be explained by the applicant to the Department, therefore, the matter is remitted back to the authorities concerned to do the needful within a period of three months from the date of receipt of a copy of this order, by following due process of law and by keeping in mind the judgments as referred to above in Para 7 (1) to (4).

9. With the above directions, the O.A. is disposed of. No order as to costs.



(MRS. MEERA CHHIBBER)
MEMBER (j)

'SRD'

from MBS