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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

CP No. 281/2009

in

OA No. 2863/2004

New Delhi this the 16th day of July, 2009

**Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J)
Hon'ble Mr. Shailendra Pandey, Member (A)**

K.M. Sebastian (Konikkara Mathew Sebastian)
S/o Konikkara Vavu Mathew,
Retd. Director General, Defence Estates,
Ministry of Defence, Konikkara House,
132, Hill Gardens, Kuttanellur,
Thrissur-680014.

... Applicant

(By Advocate Shri Rajat Gaur)

VERSUS

1. Shri Vijay Singh,
Secretary, Ministry of Defence,
South Block, New Delhi-110011
(Respondent No.1 in OA 2863/2004)
2. Shri M.P. Singh,
Director (PP),
Department of Pensions & Pensioners Welfare
Representing
Secretary,
Department of Pensions & Pensions Welfare,
Lok Nayak Bhawan, New Delhi-110003
(Respondent 2 in OA 2863/2004)
3. Shri T. P. Mandal,
Retired Principal CDA (Pensions),
C-2/23 Kendriya Vihar,
VIP Road, Kolkata-700052.
(Respondents 3,4 & 5 in OA 2863/2004)
4. A. K. Chopra,
Principal CDA (Pensions),
Draupadi Ghat, Allahabad-211014.
(Respondents 3,4 & 5 in OA 2863/2004)
5. Smt. Bulbul Ghosh,
Controller General Defence Accounts,
Ministry of Defence,
West Block V, Sector 1,
R. K. Puram, New Delhi-66
(Respondent 5 in OA 2863/2004)

6. Manager,
Syndicate Bank,
Palace Road, Thrissur 680020
(Respondents 11 in OA 2863/2004)

... Respondents

O R D E R

(Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J) :

We had heard Mr. Rajat Gaur, learned counsel appearing on behalf of the applicant. He had referred to judgment in OA 2863/2004 dated 20.5.2005; applicant was the 5th applicant in the OA. In the matter of fixation of pension, a clarificatory memo. was issued by the Government on 11.5.2001 in respect of the officers on the basis of scale of pay last held by them regardless of the post held.

2. Delhi High Court in Writ Petition (Civil) 678/2003 had earlier held that such an order modifying OM dated 17.12.1998 could not have been possible to be given effect to. In view of the decision as above, challenge by the applicants was upheld and it was specifically declared that the reduction in pension of persons like the applicant from Rs.13000/- per month was to be set aside. Applicant's pension was to be restored.

3. The direction of the Bench of the direction had been extended to the applicant, and he was being paid pension at Rs.13000/- p.m. The decision in OA was not challenged. However, later, now, Appendix P-2 produced here made at the instance of the office of the respondents directed the disbursing Bank to reduce the pension which was being drawn ^{from} by the Bank.

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Applicant submits that direction of the Tribunal stands washed away because of the above. Therefore, on the strength of the Supreme Court judgment cited, it is pleaded that this would have been impermissible so long as the order was not modified. The effect of an order could not have been tinkered by the administration and the fall out of the direction as above was contumacious conduct, which is actionable.

4. However, we do not think that a technical view could be accepted, since Appendix C which was addressed to applicant on 28.5.2007 indicate that such proposal for reduction in the pension has been brought to his notice and it was for valid reason. It would be noticed that by judgment dated 23.11.2006, the Supreme Court had upheld Office Memo. of 11.5.2001, and the judgment of the Delhi High Court had been set aside. In fact the communication shows that the Supreme Court was cautious while dealing with the issue, viz that notwithstanding the declaration of law, claims should not subsist. Judgments of all other High Courts and Tribunals holding OM as null and void was declared as superseded by the judgment of the Supreme Court.

5. In view of the position as above, the applicant is ill advised in filing the present application. In fact it would have been contumacious conduct on his part to present this application as the directions of the Supreme Court are attempted to be got

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around. The declaration earlier obtained by him cannot be considered as in force now. Therefore, application has no merit and is dismissed in limine.


(Shailendra Pandey)
Member (A)


(M. Ramachandran)
Vice Chairman (J)

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