

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 1575/92  
MP No. 2669/92

New Delhi this the 18th Day of July 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

Shri R.M. Singh,  
Son of Late Shri T.S. Verma  
Junior Scientific Officer,  
D.I.P.R.,  
Department of Defence Research & Dev.,  
Ministry of Defence,  
West Block 8 (IInd Floor),  
R.K.Puram, New Delhi.

2. Shri H.L. Tamta,  
son of Shri Kishori Lal Tamta,  
working as Senior Scientific Assistant,  
Directorate of Standardisation Department of  
Defence Research & Development,  
Ministry of Defence,  
New Delhi.

3 Shri S.N.Arora,  
Son of Late Shri Laxman Das,  
Senior Scientific Assistant  
Dte. of Manpower Dev. R&D Hq  
Dept. of Defence & Research Del.  
New Delhi.

(By Advocate Shri R.P. Obroi)

Vs.

1. Union of India,  
Secretary, Dept. of Defence Research  
& Development,  
Ministry of Defence, South Block,

2. Chief Admn. Officer, Min.of Defence,  
C-II Hutmants,  
New Delhi.

3. Controller of Defence Accounts (HQ)  
Ministry of Defence, New Delhi.  
(Dept. Representative Shri M.S. Ramaloingan)

O R D E R (ORAL)

Hon'ble Shri J.P. Sharma, Member (J)

The applicant no. 1 at the time of filing of

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this application was working as Junior Scientific Officer and applicant Nos. 2 & 3 were working as Senior Scientific Officer in different wings of different Research & Development Organisations. They had a common grievance against the order dated 28.2.1991 (Annexure I) by which the fixation of pay of applicant no. 1 & 2 Shri R.M. Sinha, SSA and Shri H.L. Tamta, SSA has been done. There is no order with respect to applicant no. 3 Shri S.N. Arora. Applicant No. 1 and others filed earlier OA-1072/91 which was dismissed by the Principal Bench by its order dated 24.12.1991 with the observation that final decision of the Hon'ble Supreme Court in the SLP 14961/89 will also govern the case of the applicants. The applicants have filed the present application on the ground that the aforesaid SLP has been dismissed hence the cause of action for filing this application and also on account of the fact that alleged recovery of over payment has been commenced from the pay bills of the applicants for the month of April 1992. The relief claimed by the applicants are in Para 8 in sub-paras(a) to (f) which are reproduced below:

(a) This Hon'ble Tribunal be graciously pleased to quash the impugned order - Daily Order Part II dated 28.2.1991 (Annexure I) issued by respondent No. 2 so far it relates to refixation of pay of applicants No. 1 & 2.

(b) This Hon'ble Tribunal be also graciously pleased to issue appropriate orders/instructions/directions to the respondents that a similar order regarding refixation of pay issued in respect of applicant No.3 shall also be deemed to have been quashed.

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respondents refix the pay of the applicants in the pay scales of Rs. 840-1040 and Rs. 2375-3500 in terms of the award of the Board of Arbitration which is effective from 22.9.1982.

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(d) The respondents be directed to prepare the dues and drawn statements after refixation of pay of the applicants and to furnish copies of the same to the applicants for verification of the same and to carry out adjustments of accounts/liabilities in accordance therewith after giving due credit for the amount of interest on delayed payment to which the applicants are entitled in Hon'ble of the judgements/order of this Hon'ble Tribunal dated 10.8.1989.

(e) The applicants be awarded the cost of this application.

(f) Any other reliefs which this Hon'ble Tribunal deemed fit, proper, appropriate just and fair on the facts

The matter came before the Bench on 15.6.1992 before the Vacation Judge when it was ordered that no recovery should be effected from the salary bill of the applicant in pursuance of the impugned order dated 28.2.1991 by the order dated 15.6.1992. This order continues and has been vacated by the Order dated 10.6.1994 after the decision of the Hon'ble Supreme Court in an analogous similar matter involving the same issue of adjudication in Civil Appeal No. 3954/90 Union of India and Ors. Vs. Scientific Workers Association (Registered) Kanpur and Ors. with SLP Civil Nos. 14920/92, 2090/93, and CC 21832/93.

The respondents contested this application by filing a reply and the applicants have filed the rejoinder reiterating the averments made in the OA. We heard the

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learned counsel for the applicant at length Shri R.P. Obroi and Shri S.C. Saxena and Departmental Representative Shri M.S. Ramalingam for the respondents.

The learned counsel gave a statement at the Bar that in view of the decision of the Hon'ble Supreme Court referred to above sub-para (a), (b) & (c) of Para 8 of the relief clause cannot be pressed and therefore he is giving up those reliefs in view of the fact that the Hon'ble Supreme Court in its detailed judgement, a copy of which has been placed on file granted the benefit to applicant and similarly situated employees in terms of the Award of the Board of Arbitration with effect from 1.1.1099. The learned counsel for the applicants, however, clarified his statement that a review is pending against the judgement before the Apex Court on certain grounds. We have taken that fact into account.

The learned counsel for the applicants press only sub-paras (d) (e) & (f) of Para 8 of the relief clause. Sub-para (e) with regard to the cost of the Award but in view of the reasonings we are detailing hereinafter the applicants are not entitled to Award of any cost. Regarding sub-para (f) of the relief clause we do not find any equitable relief in the circumstances of the case available to the applicants on which a direction can be issued to the respondents. Thus, these reliefs cannot be allowed favourable to the applicants.

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Regarding the relief in sub-para (d), the learned counsel for the applicants Shri R.P. Obroi has taken us to abnormal length during the course of the arguments regarding adjustment by way of interest on the amount which remained suspended from payment to the applicant by virtue of the order passed in OA 952/86 by the order dated 10.8.1989 which gave three directions to the respondenets to be complied in favour of the applicants viz that the date of implemenmtation of the arbitration award of Board of Arbitration is 22.9.1982 and the petitioners of that case shall be entitled to the arrears of enhanced fixation of pay by virtue of implementation of that Award and that amount of such short payment be paid with 10% interest till the date of payment. It is this 10% interest which is referred to in sub-para (d) of Para 8 of the relief clause.

We do not find any reason or any force in the contention that unpaid interest is liable to be set off against payments now being recovered on account of the directions tabled above by the Principal Bench of Central Administrative Tribunal having been quashed and set aside by the judgement of the Hon'ble Supreme Court of March 18, 1994. The relief to this extent prayed for is not justifiable and is not also due to the applicants and has been erroneously claimed by them because that amount was never due to them as held ultimately in the order of the Hon'ble Supreme Court as it is ultimately held that amount was never due, the question of any interest on such amount does not arise at all.

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In the earlier part of the same sub-clause (d) of para 8 of the relief clause, the applicants have sought direction to the respondents that they should be furnished with a statement of re-fixation of their pay. In this connection the departmental representative has rightly pointed out to undenied para 4.19 of the O.A where the amount against applicant no. 1 is shown as Rs.

49,368/-, against the applicant No. 2 Rs.16,000 and against the applicant no. 3, Rs. 36,807/- respectively. When the applicants have themselves admitted on verification this averment in the O.A. it goes to show that they have knowledge of the amount over-paid to them and liable to be recovered. The learned counsel, however, emphatically press that the respondents be directed to give a show cause notice before effecting any recovery from the monthly salary of the applicants on account of excess payment to them in pursuance of the order dated 10.8.1989 passed in O.A. No. 952/86 as well as in review petition against the same decided on 10.4.1990. All these orders has been quashed and set aside by the judgement of the Hon'ble Supreme Court of 8.3.1994. Thus, the excess is recoverable. The applicants cannot claim any show cause notice as the respondents are not passing any new order or withdrawing any benefit which was made earlier admissible to them. On the other hand, the respondents are carrying out the effect of the order of the Hon'ble Supreme Court on 18.3.1994 in the same manner as the applicants had earlier pressed for carrying out the directions of the quashed order passed by the Tribunal on 10.8.1989. In view of

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this no show cause notice is required. The learned counsel for the applicants, however, referred to a decision of C.S. Bedi reported in ATR 1988(2) CAT P 510 and 1988(6) ATC 550 Shada Shiv 1991(1) SLJ 510 CAT Nayyar's case.

All these cases referred to above are solely based on the facts where there was earlier fixation of pay by which the petitioners of that case were given more pay which was subsequently found to be fixed inadvertently thereby excess payment having paid to the petitioners and therefore orders for recovering that amount paid in excess by virtue of the subsequent order was passed. The Principal Bench observed that any order disadvantageous to a person could only be done after hearing that person. Here the case is different. Here the applicants are made to reimburse the amount paid to them under the judgement which is now a nullity having been quashed by the Hon'ble Supreme Court by the order dated 18.3.1994. If this perception is accepted then the principle of natural justice has been extended to that extent where severe injustice would be the likely result. Thus, we do not accept the contention of the learned counsel that any show cause notice in the present case is required.

Nothing else has been pressed before us. We are mindful of our position in this case as the applicants had harboured certain apprehensions which were figment of imagination and had been rightly turned out by the Hon'ble

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Chairman. We have fairly dealt with the matter hearingg the learned counsel at length extending the sitting of this Bench also for about half an hour.

However, before parting with this case the learned counsellm Shri R.P. Obrai also emphasised that the respondents while recovering the amount would consider that the instalments are not so heavily fixed as to leave

the applicants in a state of penury. We hope and trust that the respondents will accommodate the applicants keeping their actual date of superannuation.

The case is dismissed leaving the parties to bear their own costs.

  
(B.K. Singh)  
Member (A)

  
(J.P. Sharma)  
Member (J\_)