

In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No.3326/92

Date of decision:19.02.93.

Shri R.K. Tandon

....Petitioner

Versus

Union of India through the
Joint Secretary (A) and the
Chief Administrative Officer,
Ministry of Defence and
Another

....Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner

Shri K.V.S.Rajan, Counsel.

For the respondents

Shri K.S.Dhingra, Counsel.

Judgement(Oral)

Heard the learned counsel for both the
parties.

2. The short point involved in this O.A. is that the petitioner was fixed w.e.f. 3.5.1976 in the pay scale of Rs.425-700 vide order dated 25.9.1989. It was, however, found that the petitioner was not eligible for fixation in the pay scale of Rs.425-700 in accordance with the OM dated 11.9.1987 issued by the Ministry of Finance (Department of Expenditure). The relevant part of the said OM reads:-

"3. The question of extension of the benefit of the judgement of the Supreme Court to the similarly placed Draughtsmen in other Ministres/Departments of the Government of India has been under consideration of the Government. President is now pleased to decide that the Draughtsmen as were in the pay scale of Rs.205.280 prior to 1.1.1973 and were placed in the scale of Rs.330-560 based on the recommendations of the

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Third Central Pay Commission as referred to in para 1 above, may be given the scale of Rs.425-700 notionally from 1.1.1973 and actually from 1.9.1987."

3. The learned counsel for the petitioner concedes that the claim of the petitioner was based on the Ministry of Finance, Department of Expenditure's OM referred to above. The stand of the respondents is that the petitioner was not in the pay scale of Rs.205-280 prior to 1.1.1973 and accordingly, he was entitled to be fixed in the scale of Rs.330-560 and not in the pay scale of Rs.425-700. It is not disputed by the petitioner that he was not in the pay scale of Rs.205-280 on or before 1.1.1973. In this situation the respondents are entitled to rectify the mistake which was committed by them in September, 1989. The learned counsel for the petitioner, however, submits that the respondents should be restrained from effecting the recovery of the amount already paid to the petitioner. He makes this claim on the basis of the Government of India's order No.4 appearing under Rule-17 of Delegation of Financial Powers (Muthuswamy's compilation, 1st August, 1987 Edition). According to this order once a particular payment, which is of recurring nature, is considered inadmissible by audit, continuation of the payment pending a decision by the competent authority involves the risk of increasing the amount of recoverable overpayments. It, therefore, stipulates that the audit point of view should ordinarily be provisionally accepted, pending the final decision of the competent authority. In my view this letter is of no help to the petitioner, as the intention of the instructions is to restrict the amount

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(SF)

of over-payment to the minimum possible to obviate hardship to the employee at a later stage. In the circumstances this relief cannot be granted to the petitioner. Other reliefs claimed in the O.A. were not pressed by the learned counsel for the petitioner.

4. Keeping in view the facts and circumstances of the case, I am not persuaded to accept that the payment made by wrong fixation cannot be rectified by the respondents. The O.A. is, therefore, devoid of merit and is dismissed. No costs.

De Lappha
(I.K. Rasgotra)

Member (A)

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