

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.Dated : This the 09th day of DECEMBER 2002.original Application no. 229 of 1997.Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman
Hon'ble Mr. Govindan S. Tampi, Administrative Member.

1. Arjun Kumar Singh,
S/o B.L. Singh,
R/o Plot No. 69, Kunj Bihari,
Yasodanagar,
KANPUR.
2. Chandra Has Singh,
S/o Late Rajju Singh,
R/o Plot No. 81, Kunj Bihari,
Yasodanagar,
KANPUR.
3. Surendra Bahadur Singh,
S/o Late Chandra Pal Singh,
R/o Maswanpur, Naibasti,
Plot No. 524,
KANPUR.

... Applicants

By Adv : Shri H. Zaidi

Versus

1. Union of India, through Secretary of Defence,
NEW DELHI.
2. General Manager, Ordnance Factories,
Kalpi Road,
KANPUR.
3. Deputy General Manager (Administration),
Ordnance Factory, Kalpi Road,
KANPUR.

... Respondents.

By Adv : Shri Amit Sthalekar

O R D E RHon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman.

By this O.A., filed under section 19 of the A.T.

Act, 1985, the applicants have challenged order dated 5.7.1997 and have prayed to direct the respondents to give increments due to the applicants. It has also been prayed that the

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amount deducted by the department in violation of due order dated 4.6.1996 and 10.3.1997 may be repaid to the applicant without any further delay.

2. The facts of the case are that the applicants are ex-servicemen. They retired before attaining the age of 55 years and they were re-employed in Ordnance Factory, Kanpur as Fire-men Gr. II. The salary of the applicants was fixed in the pay scale of Rs. 200-250 and the pay was fixed adding the increments, in case of applicant no. 1, Arjun Kumar Singh at Rs. 246, in case of Shri Chandra Has Singh at Rs. 230/- and in case of Shri Surendra Bahadur Singh at Rs. 238/-. The above amount included the increments ~~of each~~ equivalent to years of service rendered by the applicants in the Army in terms of OM dated 30.8.1978 and 30.8.1982 issued by Ministry of Defence, New Delhi. This revised fixation of pay was approved by Controller of Account, Calcutta vide order dated 10.8.1989 and 20.9.1989. However, subsequently, it was realised that the revised pay was erroneously approved and was communicated vide letter dated 13.1.1992. The earlier orders dated 10.8.1989 and 20.9.1989 were cancelled and refixation of pay was proposed as per Ministry of Defence OM dated 8.2.1983. Under this OM dated 8.2.1983 the entire pension was to be ignored, but the applicants were not entitled for any increment regarding the service rendered in Army at the time of fixation of pay. In pursuance of the Controller's letter dated 13.1.1992, an order dated 10.12.1993 was passed reducing the salary of the applicants and directing the recovery of the amounts wrongly paid, which was challenged in OA no. 17 of 1994 before this Tribunal and was decided on 4.6.1996 by the following order:-

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orders :-

" On the consideration of the facts, I come to the conclusion that the impugned order of reduction of salary and recovery of excess amount, cannot be upheld. In case, the pay has not been properly fixed and the respondents want to refix, an opportunity should be given and after hearing the applicants, the step of refixation may be taken up. The O.A. is decided accordingly. No order as to costs."

In pursuance of the aforesaid direction of this Tribunal, the respondents have passed order dated 05.02.1997 (Ann A1).

3. Learned counsel for the applicant has submitted that the order has been passed ^{without} giving opportunity of hearing. However, in para 12 of the counter affidavit, it has been stated that in pursuance of the direction of this Tribunal, a letter dated 4.11.1996 asking applicants as to why their pay may not be fixed at the minimum of the pay scale of Firemen Gr II, ignoring advance increments already granted for the service rendered in the Army and recoveries of excess payments may not be initiated. The notice was served on the applicants giving them an opportunity of making representations. After considering the representation dated 13.11.1996, the order was passed on 5.2.1997. Thus from the aforesaid it is clear that the impugned order has been passed after the applicants were given opportunity of hearing and making a representation and the legality of the order cannot be challenged on this ground. Learned counsel for the applicant also could not demonstrate any error so far as the fixation of the salary is concerned."

4. Learned counsel for the applicant, however, submitted



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that the applicants were not responsible in any manner for mistake in refixation of salary, the amount already paid to them cannot be recovered. As held by Hon'ble Supreme Court in case of Shyam Babu Verma Versus Union of India and others 1994 (2) SCC 521.

to this extent, the submission of learned counsel for the applicant appears to be justified and the applicants are entitled for relief to this extent.

5. For the reasons stated above, this O.A. is partly allowed. The order dated 05.02.1997 impugned in this O.A. though is maintained. However, the portion directing the recovery of the amount from the applicants by deduction from their salary is quashed. If the amount has been recovered from the applicants, it shall be paid to them within a period of four months from the date of copy of this order is filed.

6. There shall be no order as to costs.

Member (A)

/pc/

Vice-Chairman