

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH, ALLAHABAD

Original Application No.947 of 1998

Allahabad, this the 3rd day of December, 2004

Hon'ble Shri M.P.Singh - Vice Chairman
Hon'ble Shri A.K.Bhatnagar - Judicial Member

Jeevan Lal Sonkar, aged about 46 years,
S/o late Shri Ram Prasad, R/o 48-A,
Barsaitpur, P.O.Kanpur University,
District-Kanpur Nagar

- APPLICANT

(By Advocate - Shri R.Verma)

Versus

1. Union of India through the
Secretary, Ministry of Defence,
New Delhi.

2. The General Manager, Field Gun Factory,
Kanpur

- RESPONDENTS

(By Advocate - Shri A.Mohiley)

ORDER

By M.P.Singh, Vice Chairman -

By filing this Original Application, the applicant
has claimed the following main reliefs :-

"(i) To issue a writ, order or direction in the nature of certiorari quashing Factory Order Part II No.1003 dated 28.8.1998 passed by the Respondent No.2, retixing the pay of the petitioner at Rs.4000 per month basic as on 1.1.1996 and thereby reducing the petitioner from Rs.4300/- to Rs.4000/- per month as the basic pay.

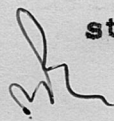
(ii) To issue a writ, order or direction in the nature of Mandamus directing the Respondent No.2 to restore the petitioner at Rs.4300/- basic as on 1.1.1996 as per Slab No.7 Model Table No.12 of the CCS(Revised Pay)Rules,1997.

(iii) To issue a writ, order or direction in the nature of Mandamus directing the Respondent No.2 not to make any recovery of the arrears paid to the petitioner as a result of fixation of pay in the revised pay scale of Rs.4000-6000/- amounting to Rs.11,206/-...."

2. The brief facts of the case are that the applicant has been working as Upper Division Clerk (for short 'UDC') in the old pay scale of Rs.1200-2040 and was drawing the basic pay of Rs.1380 in that pay scale as on 1.1.1996. As per the recommendations of the 5th Central Pay Commission, the old pay scale of Rs.1200-2040 has been revised to Rs.4000-6000. The pay of the applicant as per the new pay scale has been

revised at Rs.4300/- as per slab no.7 Model Table No.12 with effect from 1.1.1996. On 1.2.1996 the pay of the applicant was raised to Rs.4400/- after granting him one increment of Rs.100/-. The applicant has also been paid the arrears of Rs.11,206/- as a result of refixation of his pay. Suddenly by the impugned order dated 28.8.1998 respondent no.2 has refixed the pay of the applicant at the stage of Rs.4,000/- in the new pay scale of Rs.4000-6000 w.e.f. 1.1.1996, thus reducing his pay from Rs.4300/- to Rs.4000/-. The applicant has alleged that while passing the aforesaid order dated 28.8.1998, no reason has been disclosed to him and as such the impugned order is liable to be quashed and the applicant's pay is liable to be restored to Rs.4300/- as on 1.1.1996, and after granting him one increment of Rs.100/- at Rs.4400/- w.e.f. 1.2.1996. Hence this O.A.

3. The respondents in their reply have submitted that the applicant, who was working as UDC in M.M.F. Section of Field Gun Factory, Kalpi Road, Manpur had fraudulently booked extra over-time in respect of industrial workers of M.M.F. Section who were not present on duty on certain dates. A memorandum of charge under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 was issued to him. After finalising the enquiry held against him, a penalty of reduction to the post of Lower Division Clerk in the time scale of pay of Rs.950-20-1150-EB-25-1500 w.e.f. 04.06.92 until he is found fit by the competent authority for promotion to the higher post. It is further ordered that in the post of Lower Division Clerk said Shri Sonkar will draw pay at the minimum of the scale of pay with effect from the date of reduction and will earn annual increment from that stage. The seniority of said Shri Sonkar in the post of LDC will reckon from the date of reduction to the post of LDC. On repromotion to the post of Upper Division Clerk, if and when ordered, his seniority and pay shall not be restored to the stage at which it existed before reduction and shall be fixed



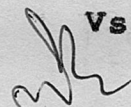
under normal rules as per date of such repromotion", vide order dated 3.6.1992 (Annexure-CA-6). The applicant preferred an appeal against the aforesaid order dated 3.6.1992 and the appellate authority vide its order dated 16th April, 1993 (Annexure-CA-8) has moderated the aforesaid penalty to the extent that "the currency of the penalty has been modified for a period of 2 years instead of indefinite period and the other conditions in the penalty order would remain unaltered". The applicant preferred a review-petition, which was rejected vide order dated 19.8.1998 (Annexure-CA-10). In the meanwhile, the applicant was promoted to the post of UDC w.e.f. 4.6.1994 vide order dated 5.6.1997 (Annexure-CA-11). The respondents have further stated that as the applicant was restored to the post of UDC w.e.f. 4.6.1994, his pay was required to be fixed at the minimum of the scale, which has now been done as per order dated 28.8.1998. The earlier fixation of the applicant on provisional basis at Rs.4300/- w.e.f. 1.1.1996, was wrong and hence it was disallowed by the audit authority and, therefore, the pay of the applicant has now been fixed correctly vide order dated 28.8.1998 and the present O.A. is liable to be dismissed.

4. ✓ Heard the learned counsel of both the parties.
5. ✓ The admitted facts of the case are that the applicant was working as UDC. While he was working as such in the pay scale of Rs.1200-2040, he was imposed a penalty of reduction to the post of LDC for indefinite period. However, this penalty was moderated by the appellate authority for a period of two years. The other conditions attached with the penalty imposed by the disciplinary authority remained the same. As per the order passed by the disciplinary authority the applicant was required to be restored to the minimum of the scale of UDC, and his pay and seniority was to be counted from the date he was restored. It is not in dispute that the



applicant was restored to the post of UDC on 4.6.1994 and his pay was, therefore, required to be fixed at the minimum of the scale of the UDC i.e. at Rs.1200/- from that date. The respondents had earlier restored his pay to the stage at which he was drawing at the time of imposition of the penalty and accordingly they had fixed his pay at Rs.4300/- w.e.f. 1.1.1996 which was not correct. They have now corrected the mistake and fixed his pay at the minimum of the scale of UDC at Rs.1200/- w.e.f. 4.6.1994 i.e. the date of his restoration of promotion to the post of UDC and subsequently they have fixed the pay in the revised pay scale accordingly. Thus, no illegality has been done by the respondents while fixing the pay of the applicant by the impugned order dated 28.8.1998 and the ^{same} is hereby upheld.

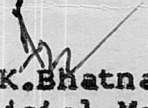
6. The applicant in the OA in para 5(b) has also contended that "the respondent no.2 has effected recovery of an amount of Rs.11,206/-". However, vide an interim order passed by this Tribunal on 22.9.1998, the said recovery has been stayed. The learned counsel for the applicant has argued that since in this case the applicant has not misrepresented the facts and the respondents themselves have fixed his pay at a higher stage at Rs.4300/- from 1.1.1996, the applicant cannot be penalised at this stage, by making recovery of the over-payment. In this regard, we may observe that the law has already been settled by the Hon'ble Supreme Court and various other Benches of the Tribunal. The Hon'ble Supreme Court in the case of Sahib Ram Vs. State of Haryana & others, 1995 SCC (L&S)248 has held that the revised pay scale has been paid to the appellant not on account of any misrepresentation made by him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. In the circumstances their Lordships ordered that the amount paid may not be recovered from the appellant in the said case. This judgment has been followed in various Benches of this Tribunal in the cases of R.B.Saxena Vs. Union of India & others, 1996(2)SLU (CAT)142; P.S.Jain Vs.

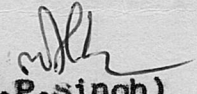


Union of India and others, 1996(3)SLJ (CAT)223; and
A.K.Agarwal Vs. Union of India and others, 2003(1)CAT(SLJ).

In the facts and circumstances of the case, we respectfully follow the aforesaid judgment of Hon'ble Supreme Court in the case of Sahib Ram (supra) and the respondents are directed not to make any recovery consequent to the pay fixation order dated 28.8.1998.

7. In the result, for the reasons stated above, the O.A. is partly allowed, with the directions as contained in the preceding paragraph. No costs.


(A.K. Bhatnagar)
Judicial Member


(M.P. Singh)
Vice Chairman

rkv.