

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

ORIGINAL APPLICATION NO. 1462 OF 2001.

ALLAHABAD THIS THE 2nd DAY OF August 2007

Hon'ble Mr. Justice Khem Karan, V.C.

Madhu Sudan Singh, son of Sri Varad Raj Singh, Resident of House No. B/76, Suraj Kund Colony, Gorakhpur.

.....Applicant

(By Advocate: Sri A.N Bhargava)

Versus.

1. Union of India, through Chairman, Central Board of Excise and Customs, North Block, Ministry of Finance (Revenue Department), New Delhi.
2. Commissioner, Custom and Central Excise, 38, M.G. Marg, Allahabad.
3. Pay and Accounts Officer, Central Excise Commissionerate 38 M.G. Marg, Allahabad.

.....Respondents

(By Advocate: Sri V.V. Mishra)

ORDER

Applicant, Madhu Sudan Singh, who was reemployed in Excise Department after retirement from Air Force on 4.9.1973 and who retired on 31.7.1996 from the service of respondents, has prayed for following relief(s):-

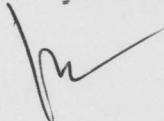
- "(i) Set aside the order dated 37.4.2001 (Annexure NO.1) passed by respondent NO.2 and to direct the same to pay the gratuity amount i.e. 43,931/- including interest i.e on the entire gratuity amount i.e. 43,811/- in favour of applicant.
- (ii) Direct the respondents to fix the pension of applicant as per salary drawn at the relevant period of retirement by ignoring the option by canceling the re-fixation of salary.
- (iii) Direct the respondents to pay all the unpaid consequential retiral benefits to applicant.



- (iv) To direct the respondents to pay the damages and compensation by Rs.5, 00,000/- to applicant as suffered mental agony due to illegal and harrasive act of respondents.
- (v) Cost of the application be also awarded by respondents to applicant".

2. His case, in brief is that after retirement from Air Force, he was reemployed as Ex-Arms Man in Excise Department in the year 1975 and was posted as Lower Divisional Clerk and after passing the necessary examination, was appointed as Upper Division Clerk in 1977. He says that his salary on the post of L.D.C and U.D.C was fixed as per Rules and in due course, he retired on 31.7.1996. He alleges that the respondents adopted dilly-dallying tactic in releasing post retiral benefits. According to him, respondent No.2 passed an order on 30.3.1998 (Annexure 1) fixing his minimum pay at Rs.330/- w.e.f. 25.1.1993, treating him a fresh employee and again passed an order on 24.7.1998 (Annexure 2), making some modification in the said fixation of pay. He goes on to state that respondent NO.3 passed an order on 27.4.2001 (Annexure 3) deducting alleged excess amount of Rs.43931/- and thus applicant could be paid only Rs.22429/- against gratuity amount of Rs.67360/- (Annexure 3). He gave representations dated 9.9.1998, 7.4.1999, 16.7.1999, 12.6.1999 and 20.9.1999 (Annexures 4, 5, 6, 7 and 8 respectively) raising grievance against refixation of pay and against deduction of an amount of Rs.43,931/- from the amounts, so payable under the head of Gratuity. He says that respondent NO.1 took a decision by its order of 1983 for giving of option for fixation of pay by reemployed persons and since it was not beneficial to him, so he did not give any option within a period of six months and so respondents are absolutely wrong in refixing his salary on the basis of any such option. He wants to say in para-10 of the O.A. that respondents took his option in the year 1998, after his retirement, which was totally beyond the scheme of the Rules. The sum and substance of his grievance is that refixation of pay by respondent No.2 on the basis of alleged option is not in accordance with Rules and has to be cancelled and pay which he was drawing up, ^{to} the date of his retirement, has to be restored and amount deducted from his gratuity on the ground that there was excess payment of some amount him under the Head of Salary, has to be given back to him.

3. In their reply, respondents have tried to defend the refixation of applicant's salary by saying that when the applicant joined the department in



the year 1995, his pay was to be fixed as reemployed person, but this was not possible for want of relevant information/records of his parent office and so he was allowed to draw minimum of pay ~~assuring~~ ^{leaving} that regular fixation to be dealt with in future. They say that in para 4 that regulations dated 19.7.1978 and 24.10.1983 (CA-1 and 2) deals with fixation of pay of such reemployed person. It is also said that applicant gave his option before the Department and copies of the same are Annexure CA-3 and 4. They want to say that refixation of salary was as per Rules, on the basis of option given by the applicant. According to them, it is not correct to say that options were called for after the retirement of the applicant but he gave these options on 14.9.1978 and 19.10.1983 (see para 7 of the reply) and so there was nothing wrong in refixation of his pay on the basis of those options. They say that in term of Rule 71 of CCS (Pension) Rules, excess payment of under head of pay and allowance could be recovered from the amount payable under the head of gratuity as the same falls within the expression of Govt. dues.

4. In para 6 of the rejoinder, the applicant has almost admits that he gave options dated 9.7.1978 and 24.10.1983.

5. On the date, the matter was listed for final hearing that on 13.7.2007, none appeared for the respondents, even on revised call. Shri A.N Bhargava appeared for the applicant.

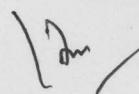
6. Shri A.N Bhargava has submitted that refixation of salary after retirement of the applicant that too on the basis of options given long back in the year 1978 and 1983 is totally illegal and uncalled for. He says, under the relevant Rules, the respondents were to act upon the options within a period of six months from the date, such options were given and if they did not act according to the options, within that period, those options stood waste and exhausted and nothing thereafter could have been done by the respondents. Shri Bhargava, however, could not support his contention by citing any specific Rule or executive instruction. It was a case where the applicant was reemployed after his retirement from Army. There can be no dispute that the pay of such a person, who is reemployed, is to be fixed according to the certain procedure, taking into account the amount of pension etc. The respondents say that since relevant papers necessary for fixation of his pay were not available from the parent department, so applicant's salary was fixed at the minimum of pay, so admissible as L.D.C. or U.D.C. In normal course,



the pay ought to have been determined or fixed by calling the necessary records or paper from the parent department but it was not done and applicant retired in 1996. It appears, when the matter relating to retiral benefits was taken up, the Authorities proceeded to fix his pay as per Rules, from the previous dates as disclosed in Annexures 1 and 2. It transpires from perusal of various representations given by the applicant that he wanted that options given by him for selecting the pay/salary or for opting for fixation of pay in a particular way, should not be acted upon and the same be treated to be cancelled. The respondents have averred in their reply that options acted upon cannot be taken back. I think, once the applicant gave his options for fixation of his pay in a particular way and those options were on record and thereafter were acted upon in revising his pay accordingly the same cannot be treated to be a waste and there was no good reason with the applicant to say that the same should be cancelled or refixation done on the basis of option should be cancelled.

7. Shri Bhargava could not point out shortcoming in refixation of pay indicated in Annexures 1 and 2. In other words, no error could be pointed out in calculation of part of fixation of pay.

8. Shri Bhargava has referred to *Vishwanath Ram Vs. General Manager, Obra Thermal Power Station [2007 (4) ADJ 404]* decided by Allahabad High Court, so as to say that the alleged excess payment of an amount of Rs.43,931/- under the head of pay and allowance cannot be recovered from the gratuity payable to the applicant as there is nothing to say that the applicant was instrumental in getting that amount. Shri Bhargava argues that if the respondents or their employees were at fault in making payment of this amount, by not correctly fixing the salary of the applicant, at relevant time, now that amount cannot be recovered from the amount payable under the head of gratuity. He has also tried to support, his above contention by referring to *Shyam Babu Verma and others Vs. Union of India and others (1994) 2 Supreme Court Cases 521* and to *Kamala Kant Jha Vs. State of West Bengal and others, E.S.C (Cal.) page 1187 Calcutta High Court*. Undoubtly, the above judicial pronouncements do support Shri Bhargava on the point that excess payment of pay and allowance during the course of service, not attributable to the employee, cannot be recovered from retiral benefits especially from the gratuity payable to him. The case before



Calcutta High Court, as referred to above, was more or less similar to the case in hand.

9. It is true that Rule 71 (3) (b) provides that over payment of pay and allowance does fall within the definition of Govt. dues but in view of the judicial pronouncement mentioned above, it has to be held that the recovery of Rs. 43,931/- from the amount of Rs.67,360/- payable to the applicant as gratuity was not just and proper in the facts and circumstances of the case. If such a substantial amount will be deducted, he will be left with no sufficient amount to lead a proper retired life. After all, there is certain object behind giving gratuity and in my view, deduction of such a substantial amount, in the circumstances mentioned above, would be highly unjust and improper. The respondents paid that amount to him, treating the part of salary.

10. I think applicant is also entitled to interest at the rate of 12% per annum, on the amount so withheld or deducted, from the amount payable to the applicant, as gratuity.

11. For the reasons stated above, the relief No.2 has to be refused.

12. So, the O.A. is finally disposed of with a direction to the respondents No.2 and 3 to pay an amount of Rs.43,931/- which has been deducted from the gratuity, within a period of three months, from the date, a certified copy of this order, is produced before them. The applicant shall also be entitled to interest at the rate of 12% per annum on the said amount w.e.f the date the said gratuity was payable to the applicant, till the date of actual payment. Relief No.2 is refused.

No order as to costs.

C. J. M. 22.8.07

Manish/-

Vice-Chairman