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Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

...

Original Application No. 1389 of 1998

this the 26th day of April 2004.

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)
HON'BLE MR. S.C. CHAUBE, MEMBER(A)

1. Sheo pal Singh, s/o Sri Visheshwar Singh Chauhan.
2. Virendra Kumar, s/o late Raghuvir Sahari Sharma.
3. Amar Singh, s/o late Babu Singh Chauhan.
4. Lakhpat Singh, s/o late Rustam Singh.
5. Prakash Narain Misra, s/o late S.N. Misra.

Applicants.

By Advocate : Sri N.K. Sharma
with

✓ Original Application No. 1283 of 2001 ✓

Raj Kumar Sachan, s/o late Ram Gopal Sachan, R/o
68 Ganga Ganj, Panki District Kanpur Nagar.

Applicant.

By Advocate : Sri N.K. Sharma.

Versus.

1. Union of India through the Secretary, Ministry of Defence, Department of Defence production, Govt. of India, New Delhi.
2. The General Manager, Ordnance Equipment Factory, Kanpur.
3. The Chief Controller of Accounts (Factories), Ordnance Factory Board, 10-A Buckland Road, Calcutta.

Respondents.

By Advocate : Sri R.C. Joshi & Km. S. Srivastava.

O R D E R

PER MEERA CHHIBBER, MEMBER(J)

O.A. nos. 1283/2001 and 1389/98 are identical in nature and are fully covered by the judgment given in the case of O.A. no. 542/2000 decided on 13.5.2003, which was further upheld by the Hon'ble High Court of Allahabad in writ petition no. 41157 of 2003 vide its order dated 12.9.03.

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whereby judgment passed by this Tribunal dated 13.5.2003 has been upheld. Therefore, both these O.As were heard together and are being disposed off by a common order.

2. The brief facts as alleged by the applicants are that they had initially filed O.A. no. 592/92 for challenging the order dated 12.3.1992 against the reduction and refixation of their pay in the re-employed posts in the Ordnance Equipment Factory, Kanpur, at the minimum of the re-employed posts as on the date of re-employment. It was submitted by the applicants that they were retired military pensioners having been released from military service before attaining the age of 55 years. Therefore, on re-employment their pay was re-fixed in accordance with Government orders under the Ministry of Defence file noting dated 1.5.1989.

3. The O.A. was opposed by the respondents, but after hearing both the counsel, this Tribunal ultimately held as under :

" Accordingly, this application is allowed and the respondents are directed not to make any recovery from the applicant and the re-fixation which has been done, will only take place from the date, the order was passed with the result no recovery shall be made though an increment may not be granted thereafter, in the same term after the order of the year 1989 was passed. In case, the recovery, if any, has already been made from the applicant, the amount of the same shall be refunded to the applicant because it is a settled principle of law that no one has to suffer because of the lapses and mistake committed by the respondents. The application is disposed of with the above terms. No order as to costs."

Pursuant to this judgment, respondents filed Review application, which was ultimately rejected by the Tribunal on 16.4.1997. Therefore, vide order dated 13.5.1998 applicants were informed that their pay has been fixed pursuant to the directions issued by this Tribunal on 30.11.92, in O.A. no. 592 of 1992, vide order dated 30.9.98 ~~decreed~~ the pay of the applicant, therein was fixed (page 9). Applicants have now challenged these two orders in the present O.As. However, counsel for the respondents

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brought to our notice that the similar orders were challenged by one Tej Singh in O.A. no. 542/2000 and after hearing both the counsel, this Tribunal observed as follows :

"It is clear that the Tribunal accepted the claim of the applicant and recovery could not be retrospective. The Tribunal directed not to make recovery from applicant and the re-fixation will take place from the date, the order was passed. The respondents, in pursuance of the Tribunal's order dated 30.11.92 started recovery of the amount. From the order dated 29.4.2000, it is clear that the over payment made to applicant between the period from 12/92 to 01/98 are being recovered. Thus, the recovery has been made after the judgment of this Tribunal and the recovery does not suffer from any error of law. The O.A. is accordingly dismissed with no order as to costs."

4. Therefore, it is clear that this matter has already been adjudicated upon by this Tribunal and Sri Tej Singh was also one of the applicants in the earlier O.A. no. 592/92. Therefore, he was similarly situated as ~~was~~ all the applicants in the present O.A. By the judgments as referred to above, the action of the respondents was upheld and also the judgment of this Tribunal was further upheld by the Hon'ble High Court of Allahabad in writ petition no. 41157 of 2003 by observing as under :

"As the judgment and order passed by the learned Tribunal dated 30.11.1992 has attained finality, it was not challenged by the petitioner. Further the order of the Tribunal is ~~in~~ strictly in adherence ^{with} the said judgment, no interference is called for."

Meaning thereby that the matter has attained the finality, therefore, the present O.A.s being fully covered by the judgment given by this Tribunal in O.A. no. 542/2000 does not require any further adjudication. Since the Tribunal has already held in the first O.A. that re-fixation will take place from the order when the same was passed and the orders which are now challenged were issued by the respondents pursuant to the directions given by this Tribunal for recovering the over payment made to the applicants between the period from 12/92 to 01/98. Therefore, it cannot be said that the said order suffers from any error of law.



5. In view of the above discussions, both these O.As
are dismissed with no order as to costs.