

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 964 of 1988

Shanker Prasad Mishra Applicants.

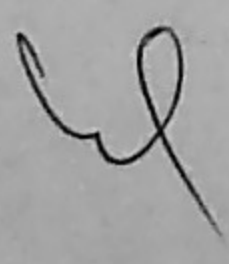
V E R S U S

Union of India & others Respondents.

Hon'ble Mr. A.K.Sinha, Member-J

1. The applicant Shanker Prasad Mishra has filed this application under Section 19 of the Administrative Tribunal's Act 1985 praying that the orders/directions contained in the letter No. 45-29/86 PAT dated 10.8.1987 issued by the Assistant Director General (Telegraph Engineering) department of Telecommunication, Government of India, New Delhi and the order/memorandum No. DTM/LW/B-18/PF/Misc./229 dated 13.10.1987 issued by the Accounts Officer (P&A), office of the Director Telecommunication Maintenance, Lucknow (vide Annexure A-6) reducing the pay of the applicant to Rs. 260/- from 276/- per month as on 13.4.1977 in the pre-revised scale and accordingly, reducing the further pay and ordering recovery of the over payment be quashed and that the respondents be directed to correctly fix the pay of the applicant at Rs. 327/- per month as on 13.4.1977 with consequential benefits and disbursement of arrears.

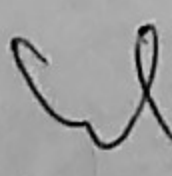
2. The uncontroverted facts are that the applicant was an Ex-Indian Air Force employee. He remained employed there as mechanic from 22.1.1965 to 17.5.1974. His last basic pay in



the active Indian Air Force service was Rs. 327/- per month. However, after completing 9 years in active service, he took release and later on was appointed as technician in the post of Telegraph department w.e.f. 13.4.1977 in the scale of pay of Rs. 260-480 with basic pay of Rs. 260 per month. It is stated that the applicant had not completed 15 years of service in the Indian Air Force therefore he was not entitled to any Military pension. He joined the service as Civilian under the respondents on being released from Military service and claimed his pay protection at Rs. 327/- per month which he drawn last in his Military service.

3. The applicant made representation to the Post and Telegraph department on 26.2.1983 vide Annexure A-1. The pay of the applicant was fixed @ Rs. 276/- per month on his re-employment on 13.4.1977 with the date of next increment on 13.4.1978 vide Annexure A-2. It appears that vide Annexure- A-3 dated 8.1.1986, the applicant's pay was re-fixed at Rs. 276/- per month as on 13.4.1977 and the date of next increment was shifted to first April in each subsequent year and accordingly the pay of the applicant became Rs. 340/- per month as on 1.4.1985.

4. As request of the applicant for fixation of his basic pay at Rs. 327/- per month as on 13.4.1977 and subsequently, increments every year and disbursement of arrears accordingly as prayed for was not conceded by the respondents, the applicant made further representation on 1.3.1986 and 2.7.1986 vide his representations Annexures.

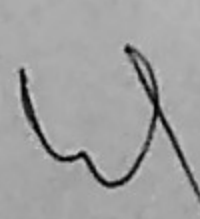


A-4 & A-5 respectively.

5. It is alleged that the applicant was shocked to receive a copy of memorandum dated 13.10.1987 (Annexure A-6) issued by the Accounts Officer (P&A), office of the Director Telecom Maintenance, Lucknow, wherein, the applicant's pay was reduced and fixed at Rs. 260/- per month as on 13.4.1977 with consequent reduction in all further pay drawn by the applicant ever year with a direction to the department to recover over-payment made to the applicant.

6. The case of the applicant is that before so reducing the pay of the applicant with retrospective effect, the applicant was not issued any show-cause notice nor was afforded any such opportunity to contest such action. It is submitted that the enhancement of pay was under the sanction of the President of India and the Authorities who passed the orders reducing the pay of the applicant subsequently had no such authority and as such, the order was illegal. It is further stated that the respondents have illegally and wrongfully reduced the pay of the applicant from Rs. 360/- per month to Rs. 340/- per month w.e.f. December 1987. The next increment in the scale of pay due as on 1.4.1988 has not been given and the applicant is continuing to receive pay at Rs. 340/- per month even after 1.4.1988.

7. On being aggrieved by the illegal order of the respondents the applicant submitted a representation dated 29.12.1987 addressed to the



Assistant Director General (Telegraph Engineering), department of Telecommunication, New Delhi through proper channel, requesting that the impugned order reducing the pay of the applicant be rescinded and prayed to restore the pay of the applicant to the enhanced rate and further to fix the pay of the applicant at Rs. 327/- per month as on 13.4.1977 and to pay arrears accordingly vide Annexure A-7.

8. When even after expiry of more than 6 months, the applicant was not communicated any decision, he filed this case before this Tribunal for the above reliefs.

9. On notice, the respondents appeared and filed their Counter. In paragraph 3 of their written statement, it is specifically stated that on a reconsideration of the case of the applicant the latter's pay has been restored back @ Rs. 276/- per month as on 13.4.1977 and in support thereof has filed a copy of office order No. DTM/LW/B-18/PF/Misc/11 dated 10.10.1988 which on perusal would show that in partial notification of the office memo No. DTM/LW/B-18/PF/Misc/229 dated 13.10.1987, the pay of the applicant S.P. Mishra, Technician is refixed.

10. On the basis of these subsequent developments the learned counsel for the respondents submitted that the first part of the relief has already been complied with in view of the restoration of the salary of the applicant at Rs. 276/- as on 13.4.77 and, therefore, the relief No. 1 has already been granted to him.

11. The learned counsel for the respondents submitted that so far the second part of the relief is concerned regarding fixation of his pay at Rs. 327/- per month as on 13.4.1977 the same could not be allowed because the Tribunal has got no jurisdiction in this regard since the cause of action arose prior to the constitution of the Tribunal. He further submitted that unless the applicant challenges and gets the order of fixing his salary at Rs. 276/- per month as on 13.4.1977 is set-aside, he cannot get his claim for refixation of his salary at Rs. 327/- per month as on 13.4.1977. According to the learned counsel for the respondents, the applicant was appointed in the Civilian post on 13.4.1977 and on his re-employment, as such, his initial basic pay was fixed at Rs. 276/- per month as on 13.4.1977 and if he had any grievance regarding the fixation of his pay, he could ^{have} filed the case then and there because the cause of action had arisen when his pay was fixed at Rs. 276/- per month as on 13.4.1977.

12. On the contrary, the learned counsel for the applicant submitted that the argument of the learned counsel for the respondent is totally misconceived because the order fixing his pay Rs. 276/- per month with date of next increment as on 13.4. 19.78, was passed vide department's letter No. 45-78/83-PAT dated 14.11.1985 and prior to that the Administrative Tribunal Act 1985 had already come into existence and, therefore, this

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Court had jurisdiction to decide this question.

13. I have gone through the averments made in the pleadings of the parties and, on a careful consideration of the submissions, it is obviously clear that at the time when the applicant was released from Indian Air Force, his salary was 327/- per month. He was reemployed as Civilian w.e.f. 13.4.1977 as Technician in the Post and Telegraph department as per the memo No. E.3/42 of July 1977, issued by the Assistant Engineer (Electrical) Central Telegraphs Office, Kanpur. The applicant was granted initial basic pay at Rs. 260/- per month as on 13.4.1977 and since then the applicant through various representations to the department was requesting to fix his salary at Rs. 327/- per month as on 13.4.1977 giving pay protection to him which he had been drawing last while serving in the Indian Air Force.

14. It appears to me when an Ex-employee of Armedforces is re-employed in Civil post, his salary which he was drawing in the Military service as last pay drawn, should have been protected and his salary should have been fixed accordingly as per Rules giving protection to his salary which he had drawn last in the Military service. It emerges from the undisputed fact that the last pay of the applicant, while employed in Indian Air Force as Mechanic was Rs. 327/- per month and when he was reemployed in the Civil post on being released from the Army service, as Technician w.e.f. 13.4.1977 in the scale of pay of Rs. 260 - 480,

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with initial salary at the time of his entry in the Civil post was fixed at Rs. 260/- as on 13.7.1977 which to my mind should have been nationally fixed in that scale and then at Rs. 327/- as on 13.4.1977 giving protection to his last pay which he had been drawing in the Indian Air Force service.

15. In that view of the matter, the prayer of the applicant is allowed and the respondents are directed to consider the representation of the applicant Annexure A-7 dated 29.12.1987 and fix his salary giving protection to his pay which he had drawn last in the Indian Air Force under the provisions of the law in the light of the above observations with all the consequential benefits within a period of three months from the date of receipt of this judgement. There will, however, be no order as to cost.

Ashwini Kumar Sinha
19/3/93.
Member(J)

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Allahabad Dated: 19/3.1993

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