

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1126 of 1993

Allahabad this the 12th day of Feb. 2002

Hon'ble Mr.C.S. Chadha, Member (A)

Lalta Prasad Gupta, aged about 52 years, S/o
Late Sri Suraj Prasad Gupta, Presently posted
as Accounts Officer in the Office of the Chief
Controller of the Defence Account (Pensions),
Allahabad, R/o Village & Post Lakshgraha, Handia,
District Allahabad.

Applicant

By Advocate Shri H.S. Srivastava

Versus

1. Union of India through Secretary, Ministry of
Defence (Finance), New Delhi.
2. Financial Advisor, Government of India, Ministry
of Defence (Finance), New Delhi.
3. Controller General of Defence Account, West Block,
5, R.K. Puram, New Delhi.
4. Chief Controller of Defence Account, Raksh Lekha
Bhawan, Rajendra Path, Patna-800019 .
5. Chief Controller of Defence Account (Pensions),
Allahabad.

Respondents

By Advocate Shri R.C. Joshi

O R D E R

By Hon'ble Mr.C.S. Chadha, Member (A)

The O.A. has been filed against the order
of respondent no.3 dated 22.4.1991 by which one increment

..pg.2/-

[Signature]

of the applicant was withheld for one year without cumulative effect. The applicant appealed against the order but his appeal was also rejected vide an order of respondent no.2 dated 29.7.1992, hence this O.A. has been filed.

2. The facts of the case are that the applicant was working as Local Audit Officer at Siligurhi between 30.6.87 and 10.1.89 when he refixed the pay of 322 Mazdoors, ('Correctly' fixed initially in June, 1983) in April, 1988 and this pay fixation was held to be irregular and in violation of the orders issued in this behalf on 11.5.1983. The applicant's defence was and still is that he refixed the pay of the concerned persons on a 'request' made to him on the basis of a letter dated 13.4.1998 From Superintendent Local Audit(hereinafter referred as S.L.A.), 16 F A D (Annexure.I) which also enclosed a letter of the Head Quarter, Eastern Command dated 27.9.83, which clearly mentioned that the pay fixation in such cases ought to be done in consonance with the Ministry of Defence Order dated 16.10.81, which is exactly what he had done. On the other hand the stand of the department has been that the M.O.D. orders dated 16.10.81 had been superceded by order dated 11.5.83 and as such were not applicable in April, 1988 when the applicant revoked the earlier pay fixations and refixed the pays of the concerned persons in accordance with the M.O.D. order dated 16.10.81, without seeking the approval of the higher

..pg.3/-

[Signature]

authorities. The defence of the applicant against this is that he or his office did not have a copy of the M.O.D. order dated 11.5.83 and more over^{even} as late as 27.9.83 the Head Quarter, Eastern Command was itself not aware of the order of 11.5.83 as is clear from its letter dated 27.9.83 (which is filed as an enclosure to annexure-I). The applicant therefore took the defence that if even the Eastern Command Head Quarter was not aware of the order of 11.5.83 even in September, 1983 how was he to be aware of the revised order. He has therefore, argued that Annexure-I sent to him, being dated 13.4.88, enclosing the letter of the Eastern Command Head Quarter of 27.9.83 misled him and refixed the pay under the genuine belief that he was acting under the guide lines issued by his superiors.

3. On going through the various letters and orders issued from time to time and referred to above I am not inclined to agree with the arguments put forward on behalf of the applicant. The applicant draws his main strength from the 'request' received by him from the Mazdoors together with annexure-I sent to him. However, a perusal of para-3 of Annexure-I shows that the letter of the S.L.A. F.A.D was only seeking guidance and not suggesting pay fixation in accordance with the letter of H.Q. Eastern Command dated 27.09.1983. It reads;

"These cases were to be initiated and completed by 30.9.83 as per para 5 of AHQ letter dated

...pg.4/-

Robb the

7.9.83 but the same has now been initiated after four years as such please intimate whether the pay fixation can be done now on the basis of AHQ letter dated 7-9-83."

4. Further a copy of the H.Q.E.C. letter dated 15.9.83 was enclosed for necessary action. It cannot be concluded with any degree of certainty from the underlined portion of Annexure-I, referred to above, that this was some sort of direction from the S.L.A. F.A.D. to the applicant in anyway. When guidance was sought that even after four years could action be taken under the orders/letters of 27.9.83 or 30.9.83 the applicant should have been doubly careful in looking up all the circulars/orders on the subject, issued from time to time. It is possible and to some extent understandable that the revised order of the M.O.D. of 11.5.83 had not filtered down to the H.Q.Eastern Command till September, 1983(i.e. 4 months) but that cannot be a defence as late as in April, 1988 when the applicant used the old orders of 16.10.81 to refix pay. Certainly a senior and responsible officer should have kept himself abreast of all the latest orders and there cannot be any excuse to be not aware of orders of May, 1983 in April, 1988 after five years of their issuance. It was his job to be aware of all orders. The doubt expressed by S.L.A. F.A.D in his letter of 13.4.88(annexure-I) and seeking a clarification whether even after a lapse of four years the old order was still applicable, should have, in fact, set the applicant thinking and he was expected to go through the standing orders on the subject. It cannot, therefore, be agreed that the applicant showed due diligence and sincerity to his

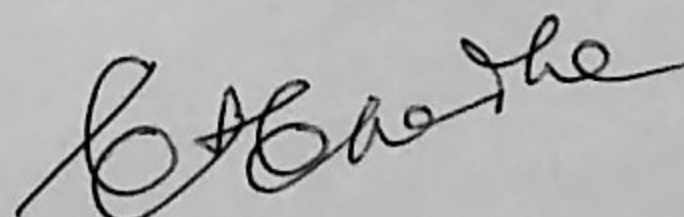
Chatterjee

duty and in applying his mind in the case.

5. The applicant has also stated in the O.A. that he had discussed the matter with the higher officers of 16 F A D and requested them to get prior sanction of the C.F.A. before making payment as per the re-fixation done by the applicant. First of all merely mentioning orally something to senior officers has no evidentiary value without any written proof. Moreover revoking an earlier pay fixation by a wrong pay fixation and merely suggesting prior clearance of higher authorities before actual payment does not absolve the applicant of his wrong action.

6. Even if his action does not conclusively prove his malafides in the matter it certainly shows that he did not exercise due care and caution in authorising huge payments from the exchequer. He has also been given a minor punishment which is perhaps the least he could get for such negligence. Therefore, there seems to be no case for considering the punishment awarded to him to be incorrect. Under the circumstances, the O.A. is rejected. The order of punishment and rejection of his appeal are both upheld.

7. There shall be no order as to cost.


Member (A)