

A2
2

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

* * * *

Allahabad : Dated this 12th day of February, 1996

Original Application No. 1291 of 1994

District : Allahabad

CORAM:-

Hon'ble Mr. S. Das Gupta, A.M.

Hans Raj Sharma s/o Late Sri R.N. Sharma,
Senior Auditor in the office of Controller
of Defence Accounts (Pensions), Allahabad,
(By Sri Satish Dwivedi, Advocate
Sri Anil Dwivedi, Advocate)

. Applicant
Versus

1. Union of India through the Secretary
Ministry of Defence,
Government of India, New Delhi.
2. The Chief Controller,
Defence Accounts (Pension),
Allahabad.
3. Senior Accounts Officer (Pensions),
Office of Chief Controller of Accounts (P),
Allahabad

(Sri A. Sthalekar, Advocate)

. Respondents

O R D E R

By Hon'ble Mr. S. Das Gupta, A.M.

The applicant in this OA is aggrieved by the
order dated 19-7-1994, passed by respondent no.3
by which his pay was refixed and the order dated

28

21.9.1994 by which his representation against such re-fixation of his pay has been rejected. He has sought quashing of both the orders by way of relief.

2. The applicant was working on the post of Senior Auditor under the Controller of Defence Accounts (Pensions), Allahabad. While working as such he was awarded a penalty of withholding of the increment for six months by order dated 8-5-1985. Pursuant to this order the increment which was due to the applicant on 1-8-1985 was not released until 31-1-1986 on which date the period of penalty came to an end. The increment was released on 1-2-1986 and his pay was fixed after adding the increment. Subsequently, on the basis of the recommendation of the Fourth Pay Commission the applicant's pay was revised and his pay was fixed as Rs. 1410/- on 1-2-1986 by an order dated 22-4-1987 (Annexure-A-2). The applicant was receiving salary according to this fixation of pay until an order was passed on 19-7-1994 by respondent no.3 whereby the earlier order dated 22-4-1987 was cancelled and his pay was re-fixed on Rs. 1470/- w.e.f. 1-2-1987. Recovery of overpayment was also ordered, as a result of such re-fixation. The applicant made representation to respondent no.2. It is stated, the said representation was rejected by respondent no.3 by the impugned order dated 21-9-1994.

Wf

12
u

- 3 -

3. The applicant's case is that by the impugned order dated 19-7-1994 his date of increment has been shifted and this has been done without giving any notice or opportunity to him. He contends that the earlier fixation of pay was strictly in accordance with the CCS(RP) Rules, 1986 and, therefore, the cancellation of the earlier fixation of pay without giving an opportunity is wholly arbitrary and unjustified.

4. The respondents have filed a counter affidavit in which it has been stated that consequent to fixation of his pay under CCS (RP) Rules, 1986 w.e.f. 1-1-1986 his pay was fixed at Rs. 1410/- on the actual drawn pay of Rs. 428/- on 1-1-1986. However, his pay was to be re-fixed on expiry of penalty under existing orders on the basis of clarification issued by the Ministry of Finance letter dated 4-5-1987. However, erroneously, his pay was fixed on 1-2-1986 at Rs. 1440/- instead of Rs. 1410/- and again on 1-8-1986 at Rs. 1470/-. It has been further stated that in accordance with CCS (RP) Rules, 1986, pay for both the stages of Rs. 428/- and Rs. 440/- comes to Rs. 1410/- in the revised scale. As a result of wrong fixation of pay the applicant started drawing higher salary than his seniors and contemporaries. When some seniors represented against this, the mistake came to light and the same was corrected by the impugned order dated 19-7-1994. In this re-fixation his date

56

A2
5

- 4 -

of increment has been shifted to 1-2-1986 instead of 1-8-1986 so that his juniors should not draw pay more than him.

5. The applicant has filed RA reaffirming the contentions made in the OA. It has been stressed that the fixation of pay of the employee cannot be done more than once. He has also stressed the fact that re-fixation has been done without affording him an opportunity and this is in violation of the principles of natural justice.

6. I have heard learned counsel for both the parties and carefully perused the record.

7. The applicant has relied on the decision of the Hon'ble Supreme Court in the case of Bhagwan Shukla Vs. UOI reported in AIR 1994 S.C. 2480. In that case the applicant's salary was fixed at Rs. 190/- w.e.f. 18-12-1970. By an order dated 25-7-1991, the pay was sought to be re-fixed at a lower stage of Rs. 18 1/- retrospectively w.e.f. 18-12-1970. The Hon'ble Supreme Court held that since such an order was passed 20 years after initial fixation of pay without putting the applicant on any notice, it was ^{an} flagrant violation of the principles of natural justice.

8. In the case before me also, the fixation of pay

SL

- 5 -

which was done in April 1987 has been undone seven years later by the order dated 19-7-1994. It is clear that this order has been passed without putting the applicant on notice or without even giving an opportunity. The decision of the Hon'ble Supreme Court in the case of Bhagwan Shukla would thus be applicable to the present case. I, therefore, held that the impugned order dated 19-7-1994 and 21-9-1994 are both violative of the principles of natural justice, and cannot, therefore, be sustained. The applicant has also relied on the case of Saligram Vs. State of Haryana reported in AIR 1985 SCC 248 in which the Hon'ble Supreme Court inter alia held that when the pay grade/pay scale was given due to wrong construction of the relevant order by the authorities concerned without any misrepresentation by the employee, the recovery of the payment already made cannot be ordered. In the case before me, even if the pay of the applicant was wrongly fixed at higher level, it certainly was not due to any misrepresentation by the applicant but by an incorrect interpretation of the relevant rules regarding fixation of pay by the authorities concerned. In that view of the matter, even if the earlier fixation of pay is held to be incorrect and it is necessary to correct that mistake by revising the applicant's pay, no recovery for the payment already made can be allowed.

9. In view of the foregoing, both the impugned orders are quashed. The respondents, however, shall

le

A2
7

- 6 -

be at liberty to give an opportunity to the applicant to show cause why his pay shall not be refixed, in accordance with the correct provisions of CCS (Rp) Rules, 1986, in case his pay was earlier fixed in contravention of such rules, and to take further appropriate action after considering the applicant's reply to the show cause notice. In any case, however, the payment already made on the basis of the earlier fixation of pay shall not be recoverable.

10. The application is disposed of with the aforesaid direction. The parties shall, however, bear their own costs.



Member (A)

Dube/