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Reserved.

Before the Central Administrative Tribunal
Addl. Bench, Allahabad.

Dated : Allahabad On this 23rd Day of Dec'1996.

CORAM: Hon'ble Dr R.K.Saxena. JM.
Hon'ble Mr. D.S.Bawaja.AM.

ORIGINAL APPLICATION NO: 744 OF 1994.

Brij Lal aged about 56 years son of
Sri Dalla resident of 107/6, Chandra
Nagar, Kanpur. Presently employed
as Tailor (SS Skilled) L.T. Section,
Ordnance Equipment Factory, Kanpur.

.... Applicant.

C/A Sri N.K.Nair.

Versus:

1. Union of India through the Secretary,
Ministry of Defence.
Department of Defence Production,
Govt of India, New Delhi.
2. Chief Controller of Defence Accounts (Fys)
10A, Auckland Road, Calcutta.
3. Chairman, Ordnance Factory Board
Director General of Ordnance Factories,
10A, Auckland Road, Calcutta.
4. General Manager,
Ordnance Equipment Factory, Kanpur.

... Respondents.

C/R: Km.S.Srivastava.


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Order

(By: Hon'ble Dr R.K.Saxena, JM).

The applicant is challenging the Order dated 24.2.1994(annexure-3), which has been passed keeping the instructions of the Ordnance Factory Board, Calcutta contained in letter dated 3.12.1990, in lieu.

2. The case in brief is that the applicant was appointed as Tailor(D) in the Ordnance and Equipment Factory, Kanpur on 21.4.1993. It is stated that at the time of Chinese aggression, large number of Tailors were required in different Ordnance factories. The applicant had also applied and thus, he was selected and appointed. It appears that the applicant was given promotion to the post of Tailor (C), and was transferred to the Ordnance Parachute factory, Kanpur. It is further stated that after sometime, the work decreased and, therefore, some of the tailors were declared surplus, but instead of being retrenched, they were allowed to continue in service, but they were sent to different factories to the lower posts. The applicant was sent to Ordnance factory, Ambernath on the post of labour, which was designated as Stamper(B). Some of the tailors^{who} were junior to the applicant continued to work in the Ordnance Equipment Factory, Kanpur. They however, were promoted when the work of tailors again increased. These tailors including the applicant, who were posted on the lower post, were again made tailors and transferred to the Ordnance and - Equipment factory, Kanpur.



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3. It is stated that when the staff was declared surplus and it was allowed to continue in the job^{on} the lower posts which were available then, their pay was protected ^{and} by the difference of the pay^{of} the lower post to that of the post from which they were sent to lower post, was allowed to be given as Personal Pay. Not only this, further promotions were also given and accordingly, the applicant was posted as Tailor(B) in the higher grade. The salary was accordingly fixed. Subsequently, the view was changed and it was found that the staff which was sent to the lower post after it was declared surplus and when that staff came^x back, the salary of the higher^{post} could not be given. Accordingly, Ordnance Factory, Kanpur issued directions to reduce the salary and to make recovery of the excess payment as a result of the said circular-letter dated 5.8.1991 (annexure-I) was issued. Another letter dated 24.9.1991 (annexure-II) was also issued intimating the reduction of salary and recovery of the excess pay. Ultimately, the impugned order dated 24.2.1994, (annexure-3) was issued whereby, the salary of the applicant was reduced from Rs1300/- to Rs1225/- with effect from February, 94 (payable in March, 94). It was further ordered that the recovery of the excess payment is going to be made separately.

4. Feeling aggrieved^{by} this order, the present O.A. was filed seeking remedies which ^{were} already disclosed. It was further pointed out ^{that} similar point was raised in O.A.No: 1122/91 'Rajendra Bahadur Singh. VS. The Union Of India and Others' which was decided by this Tribunal on 25.2.1993 and the reliefs which was claimed was allowed. The applicant, therefore, contends that his case cannot be distinguished.

5. The respondents have contended in their Counter-affidavit that the applicant was initially appointed

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as a tailor and was promoted. Subsequently, the staff was declared surplus. On taking sympathetic view, the services were not terminated and they were absorbed ² on lower post. It is also averred that the appointment on the lower posts were the fresh appointments. ² As regards this applicant, it is further averred that the applicant had relinquished the job of Stamper(B), and again joined as Tailor. It is, therefore, contended that the applicant was not entitled to higher salary of tailor(B) which was given to him.

6. In reply to the decision in O.A.No: 1122/91

'Rajendra Bahadur Singhand Others VS. Union of India and Others', it is claimed by the respondents that the judgment related to different parties and though, the same was implemented, but the said benefit could not be given to the applicant because he was not a party.

7. The applicant filed rejoinder reiterating the facts which were already mentioned in the O.A.

8. We have heard the learned counsel for the parties and have perused the record.

9. The factual position is almost admitted to both the parties. There is no dispute that the applicant has been declared surplus, was sent to the lower post in the Ordnance Factory, Amber Nath and subsequently, he was again taken back on the post of tailor at Kanpur. The respondents admit that when the applicant was declared surplus and was posted as Stamper, his pay which was drawn as tailor, was protected.

10. The only point is whether the ratio of the decision in O.A.No: 1122/91 'Rajendra Bahadur Singh: and others: V/S: Union of India and others.' (Supra) would be applicable to the applicant, or not. The respondents do not dispute -

that the same issue was involved in the case of 'Rajendra Bahadur Singh. The Tribunal allowed the O.A. quashing the order of reduction of salary and recovery of the excess payment of salary. The applicants in Rajendra Bahadur Singh's case were also the tailors and similarly placed persons. They were also affected to the staff being declared surplus and they were also transferred to lower posts. It is also admitted that these applicants were again posted against their original posts and they continued to draw the same salary. The respondents did not challenge the judgment of Rajendra Bahadur Singh's case in appeal. On the other hand, it is admitted by the respondents that the said judgment was implemented. There appears no earthly reason as to why the benefit which was given to the applicants in the case of Rajendra Bahadur Singh and others, should ^{not} ~~also~~ be given to the present applicant.

11. We, therefore, allow this O.A. and quash the impugned order dated 24.2.1994 (annexure A-3). The O.A. is disposed accordingly. No order as to the cost.


AM. 
JM

RCS/