OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 7th day of December, 2000

CORAM :-

Hon'ble Mr. Justice RRK Trivedi, V.C.

I. Original Application No.615 of 1999.

Navee Bux S/o Sri Mahboob Bux,
Ticket No.368/NID Waterman,
Resident of Qr. No.290,
G-2, Armapur Estate, Kanpur Nagar.

(Sri KK Tripathi, Advocate)

. . . .Applicant

Versus

1. Union of India through Ministry of Defence, New Delhi.

2. Director General Ordnance Factory, Calcutta.

3. General Manager Ordnance Factory, Kanpur Nagar.

4. Chief Controller of Accounts, Ordnance Factory, Calcutta.

(Sri Amit Sthalekar, Advocate)

. . . .Respondents

A N D

II. Original Application No.614 of 1999.

Abdul Karim (Ticket No.367/NID-Waterman)
S/o Sri Abdul Razzaq,
R/o Qr. No.5, Ordnance Factory (O.F.C.),
Kalpi Road, Armapur Estate,
Kanpur Nagar.

(Sri KK Tripathi, Advocate)

. . . .Petitioner

Versus

1. Union of India through Ministry of Defence, New Delhi.

2. Director General Ordnance Factory Calcutta.

3. General Manager Ordnance Factory, Calcutta.

4. Chief Controller of Account Ordnance Factory, Calcutta.

(Sri Amit Sthalekar, Advocate)

. . . . .Respondents

A N D

III. Original Application no. 496/1999.

Indra Pal Singh S/o Sri Chandan Singh,
R/o Barra-2, Vishwa Bank, E-229, Vishwa Bank,
Kanpur.

(Sri KK Tripathi, Advocate)

. . . . . Applicant

Versus

1. Union of India through Ministry of Defence,
New Delhi.

2. Director General Ordnance Factory, Calcutta.

3. General Manager, Ordnance Factory, Kanpur Nagar.

4. Chief Controller of Account, Ordnance Factory,
Calcutta.

(Sri MB Singh, Advocate)

. . . . .Respondents

A N D

IV. Original Applicatio No.457 of 1999.

Rajendra Singh Rawat S/o Sri Har Singh Rawat.
R/o Qr. No. New Type-1-486, Armapur Estate,
Kanpur Nagar.

(Sri KK Tripathi, Advocate)

. . . . . .Applicant

Versus

1. Union of India through Ministry of Defence,
New Delhi.

2. Director General Ordnance Factory, Calcutta.

3. General Manager, Ordnance Factory, Kanpur Nagar.

4. Chief Controller of Accounts, Ordnance Factory,
Calcutta.

(Sri Amit Sthalekar, Advocate)

. . . . .Respondents

A N D

V. Original Applicatio No.495 of 1999.

Shambhoo Singh S/o Sri Ram Deo Singh,
R/o H.No.210/5, Shastri Nagar,
Kanpur Nagar.

(Sri KK Tripathi, Advocate)

. . . . Applicant

Versus

1. Union of India through Ministry of Defence,
New Delhi.

2. Director General Ordnance Factory, Calcutta.

3. General Manager, Ordnance Factory, Kanpur Nagar.

4. Chief Controller of Accounts, Ordnance Factory, Calcutta.

(Sri MB Singh, Advocate)

. . . . . Respondents

A N D

VI. Original Application No.494 of 1999.

Phool Chandra S/o Sri Nathhoo Ram,
R/o Chaurayee Bag,
P.O. Armapur, District-Kanpur Nagar.

(Sri KK Tripathi, Advocate)

. . . . .Applicant

Versus

1. Union of India through Ministry of Defence, New Delhi.

2. Director General Ordnance, Factory, Calcutta.

3. General Manager, Ordnance Factory, Kanpur Nagar.

4. Chief Controller of Accounts, Ordnance Factory, Calcutta.

(Sri MB Singh, Advocate)

. . . .Respondents

VII. Original Application No.493 of 1999.

Mahesh Kumar S/o Sri Ram Murti,
R/o 118/7, Vijai Nagar Colony,
Kanpur Nagar.

(Sri KK Tripathi, Advocate)

. . . .Applicant

Versus

1. Union of India through Ministry of Defence, New Delhi.

2. Director General, Ordnance Factory, Calcutta.

3. General Manager, Ordnance Factory, Kanpur Nagar.

4. Chief Controller of Accounts, Ordnance Factory, Calcutta.

(Sri MB Singh, Advocate)

. . . .Respondents

VIII. Original Application No. 492 of 1999.

Mohan Lal S/o Sri Shyam Lal,
R/o G-II-6, Armapur Estate, Kanpur Nagar.

(Sri KK Tripathi, Advocate)

. . . . . Applicant

Versus

1. Union of India through Ministry of Defence, New Delhi.

2. Director General Ordnance, Factory, Calcutta.

3. General Manager, Ordnance Factory, Kanpur Nagar.

4. Chief Controller of Accounts, Ordnance Factory, Calcutta.

(Sri MB Singh, Advocate)

. . . . Respondents

A N D

IX. Original Application No.642 of 1999.

Sita Ram S/o Sri Neemar,
R/o Type-1, 351-Armapur, Kanpur,
District Kanpur Nagar.

(Sri KK Tripathi, Advocate)

. . . . .Petitioners

Versus

1. Union of India through Ministry of Defence, New Delhi.

2. Director General Ordnance Factory, Calcutta.

3. General Manager, Ordnance Factory, Kanpur Nagar.

4. Chief Controller of Accounts, Ordnance Factory, Calcutta.

(Sri Amit Sthalekar, Advocate)

. . . . .Respondents

O R D E R

By Hon'ble Mr. Justice RRK Trivedi, V.C.

As question of fact and law are similar, they can be decided by a common order against which counsel for the parties have no objection. OA No.615 will be the leading case.

2. In this bunch of cases, the applicants have questioned the legality of the order dated 27-3-1999 by which the recovery of different amount has been

ordered to be recovered from their salary on the allegation that overtime payment made to them was wrongly calculated on the basis of single rate while under the relevant O.M. of 19-3-1991, they were entitled for a slab rate. Learned counsel for the applicant has submitted that the impugned orders are liable to be quashed as they have been passed without giving any opportunity to the applicants of hearing and without giving any show cause notice. It is submitted that the orders have been passed in utter violation of the principles of natural justice, which cannot be sustained. Learned counsel for the applicant has further submitted that the Hon'ble Suprme Court in case of Sahib Ram Vs. The State of Haryana & Ors, JT 1995(1) SC 24 granted relief to the employees against the order of recovery of the amount paid to them in excess as the petitioners in that case were not found responsible for any misrepresentation or otherwise in wrong calculation in payment of the overtime dues. Similar views have been taken by the Division Bench of the Hon'ble High Court in case of Bindeshwari Sahay Srivastava Vs. Chief Engineer, Irrigation Deptt., 1996(2) LBEC 225. Learned counsel for the applicant placed reliance on a Division Bench Judgement of the Hon'ble High Court in case of Harish Chandra Srivastava Vs. State of U.P. & Ors, 1996 (3) UPLBEC 1, where the order was passed withholding superannuation benefits without giving opportunity of hearing.

3. Sri Amit Sthalekar, counsel for the respondents on the other hand submitted that opportunity of hearing was given to the applicants by the impugned order which was an order of recovery as well as notice. The averment to this effect has also been made in para 10 of the counter affidavit. Learned counsel for the applicant has also placed reliance in case of State of Haryana Vs. OP Sharma, AIR 1993, SC 1903 wherein the Hon'ble Supreme Court approved recovery of excess amount paid to the employees. Learned counsel for the applicant also

placed before me the case of B. Ganga Ram Vs. Regional Joint Director & Ors, 1997 (6), SCC 139. Learned counsel has further placed reliance on the OM dated 19-3-1991 (Annexure-CA-3) and Memo dated 18/19-4-1991 (Annexure-CA-4) to justify the recovery from the applicants.

4. I have carefully considered the submission of the counsel for the parties.

5. The applicants in para 4.8 of the application have specifically averred that no show cause notice or opportunity of hearing was given to the applicants before passing the impugned order dated 27-3-1999. Reply to these averments have been made in para 10 of the counter affidavit wherein it has been stated that the order dated 27-3-1999 was an order of recovery as well as notice. Thus, the principles of natural justice were complied with. It has been stated that the amount of recovery per month has been reduced from Rs.500/- to Rs.300/-. It is submitted that the order cannot be termed bad on the ground that no opportunity of hearing was given to the applicants. However, the stand taken by the respondents does not appear to be correct. From perusal of the order of 27-3-1999 (Annexure-A-1 to the OA) it does not appear that the applicants were called upon to show cause as to why the amount in question may not be recovered and that order was also ~~to the~~ a notice of the applicants calling upon them to file any reply. The legal position is well settled that any order entailing civil consequenes can be passed only after giving an opportunity of hearing to the person affected. In the present case it cannot be disputed that the impugned order entails serious civil consequences against the applicants. Thus, they were entitled to be heard. From

the perusal of the judgements of the Hon'ble Supreme Court and the Hon'ble High Court relied upon by the learned counsel for the parties, it is clear that the applicants could plead before the authority with the help of the views expressed by the Hon'ble Court that the amount may not be recovered from them as they were not responsible in any manner in calculating wrong amount. Delay in recovery could also be considered as one factor against recovery. Without expressing any opinion, the purposes of the said observation is that the applicants should have been heard before the impugned orders were passed against them. They could also have a say in the matter of fixing the amount for monthly recovery. In my opinion, the impugned orders cannot be sustained as they have been passed without any show cause notice or opportunity of hearing to the applicants.

6. For the reasons stated above, these applications are allowed. The impugned orders dated 27-3-1999 passed against the applicants are quashed. However, it shall be open to the respondents to pass fresh orders after giving show cause notice and opportunity of hearing to the applicants in the light of the judgement of the Hon'ble Supreme Court and the Hon'ble High Court mentioned above. With the above observation the OAs are disposed of finally ~~accordingly~~ with no order as to costs.

Sd/-
VC