

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

Dated: Allahabad, the 3rd day of July, 2001.

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

ORIGINAL APPLICATION NO.1504 OF 1999

Dr. M.K. Langthasa,

s/o Shri J. Langthasa,

Principal Medical Officer,

Ordnance Clothing Factory,

Shahjahanpur.

(By Advocate: Sri S.K. Kulshreshta) . . Applicant

Versus

1. Union of India through the Secretary to Govt. of India,
Ministry of Defence,
New Delhi.
2. The Chairman and Director General,
Ordnance Factories Board,
10-A, SK Bose Road,
Calcutta- 700001.
3. The Chief Controller of Accounts (Fys),
10-A, S.K. Bose Road, Calcutta- 700001.
4. General Manager,
Ordnance Clothing Factory, Shahjahanpur.
5. General Manager,
Ordnance Factory, Kanpur- 208009.
6. General Manager,
Vehicle Factory, Jabalpur.

. Respondents

(By Advocate: Sri Ashok Mohiley)

2.

O R D E R

(ORAL)

(By Hon'ble Mr. S. Dayal, AM)

This application has been filed for a direction to the respondents to waive recovery of overpayment of Rs.1,27,262/- made to the applicant due to incorrect fixation of his pay as Principal Medical Officer in 1987, as overpayment was not due to fault of the applicant.

2. The case of the applicant is that he was promoted as Principal Medical Officer on 5.3.1987 in the grade of Rs.4500- 5700 on the basis of SRO-9(E) dated 20.3.87 by Factory Order dated 8.12.87. The applicant was granted pay-scale of Rs.4500- 5700/- on the basis of SRO 9(E) dated 20.3.87. The applicant continued in the scale of Rs.4500- 5700/-. The Ordnance Factories Board, Calcutta vide its letter dated 11.10.96 intimated that the new pay-scale circulated in SRO 9(E) dated 20.3.87 were inadvertently shown as Rs.4500- 5700/- in the revised scales of pay. This mistake has been rectified by SRO 22(E) dated 12.11.87, in which scale of pay of Principal Medical Officer has been indicated as Rs.3700- 5000/- in the revised pay-scale. The applicant claims that SRO 22(E) dated 12.11.87 was never circulated by Ordnance Factories Board, Calcutta to the concerned factories. It appears that the Principal Medical Officer continued to draw in the scale of Rs.4500-5700/-, despite issuance of the above mentioned letter dated 11.10.96 and it appears that the Chief Controller of Accounts (Factories) issued instructions for¹ revision of the pay-scales and effect recovery of overpayment.

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The applicant claims that his pay fixation was approved by the Chief Controller of Accounts, vide his letter dated 2.9.87 and the Chief Controller of Accounts (Factories) approved the pay fixation of the applicant in the revised scale of pay by order dated 6.12.97. The claim of the applicant is that since his pay fixation was done on the basis of SRO 9(E) and was not revised on the basis of the SRO 22 (E) by the appropriate authority till re-fixation of his pay, vide Factory Order dated 17.3.98, he continued to receive pay in the higher pay-scale on account of wrong action of the respondents and not on account of any misrepresentation made by him. He has also claimed that no show-cause notice was given to him before effecting the recovery.

3. We have heard arguments of Sri S.K.Kulshrestha for the applicant and Sri Ashok Mohiley for the respondents.

4. The learned counsel for the Respondents has contended that since the applicant was the Drawing and Disbursing Officer, he was responsible for receiving pay according to SRO 22 (E) from the date the SRO came into effect and any extra payment made to him requires to be recovered.

5. We find that the pay of the applicant was fixed initially on 8.12.87 as Principal Medical Officer in the pay-scale of Rs.4500- 5700/- at Rs.4500/-p.m. by General Manager of Ordnance Factory, Kanpur, on the basis of authority of letter dated 20.3.87 of C.C.A (Factories). The issue of SRO 22 (E) did not result

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in any re-fixation of pay of the applicant till Factory order dated 17.3.98^{was issued} when his pay was re-fixed in the scale of Rs.3700- 5000 at Rs.3700/- with Rs.950/- as N.P.A. with effect from 5.3.87. The said order dated 17.3.98 also states that the pay fixed at Rs.4500/- w.e.f. 5.3.87 vide CC of A (Factories) letter dated 2.9.87 was superseded. It is clear from these orders that follow up action, which was required to be taken by the authorities for re-fixation of pay, had not been taken by them and continuance of receiving the pay in the pay-scale of Rs.4500- 5700/- was not on account of any misrepresentation or fault of the applicant.

6. We also find that the applicant by various orders for his period of stay in different factories was asked to refund the amount of overpayment. At no stage, any opportunity was given to him to show cause as to why the recovery may not be effected from him.

7. The respondents themselves in supplementary counter reply of Sri V.K. Tripathi filed on 8.5.2000 have admitted that the applicant has not been held responsible for erroneous fixation of pay and that the non-revision of fixation of pay was a bona fide error on account of non-linkage of relevant SROs at the operating level.

8. The learned counsel for the applicant has relied on the judgment of Allahabad High Court in a case of Ram Khelawan Pathak Vs. State of U.P. and

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others (1998) 3 UPLBEC 1954 to contend that where the applicant had worked for a year and 5 months and was paid salary, he cannot be deprived of the benefit of salary for the work actually put in. The learned counsel for the applicant has also relied upon the judgment of Allahabad High Court in a case of Harish Chandra Srivastava Versus State of Uttar Pradesh and others, (1996) 3 UPLBEC 1840, in which the order of recovery was set aside, because the applicant could not be held responsible for securing promotion by misleading the department and the payment of salary has been made due to fault of department for years together. It was also found that the applicant was given no opportunity before recovery was effected thereby violating the rule of audi alteram partem. The learned counsel for the applicant has also relied upon the judgment of Hon'ble Supreme Court in a case of Shyam Babu Verma and others Versus Union of India and others, 1994 IJR 288, in which it was held that the applicant was entitled to the pay-scale of Rs.330- 480 in terms of the recommendations of the Third Pay Commission to receive the pay-scale of Rs.330- 560 since 1973, due to no fault of theirs, and the scale was reduced in the year 1984 with effect from 1.1.1973, it was only just and proper not to recover any excess amount which has already been paid to them. The learned counsel has also relied upon the judgment of Hon'ble Supreme Court in Sahib Ram Vs. State of Haryana and others 1995 Supp (1) S.C.C. 18, in which it has been held that the benefit of

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the higher pay-scale was given not on account of mis-representation but wrong construction made by the respondents. Hence, the amount paid may not be recovered.

9. The learned counsel for the Respondents has, on the other hand, contended that recovery has been permitted by the Hon'ble Supreme Court in Radha Kishun Vs. Union of India and others, 1997 JT (4) 116, in which the applicant, who was due to retire on 1.6.91, ~~was~~ continued to work till 26.6.94 and claimed payment of pay and allowances w.e.f. 1.6.91 to 26.6.94 as also retiral benefits on the basis of retirement from service on 26.6.94. The applicant was not allowed payment of salary or the benefits on account of retirement from 26.6.94. The learned counsel for the respondents has also relied on the judgment of Central Administrative Tribunal, Mumbai in K.S. Gaikwad Vs. Union of India and others dated 3.9.99. In this case, the Tribunal held that the recovery of Rs.71,445/- was justifiable on the basis of judgment of Hon'ble Supreme Court in Radha Kishun Vs. Union of India and others (Supra). The facts of the cases cited by the learned counsel for the respondents can be distinguished, as no re-fixation of pay was required in the cases of persons, who continued to work beyond their period of superannuation. In the case before us, such a re-fixation was clearly necessary. The ratio of Shyam Babu Vema and others Vs. Union of India 1994 IJR 288 and others is applicable to the case before us.

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10. We, therefore, allow the application and orders shall be passed by the respondents accordingly within a period of three months from the date of receipt of a copy of this order.

There shall be no order as to costs.

Rafiq Uddin
(RAFIQ UDDIN)
JUDICIAL MEMBER

S. Dayal
(S. DAYAL)
MEMBER (A)

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