

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the ¹⁴10 day of Dec, 2010.

Original Application Number. 696 OF 2003.

HON'BLE MR. S. N. Shukla, MEMBER (A).

Vinay Kumar Tandon, son of Late Banwarilal Tandon, resident of 20, Rani Mandi, Allahabad (was employed in O.D. Fort, Allahabad).

.....Applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Defence, New Delhi .
2. The Commandant, Ordnance Depot Fort, Allahabad.
3. The Accounts Officer, CDA Pension, Allahabad.

.....Respondents

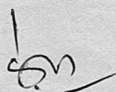
Advocate for the applicant: Sri Namit Srivastava

Advocate for the Respondents : Sri Himanshu Singh

ORDER

This is a case of reduction of pension without issue any notice to the applicant.

2. The applicant after a number of years of service in respondents' organization retired on 31.05.2000 and in receipt pension @ Rs. 3340/- on the basis of average emoluments drawn for the last 10 months @ Rs. 6680/ (PPO is at Annexure A-5 of O.A). Vide order dated 17.02.2003/Annexure A-1, the pension of the applicant was revised



downward at Rs. 3190/-, apparently on the basis of some audit objection. Also it seems that Leave Encashment of the applicant was held up for some reasons and finally the applicant was paid an amount of Rs. 70,654/- as against the claim of Rs. 93840/-. After filing of O.A, Suppl. CA and Suppl. CA-II have been filed by respondents. In none of the Reply/Affidavits, however, it has been clarified as to whether or not before passing of the order placed at Annexure A-1, an opportunity was offered to the applicant to hear his case. Also no care has been taken to explain as to the reasons and circumstances under which the emoluments of the applicant arrived at in PPO dated 19.05.2000 (Annexure A-4 of O.A) were considered incorrect and a reduced figure was arrived at. In para 12 of CA filed on 21.07.2004, a bare statement has been made that the applicant was drawing Rs. 6800/- at the time of his retirement, which was wrong and in view of the audit authorities accordingly his last pay was fixed at Rs. 5900+100 PP w.e.f. 09.04.199 in pay scale Rs. 5000-150-8000.

3. Learned counsel for the applicant relied upon the following decisions in support of his contention that pension once fixed cannot be reduced without opportunity of hearing: -

- (A). **Judgment dated 23.04.2002 passed by Hon'ble High Court, Allahabad in Civil Misc. Writ Petition No. 35427/2002 - Suresh Chandra and others Vs. State of U.P. and others.** It was held that the petitioners are entitled to get pension in accordance with law for the service rendered by them as a right, not as charity - once pension

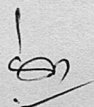
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was fixed, it cannot be reduced without opportunity of hearing. In the said judgment it was also held that the authorities would pay original pension as fixed. However, they were allowed to pass a fresh order in accordance with law after giving opportunity of hearing to the petitioners.

(b). **2006 (1) ESC (Alld.) 717 - Pyare Mohan Sinha Vs. Director of Education (Madhyamik) and others.** In the said judgment it was held that amount alleged to have been paid in excess cannot be recovered, if it was not paid on the basis of misrepresentation or fraud played by the petitioner.

4. Heard learned counsel for the parties and perused the material on record.


5. It is unfortunate that inspite of several replies filed on behalf of the respondents even minimum facts and figures have not been brought on record to enable the Tribunal to adjudicate ^{after} ~~on~~ considering the extant rules in this regard. ⁱⁿ While the decision is based on audit objection; even a copy of the audit objection has not been brought on record. This Tribunal is not in a position to evaluate the case on merits. It is, however, a settled law that no recovery can be made inspite of excess payment, if any, unless a malafide or fraud or concealment of information committed by the employee and obtaining such payment. Admittedly that is not the allegation of respondents as well. Also admittedly no opportunity was afforded to the applicant before reducing his pension and effecting some recovery. .



6. In view of the settled position of law, the respondents are directed to start paying pension to the applicant, as fixed, as per the PPO order (Annexure A-4 of O.A) forthwith . The authorities are, however, at liberty to give an opportunity of being heard to the applicant and after taking into consideration the stand taken by the applicant in the matter pass reasoned and speaking order, within a period of three months from the date of receipt of certified copy of this order. In any event , the amount recovered by the respondents shall be refunded finally to the applicant within this period.

7. The applicant had a grievance regarding the quantum of leave encashment. After giving opportunity of being heard to the applicant, the authorities will also give reasons and calculation of quantification of leave encashment in their speaking order, as directed in the para immediately above.

8. No costs.



MEMBER- A.

/Anand/