

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 626 Of 1996

Present : Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member
Hon'ble Mr. M.K. Misra, Administrative Member

MILAN KANTI SEN & OTHERS

VS.

1. Union of India, Service through the Secretary, Ministry of Defence, Raksha Mantralaya, New Delhi.
2. Engineer-in-Chief, MES, Kashmere House, DHQ, New Delhi - 110 011.
3. The Chief Engineer, Eastern Command, Fort William, Calcutta - 700 021.
4. The Chief Engineer, Siliguri Zone, Siliguri, Dist. Darjeeling.
5. The Commander Works Engineer, Bengdubi P.O., Dist. Jalpaiguri.
6. The Garrison Engineer, Bengdubi P.O., Dist. Darjeeling.

For the applicant : Mr. N.C. Chakraborty
Mr. B.P. Manna

For the respondents : Mr. B. Mukherjee

Heard On: 23.11.2004.

Date of Order: 3.12.2004

O R D E R

Mr. Mukesh Kumar Gupta, JM:

By the present application, the applicants seek the following reliefs:

- i) In terms of averment made under Para 4 (ii) all the 6 applicants may be permitted to join together in this single petition.
- ii) to specifically quash the order of recovery.
- iii) to pass a specific direction to the respondents to refund the amount already recovered from the applicants prior to their coming before the Hon'ble Tribunal.
- iv) to pass any other order or orders as may deem fit in the circumstances of the case as considered expedient by the Hon'ble Tribunal to pay cost to the applicants for resorting to this avoidable litigation and incurred expenses thereto.

2. The admitted facts of the case are that the six applicants in the present case earlier instituted OA No. 729/ 1990, wherein among other things they sought cancellation/ setting aside of the order of recovery from their monthly pay. The said OA was allowed vide order and judgement dated 10.2.93 with the following observations:

"4. The application is accordingly allowed and the respondents are directed not to make any recovery of the overpayment already made. There shall be no order as to costs."

(emphasis supplied)

The further admitted facts of the case are that these six applicants were promoted to the next higher post and subsequently they were reverted. The said reversion order was not impugned. However, they sought quashing of the recovery, from their pay so fixed on their reversion. Earlier, they were promoted in the scale of HS Gr. II in the scale of Rs.330 - 480 and were reverted to the scale of Rs.260-400. In the present application, the applicants seek direction to respondents to refund the amount already recovered from them prior to their approaching this Tribunal in OA No. 729/ 1990.

For this purpose reliance was placed on judgement dated 24.6.92 in OA No. 1083/ 1989 - Sopan Kumar Saha and another Vs. Union of India as well as order dated 15.7.91 in OA No. 596/ 1991 Kajal Sen Vs. Union of India and others and order dated 12.1.94 passed in OA No. 409 and 410 of 1989. Further reliance was also placed on 2003 (1) ATJ 440 Punjab & Haryana High Court, Vs. Anup Singh Vs. State of Haryana; - 2003 (2) ATJ 108 by the Hyderabad Bench of this Tribunal - S.V.V. Satyanarayana Murthy Vs. The Director of Accounts (Postal), A.P. Circle and others.

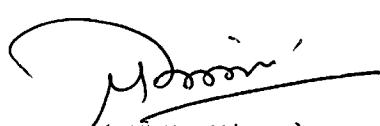
3. The respondents on the other hand contested the above mentioned claim and stated that vide judgement dated 10.2.93 in OA No.

729/ 1990, the Tribunal only directed not to make recovery of the over payment made to the applicants and there was no direction to refund the amount already recovered from them. It was further pointed out that before the aforementioned judgement was pronounced, the recovery of Rs.18,200/- had already been made from the applicants.

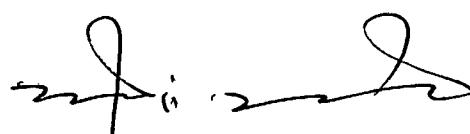
4. We heard learned counsel for the parties and perused the pleadings as well as the judgement cited carefully.

5. The OA No. 729/ 1990 which was allowed on 10.2.93, nowhere directed the respondents to refund the amounts so recovered from the applicants. The reliance placed on judgement dated 24.6.92 in OA No. 1083/ 1989 as well as 12.1.94 in OA No. 409 and 410 of 1989 specifically goes to show that in the later judgements there was a specific direction to refund the amount recovered from the applicants, which were not the facts in the present case. Similarly, the facts of Anup Singh as well as S.V.V. Satyanarayana Murthy were totally different and therefore the said judgements being distinguishable have no application. In our view the claim made in the present OA is also barred by the principle of constructive res-judicata.

6. In view of the discussions made hereinabove, we find no justification in the present application and the same is dismissed. No costs.



(M.K. Misra)
Member (A)



(Mukesh Kumar Gupta)
Member (J)