

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA No. 799 of 1997

Present : Hon'ble Mr. S.K. Hajra, Administrative Member
Hon'ble Mr. K.V. Sachidanandan, Judicial Member

Malay Ganguly & 10 Others

... Applicants

- Vs -

- 1) Union of India, through the Secretary,
Govt. of India, Ministry of Science and
Technology, Rafi Marg, New Delhi.
- 2) The Director, Central Mechanical Engineer-
ing Research Institute (CSIR), Durgapur.

... Respondents

For the Applicants : Mr. B. Chatterjee, Counsel

For the Respondents : Ms. U. Bhattacharjee, Counsel

Date of Order : 28/7/04

ORDER

MR. K.V. SACHIDANANDAN, JM

Being aggrieved by the order dated 16-6-1997, 11 applicants filed this application seeking the following reliefs :

- a) The applicants pray for a direction upon the respondents not to recover any amount alleged to have been paid as excess pay from 1-2-1989 and 23.11.88 to the applicants erroneously, although the applicants claim that the same was illegally paid as due, as proposed to be recovered in 36 instalments effecting from July 1997, as per decision of the Hon'ble Supreme Court that no such recovery could be made.
- b) For a declaration that the promotion of the applicants from 1.2.1989 and 23.11.88 as stated in Annexure-A/1

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at page 5 of the said Annexure is valid and legal and must not be interfered with on any pretext whatsoever.

2. According to them, recovery of erroneous payment made from 1-2-1989 beginning from July, 1997 after a lapse of about $8\frac{1}{2}$ years which is against the law laid down by the Hon'ble Supreme Court in a case of Shyam Babu Verma Vs - Union of India & Ors. reported in ATC 1994 (2) SC 121. As per the averment in the O.A., the applicants were working in the Science and Technology Department in the Central Mechanical Research Institute (CSIR) and they were granted required scale of pay. Vide Annexure-A/1 the Department proposed to recover alleged excess payments from the date of their enjoying the scale from 1-2-1989 from the applicants.

3. The respondents have filed detailed reply stating that this group of technical employees, the applicants were promoted on the basis of recommendation of the Assessment Committee from the retrospective date. The findings of the Assessment Committee were kept in a sealed cover in terms of para 6.4.11 of MANAS (pre-revised) as the disciplinary proceedings were pending against the elements for involvement in the false Leave Travel Concession claims on the date of the meeting of the said Committee. Later, they were promoted from their due date of eligibility and the findings of the disciplinary proceedings resulted in imposition upon them the penalty of reduction of pay by two stages without cumulative effect for a period of two years. As per terms of para 6.4.11 of MANAS (Pre-revised) the sealed cover procedures were required to be followed and their assessment promotion kept in sealed cover could be opened only after conclusion of the disciplinary proceedings. The applicants were served with a show cause as to why the excess payment already paid to them as a consequence of erroneous promotion should not be recovered from them. Hence, the competent authority passed an order for rectification of their date of assessment promotion and for the

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recovery of the excess payment arising out of erroneous assessment promotion and the actual recovery would be effective only after the re-fixation of their pay scale vide order dated 16-6-1997. The Supreme Court's ruling is not applicable in this case.

4. We have heard Mr. Chatterjee, Id. Counsel for the applicants and Ms. Bhattacharjee, Id. Counsel for the respondents. After going through the pleadings and evidence placed on records, we have given due consideration to their effective arguments. The Id. Counsel for the respondents also filed a supplementary reply in which it is specifically contended that the sealed cover was opened and they were promoted from their due date i.e. 1.2.1989 and 23.11.88 during the currency of the penalty which was imposed upon them as a result of the said disciplinary proceedings. The penalty of reduction of pay by two stages without cumulative effect for a period of two years was imposed upon them vide order of different number and different dates. The Id. Counsel for the applicants argued that after $8\frac{1}{2}$ years of delay such recovery is not justified. The Id. Counsel for the respondents on the other hand argued that the penalty imposed by the respondents upon the applicants was not recovery simpliciter which cannot be impertinent. We have given due consideration on the arguments advanced by the Id. Counsel. It is pertinent to note that the case of the respondents was that there was disciplinary proceedings pending against the applicants for drawal of fraudulent amount by the applicants as LTC claim for the block-year 1982-85. The rule position as reflected in the Merit and Normal Assessment Scheme (MANAS) in Clause 6.4.11 is that where the employee is neither completely exonerated nor the disciplinary proceedings result in imposition of any of the recognised penalty, the recommendations in the sealed cover may be placed before the same Assessment Committee for deciding on whether the sealed cover is to be opened and, if so, deciding the due date of his assessment and in case disciplinary proceedings/court cases result in imposition of any of the minor/major penalties under Rule 11 of CCS(CCA) Rules, the effective date of assessment will be

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from the date immediately after the completion of the period of ^{if} penalty and/recovery from pay of the whole or part of any pecuniary loss caused to the Council by negligence or breach of orders is imposed, the due date of assessment will be immediately after the issue of the orders imposing any of these penalties. Admittedly, as per rule in this case disciplinary proceedings has been initiated and while the disciplinary proceedings was pending, the applicants could not be granted promotion as borne out by the memorandum of and article of charges dated 16-6-1989 and the order dated 25-9-1991 No.52/13/87-Vig. The penalty was imposed by reduction of two stages per month in the time scale for a period of two years with immediate effect and the amount drawn towards LTC claim for the block-year 1982-85 by making fraudulent representation which has been directed to be recovered from the applicants. Now this has been ordered to be recovered by virtue of Annexure-A/1 dated 16.6.1997. On close scrutiny of the decision, which the Id. Counsel for the applicants is relying on is Shyam Babu Verma -vs- Union of India & Ors. it is seen that the Hon'ble Supreme Court dealt with the erroneous recovery of amount towards receipt of higher scale of pay due to no fault of the employee and the Supreme Court held that the said recovery is not contemplated. This case is entirely different. Recovery has ^{not} ~~not~~ culminated ⁱⁿ the disciplinary proceedings. Here the applicants have made fraudulent representation before the authority to obtain false LTC claim to which they are not entitled. Absolutely there is misrepresentation on the part of the applicants in receiving that amount from the Department and in the enquiry it is also proved that the employees have obtained/received the amount which they were not entitled to get. We are of the considered view that the decision as cited by the Id. Counsel for the applicants is not applicable on the above facts. Since the decision is not applicable in the present case, we are of the view that the O.A. has no merit and accordingly it is dismissed. No costs.


Member(J)


Member(A)