

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW.

ORIGINAL APPLICATION NO:409/2005

Lucknow this, the 13th day of MARCH, 2008.

HON'BLE MR. JUSTICE KHEM KARAN, VICE CHAIRMAN

Akshaivar Shukla,  
Aged about 60 years,  
Son of Late E.D. Shukla,  
Resident of Khinni Wali Kothi,  
Chaudhary Tola, Aliganj, Lucknow

Applicant.

By Advocate: Shri P.K. Rai.

Versus

1. Union of India, through Registrar General of India, New Delhi.
2. Assistant Director (Census In charge), Directorate of Census Operation, U.P. Lekhraj Market, 3 Indira Nagar, Lucknow.
3. Joint Director (Census Incharge), Directorate of Census Operation, U.P. Lekhraj Market, 3, Indira Nagar, Lucknow.
4. Senior accounts Officer, EAO, Census MHA, New Delhi.

Respondents.

By Advocate: Shri Azmal Khan.

Order (Oral)

By Hon'ble Mr. Justice Khem Karan, Vice Chairman.

Applicant has prayed for the following reliefs:

- a). Issue an order or direction, quashing the impugned order dated 27.5.2005, 9.6.2005 and 24.6.2005 as contained in Annexure No. 1,2 and 3 to this original application.
- b). Issue an order or direction commanding the Respondents to refund the amount of Rs, 336/-already deducted from the salary and retrial benefits of the petitioner.
- c). Issue an order or direction commanding the Respondents to pay all the post retrial and pensionery benefits to the petitioner.
- d). That any other relief which this Hon'ble Tribunal deems just and proper in the circumstances of the case may also be granted to the petitioner.

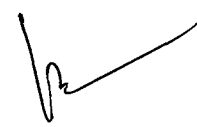
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4) e). That the cost of the applications may also be allowed to the petitioner.

2. There is no dispute that prior to his joining the Directorate of Census Operation on 3.7.1970, he served as Combatant Clerk in the Army for about 5 years (1962 to 1968). On joining in the Census department, his pay was fixed. He represented for counting his previous services of Army. Vide orders dated 17.7.1992 (Annexure-5), <sup>4</sup> The director accepted his request and consequently vide order dated 14.6.93 (Annexure -6), his pay was also re-fixed, w.e.f. 3.7.70. It appears that this re-fixation was subsequently found to be erroneous and therefore, orders dated 2.3.1995 and 9.3.1995 were passed for restoring the earlier pay and for recovery of the excess amount paid to him. Aggrieved of these orders, the applicant filed one O.A. 129/1995, which this Tribunal disposed of vide its order dated 23<sup>rd</sup> March 2004, providing that alleged excess amount will not be recovered from him as he was not at fault in getting that excess amount. The Tribunal however found no fault or <sup>4</sup> infirmity in restoration of earlier pay. It appears that the applicant continued getting benefit of fixation dated 14.6.93 on the basis of interim orders, in the said O.A. After disposal of OA, the impugned orders have been passed. Applicant retired on 30.6.2005.

3. The respondents have filed reply contesting the claim. They say that order passed in February 27<sup>th</sup> 2005, re-fixing the pay as it was earlier to 14.6.1993 was not interfered with by the Tribunal and the only direction was not to recover amount already paid. They say that whatever the excess payment was made to the applicant pursuant to fixation dated 14.6.93 cannot be counted towards average emoluments, for calculating the pensionary benefits. They also say that order dated 24.6.2005 is also in tune with the earlier directions of the Tribunal, so the case of the applicant for quashing the same is not well founded.

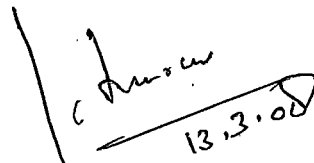
4. I have heard the parties counsel and have perused the entire material on record. In so far as, re-fixation of applicant's salary vide order dated 27.5.2005 is concerned, there appears no fault in it. The reasons<sup>4</sup> is that when the



applicant challenged the re-fixation dated 2.3.95 and 9.3.95, the Tribunal did not interfere with the same and it only provided for not recovering the amounts so paid, pursuant to erroneous fixation of pay 1993. Order dated 9.6.2005 is nothing but a consequential order-to-order dated 27.5.2005. In so far as order dated 24.6.2005 (Annexure 3) is concerned, it appears to be apparently not correct because it says that the amount of Rs. 6,336/- is to be recovered, pursuant to the directions of the CAT. It has been noted above, that the Tribunal never directed that any amount should be recovered from the pay of the applicant. So this order dated 24.6.2005 deserves to be quashed.

5. There can be no dispute that amount erroneously or wrongly paid to the applicant, cannot be counted towards working out the average emoluments for the purposes of pension.

6. So, in the result, the O.A. is partly allowed and order dated 24.6.2005 (Annexure -3), for making recovery from the pay of the applicant is quashed. The rest of prayers are refused. In case any amount has been recovered, pursuant to order-dated 24.6.2005, the same shall be refunded without delay. No order as to costs.

  
(Khem Karan)  
Vice Chairman