

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 116 of 1999.

Dated this *Tuesday*, the *4th* day of *April*, 2000.

Dr. A. Bhaskar Rao & 4 Others, Applicants.

Shri S. P. Saxena, Advocate for the applicants.

VERSUS

Union of India & Others, Respondents.

Shri R. K. Shetty, Advocate for the Respondents.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,  
Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ? *ye*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *no*
- (iii) Library.

*R. G. Vaidyanatha*  
(R. G. VAIDYANATHA)  
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 116 of 1999.

Dated this 10<sup>th</sup> the 10<sup>th</sup> day of April, 2000.

CORAM : Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman.  
Hon'ble Shri B. N. Bahadur, Member (A).

1. Dr. A. Bhaskar Rao.
2. Dr. B.C. Srivastawa.
3. Dr. S. K. Singh.
4. Dr. (Mrs.) Sushila Muralidhran.
5. Dr. S. Raja Sekhara. ... Applicants.

(All the applicants are working as Reader in the National Defence Academy, Pune).

(By Advocate Shri S. P. Saxena)

VERSUS

1. Union of India  
Through the Secretary,  
Ministry of Defence,  
New Delhi - 110 011.
2. The Commandent,  
National Defence Academy,  
Khadakwasla,  
Pune - 411 023.
3. The Registrar,  
Jawaharlal Nehru University,  
New Delhi.
4. Controller of Defence Accounts,  
(Southern Command),  
Pune - 411 001.
5. The Secretary,  
Deptt. of Education,  
Ministry of Human Resources  
& Development,  
Government of India,  
New Delhi. ... Respondents.

(By Advocate Shri R. K. Shetty).

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O R D E R

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed under Section 19 of the Administrative Tribunals Act. Respondents have filed reply. We have heard Mr. S. P. Saxena, the Learned Counsel for the applicants and Mr. R. K. Shetty, the Learned Counsel for the respondents.

2. The applicants are working as Readers in the National Defence Academy at Pune. All of them are Ph.D. holders. They were earlier appointed as Lecturers in the National Defence Academy (in short N.D.A.) prior to 01.01.1986, as per the then existing recruitment rules. Under the old rules, there was no provision for giving any additional increments on the basis of higher educational qualification like Ph.D. Subsequently, the University Grants Commission (in short U.G.C.) gave certain incentives and higher pay scales to the University Lecturers and teachers. This U.G.C. Package was recommended by the Ministry of Human Resources Development (Department of Education), Government of India, for being adopted by all States. The Government letter dated 22.07.1988 was addressed to all the Education Secretaries of all the States and the Union Territories. Subsequently, by a presidential order dated 02.04.1993 the U.G.C. Package, as per the 1988 circular issued by the Ministry of Human Resources Development, was adopted for the civilian teaching staff of National Defence Academy and some other institutions. Under this U.G.C. Package, lecturers who have Ph.D. Degree will get three additional increments. After the U.G.C. Package was extended to N.D.A., with which we are now concerned, as per presidential

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order dated 02.04.1993, the revised pay scales were given to the applicants from 01.01.1986, including three additional increments, being holders of Ph.D. degree. Subsequently, the N.D.A. had second thought. The Accounts Branch objected for these three additional increments to the applicants, since they are not new recruits after 01.01.1986. Therefore, the N.D.A. wanted to revise the pay scale of the applicants and intended to recover the excess amount paid to the applicants. Apprehending this, the applicants have filed the present application challenging the intended action of the N.D.A. to take away the three additional increments given to them and consequently to recover the amount paid to them from 01.01.1986. The applicants have taken number of grounds challenging the action of the N.D.A.

3. The respondents in their reply have justified the action sought to be taken against the applicants. Their case is that, since the applicants <sup>had</sup> ~~have~~ been appointed prior 01.01.1986, they are not entitled to the benefit of three additional increments which are meant only for new recruits after 01.01.1986 with Ph.D. qualification. The other allegations in the reply are not relevant for our present purpose, since the point to be considered is a short point, which is purely a legal point.

4. The Learned Counsel for the applicants contended that the apprehension of the applicants have now become a reality, since the N.D.A. <sup>has</sup> ~~have~~ since fixed the applicant's revised pay by excluding the three additional increments and now wants to recover the excess amount paid to them from 01.01.1986 till now. He first argued that on the basis of circular of Ministry of Human Resources and the Presidential order dated 02.04.1993 that

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even the existing lecturers are entitled to the benefit of three increments, he contended that even if respondents' contention is accepted, then the policy of the Government is in violation of equality clause under Article 14 and 16 of the Constitution of India. He contended that there cannot be any discrimination between Lecturers appointed prior to 01.01.1986 and those appointed after 01.01.1986 so far as grant of three additional increments for holders of Ph.D. Degree is concerned. There cannot be such a discrimination at all. The Learned Counsel for the respondents contended that the Lecturers appointed after 01.01.1986 cannot be equated with Lecturers appointed prior to 01.01.1986 and the order is not hit by the vice of discrimination.

Then it was argued on behalf of the applicants that the impugned action of the respondents is in violation of principles of natural justice, since without hearing the applicants and without giving a show cause notice, the administration has now revised the pay of the applicants and wants to recover the excess amount from 01.01.1986 till today, which entails civil consequences and, therefore, the order is bad in law. Then it is argued alternatively that even if the fixation of pay as per the impugned action is justified, even then the respondents cannot take any action for recovery of alleged excess amount paid to the applicant for the period from 01.01.1986 till now.

5. After hearing both sides, we have reached the conclusion that the impugned revised fixation of pay is not sustainable due to violation of principles of natural justice. We are not expressing any opinion on merits on the decision of the

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administration that applicants are not entitled to the benefits of additional increment for having Ph.D. Degree and we are leaving that question open to be decided by the competent authority after issuing a show cause notice to the applicants and then passing an appropriate order according to law.

In this case, the benefit of additional increments have been given to the applicants with effect from 01.01.1986. It is not a case where applicants had made any misrepresentation. It is a su-moto decision taken by the competent authority in granting the benefit of additional increments as per the U.G.C. Package and as per the Government Circular of 1988 and Presidential Order dated 02.04.1993. But subsequently, the department felt that this grant of additional increments is wrong, since the concerned rules apply only to fresh recruits after 01.01.1986 and not to existing teachers like the applicants, who had been recruited prior to 01.01.1986. After having felt like that, the department straight-away decided to take a decision and pass an order of refixing the pay of the applicants by excluding the three increments. Such an order which entails civil consequences could not have been passed by the administration without observing the principles of natural justice. There is a direct decision of the Apex Court on this point, which is reported in 1994 (28) ATC 258 (Bhagwan Shukla V/s. Union Of India & Others) where an identical question arose for consideration. In that case also, the pay of the official had been fixed at a particular rate from a particular date. Subsequently, the Railway administration refixed his pay and reduced his basic pay from a particular date. It was stated that due to administrative lapses mistake had occurred in fixing the pay of the officer wrongly and it has been subsequently

corrected. After the re-fixation order was passed, the official challenged that order before the Bench of this Tribunal at Patna. The application came to be dismissed. He carried the matter in appeal before the Supreme Court. The Supreme Court held that the order of re-fixing the pay retrospectively will entail civil consequences and he has not been given any opportunity to show cause as to why his pay should not be reduced. Since the order has been passed without any notice to the concerned officer, it was held that the order is passed in flagrant violation of the principles of natural justice and the officer has been made to suffer huge financial loss without being heard. It is further pointed out that fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without giving notice to the official concerned and hearing him in the matter. It was, therefore, held that the impugned order of re-fixation of pay is liable to be quashed. Accordingly, the appeal was allowed and the impugned order was quashed by the Supreme Court.

In our view, the above decision is directly applicable to the facts of the present case. The applicants are given the benefit of additional increments w.e.f. 01.01.1986 by an order passed in 1996. That benefit cannot be taken away unilaterally by re-fixing the pay of the applicants by removing the three additional increments.

6. Though on the date of the O.A. orders had not yet been passed and were only contemplated, now it is brought to our notice that the competent authority has since passed an order re-fixing the pay of the applicants by order dated 24.02.1999.

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The Learned Counsel for the applicants placed before us the xerox copy of the said orders in respect of number of Lecturers/Readers, including the applicants. For instance, as far as the first applicant, Dr. A. Bhaskar Rao is concerned, his name appears at Sl. No. 22 on page 13 of the copy of the order. As a result of this order, the grant of three additional increments to Mr. Bhaskar Rao has been taken away from 01.01.1986.

Similar order is passed in respect of other applicants like :-

Dr. B.C. Srivastava,  
Applicant No. 2.

Is shown at Sl.No. 9 on page  
No. 6 of the copy of order.

Dr. S. K. Singh,  
Applicant No. 3.

Is shown at Sl.No. 8 on page  
No. 5 of the copy of order.

Dr. (Mrs.) Sushila  
Muralidhran,  
Applicant No. 4.

Is shown at Sl.No. 26 on  
page No. 16 of the copy of  
order.

Dr. S. Raja Sekhara,  
Reader.

Is shown at Sl.No.23 on page  
No. 14 of the copy of order.

There is nothing on record to show whether this impugned order dated 24.02.1999 has been implemented so far as actual fixation of pay is concerned. As far as recovery is concerned, we have granted an interim order not to make any recovery from the salary of the applicants.

In the light of the observations made above, what we are inclined to hold is, that this order of the administration dated 24.02.1999 fixing the pay of the five applicants is concerned, it should be treated as a tentative decision of the competent authority. On that basis, the competent authority must also

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issue show cause notice to the applicants as to why their salary should not be fixed as per order dated 24.02.1999. Then the applicants can give a representation taking all grounds open to them and plead their case before the competent authority by producing all documents on which they want to rely and the concerned rules. Then the competent authority should apply its mind and then decide whether the applicants are entitled to the three increments for having Ph.D. Degree or not. The competent authority may also <sup>consult</sup> ~~consult~~ the Ministry of Human Resources Development, since it is the said Ministry who has issued the first order dated 22.07.1988 recommending acceptance of U.G.C. Package by all States. The Competent Authority can also consult the University Grants Commission on this point. Then the competent authority may take a final decision on this point and communicate the decision to the five applicants individually. If the applicants are still aggrieved by the order of the competent authority in this behalf, they may challenge the said order according to law. This order will not come in the way of the administration in acting upon the impugned order of fixation of pay dated 24.02.1999 till a final decision is taken in that behalf by the competent authority, in the light of the observations made above.

7. The next point for consideration is, whether the respondents are entitled to make recovery of the excess payment made to the applicants or not ?

Either on the basis of the impugned order dated 24.02.1999 or on the basis of fresh order to be passed by the competent authority, in the light of the observations made above,

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whether it is open to the Government to recover the excess amount paid to the applicants for the period from 01.01.1986 till the date of filing this application, when interim order was granted by this Tribunal ?

The question is no longer res integra and is covered by number of decisions of the Apex Court.

In the case of Shyam Babu Verma & Others V/s. Union of India & Others reported in 1994 (27) ATC 121, the Apex Court has held that higher pay has been given erroneously in 1973 and subsequently, the pay was reduced in 1984. Whether it is just and proper to recover the excess amount paid from 1973 to 1984. The Supreme Court pointed out that the officials had been paid higher scale of pay due to no fault of theirs and hence, the recovery of excess amount paid should not be ordered. The Supreme Court upheld the contention of the Government that excess amount had been paid to the officials by mistake or wrongly but still the Supreme Court held that it is just and proper that the Government should not be allowed to recover the excess amount already paid to the officials and no steps should be taken to recover that amount or adjust that amount.

Therefore, this decision is a complete authority on the question that Government should not be allowed to recover the excess amount paid to the applicant, even if it is conceded that applicants had been given three additional increments wrongly or by mistake.

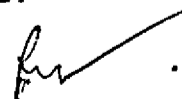


Similarly, in the case of Sahib Ram V/s. State of Haryana & Others reported in 1995 SCC (L&S) 248, the Supreme Court has held that when excess payment has been made due to wrong construction of the relevant order by the authority concerned without any misrepresentation by the applicant, then in such a case recovery of payment already made should not be permitted.

We may also make useful reference to a decision of the Apex Court in Union of India & Others V/s. M. Bhaskar & Others reported in 1996 (4) SCC 416, where also it has been held that fixation of pay was wrong but since amounts have already been paid as per judicial decisions, it will cause hardship to the officials to repay the amount and, therefore, the Union Government was directed not to recover the amount already paid.

8. Then we also notice that there are many decisions of the Division Bench<sup>es</sup> of this Tribunal taking similar view. We notice only two three cases bearing on the point. The latest judgement is of a Division Bench of Jaipur Bench of this Tribunal in the case of T. C. Chandnani V/s. Union of India & Others reported in 2000 (1) ATJ 297 where it is held that if there is a mistaken or wrong fixation of pay and subsequently corrected for no fault of the official, then recovery of excess amount already paid should not be permitted.

In the case reported in 1996 (2) SLJ (CAT) 142..(R.B. Saxena V/s. Union Of India & Others) it is held that excess payments made due to wrong fixation of pay or due to wrong date of promotion should not be permitted to be recovered.

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Similarly, the Principal Bench of this Tribunal in the case of P.S. Jain V/s. Union of India reported in 1996 (34) ATC 579 has also taken the view that in the case of wrong fixation of pay and subsequent correction of the same will not entitle the Government to recover the excess amount from the official.

In view of the above decisions, we hold that irrespective of the decision the competent authority may take, any re-fixation of pay of the applicants, the respondents should not recover any excess amount paid to the applicants prior to the date of filing of this application, namely - 16.02.1999. If any excess payment is made after 16.02.1999 and thereafter, it can be either recovered in reasonable monthly instalments or it can be adjusted from any amount due to the applicants.

9. In the result, the application is allowed as follows :

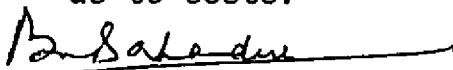
(i) The impugned fixation of pay of the five applicants as per the pay fixation order dated 24.02.1999, is held invalid, being in violation of principles of natural justice. However, the respondents can follow the fixation of pay as per that order till a fresh order is passed by the competent authority after issuing show cause notice to the applicants in the light of the observations made in this order.

(ii) Irrespective of the decision the competent authority may take on the disputed question, whether applicants are entitled to the benefit of three increments from 01.01.1986 for having Ph.D. Degree, no recovery shall be

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made from the salary of the applicants for any alleged excess payment for the period from 01.01.1986 till the date of filing of this application in the Tribunal, namely - 16.02.1999.

- (iii) If however, the competent authority takes some decision lowering the pay of the applicants and if any excess amount is paid after 16.02.1999, then it can be recovered in reasonable monthly instalments or it can be adjusted from any amount due to the applicants.
- (iv) If in the light of the observations made in this order and after giving show cause notice to the applicants, the competent authority passes any order which is adverse to the interest of the applicants, then the applicants may challenge that order according to law.
- (v) In the circumstances of the case, there will be no order as to costs.

  
(B.N. BAHADUR)  
MEMBER (A).

  
(R.G. VAIDYANATHA)  
VICE-CHAIRMAN.