

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION NO. : 817/99

Date of Decision : 17.6.03

S.K.Wagholarikar Applicant

Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Advocate for the
Respondents

CORAM :

The Hon'ble Shri V.K.Majotra, Member (A)

The Hon'ble Shri Shanker Raju, Member (J)

(i) To be referred to the reporter or not ? X

(ii) Whether it needs to be circulated to other Benches of the Tribunal ? X

(iii) Library ✓

V.K.Majotra
(V.K. MAJOTRA)
MEMBER (A)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.817/99

Dated this the 17th day of June 2003.

CORAM : Hon'ble Shri V.K.Majotra, Member (A)

Hon'ble Shri Shanker Raju, Member (J)

S.K.Waghlikar,
Senior Scientific Assistant,
Faculty of E & M,
College of Military Engineering,
Dapodi, Poona.

...Applicant

By Advocate Ms.N.Gohad
for Shri S.P.Saxena

vs.

1. Union of India
through the Secretary,
Ministry of Defence,
DHQ P.O., New Delhi.

2. The Engineer-in-Chief,
Army Headquarters,
New Delhi.

3. The Commandant,
College of Military
Engineering,
Dapodi, Poona.

4. The Controller,
C.D.A. (SC),
Poona.

... Respondents

By Advocate Shri R.K.Shetty

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ORDER (Oral) *b*.

{Per : Shri V.K.Majotra, Member (A)}

Vide our order of 17.6.2003 on the request of the applicant relief 8 (d) has been directed to be deleted with liberty to the applicant to move a fresh application in that regard. Thus, this OA. has been heard in regard to main reliefs which are stated below :-

"8. (a) To declare that the applicant is entitled for the same scale of pay of Rs.6500-10500 w.e.f. 1.1.1996, as is given to the S.S.A.'s working in other departments in the Ministry of Defence.

(b) To direct the Respondents to refix the basic pay of the applicant as per the Pay fixation formula and, in case his basic pay exceeds the maximum of the scale, the amount so exceeding should be treated as personal pay of the applicant.

(c) To declare that the discrimination between the S.S.A's working in C.M.E. and those working under other departments of Ministry of defence is violative of Art.14 and 16 of the Constitution.

(e) To grant all other consequential benefits, including monetary benefits due to applicants being placed in the scale of Rs.6500-10500.

(f) To pass any other order which may be just and proper in the facts and circumstances of the case.

(g) To award cost of the application."

2. According to the applicant, he had been promoted to the post of Senior Scientific Assistant since September, 1975 and was working in the scale of Pay of Rs.1640-2900 prior to 1.1.1996.

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His basic pay before the V Pay Commission is stated to be Rs.3,125/- . According to him, he has rendered 24 years of service in his present grade of Senior Scientific Assistant and there are no promotional avenues for him in future. He has attained the basic pay of Rs.3,125/- after having been granted 3 stagnation increments. While applicant has been placed in the scale of Rs.5500-175-9000, he claims placement in the scale of Rs.6500-200-10500 which is revised pay scale for S.S.A. w.e.f. 1.1.1996. Applicant has retired on 30.9.2000. Applicant has claimed the aforesated reliefs on the ground that similarly situated Senior Scientific Assistants working in the Defence Production & Supplies, DTD & P (Air), DRDO and Scientific Personnel in Air Force have been accorded the revised scale of pay of Rs.6500-10500 while the applicant has been begged down to the scale of Rs.5500-9000. Learned counsel of the applicant submitted that applicant has performed similar duties and responsibilities as S.S.A. as those of other establishments/units/departments under the same Ministry of Defence. It has also been contended on behalf of the applicant that while applicant's basic pay has been reduced from Rs.9413/to Rs.9000/-, respondents have recovered arrears of about Rs.17,000/- from the applicant without issuing any show cause notice to the applicant.

3. On the other hand, learned counsel of the respondents stated that this Tribunal has no jurisdiction to grant the reliefs claimed by the applicant as such matters have to be considered and decided by Expert Bodies like the Pay Commission and the Government. He further stated that respondents have

asked the applicant certain details in respect of his claim by their letter dated 9.2.1998 (Annexure-'A-4') which the applicant had not submitted, as such, respondents have correctly placed and fixed applicant's pay in the replacement pay scale of Rs.5500-175-9000. Respondents have not denied the contention of the applicant regarding recovery of arrears of about Rs.17,000/- from the applicant on refixation of his pay without issuing a show cause notice.

4. We have perused Annexure-'A-4' carefully. We find that although it relates to applicant's representation dated 2.1.1998, it has not been addressed to him but to Administrative Wing ('C' Coy) asking for authentic copy of duties and responsibilities of SSA in CME and other organisations, namely, Department of Defence Production & Supplies, DTD & P (Air), DRDO and Scientific Personnel in Air Force. Obviously, the blame for non furnishing of information of duties and responsibilities of the post stated in Annexure-'A-4' does not lie on the applicant. As such, Respondents have not dealt with the representation dated 2.1.1998 of the applicant in judicious manner. While there is no gainsaying that this Tribunal has limited jurisdiction in judicial review but this Tribunal can certainly look into non-consideration of applicant's representation and arbitrariness of the action of the respondents in matters of pay fixation etc. As respondents have not issued a show cause notice for recovery of excess amount calculated on the basis of refixation of the pay of the applicant, recovery of an amount of Rs.17,000/- from the applicant who has also retired from Government service is extremely arbitrary and unjust.

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5. Having regard to the above discussion, this OA. is disposed of with the following directions :-

(i) Respondents shall refund the amount of Rs.17,000/- to the applicant which had been recovered from him without issuing show cause notice within a period of one month from the date of receipt of these orders. However, they are not precluded from taking further action in regard to the said recovery after issuing a show cause notice and adopting a due process of law.

(ii) Applicant shall furnish to the respondents comparative duties and responsibilities of the post of SSA in the College of Military Engineering where he worked and in the Department of Defence Production & Supplies, DTD & P (Air), DRDO and Scientific Personnel in Air Force within a period of one month from the date of communication of these orders.

(iii) Respondents shall decide applicant's representation dated 2.1.1998 after considering the comparative duties of SSA of the College of Military Engineering and other units, organisations under the Ministry of Defence as stated above. Respondents shall do so within a period of two months from the date of receipt of comparative duties and responsibilities of the post of SSA as stated above.

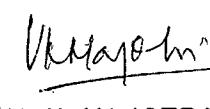
(iv) In case respondents do not accord the reliefs claimed by the applicant in his representation dated 2.1.1998, as per sub-para (iii), they shall pass detailed, reasoned and speaking orders. Only in such eventuality, they can resort to recovery of arrears as stated in terms of sub-para (i) above.

6. OA. is disposed of in the above terms. No costs.


(SHANKER RAJU)

MEMBER (J)

mrj.


(V.K. MAJOTRA)

MEMBER (A)