

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 240 of 2000.

Dated this Thursday, the 5th day of October, 2000.

Maddala V. Suryanarayana Murty, Applicant.

In Person, Advocate for the
applicant.

VERSUS

Union of India & Others, Respondents.

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

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

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

B. N. B.

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

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Dated this Thursday, the 5th day of October, 2000.

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

Maddala V. Suryanarayana Murty,
Scientist 'E' (Retired) in
Research & Development Estate,
(Engineers), Pune, under the
Defence Research & Development
Organisation, Min. of Defence.

R/o. Flat No. 1,
Aviraj Society,
(Off) D.P. Road, Kotbagi
Hospital Lane, Aundh,
Pune - 411 007.

... Applicant.

(In Person)

VERSUS

1. Director,
Research & Development Estt.
(Engineers),
Defence R & D Organisation,
Ministry of Defence,
Dighi, Pune - 411 015.

2. Chief Controller of Defence
Accounts,
O/o. CCDA (Pension),
Allahabad - 211 014.

3. State Bank of India,
East Street Branch,
Pune - 411 001.

... Respondents.

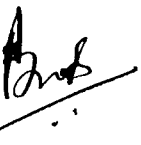
(By Advocate Shri R. R. Shetty for
Shri R. K. Shetty).

OPEN COURT ORDER

PER : Shri B. N. Bahadur, Member (A).

This is an Application made by Shri M.V.S. Murty, who retired on 30.04.1999 (Voluntary Retirement) from the post of Scientist 'E' in Defence Research & Development Organisation (D.R.D.O.) under the Ministry of Defence of Government of India.

The case made out by the Applicant is as follows :



...2

The Applicant states that his pension had been finally settled on his retirement through Pension Payment Order (copy at page no. 21/22). In this, the Pension/Pensionary Benefits were given on the basis of his last pay drawn, being Rs. 16,700/- which included an amount of Rs. 800/-, representing two increments granted to him as a result of a policy decision of Government of India. This policy decision is contained in the letter dated 03.02.1999, a copy of which is available at pages 14 and 15 of the Paper Book.

However, the Ministry of Defence (D.R.D.O.) issued a corrigendum Pension Payment Order (page 11) exhibit 'A', through which the pension and pensionary benefits of the Applicant were revised to his disadvantage, and he was asked to refund the amounts which were overpaid to him in view of the revised pension. The revision came about because the sum of Rs. 800/- representing the two incentive increment now stands omitted from 'pay' and hence, calculation of pensionary benefits and pension stood decreased. This is the grievance with which the Applicant comes up before us seeking the relief for the setting aside of the corrigendum to the Pension Payment Order, and for a direction for payment of Pension as per the Original P.P.O. Consequential reliefs of refund of amounts recovered are also sought. Further, a specific declaration is sought to the effect that incentive increment may be considered as pay for all purpose under relevant rules.

2. The Respondents have filed a Written Statement, in which the stand taken is that the two additional increments are not to be merged with the basic pay for the purpose of pay fixation.



It is averred that this point was clarified by the Government of India, by the letter dated 14.05.1999, copy of which is at page 24 of the Paper Book. It is further averred that the pension fixation, etc. in the case of the Applicant was earlier done after taking into consideration these increments and that this order was a mistake. It is this mistake which is sought to be corrected and hence the action of recovery.

3. The Applicant in person argued his case at some length. He took me over the various orders in order to familiarize me with the total position and background of the case. Thereafter, the two basic arguments that were put forth by him are as follows :

(a) That the Pension Payment Order had become final and could not be varied or corrected to Applicant's disadvantage at this stage.

(b) Even if the position above is not agreed to, he contended that the amendment to the P.P.O. was in itself not valid on merits.

4. On the first point the Applicant referred to the 'Instructions' on the Pension Payment Order to state that this P.P.O. was 'final'. He also contended that the Audit Office at Pune had gone into this and the first P.P.O. was issued after they had examined the matter.



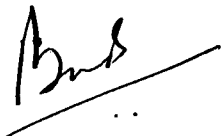
5. On merits, the Applicant in person argued that "an increment" by definition has to be part of pay, and hence there was no question of deeming it be separate. He further contended that the letter dated 14.05.1999, page No. 24, was not a Government letter and was issued by the Chief Controller of Research & Development (C.C.R.D. in short) and that no authority except from the original authority i.e. the Government could issue any interpretation. Hence, this interpretation was invalid. It was not a decision by a competent authority and hence bad in law. The Applicant took me over various rules and instructions, specially Rule 70 of Pension Rules to say that pension once fixed could not be reduced to the disadvantage of the Applicant, except for clerical error/s or as an act of punishment after due process of law.

6. The Learned Counsel for the Respondents also argued his case in detail. Making the specific point, first, that a mistake had been made and it was this mistake that was sought to be corrected and as per settled law, right to correct mistake existed. He referred to the original order of the Department of Defence Research & Development, New Delhi dated 03.02.1999 relating to incentive increments and state that the phrase "after their normal pay fixation" used in para (2) sub-para (ii) clearly showed the intention of the Government to the effect that incentive increment were outside the scale of pay. He further argued that the letter of 14.05.1999 issued by the C.C.R.D.(M) was only in the nature of clarificatory letter and there was no question of this authority trying to issue instructions which were different to those issued by the Government.

7. It was also argued by the Learned Counsel, Shri R. R. Shetty, that a show cause notice was not necessary in accordance with the law settled by the Supreme Court in the case of A.K. Sharma V/s. Union of India reported in 1999 (1) SCC 171 and that a representation had been made. However, it was conceded that representation made cannot be deemed to have been replied to by the letter dated 23.02.2000 (page 35 - exhibit 'H'). The Learned Counsel agreed with the settled law in respect of the non-recoverability of amount paid even erroneously to Government servant. He also conceded the question regarding the point made in the letter dated 14.05.1999 about reference to Ministry of Finance and stated that no decision had yet been taken as per his knowledge.

8. We have considered the papers in the case and have also considered the arguments made on both sides.

9. Let us first take up the point regarding finality of the P.P.O. and the argument made that the Government had no right per se to make any amendment, specially after six months. I am not willing to concede this, in a case like the one before me, where the correction is sought to be made because of a mistake. There is merit, as per settled law, in the stand taken by the Respondents that this is a mistake and the right to correct mistake remains. Thus, while conceding this limited point, it must be mentioned that this right to correction of a mistake will obviously exist only if the mistake/correction is valid and in terms of rules and law. I now proceed to examine this (and the more substantial) questions.



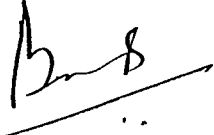
10. In the first place, let us look at the original order dated 03.12.1999. It is made by the Government. The relevant para providing two increments to Scientists states as follows :

"2. (ii) Two additional increments to Scientists (Recruitees/Promotees) in the pay scales of Rs. 10,000-15,200; 12,000-16,500; 14,300-18,300 and 16,400 - 20,000 after their normal fixation."

Now it is true that the phrase "after their normal pay fixation" is used. However, the argument that it is outside of 'pay' is not clearly stipulated and in the face of the fact that any increment or advance increment is normally assumed to be part of pay, the intention of the Government is not clearly discernable. Once I reach this conclusion, I must also note that the clarificatory letter dated 14.05.1999 issued by the C.C.R.D.(M) also needs to be viewed in this line. The letter is not indeed issued by an authority which can take policy decision unlike the Ministry and Government as such. In this connection, it is very relevant to note the following paragraph in the communication dated 14.05.1999.

"A proposal to treat the additional increments as part of 'Pay' as defined under FR 9(21) for all purposes like DA, HRA, Pension, etc. except for pay fixation, is being taken up with Ministry of Finance. Further instructions in this regard will be issued after obtaining the approval of Ministry of Finance."

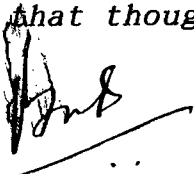
It is clear from this that even this Authority i.e. C.C.R.D.(M), is not firmly clear and is in doubt, about the intention of Government as to whether additional increments are part of pay or not. Hence, it states that the matter has been taken up with the Government. The doubt has indeed been regarded as important enough to be taken up with the Ministry of Finance and in all logic, it is necessary that finalisation of this issue should be



done by the Government, i.e. by the Ministry of Defence (D.R.D.O.) in consultation with the Ministry of Finance. This process has already been initiated and it is necessary that a decision be taken by the Government itself and not through any interpretation.

11. In deciding this case, I am conscious of the basic settled law that it is not for the Tribunal to decide what benefit should be given or not given. It is no where my intention to do so, since the settled law is very clear. The point, however, is what is the intention of Government! This intention must be clearly stated and clearly implemented. Here, the authorities themselves fixed the pension taking increments as part of pay in the first instances. Now, a doubt has been raised. It is absolutely necessary that the doubt be clarified by the Government and not by any other agency. The Government will have to decide this matter with reference to its original intention. Before giving direction on this issue, I must go into the question of the recovery made from the Applicant in respect of the alleged over-payment.

12. 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. Similarly, in the case of Union of India & Others V/s. M. Bhaskar & Others reported in 1996 (4) SCC 416 it has been held by the Apex Court that though the 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. In the latest decision of a Division Bench of this Tribunal in O.A. No. 116/99 decided on 04.04.2000 it has been held that excess payments made due to wrong fixation of pay shall not be recovered from the Applicants.

13. It is, therefore, now well settled that such payments, if made to a Government servant even erroneously, should not be recovered from the Government Servant. The revised Pension Payment Order has been made on 07.02.2000. The communication dated 04.06.1999 had informed the applicant of the revision being undertaken in his pension and pensionary benefits and had even asked for refund of certain amounts. Hence, the protection shall be available only upto say 30.05.1999. Hence, no recovery of the pension paid from the date of retirement to 30.05.1999 shall be made and if already made, shall be refunded. These instructions will operate for pension, ^{for PwB} and the other recoveries ordered or made on account of gratuity, payment of leave encashment, arrears of increments, etc. However, the question regarding commutation amount is linked to pension to be decided, and no protection of recovery can be granted here, ^{i.e.} in regard to commutation of pension (only).

14. In view of the discussions above, this O.A. is disposed of with the following orders/directions :

- (i) Respondent No. 1 shall consider this O.A. as a representation and take a decision, after consultation with the Ministry of Defence and Ministry of Finance, on

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the issue as to whether the additional increments are to be considered as pay/part of pay for the purpose of fixation of pension and pensionary benefits. (If necessary, the orders may be issued by the Ministry of Defence itself).

- (ii) The above decision shall be taken within a period of four months from the date of receipt of a copy of this order, and communicated to the Applicant.
- (iii) Notwithstanding any decision taken, as directed above, it is held that no recovery should be made from the amounts paid already to the applicant in respect of any benefit, except that relating to commutation of pension. For the purpose of pension itself, the benefit will be available only upto 30.05.1999 (para 13 above).
- (iv) The matter regarding commutation of pension shall be decided after a final decision on the issue raised above is taken. Till a decision is taken, no recovery in respect of commutation of pension should also be made.
- (v) The O.A. is disposed of accordingly with no order as to costs.

B. N. Bahadur

(B. N. BAHADUR)

MEMBER (A).

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

C.P. NO.: 49/2001 IN O.A. No.: 240/2000.

Dated this Tuesday, the 23rd day of October, 2001.

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

M. V. S. Murthy ... Applicant

VERSUS

Shri Y. P. Pathak,
Director,
R & DE (ENGRS),
Dighi, Pune - 411 015. ... Contemnor.

TRIBUNAL'S ORDER

Applicant present in person. Shri R. R. Shetty
for Shri R. K. Shetty, Counsel for Contemnor/Respondents.

2. Contemnor Respondents has filed a reply. The
applicant has gone through the affidavit and he states that
he would not like to file any rejoinder and, therefore,
we proceed with the hearing of contempt petition. Shri R. R.
Shetty has pointed out that Shri Y. P. Pathak, Contemnor,
is present in the Court. Learned Counsel, Shri Shetty is
heard for the alleged contemnor. Shri M.V.S. Murthy is also
present in person to assist us in the consideration of the C.P.



3. The order in respect of which disobedience is alleged, is sub-para (iii) of para 14 specifically. This sub-para reads as follows :

"(iii) Notwithstanding any decision taken, as directed above, it is held that no recovery should be made from the amounts paid already to the applicant in respect of any benefit, except that relating to commutation of pension. For the purpose of pension itself, the benefit will be available only upto 30.05.1999 (para 13 above)."

The only point in dispute is that such of the portion of recovery amount, as was already recovered, has not been refunded. The stand of the Contemnor taken by his Learned Counsel, Shri Shetty, is that the operative portion only stated that "no recovery should be made from the amounts paid already".


4. In this respect, no detailed ²⁵or long winded argument is needed to convince us that the stand is absolutely wrong. This is clear from the fact that even in the operative portion i.e. para 14 (iii), the order is explained to operate with reference to para 13 and the words "para 13 above" have been clearly put in this operative portion. In para 13, it has been clearly stated, inter alia, that "Hence, no recovery of the pension paid from the date of retirement to 30.05.1999 shall be made, and if already made, shall be refunded." It is, therefore, clear that the interpretation being made is totally incorrect and should not have been made by any reasonable person. Learned Counsel,

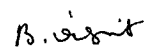


Shri R. R. Shetty, points out that the alleged contemnor is a high ranked Scientist and depended on the Audit which had advised as per the stand already taken. In view of the fact that this stand was taken on the advise from the Audit, we do not hold the alleged Contemnor as being personally and wilfully inclined to disobey the order ^{of Tribunal, ~~and~~} and since there is no wilful disobedience apparent, we do not hold him guilty of contempt.

5. However, by an interpretation that is inadequate in its ability to stand by itself and the fact that the Original Applicant has been made to come before us again for seeking implementation of the order, we feel that this is a fit case for awarding costs, which in the above explained circumstances, shall be paid by the Government and not by the alleged Contemnor. Thus, we award cost to the Original Applicant, M.V.S. Murthy, ^{i.e.} an amount of Rs. 5,000/- (Rupees : Five Thousand only). Government should pay this amount within a period of four weeks from the date of receipt of a copy of this order.

6. Copy of this order shall be provided to the Counsel for Contemnor/Respondents, Shri R. R. Shetty, by 24.10.2001.


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


(B. DIKSHIT)
VICE-CHAIRMAN.