

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 702 of 2000.

Dated this Friday, the 21st day of September, 2001.

E. K. Ramakrishnan & Another, Applicants.

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

VERSUS

Union of India & Others, Respondents.

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

CORAM : Hon'ble Shri Justice B. Dikshit, Vice-Chairman.

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 ? X
- (iii) Library. ✓

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

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

1. E. K. Ramakrishnan,
Foreman, CAFVD,
Poona - 411 003.

2. S. R. Malekar,
Foreman, CAFVD,
Poona - 411 003.

... Applicants.

(By Advocate Shri S.P. Saxena)

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
D.H.Q. P.O.,
New Delhi - 110 011.

2. The Adjutant General,
Army Headquarters,
New Delhi - 110 011.

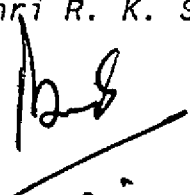
3. The Officer-in-Charge,
Army Ordnance Corps,
P.O. Tellicherry,
Secunderabad.

4. The Commandant,
CAFVD, Kirkee,
Poona - 411 003.

5. The Asstt. Controller of
Defence Accounts (S.C.),
Dehu Road.

... Respondents.

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



O R D E R (ORAL)

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

The Applicants in this case comes up to the Tribunal challenging the order dated 22.06.2000, made by the Respondents (copy at Annexure A-1). The facts of the case, as brought out by the Applicants in their pleadings, and in the arguments made by their Learned Counsel today, are that the Applicants' pay scale had been fixed at Rs. 5500-9000 w.e.f. 01.01.1996, consequent upon the revisions following the recommendations of the Pay Commission. This has come to be revised by the impugned order on the ground that it was erroneously fixed. It is in regard to revision of the scale of pay that the Applicants are before us seeking the relief to quash and set aside the impugned order and to direct the Respondents to continue to pay the salary of the Applicants in the scale of pay of Rs. 5500-9000.

2. The Respondents have filed a Written Statement in reply, resisting the claims made by the Applicants, and referring to part 'C' of the notification under Fifth Pay Commission Report, copies of which have been annexed at R-1 (page 42 to the Paper Book) by the Respondents. (A copy of this document has also been annexed by the Applicants at Annexure A-3).

3. We have gone through the papers in the case and have heard the Learned Counsel on both sides, Shri S. P. Saxena,

... 3



for the Applicant and Shri R. R. Shetty for Shri R. K. Shetty for the Respondents.

4. We will come directly to Part 'C' of the Notification referred to above, as this was the basic document on which our attention was focused with regard to the issue in the case. Learned Counsel for the Respondents, Shri R. R. Shetty, had stated that the normal replacement scale of pay of the old scale of Rs. 1600-2660 was, in fact, the scale of Rs. 5000-8000. The three scales which are shown as the revised scales with reference to this scale in Part 'C' of the Notification are contingent upon the other recommendations and conditions as made by the Pay Commission. In this connection, our attention was specifically invited to the preamble of Part 'C' notification, which is reproduced below :

"REVISED SCALES OF PAY FOR CERTAIN POSTS IN
MINISTRIES, DEPARTMENTS AND UNION TERRITORIES.

The revised scales of pay mentioned in Column 4 of this part of the Notification for the posts mentioned in column 2 have been approved by the Government. However, it may be noted that in certain cases of the scales of pay mentioned in column 4, the recommendations of the Pay Commission are subject to fulfilment of specific conditions. These conditions relate inter-alia to changes in recruitment rules, restructuring of cadres, re-distribution of posts into higher grades, etc. Therefore, in those cases where conditions such as changes in recruitment rules, etc. which are brought out by the Pay Commission as the rationale for the grant of these upgraded scales, it will be necessary for the Ministries to decide upon such issues and agree to the

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changes suggested by the Pay Commission before applying these scales to these posts w.e.f. 01.01.1986. In certain other cases where there are conditions prescribed by the Pay Commission as pre-requisite for grant of these scales to certain posts such as cadre restructuring, redistribution of posts, etc. It will be necessary for the Ministries/Department concerned to not only accept these preconditions but also to implement them before the scales are applied to those posts. It would, therefore, be seen that it is implicit in the recommendations of the Pay Commission that such scales necessarily have to take prospective effect and the concerned posts will be governed by the normal replaced scales until then."

5.....Importantly, we note here that the Respondents have stated in their Written Statement at para 12 that "the present recommendations of the 4 grade structure in respect of EME and AOC is still under consideration of the Min. of Finance." During the arguments it was stated by the Learned Counsel for applicants, Shri Saxena, that it would be appropriate even if the Respondents were directed to decide on the issue within a stipulated period of time. Since we propose to give such directions, we would like to recall two relevant points which have been argued before us among other things. The first is that, it is open to Government to make one of the three pay scales applicable to Foremen but from a future prospective date after considering the recommendations regarding restructuring, etc. At the same time, we note that the Department of Personnel has exhorted Ministries (vide their O.M. dated 25.05.1998) to decide the issue within a stipulated period of time. This is gleaned from a copy of the O.M. provided during arguments by the Learned Counsel, Shri S. P. Saxena.



6. While we propose to issue directions to the Respondents to decide on the issue, we must also consider the point regarding the recovery ordered in respect of the emoluments already paid on the basis of higher scale which was provided w.e.f. 01.01.1996. On the basis of this higher scale, these emoluments were paid from 01.01.1996 till May, 2000, as confirmed by both Counsel today. The point regarding waiving of recovery was argued by both Learned Counsel at some length. Learned Counsel for the Applicant depended on the cases of Shyambabu Verma V/s. Union of India reported at 1994 (27) ATC 121 and Sahib Ram V/s. State of Haryana & others reported at 1995 SCC (L&S) 248. On the other hand, the Learned Counsel for the Respondents, Shri Shetty cited the following case law :

- (i) V. Gangaram V/s. Regional Joint Director & Others Reported at 1997 SCC (L&S) 1652.
- (ii) Union of India & Others V/s. Sujatha Vedachalam (Smt.) & Another reported at 2000 SCC (L&S) 882.
- (iii) O. K. Udayasankaran & Others V/s. Union of India & Ors. reported at 1996 (2) SC SLJ 5.

7. We have carefully heard the arguments made and considered the cases cited. The basic law that is being followed is no doubt the one settled by the Hon'ble Supreme Court in the matter of Shyam Babu Verma and Sahib Ram (supra). On perusing the cases of Sujatha Vedachalam, we find that this was a case of suppression of facts and hence, in the background of the facts on which decision



is given, it can be concluded that this is a judgement made in the facts and circumstances of the case.

8. In the case of O. K. Udayasankaran, we find that the Hon'ble Supreme Court has really upheld the order of the High Court in that particular case and it is not a case where a dictum is settled per se that recovery can be made in respect of amounts paid by mistake. The judgement in the matter of either Shyambabu or Sahib Ram is not referred to.

9. In the case of V. Gangaram referred to by Shri Shetty, there is a decision to the effect that the recovery has been allowed in respect of the increment wrongly given. We note however, that this judgement has been made by a two Judge Bench whereas the judgement in the matter of Shyam Babu has been made by a three Judge Bench. In view thereof, we will have to go by the ratio settled by the Hon'ble Supreme Court in the case of Shyambabu. Accordingly, the Applicants will need to be protected against recovery.

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

- (i) The Respondents should consider and decide on the recommendations made and published in Part 'C' of the Gazettee of India, copy at Annexure A-3 in respect of the post of Foreman in Army Ordnance

... 7



Corps within a period not exceeding six months from the date of receipt of a copy of this order.

(ii) No recovery shall be made in respect of the salary/emoluments paid to the Applicants on higher scale. Any amount deducted shall be refunded.

(iii) No order as to costs.

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

OS*

B. Dikshit
(B. DIKSHIT)
VICE-CHAIRMAN.