

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:289/2000
DATED THE 22ND DAY OF NOV, 2001

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT.SHANTA SHAstry, MEMBER(A)

Shri Avtar Singh,
Chief Limb Fitter,
Residing at.B-51, Tatya Top~~8~~,
Housing Society, Wanworie,
Pune - 411 040. Applicant

By Advocate Shri S.S.Karkera

V/s.

1. The Union of India,
Through The Secretary,
Ministry of Defence,
Nirman Bhavan, New Delhi.
2. The Director General,
Armed Forces Medical Services,
AHQ, AG's Branch,
DHQ, New Delhi-110 001.
3. The Controller of Defence Accounts,
Southern Command No.1, Finance Road,
Pune 411 011.
4. The Officer Commanding,
Artificial Limb Centre,
Pune - 411 040. Respondents

By Advocate Shri R.K.Shetty

(ORAL)(ORDER)

Per Shri S.L.Jain, Member(J)

This is an application under section 19 of the Administrative Tribunals Act 1985 to quash and set aside the impugned order dated 14/12/99 and 14/3/2000 (Annexure - A and Annexure-B).

2. The pay of the applicant as Supervisor Grade II was fixed by the respondents with effect from 19/1/93 and the said pay fixation was found to be erroneous vide order dated

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10/99-14/12/99 (Annexure-A) and the respondents have ordered recovery of 9.963/-.

3. During the course of arguments, the learned counsel for the applicant has not challenged the fixation of pay w.e.f. 19/1/93 and his argument is confined only to the question that the recovery ordered by the respondents be set aside. On perusal of Exhibit-D, letter dated 15/9/99 it is stated by the respondents that the pay fixation on 19/1/93 in Supervisor Technical Grade-II as approved by letter No.P/3/1/4460/ALC/Pay dt. 8/7/93 holds good. In such circumstances it is a case of erroneous fixation.

4. The learned counsel for the applicant relied on 1994(2)SCSCC- 521 Shyam Babu Verma and Ors. v/s. Union of India & Ors which lays down the proposition that higher pay scale erroneously given due to no fault of the applicant, it shall be only just and proper not to recover any excess amount already paid to them.

5. The learned counsel for the respondents relied on 1996 (2) SCSLJ 5 O.K.Udayashankaran & Ors. v/s. Union of India & Ors., particularly in para-12 and argued that the respondents can make recovery of excess amount so paid in reasonable instalments. He further relied on 2000 SCC (L&S) 882 Union of India & Ors. v/s. Sujatha Vedachalam (SMT) and Anr decided on 7/4/2000 which also lays down the proposition that recovery of excess payment on wrong fixation of pay directed to be recovered in easy instalments. It is true that case of O.K.Udayashankaran & Ors was decided by Three Member Bench on 27.3.96 and Union of India & Others Vs. Smt. Sujata while & another was decided on 07.4.2000

while case of Shyam Babu Verma was decided on 8.2.94 by a Division Bench. It is suffice to state that the hardship and justification in ordering recovery should be seen and not whether the matter ^{is} decided by a Three Member Bench or a Division Bench as constitution of the Benches - number being two or three is only the matter of convenience and none else. Further the later two judgments do not refer the earlier judgment decided on 08.02.1994. The applicant was a Group 'C' employee. Recovery is sought to be made since 1993 for the excess payments made to him. We are of the considered opinion that this is a fit case where the applicant should not be asked to pay the amount already paid to him. It would certainly cause hardship to him.

3. In the result, we allow the OA, quash and set aside the orders dated Oct. 99/14/12/1999 only ⁱⁿ regard to the part relating to recovery of excess payments made to applicant from 19/1/93 to 30/9/99. No costs.

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(SMT. SHANTA SHAstry)
MEMBER(A)

S.L.Jain

(S.L.JAIN)
MEMBER(J)

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