

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 252/2001

Dated this *Monday* the *31st* day of *December 2001*

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

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

M. V. S. Murty
Flat No. 1, Aviraj Society,
(off) D.P. Road, Aundh,
Pune - 411 007.

... Applicant.

(In person)

VERSUS

1. Union of India through
The Director,
Res. & Deve. Estt. (Engrs.),
Def. R & D Organisation,
Min. of Defence, Dighi,
Pune - 411 015.

2. Chief Controller of Defence
Accounts,
O/o. Principle (east while chief)
Controller of Defence Accounts,
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).

O R D E R

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

The Applicant in this case comes up in this O.A. with the
following prayers for relief :

- (a) The increments in the pay scale granted
by President of India be declared as Pay
as defined in F.R. 9 (21)

BNS

... 2

- (b) The limitation of 6 months for treating the PPO issued as 'FINAL' as laid down by the Govt. on the PPO itself be upheld lest there may be no sanctity for Govt. orders. The PPO has a lot of Sanctity and valid document for not only the life-time of the Employee Pensioner but up to the demise of the spouse or dependent member of the family and it is binding on the Pension Disbursing Bank, who are not administratively connected with the Departments.
- (c) The First Respondent be directed to abide by the order of the Tribunal granting refund of the amount forcibly recovered immediately before contesting this petition.
- (d) The Respondents be restrained from any recovery till the date of disposal of this petition as the Hon'ble Supreme Court has actually ruled that no recovery shall be effected even if excess payments are made either to mistakes, even as a consequence of Judicial Orders."

As stated at the outset by the Applicant in the O.A., he is challenging the impugned order dated 21.02.2000, which is the decision made by the Respondents in pursuance of directions made by this Tribunal in O.A. No. 240/2000, a copy of which is annexed by the Applicant as exhibit-2, Page 9. In fact, as stated by the Applicant also at the outset, the application has arisen "as a follow-up of the judgement and order dated 5 Oct. 2000" made in O.A. No. 240/2000.

2. We have perused the application and the written statement of reply and have heard the Applicant who appeared in person and Shri R. R. Shetty for Shri R. K. Shetty for the Respondents.

Bs

3. In view of the decision in O.A. No. 240/2000 brought out at the ~~threshold~~ ^{threshold}, it is clear that only those prayers for relief can be gone into in the present O.A. that have not been gone into while deciding O.A. (No. 240/2000). In view of this, the prayers in this O.A. shall be restricted to the outcome of directions in the earlier O.A. In the earlier O.A. No. 240/2000, Respondent No. 1 was directed to consider that O.A. as a representation and take a decision after consultation with Defence and Finance Ministries on the issue as to whether the additional increments are to be considered as pay/part of pay for fixation of pension and pensionary benefits. It had also been decided that no recovery shall be made from the amounts already paid. It is seen that the Respondents have considered the matter in terms of the directions made in the earlier O.A. and have taken a decision after taking up the matter with the Ministry of Finance which, it has been stated, was not agreed to by them.

4. The Applicant had argued the points in person, as made in the O.A. and has depended mainly on the written statement and averments made. The Learned Counsel for Respondents had similarly depended on the Written Statement, mainly. In the grounds taken in the O.A., the Applicant has made a point to the effect that the case having been initiated by Cabinet Secretariat and the Government decision now having been issued by Defence Department (in concurrence with the Ministry of Finance) it is difficult to decide as to whose intention is correct. His

point is that the judiciary is the competent authority to decide in case of doubt, as between Departments. It is not a question as to which department should decide. It cannot be said that there is anything wrong in the Defence Ministry deciding the issue, especially when it has consulted the Ministry of Finance. It is not for the judiciary to decide the intention of a benefit, except where an illegality is involved or where Government rules are misinterpreted or in case of arbitrary or perverse decision. Once the issue is decided by interpretation in consultation with the Ministry of Finance, it is to be assumed that such interpretation is by Government as a whole. Certainly, it has not been pointed out as to which rule has been infringed in which case - a clear benefit could have been sought by quashing orders, if necessary. Other issues raised have already been decided in para 4 of the earlier judgement and cannot be looked into again. A point has been raised about refund of the amounts already paid. The order made in O.A. No. 240/2000 dated 05.10.2000 at sub-para (iii) of the last (operative) para is as follows :

"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)."

It is seen that a clear reference exists to para 13 of the order.

Here it is clearly stated as follows :

B. S.

"Hence no recovery of the pension paid from the date of retirement to 30.5.1999 shall be made and if already made, shall be refunded."

The stand taken by Respondents that the operative part does not contain this, is wrong, especially when para 13 is referred to above. Hence, the Respondents are bound to read para 13 as part of the operative order and act accordingly.

5. Subject to para (4) above, this O.A. is hereby dismissed.
No order as to costs.

▲ B.N. Bahadur

(B.N. BAHADUR)
MEMBER (A)

OS*

B. Dikshit
(B. DIKSHIT)
VICE CHAIRMAN