

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 395/91

199

T.A. NO:

DATE OF DECISION 18.10.1991

Shri Chamel Singh

Petitioner

Shri G.R. Menghani

Advocate for the Petitioner

Versus

Union of India and others

Respondent

Shri B.M. Pradhan.

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. M.Y. PRIOLKAR, MEMBER (A)

The Hon'ble Mr. T.C. REDDY, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal ?

1. Respondent(s)

T.C.R.
(T.C. REDDY.)
MEMBER (J)

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(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH,

Original Application No. 395/91

Shri Chamel Singh.

... Applicant.

V/s.

Union of India and others.

... Respondents.

CORAM: Hon'ble Shri M.Y. Priolkar, Member (A).

Hon'ble Shri T.C. Reddy, Member (J)

Appearances:

1. Mr. G.R. Menghani, advocate
for the applicant.

2. Mr. P.M. Pradhan, advocate
and Mr. V.S. Masurkar, advocate
for the respondents.

JUDGMENT:

Dated: 18-10-1991.

(Per Shri T.C. Reddy, Member (J))

This application is filed by the applicant
under section 19 of the Administrative Tribunals Act,
1985.

2. The facts giving rise to this application
in brief may be stated as follows:

The applicant joined Indian Navy as a
Trainee Boy on February, 14, 1949. He took voluntary
retirement from Indian Navy from 24.11.1974 onwards.
On 25.11.1974 the applicant was appointed in the
Customs Department as Skipper's Mate with effect from
25.11.1974. His pay was fixed in the scale of
Rs. 550 - 750 with effect from 25.11.1974. The applicant
retired on 30.9.1990. After the retirement of the
applicant a letter dated 21.9.1990 had been served
on the applicant refixing his pay and to refund to the
department an amount of Rs. 76,535/- which is said to
be excess payment from 25.11.1974 which is the date of
appointment of the applicant till 30.9.1990 his date of
retirement. In supersession of the letter dated
21.9.1990 revised pay fixation of the applicant was

premature release from the Navy. As the applicant had served for 25 years in the Indian Navy he was entitled to pension and gratuity and so he was sanctioned a monthly pension of Rs. 203/-.

According to the respondents after re-employment of the applicant in the Customs Department the pay of the applicant should have been fixed in the scale of Rs. 550 - 750 taking into consideration gratuity and pension of the applicant for his service in the Navy prior to his re-appointment in the Customs Department as Skipper's Mate and that the pay of the applicant was not correctly fixed w.e.f. 25.11.1974 which is the date of re-appointment of the applicant and so it became necessary for the respondents to correctly fix the pay of the applicant w.e.f. 25.11.1974 which is the date of re-employment of the applicant and that the pay was fixed correctly w.e.f. 30.9.90 and the same was fixed with reference to various orders passed from time to time and it was found that the total excess amount paid to the applicant was to the extent of Rs. 76,535/- and therefore, the order of recovery was issued by letter dated 16.11.1990.

4. Admittedly the applicant retired as Skipper's Mate from the Customs Department on 30.9.1990. From 25.11.1974 which is the date of appointment of the applicant as Skipper's Mate in the Customs Department till 30.9.1990 which is the date of retirement of the applicant in the Customs Department as Skipper's Mate never it was brought to the notice of the applicant that there was excess payment to the applicant as the pay was not correctly fixed at his initial re-appointment on 25.11.1974. It is only on 21.9.1990 that is a week before retirement of the applicant and on 16.11.1990 1½ months after the retirement of the applicant, by means of separate letter the applicant had been

worked out and a letter dated 16.11.1990 was served on the applicant calling upon him to refund the sum of Rs. 76,535/- that had resulted in excess payment from 25.11.1974 which already pointed out is the date of appointment of the applicant till 30.9.1990 which is his date of retirement. The applicant had also made a representation to the concerned contending that his pay had been rightly fixed on 25.11.1974 when he was appointed as Skipper's Mate in the pay scale of Rs. 550 - 750 and as such he was not liable to refund any amount as contended by the Respondents as there had been no excess payment. Even though more than six months had elapsed the representation of the applicant was not answered so the applicant had filed the present application for the following reliefs:

- (i) To call for the record and proceedings and impugned letters dated 21.9.1990 and 16.11.1990 that are issued by respondent No. 3 and after going through the legality or otherwise thereof to quash and set aside the impugned letters dated 21.9.1990 and 16.11.1990.
- (ii) To declare the recovery action taken by 3rd respondent by the letters dated 21.9.1990 and 16.11.1990 in respect of fixation of pay of the applicant is bad in law arbitrary and have no legal consequence.
- (iii) To direct the respondents to pay to the applicant terminar benefits amounting to Rs. 77,658/- as stated in letter dated 16.11.1990 forthwith together with interest thereon @ 21% p.a. w.e.f. 30.9.1990 till the date of payment.
- (iv) To award costs of this application.

3. As already pointed out the applicant has joined in the Customs Marine Department as Skipper's Mate on 25.11.1974. Admittedly at the time of joining in service in the Marine Department he was appointed in pay scale of Rs. 550 - 750 w.e.f. 25.11.1974. The applicant had worked in the Indian Navy as a Train Boy and while he was working as Chief Petty Officer he took

informed that there is excess payment from 25.11.1974 onwards resulting in an amount of Rs. 76,535/- which the applicant was liable to refund to the respondents. In the said letter the applicant had been informed that the excess payment of Rs. 76,535/- would be adjusted from the amount of Rs. 76,658/- that was payable to the applicant towards retirement benefits.

8. It is significant to note that the Calcutta Bench of the Central Administrative Tribunal dealing with a case of recovery of overpayments report in All India Service Law Journal in Nilkantha Shah V/s. Union of India and others 1978, 3 CAT page 307 at Page 309 para 7 has observed as follows:

" 7. We have, however, taken into account the fact that the respondents took more than seven years in detecting their mistake regarding wrong fixation which resulted in over payment of more than Rs. 13,000/- and even after waiver of 50% on compassionate ground, the applicant is required to pay back more than Rs. 6,000/- from his salary. When the applicant was given the benefit of revised pay he was not aware that he would have to pay back the excess amount drawn and he spent the amount according to the pay scale that he enjoyed. Any deduction at this late stage definitely causes hardship to the applicant. It is also quite clear that the applicant was not responsible or for the non-detection of the mistake of the Department for a long seven years."

As already pointed out no notice had been given to the applicant prior to the said letters of recovery dated 21.9.1990 and 16.11.1990. In the case of K.S. Shridharan and others V/s. Union of India and others reported in All India Service Law Journal 1991 (2) page 230 at page 233 ~~was mentioned~~ laid down as follows:

" 17. From the facts detailed above, it is evident that the pay of the applicants in these three applications was fixed originally in 1974 in OA 1006/89, in 1975 in the case of OA 21/90 and in 1984 in the case of OA 1007/89. All the applicants have thereafter been drawing their emoluments accordingly. In all these cases, the impugned orders were issued in 1989 refixing the pay of the applicants to their disadvantage and ordering recovery of excess payment on that basis. One of the main grounds urged by the

learned counsel for the applicants was that such a refixation of pay has been done arbitrarily and in violation of the principles of natural justice, since no notice was given to the applicants, and no opportunity was given to them to make their representations against such refixation of pay to their disadvantage. The respondents in their reply have contended that the refixation of pay in these cases was done to correct a mistake. We are of the opinion that when a Government servant's pay is fixed and he continues to draw the same, such pay cannot be refixed to the disadvantage of the Government Servant, without giving an opportunity to such Government servant to show cause why such refixation should not be done. The reason for such proposed refixation might be that it was considered that there was some error in the original fixation of pay. But this does not obviate the necessity to set in accordance with the principle of audi alteram partem. Any such unilateral action of refixation of pay, without giving such opportunity to the Government servant, is vitiated and renders the refixation illegal and without any effect.

18. The applicants have referred to the case of the Divisional Superintendent, Eastern Railway, Dinapur and Others v. L.N. Kashri and others, AIR 1974 SC 1889. In that case also the pay of a Government servant was sought to be fixed on the ground that there was some mistake which had to be rectified. The Supreme Court held that the " appellants having fixed the scale and confirmed the respondents could not reduce the scale without giving any opportunity to the respondents to be heard.

19. The learned counsel for the applicants referred to the decisions in the following cases:

- (1) C.S. Bedi v. Union of India and another, AIR 1988 (2) CAT 510.
- (2) Vithal Dagdo Marathe v. General Manager, Central Railway and Others, ATR 1989(2)CAT 65

AND

- (3) Pushpa Bhide v. Union of India and Others ATR 1989(1) CAT 397.

On the basis of the above decisions, the learned counsel contended that the impugned orders of refixation of pay in these case are all illegal. He further contended that even if there was some mistake, according to some of these decisions there can be no refixation after such a long time.

20. In P.G. Sivalingam and others v. Assistant Superintendent, Central Telegraph Officer, Tirupattur and Others, OA 398, 399, 406, 469, 470, 453, 407, 856 and 611/1988, a similar issue was involved. In that case also, the pay already fixed in respect of certain Government servants was sought to be refixed to their disadvantage. The following extract from the judgement dated 20.12.1990 in that case, to which one of us (K.J. Raman) was a party, is relevant for the present case:

22. We have to uphold that above contention of the applicants in so far as the issue of impugned orders in these cases are concerned. In this connection we may refer to the decision of the Supreme Court in State of Orissa v. Binapani Dei (AIR 1967 .SC-1269).

23. A similar issue was considered and decided in Vithal Dagdo Marathe v. General Manager, Central Railway (ATR 1989 (2) CAT 65). There the respondents sought to deduct certain sum from the retirement benefits of the applicant therein, on the ground of correcting a mistake in the fixation of pay of the applicant earlier during his service. Such refixation and recovery were sought to be done after several years. In addition to an allegation of violation of the principles of natural justice, it was contended by the applicant in that case, that the respondents were not justified in deducing the amount from the emoluments of the applicant on the ground of mistake after so many years, and that the applicant was in no way responsible for the alleged mistake. In the present case also, the respondents are not justified in unsettling the settled pay of the applicants and in seeking to recover heavy sums. The following extract from the said judgment, is germane to the present cases:

17. The final submission on behalf of the applicant was that this recovery on account of alleged overpayments had resulted in serious civil consequences to the applicant and that it is now settled law that this could not be done without issuing him a show cause notice setting out all the circumstances and affording him an opportunity of hearing to state his case as one of the basic requirements of the principles of natural justice. Without any doubt that had done in this case.

18. A similar matter was decided in C.S. Bedi v. Union of India and another (ATR - 1988 (2) CAT - 51 In this judgment there is also a reference to Nilkantha Shah (1987 (3) SLJ (CAT) 306) para 15 of the judgment in C.S. Bedi's case is reproduced below:

15. I will even assume that there was a mistake in the fixation of pay of the applicant and that mistake came to the light of authorities only in 1986 and that mistake is even rightly sought to be corrected by them. Whether in such circumstances, recoveries should be permitted or not came up for consideration before a Division Bench of the Calcutta Bench of this Tribunal in Nilkantha Shah's case where the delay was only 7 years as against 16 years in the present case. In upholding the claim in that case that in such cases recoveries should not be permitted, the Division Bench expressed thus:

7. We have however, taken into account the fact that the respondents took more than 7 years in detecting their mistake regarding wrong fixation which resulted in over payment of more than Rs. 13,000/- and even after waiver of 50% on compassionate ground, the applicant required to pay back more than Rs. 6,000/- from his salary. When the applicant was given the benefit of revised pay, he was not aware that he would have to pay back the excess amount drawn and he spent the

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amount according to the pay scale that he enjoyed. Any deduction at this late stage definitely causes hardship to the applicant. It is also quite clear that the applicant was not responsible for the non-detection of the mistake of the Department for a long seven years.

On this ration which is binding on me, the applicant in this case is also entitled to succeed.

24. We are also of the same view in so far as the present cases are concerned. The impugned orders are bad in law. On account of the obvious infringement of the principles of natural justice as pointed out above. In addition, we are certain that an attempt to re-fix the settled pay of the applicants, unilaterally and arbitrarily after several years, and to order recovery of huge amounts, when there is not even a whisper of allegation of any default or remissness on the part of these applicants, is wholly unfair. The ~~fix~~ act of the respondents is extremely offensive to the principles of fairness and sense of justice. Can the settled pay of the Government servant fixed in accordance with the extent rules, be re-opened and unsettled at the sweet will of the officials on the pretext of interpreting obvious orders at any time, and thereby, could huge amounts be recovered from the low paid ex-serviceman after several years?

We are of the opinion that such action is totally impermissible in terms of law as well as equity. We may, in support of our view in this matter, refer to the decision and observations of the Supreme Court in Management of M/s Nally Bharat Engineering Co. Ltd. v. State of Bihar 1990 (2) SCC 48.

21. The same principles were followed in P.K. Anil and Others v. The Director General of C.S.I.R. and others in OAs 471/89, 472/89 and 473/89, decided by this Bench.

In the circumstances, we have to uphold the contention of the applicants that the impugned orders and the re-fixation of the pay in these cases are all liable to be set aside, on the ground of infringement of the principles of natural justice and fairness.

In another decision of Guwahati Bench reported in 1991(1) CAT page 74 (Gobinda Sinha & Others v/s. Garrison Engineer.) it is held recovery of overpayment after lapse of years was not justified as it would cause great hardship to the applicant. So from the above decisions it becomes evident that there is no justification on the part of the respondents in

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demanding recovery of the sum of Rs. 76,535/- said to be excess payment due to wrong fixation of salary and to adjust the said amount of Rs. 76,535/- from the amount of Rs. 77,658/- due to the applicant towards retirement benefits. The said action of the respondents to adjust the said amount of Rs. 76,535/- from Rs.77,658/- payable to the applicant by respondents is not tenable in law. Hence we see no other alternative except to restrain the respondents by means of an ~~injunction~~ ^{order} of from recovering the said amount of Rs. 76,535/- from the applicant which is said to be excess payment of the applicant's salary from the year 25.11.1974 to 30.9.1990 and to direct the respondents to pay all the retirement benefits due to him. The applicant has claimed interest on the sum of Rs. 77,658/- which already pointed out are said to be retirement benefits payable to the applicant by the respondents and that is withheld payment. In the circumstances of the case we are not prepared to award any interest to the applicant on the said sum of Rs.77,658/-. Even though arguments were advanced by both the sides with regard to the pay scale of the applicant, in view of our above findings, the question whether the pay of the applicant was correctly fixed on his re-employment on 25.11.1974 in the pay scale of Rs. 550 - 750 we refrain to express any opinion as we feel it unnecessary in deciding this case.

9. In the result the letters dated 21.9.1990 and 16.11.1990 issued by the respondent refixing the pay of the applicant are hereby quashed and we restrain the respondents by means of an ~~injunction~~ from recovering the said amount of Rs. 76,585 said to be excess payment. We direct the respondent today to the applicant all the

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retirement benefits within a period of 3 months from the date of the receipt of this order. In the circumstances of the case the applicant will not be entitled to any interest on the said retirement benefits. The parties shall bear their own costs of this application, Application is allowed accordingly.

T. Chandrasekhar Reddy,

(T.C. REDDY)
MEMBER (J)

(M.Y. PRIOLKAR)
MEMBER (A)