

Central Administrative Tribunal⁶

~~HYDERABAD BENCH AT HYDERABAD~~

BOMBAY BENCH AT BOMBAY

O.A. No. 161 of 1991

Date of Decision : 22-11-1991

~~Trans.~~

Mr. Vasant Vithal Joshi

Petitioner.

Applicant in person

Advocate for the
petitioner (s)

Versus

Union of India and others

Respondent.

Mr. V M. Bendre

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. T. Chandrasekhar Reddy, Member (Judl.)

THE HON'BLE MR. M.Y. Priolkar, Member (Admn.)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgment? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

T. C. M. Reddy
HTCR
M(J)

M. Y. Priolkar
HMYP
M(A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: BOMBAY BENCH:
AT BOMBAY

ORIGINAL APPLICATION NO.161 of 1991

DATE OF JUDGMENT: 22nd NOVEMBER, 1991

BETWEEN:

Mr. Vasant Vithal Joshi

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Applicant

AND

1. Union of India rep. by the
Secretary,
Ministry of Defence,
South Block, New Delhi.

2. The Director General of Ordnance
Factory, Calcutta-1.

3. The General Manager,
Ordnance Factory,
Dehu Road.

4. The Chief Controller of Accounts (Fys),
IOA, Auckland Road,
Calcutta-1.

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Respondents

COUNSEL FOR THE APPLICANT: Mxx Applicant in person

COUNSEL FOR THE RESPONDENTS: Mr. V.M.Bendre

CORAM: Hon'ble Shri T.Chandrasekhar Reddy, Member (Judl.)

Hon'ble Shri M.Y.Priolkar, Member (Admn.)

contd....

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI T.CHANDRASEKHAR REDDY, MEMBER (JUDL.)

This application is filed under Section 19 of
the Administrative Tribunals Act, 1985 for the following
reliefs:-

- (1) to declare that the pay fixation of the
applicant on promotion as per Note 7 of
GOI Min. of Def.O.M.No.2(54)/5801/D(Civil.I),
dated 15.7.1960 issued under Art.56 of CS. read
with GOI Min. of Def.O.M.No.2(1)/83/D(Civ),
dated 8.2.1983 under ART 526 of CSR is legal,
correct and proper;
- (2) to declare that the action of reduction in
salary of the applicant by the respondents
is illegal and ultravires the CSR and
void ab-initio;
- (3) to restrain the respondents from recovering
the alleged overpayment from the applicant;
- (4) to order the respondents to pay the reduced
pay to the applicant; and
- (5) to award the cost of the application to
the applicant.

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T.C. Reddy

The respondents in this case are, (1) Secretary, Ministry of Defence, Union of India, New Delhi, (2) Director General of Ordnance Factories, IOA, Calcutta, (3) General Manager, Ordnance Factory, Dehu Road, and (4) The Chief Controller of Accounts (Fys), IOA, Calcutta. The facts giving rise to this application in brief may be stated as follows:-

The applicant served in the Army for 28 years with effect from May 1954 to May 1982 and on completion of the terms and conditions of service, retired from the Army in the rank of Subedar. This was his substantive post and his last pay drawn was Rs.575/-. The applicant was re-employed as LDC with effect from 2.4.1983 in the pay scale of Rs.260-400 in the Ordnance Factory, Pune (office of the 3rd respondent). His initial pay on new employment as LDC was fixed at Rs.400/-. The applicant was promoted as UDC with effect from 15.4.1986 and by grant of advance increments, the applicant's pay was fixed at Rs.530/-. The applicant is ~~still~~ in service as on today.

2. The Audit authorities examined the pay fixation of the applicant in the light of the Departmental instructions and circulars and it was noticed by the Audit authorities that the applicant had been accorded (1) undue and unintended benefits, (2) the pay fixation

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approved on earlier occasion was irregular i.e., firstly at the time of initial appointment and secondly on promotion as UDC, (3) the said pay fixation was found contrary to the provisions as contained in the ^{Central} Government orders. So, the office of the Chief Controller of Accounts (Fys), Calcutta, issued proceedings dated 22.7.1989 to the General Manager, Ordnance Factory, Pune (Respondent No.3) informing him that in view of the above position in respect of the applicant regarding re-fixation of pay on promotion as UDC is to be considered as incorrect, that required immediate cancellation and therefore ^{to} put up fresh proposals for fixation of pay of the applicant and also to take effective steps with regard to recovery of overpayments. The applicant after knowing that such proceedings were likely to be initiated for re-fixation of pay of the applicant, the applicant gave an application on 7.9.1989 to the 3rd respondent pointing out to the 3rd respondent that his pay in the post of LDC and also in the promotional post of UDC had been correctly fixed and that there was no need to re-fix his pay in either of his posts. The applicant also pointed out by ^{Sending} ~~filling~~ a separate application dated 24.12.1990 that under the provisions of Ministry of Finance Memo No. F5(10)Estt-III(B)64, dated 30.12.1970, re-employed pensioner who ^{was} confirmed in a re-employed post if

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promoted or transferred to another post, his pay in the new post should be fixed either under Fundamental Rules or under the order contained in Government of India decision No.1 (i.e., Ministry of Finance D.O.M.No. dt.15-7-60) whichever is more advantageous to the person concerned. We have already referred to the letter dt.27-7-89 issued by the Chief Controller of Accounts (FYS), Calcutta to the General Manager, Ordnance Factory, Pune (3rd Respondent). In view of the said letter dt.27.7.89 to the General Manager, Ordnance Factory, Pune (3rd Respondent) by the Chief Controller of Accounts, Calcutta, the General Manager, Ordnance Factory, Pune issued proceedings to the applicant informing the applicant that fresh pay fixation proposals in respect of the applicant were in progress and that over payment will be recovered from the pay/gratuity of the applicant and that the applicant may refund excess amount drawn by him towards salary in lumpsum and that the applicant will also be intimated the amount that has to be refunded by him. According to the applicant, the original pay fixation of the applicant in the LDC post and UDC post on re-employment as a pensioner was legal, the act of the respondents in initiating fresh proposal for fixation of pay was illegal, ultravires and as such void. Further, according to the applicant, when he collected his pay slip for the month of February, 1991, he came to know that his basic pay had been reduced. It is also the

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case of the applicant that the action of the respondents in reducing the salary of the applicant is also illegal and void ab-initio. So, the applicant had filed this application for the reliefs already indicated above.

The respondents have filed a detailed reply opposing the application.

We have gone through the Annexures R-2 to R-9 that are appended to the reply of the respondents. Annexures R-2 to R-9 are various copies of Memos, Office Memos, letters, instructions issued by the competent authorities of the Central Government infixation of pay of the re-employed pensioners in the original post on re-employment and promotional post. We are concerned in this Original Application about the correctness of the pay of the applicant in the LDC post with effect from 2-4-83 and also in the UDC post with effect from 15-4-86. As already pointed out, the applicant was re-employed as LDC in the factory of the 3rd Respondent with effect from 2-4-83 in the pay scale of Rs.260-400 and later promoted as UDC with effect from 15-4-86. The initial pay of the applicant admittedly on re-employment was fixed at Rs.400/- and on promotion at Rs.560/-. The applicant's pay was fixed at the time of initial appointment in view of the option submitted by the applicant to fix his pay in terms of

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government of India OM dt.15.7.60 read with OM dt.8.2.83. Subsequently it was found that the above pay fixation was not in conformity with the government of India OM dt.15.7.60 read with OM dt.8.2.83. The said government of India's instructions specify that re-employed pensioner opting under OM dt.8.2.83 is entitled to get his pay fixed at the minimum of the scale ~~being~~ no hardship to him.

In view of that, the applicant's pay was revised and ~~was required to be fixed at the minimum pay~~ re-examined and the applicant's pay scale i.e., Rs.260/- at the time of initial appointment. The pay fixation of the applicant subsequent to his promotion to UDC post was also erroneously fixed at Rs.560/- under OM dt.15.7.60 read with OM dt.25-1-65. At the stage of initial appointment, as the applicant's pay was erroneously fixed, the applicant was not entitled for grant of advance increments in the promotional post. As such, review of the pay fixation also became necessary in the case of the applicant after promotion to UDC post. In the event, the pay is fixed inadvertantly or erroneously by giving un-intended benefits, the same can be reviewed and it can be modified and overpayment if any can also be recovered by bringing the facts to the notice of the individual. In accordance with the OM No.2(1)/83/D(Civ.I) dt.8.2.83, full pension ~~has~~ to be ignored ~~ignored~~ for fixation of pay and accordingly the applicant's pay had been fixed ignoring the full pension in the grade

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of UDC. Annexure R-1A shows that the pay has been fixed in the original scale, as also in the revised scale, as LDC. As can be seen from Annexure R-1A the applicant was entitled to Rs.260/- as on 2-4-83, Rs.266/- as on 1-4-84 and Rs.272/- as on 1-4-85 as the original pay scale of the LDC post was Rs.260-6-290-EB-6-326-8-366-EB-8-390-400. In the revised scale, the applicant's pay had been arrived at Rs.1010/- as on 1-1-86 and Rs.1030/- as on 1-4-86. Apart from the scale of pay as mentioned above, the applicant was entitled to draw full pension separately.

As already pointed out, the applicant was promoted to the UDC post with effect from 15-4-86. The pay scale of the applicant admittedly in the post of UDC in the revised scale was Rs.1200-2040. So, under the normal rules, the pay of the applicant was liable to be fixed at Rs.1200/- with effect from 15-4-86 in the pay scale of Rs.1200-2040. When so fixed under the normal rules, the pay of the applicant in the UDC post as on 15.4.86 will be Rs.1200/-, Rs.1230/- as on 1-4-87, Rs.1260/- as on 1-4-88, Rs.1290/- as on 1-4-89, Rs.1320/- as on 1-4-90 and Rs.1350/- as on 1-4-91. So, the said pay fixation of the applicant both in LDC post and UDC post according to us is in complete conformity with the rules and as already pointed out, Annexure R-1A shows the pay fixation of the applicant both in the LDC post and UDC post. In the UDC post also the applicant is allowed to draw full pension. So,

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the pay of the applicant fixed under Annexure R-1A and as indicated above appears to be correct and in accordance with the rules and necessarily we have to hold that the said pay fixation is legal and valid.

Now, the question is, whether the applicant is liable to refund the excess payment drawn by him towards salary in the LDC post and UDC post to the respondents. A similar matter was decided in C.S.Bedi Vs. Union of India and another (ATR 1988(2)CAT 510). 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 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.'

As already indicated, it is only in pursuance of the proceedings of the General Manager, Ordnance Factory,

Dehu Road, dt.17.12.90 the applicant was informed that

fresh pay fixation proposal for the applicant ^{was} ~~was~~ in progress and that overpayment will be recovered from the pay/gratuity of the applicant. As a matter of fact, as can be seen from the pleadings of the applicant it is only when the pay slip of the applicant was issued in the month of February, 1991, that he could know that his basic pay had been reduced. The applicant is not at all responsible as when the excess amount was drawn in his pay. The applicant was not aware that he would have to pay back the excess amount drawn by him. At this stage, if repayment is ordered, that would cause a great hardship to the applicant. In the other OA No.265/91 that is decided along with this OA, we have held that till the date of his retirement (31-1-91) the excess payment is liable to be waived by the respondents. The applicant in this OA and the applicant in OA 265/91 stand on similar footing. In these circumstances we feel that it would be fit and proper to direct the respondents to waive the excess payment made to the applicant upto 31-1-91 with effect from 8-2-83.

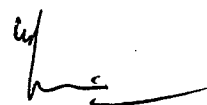
In view of the above discussion, we hold that the pay of the applicant in the post of LDC as fixed in Annexure R-1A (page 20 of the reply affidavit filed by the respondents) at Rs.260/- as on 2.4.83, Rs.266/- as on 1.4.84, Rs.272/- as on 1.4.85 and in the revised scale in the same post at Rs.1010/- as on 1.1.86, Rs.1030/- as on 1.4.86 and

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the pay of the applicant in the revised scale in the UDC post at Rs.1200/- as on 15.4.86, Rs.1230/- as on 1.4.87, Rs.1260/- as on 1.4.88, Rs.1290/- as on 1-4-89, Rs.1320/- as on 1-4-90 and Rs.1350/- as on 1-4-91 is correct, legal and valid. We direct the respondents to waive all the excess payment drawn by the applicant in the post of LDC as well as in the post of UDC towards his salary with effect from 2-4-83 to 31-1-91. We further hold that the applicant will be entitled to the retirement benefits in accordance with law as and when he retires. The application is allowed accordingly in part. We make no order as to costs.

T-Chandrasekhare Reddy .

(T.CHANDRASEKHAR REDDY)
Member (J)



(M.Y.PRIOLKAR)
Member (A)

Dated: 22nd November, 1991.

vsn/avl

Dated: 29.7.94

None for the applicant.
Shri S.S. Karkera for Shri P.M. Pradhan
Counsel for the respondents.

Respondents are directed to
file reply to Review Petition within
two weeks. List the case on 19.8.94
for orders.

M.R. Kolhatkar

(M.R. Kolhatkar)
M(A)

(B.S. Hegde)
M(J)

Dated: 19.8.94

Applicant in person. Shri S.S.
Karkera, for Shri P.M. Pradhan, Counsel for
the respondents.

Respondents are directed to
file reply to R.P. within two weeks. List
the case on 30.9.94 for orders on C.P.

M.R. Kolhatkar

(M.R. Kolhatkar)
M(A)

(B.S. Hegde)
M(J)

Reply to RP
in MP Filed
by Resps recd
on 26.9.94 in
duplicate.

File
28.9.

R.P. 61/94

Dated 30.9.94

Heard the applicant
in person and Shri P.M.
Pradhan for respondents.

The Review Application
is filed in the Year 1994
whereas the judgment was

2) delivered on 22.11.91 i.e. after a lapse of 2½ years.

Counsel for respondents, Mr. Pradhan submitted that consequent on the direction of this Tribunal, no recovery has been made for the period 2.4.93 to 31.1.91 from the applicant and other retirement benefits have been given in accordance with law.

Apart from the delay in filing the Review Application, we do not see any substance in filing this R.A., hence the same is dismissed.

MR Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)

30/9/97
Order/Judgment despatched
to Applicant's representative (A)
on 7/10/97

10/11/97

Documents sub. from
applicant on 10/9/97
kept in 'C' folder.

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