

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 599/91

198

T.A. No.

DATE OF DECISION 16/4/92Shri Ramchandra Dattatraya Bivalkar PetitionerShri S.P. Kulkarni, Advocate for the Petitioner(s)

Versus

Chief General Manager, Respondent  
MTNL, Dadar. Bombay.Shri V.S. Masurkar, Advocate for the Respondent(s)

## CORAM :

The Hon'ble Mr. Ms. USHA SAVARA, Member (A).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000

*U. Savara*  
(Ms. USHA SAVARA) 16/4/92  
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 599/91

Shri Ramchandra Dattatraya Bivalkar

... Applicant

V/s

Chief General Manager,  
MTNL, Dadar  
Bombay.

... Respondent.

CORAM: Hon'ble Ms. Usha Savara, Member (A)

Appearance:

Mr. S.P. Kulkarni for  
the applicant.

Mr. V.S. Masurkar for  
respondents.

ORAL JUDGEMENT

Dated: 7.4.92

¶ Ms. Usha Savara, Member (A) ¶

This application has been filed under section 19 of the Administrative Tribunal Act, praying for quashing the order dated 9.5.89 passed by Accounts Officer Works (Central) MTNL, who had ordered refixation of the applicant's pay and recovery of the excess paid to him. The brief facts of the case are that the applicant was appointed as Lower Division Clerk in the Bombay Telephones on 17.3.1953 and was deputed as Upper Division Clerk in the Atomic Energy Establishment, Bombay from 24.4.61 to 27.3.68. On his return from deputation he was appointed as Upper Division Clerk and was paid in that scale. The time scale was revised on 1.1.73 and 1.1.86. His pay was fixed in the scale of Upper Division Clerk. On 9.5.89, he was informed that his pay was fixed incorrectly on return from deputation and he had been over paid since then, as such his pay was reduced from Rs. 2150/- to 1900/- per month. Further, recovery of Rs. 500/- per month was being made from his pay towards the amount paid in excess. It is the case of the

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applicant, put up by Shri S.P. Kulkarni, learned counsel, that these orders have been passed without show cause notice to him, and that his pay has been reduced without any reference to his position in the seniority list.

Mr. V.S.Masurkar, learned counsel for the respondent explained that the pay was erroneously fixed when applicant returned from deputation to the parent cadre. While on deputation the official was drawing the pay of UDC in Atomic Energy Commission. However, on reversion his pay should have been fixed according to the pay scale of the parent department in the light of O.M. No. 7(75)-E-III(A)/71 dated 3.4.72. As a consequence of this erroneous fixation of pay the applicant had drawn far more salary than he was entitled to, and therefore it was decided by DGM (P & A) to refix the pay and recover the excess by order dated 9.5.89.

The facts are undisputed and Shri Kulkarni, fairly, conceded that the department had committed an error in fixation of the applicant's pay, but he submitted that recovery of the excess payment after a long lapse of time would hit the applicant very badly. He relied upon various judgements in support of his case that the respondents were estopped, after several years, from correcting what they claimed to be a mistake committed by the respondents themselves and withdrawing the benefits given in the past to the applicant retrospectively.

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The Bombay Bench of the Tribunal in the case of Chamel Singh Vs. Union of India and Ors 1992(1) CAT, reported in All India Services Law Journal, has discussed the various decisions of the different benches of the Tribunal. It has been held that recovery of over-payment after lapse of years would not be justified as it would cause hardship to the applicant. Following the consensus of the decisions on this issue, I hold that the recovery made by the respondents is not justified. In view of this, the respondents are ordered to refund the amount recovered from the applicant without interest within a period of two months from the date of receipt of a copy of this order. No other reliefs have been pressed for by the applicant. The application is disposed of in these terms with no order as to costs.

*U. Savara*  
4.4.92.  
(Ms. USHA SAVARA)  
MEMBER (A)