

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1366/92

~~xxxxxx Application No xxxxxxxx~~

DATE OF DECISION: 23.6.94

K. Pavitran Petitioner

Mr. S. Natarajan Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

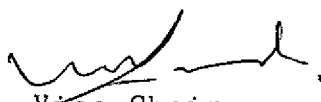
Mr. A I Bhatkar Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri

1. To be referred to the Reporter or not ? no
2. Whether it needs to be circulated to other Benches of the Tribunal ? no


Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, GULESTAN BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

O.A. NO. 1366/92

K. Pavitran

..Applicant

V/s

Union of India & Anr.

..Respondents

Coram: Hon.Shri Justice M.S. Deshpande, Vice Chairman

APPEARANCE:

Mr. S. Natarajan
Counsel for the applicant


Mr. A I Bhatkar for Mr. M I Sethna
Counsel for the respondents

ORAL JUDGMENT:
(PER: M.S. DESHPANDE, Vice Chairman)

DATED: 23.6.94

The applicant seeks a direction that the respondents are not entitled to recover the alleged excess amount worked out in the memorandum dated 17.7.1991 as a consequence to the refixation of his pay and to set out an amount of Rs.17,310/- being the amount payable to him for cash equivalent of Earned Leave at his credit.

2. The applicant was appointed as Radio Technician with effect from 31.12.1974 in the scale of Rs. 380-560 and was promoted as Technical Assistant with effect from 20.1.1979 in the revised scale of Rs. 1400-2600 with effect 1.1.1986. He retired from service on superannuation on 31.5.91. The applicant being a reemployed pensioner, his pay on 31.12.74 ought to have been fixed as per rules applicable to him which according




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to the respondents was after deducting certain unignorable amount of pension + P.E.G. The respondents purported to deduct this amount by refixing the pay of the applicant vide its memorandum dated 17.7.91. The fixation of pay as on 31.12.74 resulted in deducting an overpayment of Rs. 19,675 to the applicant and the respondents therefore sought to deduct the amount of Rs. 17,310 which would have become payable to the applicant by way of encashment of unavailed E.L. at his credit.

3. The impugned memorandum is being challenged on two grounds, firstly that the refixation was done and the amount was sought to be recovered from him without serving a notice on the applicant and without affording him a show cause against the proposed refixation and secondly on the ground that such a belated refixation could not have been done and ^{since} it was sought to be effected was bad.

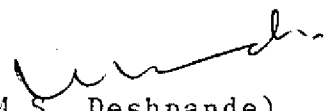
4. The applicant relies on several decisions of this Tribunal including O.A. No. 395/91 CHAMEL SINGH Vs. UNION OF INDIA & ORS., decided on 18.10.1991 and O.A. No. 944 of 1989 KRISHNA NARAYAN BASU Vs. UNION OF INDIA & ORS. decided by the Calcutta Bench of the Tribunal on 26.6.90. It is apparent from these decisions that even if the fixation which had been done earlier was bad, 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. In the present case refixation was done nearly 17 years after the original fixation. In view of the legal position in this respect, the respondents could not have refixed the pay without notice and so belatedly.

5. Learned counsel for the respondents urged that applicant is a party in another OA filed by the applicant with A. Narayanan Nair & Ors. and the point which has been raised in that case is regarding refixation of



pay with reference to revised pension granted to them with effect from 1.1.1986. The case which is pending before the Supreme Court is regarding the revised pension while in the present case the question raised is about the refixation and the point which has been raised in the other case is not involved in the present case and it is not necessary to await the decision of the Supreme Court on this point in view of the settled position of law to which I have already adverted. The issue in the other case would be distinct and separate and on that no decision is being rendered in the present case.

6. In the result it is declared that the respondents are not entitled to workout recoveries as per memorandum dated 17.7.91, Exhibit A-1, and to adjust the amount of Rs.17,310 being the amount due to the applicant towards the encashment of unavailed earned leave at his credit at the time of retirement. The respondents are directed to release the amount of Rs. 17,310/- within two months from the date of service of a copy of this order on the respondents. No order as to costs.


(M.S. Deshpande)
Vice Chairman