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CENTRAL ADMINISTRATIVE TRIBUNAL  
MOMBAY BENCH

Original Application No. 1170/93

Transfer Application No. --

Date of Production

8-11-94.

P.M. Samuel

For the Plaintiff

Mr. M.S. Karnik

For the Plaintiff

For the Plaintiff

U.O.I. & Ors.

For the Plaintiff

Mr. R.K. Shetty

For the Plaintiff

ORIGIN:

The Hon'ble Shri M.R. Kolhatkar, Member(A)

The Hon'ble Shri --

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

M.R. Kolhatkar

(M.R. KOLHATKAR)  
M(A)

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(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A.1170/93

P.M.Samuel,  
Superintendent Gr.I,  
Defence Estate Officer,  
Bombay Circle,  
Colaba, Bombay-400 005. .. Applicant

-versus-

1. Union of India  
through  
The Secretary,  
Ministry of Defence,  
South Block,  
New Delhi.
2. Director General,  
Defence Estate,  
Govt. of India,  
Ministry of Defence,  
West Block IV,  
R.K.Puram,  
New Delhi - 66
3. Director,  
Defence Estate,  
Ministry of Defence,  
Southern Command,  
Pune - 1.
4. Defence Estate Officer,  
Bombay Circle, Colaba,  
Bombay - 400 005.
5. Controller of Defence Accounts  
(Hq.), G-Block, New Delhi.
6. Controller of Defence Accounts  
Southern Command,  
Pune.1. .. Respondents.

Coram: Hon'ble Shri M.R.Kolhatkar,  
Member(A)

Appearances:

1. Mr.M.S.Karnik,  
Counsel for the  
Applicant.
2. Mr.R.K.Shetty  
Counsel for the  
Respondents.

JUDGMENT:  
(Per M.R.Kolhatkar, Member(A))

Date: 8-12-94

Applicant is an employee of Defence  
Estate Department. He was recruited as L.D.C.  
on 1-10-1961. He was promoted as U.D.C. in  
December, 1969 and worked as Cashier from  
12-6-1978 for about three years. He was

promoted as Technical Assistant w.e.f.

1-7-1981 in the pay scale of Rs.425=15-560=EB-

20-640. As a Cashier he was drawing Rs.40/-

as Special Pay. When he was promoted as

Technical Assistant his pay was fixed at

Rs.500/- and all his subsequent pay fixation

was done accordingly. It is the grievance

of the applicant that by letter dated

25-7-89 at Annexure 'A', page 16, his pay

fixation done in 1981 has been reopened.

It has been held that he ought to have ~~been~~

drawn Rs.480/- when he drew Rs.500/- P.M.

and the department has directed that the

overpayment due to wrong inclusion of

special pay on account of cashier allowance

and further grant of increments, promotions

may ~~xxxxxx~~ be worked out and recoveries

commenced from July '85 pay bill. The applicant

made a representation on 29-8-89 but there

is no reply from the respondents. Subsequently

by order dated 23-6-93 respondents asked the

Madras Circle to amend the LPC of the applicant.

The applicant has approached this Tribunal to

quash this letter dt. 23-6-93 and to direct

the respondents not to unsettle the pay

fixation which has been settled and to

declare that any recovery ~~is~~ initiated

in view of wrong fixation of the applicant's

pay because of mistake on the part of the

respondents would be illegal and bad in law.

The applicant had also asked for interim

relief by way of stay on recovery. Such

interim relief was granted by this Tribunal

vide order dated 5-11-1993.

2. The respondents have opposed the claim of the applicant. According to them the pay fixation was done wrongly. As the question of correctness of the pay fixation is one of the points to be decided we reproduce below para 6 of the written statement of the respondents dated 28-4-1994.

"6. With reference to para 4.2 of the application, the Respondents submit that the individual was doing Cashier's duty. As such he was in receipt of Cashier's allowance of Rs.40/-p.m. The applicant was promoted as Technical Assistant and his basic pay at the time of promotion was Rs.440/- and he was getting Rs.40/- as a Cashier's Allowance. While fixing his pay in the pay scale of Rs.425-15-560-EB-20-660 as Technical Assistant it was fixed at Rs.500/- erroneously by the Central Administrative office D.G New Delhi and CDA HQrs New Delhi, instead of fixing his basic pay at Rs.455/- and a personal pay of Rs.25/-p.m. Further taking into consideration pay of Rs.500/- as Technical Assistant on promotion to the post of Office Superintendent-II, again pay fixation was done in the scale of Rs.425-15-560-EB-20-700 and his pay was fixed as Rs.530/- by Accounts Officer, Madras. Since there was no order to take into account the Cashier's pay for pay fixation, the fixation of the applicant was done erroneously due to clerical error."

According to the respondents the request of the applicant for waiver of the over payment cannot also be accepted for the following reasons:

"As per orders every over payment to a Government servant must be regarded as Debit owed to the Public and all possible action is to be taken for recovery. The recovery of overpayment should not be waived simply on the grounds that the overpayment when made in good faith and the recovery could cause hardship. Even if any overpayments are written off as the Government servant is no longer in Government service the order sanctioning write off should invariably contain a clause that if any amounts subsequently found due to Government servant will be adjusted against the amounts written off. Even if the said Government servant is re-employed the amounts accrued to him on re-employment will be set off against the amounts written off. In view of these clear orders of GOI individual's contention cannot be accepted. Rule 179 of F.R. Part I Vol. I refers."

3. At the argument stage learned counsel for the applicant invited our attention to the Ministry of Finance Circular dated 25-5-1989 which relates to the question of special pay of Rs.35/-p.m. paid to the U.D.Cs being taken into account for fixation of pay on promotion. In our view this reference to the memorandum of Ministry of Finance dt. 25-5-89 is entirely irrelevant so far as the present case is concerned. It is true that the applicant as U.D.C. was held eligible for special pay of Rs.35/-p.m. vide order dated 15-12-1980 at page 31. But applicant never drew this advance. What he drew was Rs.40/-p.m. as allowance for doing cashier's job. According to the applicant the reference by the respondents to this special pay as allowance is wrong. In our view nothing turns on the

term  
on the use of "allowance" or "pay" in this case.

It is not disputed that the applicant was additional drawing Rs.40/- p.m. which should correctly be called special pay as a cashier. The issue is however regarding whether this special pay would legitimately be included while fixation of the pay of the applicant on his promotion as Technical Assistant. In our view taking into account what have been pointed out by the respondents in para 6 of the respondents' reply reproduced in full, there is no doubt at all that the pay fixation allowed to the applicant in 1981 was wrong. The only question in our view is whether the respondents are entitled to recover the overpayment after a lapse of 12 years and whether the respondents are entitled to make refixation of the pay.

4. So far as the recovery of overpayment is concerned the applicant relies on case law and in particular the case of Chamel Singh vs. Union of India & Ors. decided by the Bombay Bench of this Tribunal on 18-10-1991 vide S.I.J 1992(1)CAT 315. In this case the Tribunal after going into cases decided till that time restrained the respondents from recovering an excess amount of Rs.76,000/- which was sought to be recovered after 16 years. The Tribunal referred to the case of Calcutta Bench of C.A.T. in Nilkantha Shah v. U.C.I. & Ors. where it was held that when the applicant was not responsible ~~for~~ for the non-detection of the mistake, a recovery of overpayment after seven years would not be permitted.

It is not necessary for us to refer to all the cases that have been referred <sup>to</sup> in Chamel Singh's case, which squarely applies to the instant case.

5. The next question is therefore whether the respondents are entitled to do re-fixation of the pay of the applicant at this late stage keeping in view of the fact that the applicant is going to retire shortly viz. on 31-10-95 and when the re-fixation involves a recurring financial loss.

In our view, on this point we are required to follow the dictum of the Supreme Court in the case of Divisional Superintendent, Eastern Railway, Dinapur and Ors. v. L.N. Kashri and others, AIR 1974 SC 1889. In that case, the pay of the government servant was sought to be fixed on the ground that there was some mistake which was to be rectified. The Supreme Court held that the Government department could not reduce the pay without giving an opportunity to the government employee.

In our view the government employee has no <sup>draw</sup> vested right to <sup>has</sup> wrongly fixed higher scale merely because he <sup>open</sup> drawn it for a long time.

It is always <sup>open</sup> to the government to correct the pay scale of the government employee in accordance with the rules. However, before any such re-fixation the Govt. department ought to give an opportunity to the Govt. servant to be heard. We, therefore, dispose of this application by passing the following order:

ORDER

*(It is partly allowed)* The respondents are restrained

of over payment from making any recovery/from the applicant on account of wrong fixation of pay made on promotion of the applicant as Technical Assistant in 1981. Respondents, however, are at liberty to re-fix the scale of the Government employee as per rules <sup>to him</sup> after giving an opportunity/to be heard.

There will be no order as to costs.

M.R.Kolhatkar  
(M.R.KOLHATKAR)  
Member(A)

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