

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 272 OF 1993.

Date of Decision : 10.11.1998.

Tukaram B. Shirsat & 4 Others, Petitioner.

Shri S. S. Karkera, Advocate for the
Petitioner.

VERSUS

Union Of India & 3 Others Respondents.

Shri R. K. Shetty, Advocate for the
Respondents.

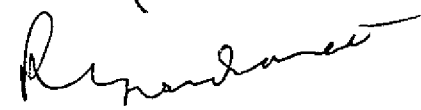
CORAM :

Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to
other Benches of the Tribunal ?


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 272 OF 1993.

Dated this Tuesday, the 10th day of November, 1998.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

1. Tukaram B. Shirsat,
Residing at -
Ramdas Swami Nagar,
Gandhi Nagar,
Nasik - 422 006.
2. Murlidhar S. Ghode,
Residing at -
G-3-6-3, Gandhi Nagar,
Nasik - 422 006.
3. Govind Purushottam Hote,
Residing at -
2/12, Umasut Apartment,
Tagore Nagar,
Nasik - 422 006.
4. Gangadhar Kisan Vandre,
Residing at -
G-3-1-4, Gandhi Nagar,
Nasik - 422 006.
5. Balkrushna R. Jadhav,
Resident of
Ramdas Swami Nagar,
Manas Apartment,
Agar Takli Road,
Nasik - 422 006.

(By Advocate Shri S.S. Karkera)

... Applicant

VERSUS

1. Union Of India through
The Secretary,
Ministry of Urban Development,
Nirman Bhavan, New Delhi.
2. The Director,
Directorate of Printing,
Nirman Bhavan, New Delhi.
3. The Manager,
Government of India Press,
Gandhi Nagar, Nasik-422 006.

4. Asstt. Manager(Admn.),
Government of India Press,
Gandhi Nagar,
Nasik - 422 006.

... Respondents.

(By Advocate Shri R. K. Shetty).

: OPEN COURT ORDER :

{ Per.: Shri R. G. Vaidyanatha, Vice-Chairman }

This is an application challenging the fixation of pay made by the respondents in respect of all the five applicants. The respondents have filed reply opposing the application. We have heard the learned counsels appearing on both sides.

2. The few facts which are necessary for disposal of the O.A. are as follows :

The applicants are working in the Government printing press at Gandhinagar, Nasik. The service particulars of the applicants are given in paras 6.1 to 6.5 of the O.A. The material point to be noted is that the applicants came to be promoted to the ^{NDA} common functional selection grades in Compositor Grade-II on different dates, namely - 22.11.1982 (first applicant), 22.11.1982 (second applicant), 07.08.1985 (third applicant), 22.11.1982 (fourth applicant) and 07.08.1985 (fifth applicant). The Fourth Pay Commission Report was accepted by the Government of India and was given effect to from 01.01.1986. In pursuance of the Pay Commission Report, the selection grade came to be abolished. Then some directions are given in the Government circulars as to how the pay scales in the erstwhile

selection grade to be fixed under the revised pay scales in pursuance of the Fourth Pay Commission Report. Though the Pay Commission Report came into effect on 01.01.1986, the Central Government has fixed the pay of the applicants in 1992. At that time, all the applicants were in service and apprehending recovery from their pay on the basis of the impugned fixation of pay, they have rushed to this Tribunal challenging the fixation of pay and the threatened recovery from their pay. According to them, the applicants pay should be protected and they are not liable to pay any amount as a result of refixation of pay. Their contention is that, this impugned refixation of pay is ^{illegal} ~~liable~~ and contrary to the principles of natural justice, since no show cause notice was issued to any of the applicants before refixing their pay. They have filed this O.A. seeking a direction for quashing the impugned orders dated 10.08.1992, 14.08.1992 and 03.03.1993 under which the applicants ^{pay} came to be refixed.

3. The respondents have filed reply justifying the action taken by them on the basis of refixation of pay in pursuance of the Fourth Pay Commission Report. They have stated that since the selection grade came to be abolished after the acceptance of Fourth Pay Commission Report, it has become necessary to refix the pay of the applicants and it has been rightly done and the applicants have not made out any case for interfering with the refixation of pay done by the respondents.

4. After hearing the Learned Counsels appearing on both sides, we find that the pleadings are not very

clear on the question of alleged recovery or apprehending recovery from the pay of the applicants. Even the applicants are not sure as to how much amount is likely to be recovered from their pay as ^a the result of refixation in terms of Fourth Pay Commission Report. Even the respondents have not clarified as to how much amount is to be recovered from each of the applicants and for what period. Even the three impugned notifications regarding refixation of pay of the applicants do not give us any indication as to how much amount is to be recovered from each of the applicants. Therefore, the materials on record both in the form of pleadings and in the form of documents are not sufficient to clearly point out about the scope of controversy between the parties. Admittedly, no show cause notice was issued to any of the applicants ^{before} to fixing their pay as ^a the result of acceptance of the Fourth Pay Commission Report. It is true that normally show cause notice may not be necessary in every case of refixation of pay after accepting pay Commission Report. But here is the case where the applicants are likely or deemed to be reverted to the previous post in view of abolition of selection grade. Then there is a dispute as to how much amount ~~is~~ to be recovered from each applicant and from what period. These are disputed questions of facts and therefore, principles of natural justice require that the respondents should have issued notice to each of the applicants and then after hearing them, pass an appropriate order of refixation of pay and consequent recovery of any excess amount paid to them. As already stated, the present pleadings do not contain all the relevant particulars and therefore, we cannot straight away decide the O.A.

on merits. In the peculiar facts and circumstances of the case, we feel that the impugned fixation of pay made by the respondents should be quashed with liberty to the respondents to issue show cause notice to the applicants and then pass speaking orders fixing the pay of the applicants and then determining whatever excess amount that may have to be recovered from them. Therefore, we do not want to express any opinion on any of the disputed questions which are raised in the present O.A. All questions on merits are therefore left open. It is also brought to our notice that all the applicants have since retired. We are also told that the amounts of recovery are also small. The Government, therefore, has to take a decision whether in view of the subsequent event of retirement of the applicants, whether it is necessary to take any action and if so, then they must be issued show cause notice and take appropriate decision according to law.


5. In the result, the O.A. is allowed partly -

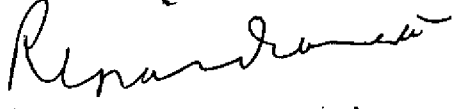
The impugned notification issued by the respondents fixing the pay of the applicants dated 10.08.1992, 14.08.1992 and 03.03.1993 are hereby quashed. However, liberty is reserved to the respondents to issue show cause notice to each of the applicants and then, after hearing them, pass appropriate speaking orders fixing the pay of the applicants and then determining as to how much excess amount, if any, is to be recovered from the applicants and if so, for what period. Needless to say, that if the applicants are aggrieved by any such determination of the pay and recovery, if any,

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the applicants may challenge the same according to law. The respondents are given six months time to initiate action in pursuance of this order.

In the circumstances of the case, there will be no order as to costs.


(D. S. Baweja)
Member (A).


(R. G. Vaidyanatha)
Vice-Chairman.

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