CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 386/93

Transfer Application No.

Date of Decision 7.8.95

V.C. Narasimhulu — Petitioner/s

Shri A.I. Bhatkar — Advocate for the Petitioners

Versus

Union of India and others. — Respondent/s

Shri R.K. Shetty — Advocate for the Respondents

CORAM :

Hon'ble Shri. B.S. Hegde, Member (J)

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

(1) To be referred to the Reporter or not ? X

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

M R Kolhatkar

(M.R. Kolhatkar)
Member (A)

CEMTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 386/93

V.C. Narasimhulu ... Applicant.

V/s-

Union of India through
Engineer-in-Chief,
Engineer's Branch
Army Head quarters,
Kashmir House,
New Delhi.

Chief Engineer,
Engineers' Branch
Headquarters,
Southern Command
Pune.

The Commander Works
Engineers (Suburbs)
Pawai, Bhandup, Bombay.

The Controller of Defence
Accounts, Southern Command,
Pune. ... Respondents.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

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

Appearance:

Shri A.I. Bhatkar, counsel
for the applicant.

Shri R.K. Shetty, counsel
for the respondents.

ORAL JUDGEMENT Dated: 7.8.95

(Per Shri M.R. Kolhatkar, Member (A))

In this O.A. the applicant has impugned the order dated 19.4.93 at page 23 on the subject of " Pay Fixation under CDS (RP) Rules 1986". This purports to dispose of the reply of applicant dated 28.9.92 at page 70 to Show Cause Notice issued to the applicant on 21.9.92 at page 62. In may be noted that the Show Cause Notice was issued to the applicant in pursuance of the order of this Tribunal in O.A. 567/92 decided on 10.8.92, in which the

....2...

Tribunal had observed that failure of the respondents to afford an opportunity to the applicant while reducing the pay from Rs. 2600/- to 2300/- as on 1.1.86 was fatal in the facts and circumstances of the case and quashed the order which necessitated show cause notice. It is interesting to note that prior to this order, the Court in O.A. 246/92 decided on 9.6.92 at page 43 directed that the order of appellate authority treating the period of absence of the applicant from 26.2.81 to 19.12.85 as dies-non in addition to the penalty awarded by the Disciplinary Authority of withholding of three increments shall not be enforced against the petitioner. The department being in possession of the order of this Tribunal relating to non-enforcement of dies-non against the petitioner which was an earlier order ought to have proceeded in a logical manner and ought to have regularised the absence of the applicant for the period in question by erasing the effect of " dies - non" and treating the entire leave in terms of CCS(Leave) Rules. Such an order was passed on 17.4.93 at page 36. However the respondents instead of following the logical and chronological order proceeded to issue Show Cause notice to the applicant on 21.9.92 in which the reason given was that the reduction of the pay has been occasioned by absence from duty for the period from 26.2.81 to 19.12.85, to this the applicant has replied. As we observed above, on 21.9.92 when the applicant was given the Show Cause notice, the presise reason for reducing the pay in the particular manner and making the pay fixation accordingly were not communicated. These reasons are contained in the subsequent order dated 17.4.93 and the impugned order dated 17.4.93 was passed by the Disciplinary Authority with

knowledge of communication dated 17.4.95 which is a Special Part II order. The decision of the Tribunal in O.A. 246/92 on 9.6.92 was implemented by treating the period of absence in accordance with CCS Leave Rules, but the applicant was not made aware thereof because Show Cause notice and reply of applicant predated all these orders.

2. A bare perusal of the statement of treatment of leave dated 17.4.93 shows that all the period of absence has not been treated as extra ordinary leave. There is a portion of the period which is treated as earned leave. Therefore while issuing the memo which has been issued to the applicant on 19.4.93 with the benefit of leave statement dated 17.4.93, the applicant himself was not made aware as to how his pay was being fixed. It clearly shows the failure on the part of the respondents to comply with the orders of the Tribunal to follow the Principles of Natural Justice since when the show cause notice came to be issued to the applicant on 21.9.92 the applicant was not made aware of the real reasons for the reduction of the pay and the modality thereof.

3. Shri Shetty argued that whatever problems have arisen are because of the manupulations committed by the applicant. However , we are not concerned with this aspect of the matter. It is open to the respondents to take appropriate action against applicant under the Rules. In any case the fact remains that there is violation of Principles of Natural Justice and therefore the order dated 19.4.93 is required to be quashed.

4. Our attention has been invited to O.A. 1115/94 decided by the Hyderabad Bench on 23.9.94 in which a direction was issued to release the pensionary entitlements of the applicant including provisional pension and the commutation of pension subject to withholding of DCRG till the decision of Bombay Bench. We also notice that in this particular case there was interim relief in terms of our order dated 18.6.93 by way of stay of recovery of overpayment in connection with pay fixation.

5. We, therefore, dispose of this O.A. by passing the following order.

ORDER

The departmental letter dated 19.4.93 is hereby quashed and set aside. The respondents are directed to issue a fresh Show Cause notice to the applicant regarding recovery proposed to be effected in terms of proper pay fixation on the basis of regularisation of the leave as shown in the P.T.O. order dated 17.4.93. The Show Casue notice referred to above may be issued within eight weeks from the date of receipt of this order. The applicant may file a reply to the Show Cause notice within four weeks from the date of receipt of Show Cause notice. Respondents to dispose of the case in accordance with Rules. As far as DCRG is concerned since respondents are claiming over payment to the tune of Rs. 40,000/- approximately, they may withhold corresponding amount of DCRG and accordingly, interim relief stands vacated. No order as to costs.

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

B S Hegde
(B.S. Hegde)
Member (J)

NS