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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 846/94

Transfar Application No:

DATE OF DECISION: 13.2.95

K.A.M. Majwar Petitioner

Shri G.S.Walia Advocate for the Petitioner

Versus

Union of India and others Respondent

Shri R.K. Shetty Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri N.K.Verma, 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 ? X

N.K.Verma
(N.K.Verma)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 846/94

K.A.M. Mujawar

... Applicant.

V/s.

Union of India through
The Commandant,
Engineering Stores Depot
Dehu Road,
Pune.

Commandant,
Engineering Stores Depot,
Dehu Road,
Pune.

... Respondents.

CORAM: Hon'ble Shri N.K.Verma, Member (A)

Appearance:

Shri G.S.Walia, counsel
for the applicant.

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

ORAL JUDGEMENT

Dated: 13.2.95

¶ Per Shri N.K.Verma, Member (A) ¶

Shri G.S.Walia, during the argument prayed for the reliefs sought in the O.A. for quashing the impugned order dated 9.7.94 by which the pay of the applicant was reduced to the level of Rs. 1130/- P.M. with effect from 1.1.90. It was also mentioned in para 3 of the order that an amount of Rs. 17,741/- has been worked out as over payment for the period from 1.1.90 to July 94. Shri Walia submitted that he ^(applicant) was not given any opportunity or any notice in this regard for reduction of his pay with retrospective effect i.e. from 1.1.90. This position has also not been disputed by the respondents. In support of his claim Shri Walia has referred to the case of Bhagwan Shukla V/s. Union of India JT 1994(5) SC 253, in which the Hon'ble Apex Court had quashed the

orders of the Central Administrative Tribunal, Patna Bench as also the order of the respondent in that application in which the basic pay of the appellant was reduced to Rs. 181/- P.M. from Rs. 190/- p.m. in 1991 retrospectively with effect from 18.12.1970. The Hon'ble Supreme Court observed that:

" The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter. "

Shri Walia submits that this case is identical with that of the one discussed in the Apex Court judgement. He therefore urged that the impugned order should be quashed.

2. Shri R.K. Shetty, counsel for the respondents submitted that the applicant had been demoted under the orders issued by the respondents on 30.12.89 which indicated that he would be demoted as Blacksmith with effect from 1.1.90. Shri Shetty stated that this order was considered to be as notice for reduction of his pay as well as his demotion. However, Shri Shetty was not able to reply why the applicant was allowed to draw the pay of Blacksmith (highly skilled) for all the four years after the order of demotion to the post on 30.12.89. All that he could say at this stage

was that this was due to Administrative lapses. He was also not able to distinguish the post of Blacksmith (Highly skilled) and the Blacksmith post held by the applicant and the nature of the job performed in these two categories of posts. In the written reply it has been averred by the respondents that as per recommendations of the IIIrd Pay Commission, 65% of the skilled workmen were to be in the lowest scale of pay, 20% were to be put in the next higher scale of Highly skilled grade II and the balance 15% in the Highly skilled grade I. However, it does not indicate the type and nature of work which distinguishes the skilled workmen of the lowest category and skilled workmen of the higher category. The facts remains that the applicant continued to work as Blacksmith and he was also drawing the pay of Blacksmith(Highly Skilled) for all the periods even after the demotion order was passed by the respondents, for the reasons mentioned by the counsel for the applicant, as stated above.

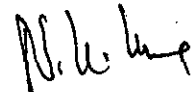
3. I have given careful consideration to the arguments of both the parties. Admittedly, the applicant was demoted from the post of Blacksmith, (Highly Skilled) grade II in January 1990 for which order were issued through the normal channels as R1 and R2. ^{In spite} ~~On inspection~~ of these orders it is found that the applicant continued to draw higher salary of Blacksmith(Highly Skilled) grade II. As and when the authorities realised their mistake, they were obliged to issue show cause notice to him before passing an order for recovery of huge amount of Rs. 17,741/- in July 1994. This order of recovery of over payment cannot be sustained in view of the Hon'ble Appex Court Judgement. The stand taken by the respondents that the applicant was overpaid from month to month for the last four years, due to

administrative lapse cannot be cured by arbitrary and unilateral decision of the respondents to reduce his basic pay to a lower level without proper notice.

The applicant must be deemed to have worked as Blacksmith (High Skilled Grade II) during this period under reference if he was paid at a higher level.

The respondents are themselves responsible for this continued overpayment for which the applicant cannot be penalised. Accordingly, the impugned order is liable to be quashed. I hereby quash the impugned order dated 9.7.1994.

4. The O.A. succeeds. Orders accordingly without costs.



(N.K. Verma)
Member (A)

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