

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 1087/95

Date of Decision 13.3.96

B.N. Kadav

Petitioner

Mr. U. Warunjikar

Advocate for the Petitioner.

Versus

Telecom Dist. Manager Respondent
& Anor.

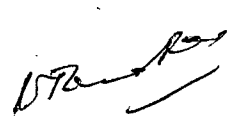
Mr. S.S. Karkera for Advocate for the Respondents.
Mr. P.M. PRADHAN

Coram:

The Hon'ble Mr. V. RAMAKRISHNAN, MEMBER (A)

The Hon'ble Mr.

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


MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESEOT ROAD, MUMBAI-1

O.A.No. 1087/95

DATED: THIS 13TH DAY OF MARCH, 1996

Coram; Hon.Shri V. Ramakrishnan, Member (A)

B.N. Kaday
Telephone Operator
Telecom Department
Ahmednagar 414001
(By Mr. U. Warunjikar, Counsel) ..Applicant

V/.s.

Telecom District Manager
Ahmednagar Division
Ahmednagar 414001 & 1 anor.
(By. Mr. S.S. Karkera,
for Mr. P.M. Pradhan, Counsel) ..Respondents

ORDER

(Per: V. Ramakrishnan, Member(A))

I have heard Shri U. Warunjikar, Ld. Counsel for the Applicant and Mr. S.S. Karkera, holding for Mr. P.M. Pradhan, Counsel for the respondents.

2. The Applicant who is an ex-service man joined the Civil post in the scale of Rs.260-480 some time in the year 1980. At the time of retirement from Army he was drawing a pay of Rs.309/- and on his retirement from Army services he became entitled to pension of Rs.168. On his reemployment in the Civil Post, his pay was fixed at Rs.244+Rs.2 taking into consideration the last pay drawn by him and reducing Rs.62 which includes a sum of Rs.43 which is excess pension over Rs.125. This was done as per Government of India orders of 1978 which

regulated pay fixation of ex-servicemen. The orders of 1978 were amended in 1983 and thereafter further amended in 1987. The applicant's pay as on 25.1.1983 was fixed at Rs.300/- earlier and he came over to the revised scale with effect from 1.1.1986 and therefore the applicant's pay was fixed at Rs.1,150/-. By an order dated 18.5.95, which is impugned as Exhibit 'A' to the O.A., the earlier pay fixation of the applicant was cancelled and his pay was brought down to a lower figure with effect from 1.9.1983 onwards. He was also informed that the excess payments made to him would be recovered in appropriate instalments. The applicant submitted representations on 5.6.95 and also on 27.6.95, copies of which are enclosed to the O.A. Thereafter the applicant has filed this O.A. He contended that no reply has been received from the respondents to his representation till the date of filing of O.A. Respondents, however, dispute this and have annexed to their written statement Annexure 'R2' which is a communication dated 30.6.1995 ~~which is a letter~~ from the Sub-Divisional Engineer (HRD) Office of Telecom District Manager, Ahmednagar addressed to the S.D.E.T. Ahmednagar in whose office the applicant had been working. Another communication ~~dated~~ 27.9.95 was sent to SDET, Ahmednagar by SDE (HRS) in this connection. It will be worthwhile to reproduce these two letters

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which read as follows:

" DEPARTMENT OF TELECOMMUNICATIONS
TELECOM DISTRICT MANAGER
AHMEDNAGAR 414001

To

The S.D.E.T.

Ahmednagar

No.Q-976/169 dt. 30.6.95

Sub.: Recovery on account of pay
fixation of Ex-Servicemen

Case of Shri B.N. Kadav, TO

Ref.: Your Lr. No.Q-43/125 dt. 12.6.95

It is intimated that the recovery of Shri
B.N. Kadav, TO has been made as per the orders
from Circle office. Authority of Circle Office
letter No. has already been quoted in our letter
dated 18.5.95.

The Official may be intimated
accordingly.

Sd/-xxx

Sub-Divisional Engineer (HRD)
O/O Telecom District Manager
Ahmednagar 414001.

" DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE TELECOM DISTRICT MANAGER
AHMEDNAGAR 414001

To

The S.D.E.T.

Ahmednagar

No. Q-976/171 dated 20.7.95

Sub.: Recovery on account of pay
fixation of Ex-servicemen
case of Shri B.N. Kadav, TO

Ref.: Your lr. No.Q-43/137 dt. 9.6.95

It is intimated that the recovery of
Shri B.N. Kadav, TO has been made as per the
orders from Circle Office lr.No. dated
18.5.95.

The official may be intimated
accordingly.

Sd/-xxx

SUB-DIVISIONAL ENGINEER (HRD)

O/O.TELECOM DISTRICT MANAGER

AHMEDNAGAR - 414001 "

3. Shri Warunlikar, counsel for the applicant
contended that the action of the respondents in
reducing and deducting the pay of the Applicant after
more than 12 years is illegal and has to be quashed.
He further submitted that before issuing the order
dated 18.5.95 the respondents did not give any
show cause notice to the Applicant and the applicant
was told that the amount would be recovered from
his salary. Shri Karkera, counsel for the respon-
dents brings out that the re-fixation of pay
has become necessary for the reasons that the
pay which was fixed earlier and was drawn by the

.5.

applicant was erroneous and was not in conformity with various orders and instructions. He further admits that before issuing the order dated 18.5.95 no show cause notice was issued to the applicant.

4. It is clear from the foregoing that before ordering recovery of the alleged excess payment, the respondents had not given any show cause notice to the applicant and even though the applicant had submitted a detailed representation the same has been turned down by a very cryptic order as has been brought out above. In fact from the ^{not} communication it is not clear whether the applicant was actually informed of the rejection of the representation. The applicant states that he has ^{not} received any reply so far. No other communication in this regard has been shown by the respondents. In the light of the above, it is clear that while taking steps to recover excess payment the department has flouted the principles of natural justice. On this ground alone the application is to succeed.

5. The applicant has filed M.P.No. 169/96 stating that despite the Tribunal's order dated 21.9.95 granting stay to the recovery, which was confirmed on 5.10.95, the respondents are continuing to effect such recovery and this amounts to defiance of the orders of the Tribunal. Shri Karkera brings out that the Tribunal had only

granted stay in respect of future recovery and the Tribunal had not granted any stay on refixation of pay at a lower level. The order of the Tribunal granting stay came to the notice of the respondents in October 1995 and no deduction ~~and~~ for recovery has been effected thereafter. In ^{to} this connection he brings ~~my~~ notice annexure to the M.P.No. 169/96 giving pay details for November 1995, from which it is evident that no excess pay recovery has been effected. In view of this Mr. Warunjikar does not press the M.P. No.169/96 and accordingly it is dismissed.

6. In the facts and circumstances of the case I quash the order dated 18.5.1995. The applicant would be entitled to all such consequential benefits flowing from this direction and whatever is due to the Applicant be paid by the respondents by complying this direction within two months from the date of communication of this order. I however, make it clear that the respondents are at liberty to take ^{further} action as per law. No order as to costs.


(V. Ramakrishnan)
Member (A)