

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 988/97

Date of Decision: 18.9.98

Shri D.M. Chapnerkar Petitioner/s

Shri Suresh Kumar Advocate for the
Petitioner/s.

v/s.

Union of India and others. Respondent/s

Shri S.S. Karkera Advocate for the
Respondent/s

CORAM:

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

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

(1) To be referred to the Reporter or not? *no*

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *no*

R. G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman

NS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1

Original Application No. 988/97

Friday the 18th day of September 1998.

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

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

D.M. Chapnerkar
residing at
Flat No.4,
Bombay Telephone Sujata CHS
Ram Nagar, Borivili West
Mumbai.

... Applicant.

By Advocate Shri Suresh Kumar.

V/s.

Union of India through
Secretary Ministry of Finance
Department of Expenditure
New Delhi.

Director General
Department of Tele Communication
Sanchar Bhavan
New Delhi.

Chief General Manager,
M.T.N.L. Telephone House,
V.S. Road, Dadar West,
Mumbai.

Account Officer (Works)
West iii Zone
Kandivili Tele. Exchange Bldg,
M.T.N.L. S.V. Road,
Kandivili West,
Mumbai.

... Respondents.

By Advocate Shri S.S.Karkera.

O R D E R (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

This is an application challenging fixation of pay and consequent recovery of alleged excess amount from the applicant. The respondents have filed their reply justifying their action. We have heard the learned counsel for both the sides.

...2...

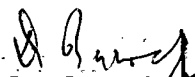


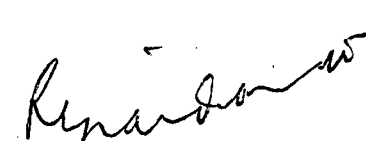
2. The applicant is aggrieved by revised pay fixation order which is at page 13 of the paper book. The respondents have issued a memo dated 18.12.97 for recovery of excess payment made to the applicant, which is at page 21 of the paper book. The applicant is challenging these two documents. Among other grounds the applicant has challenged these documents on the ground that it is in violation of principles of natural justice and without hearing the applicant.

3. After hearing both sides we find that the impugned order of fixation of salary and consequent recovery cannot be sustained since the applicant was not heard before initiating the action of recovery and fixation of pay. Even the learned counsel for the respondents fairly conceded that the department will take action after issue of show cause notice to the applicant regarding the fixation of pay. In the light of this submission we feel that impugned fixation of pay and consequent recovery should be set aside and the respondents be given liberty to take proper action after hearing the applicant.

4. In the result the application is allowed. The impugned order of fixation of pay bearing No. 10716 (page 13 of the paper book) and the impugned order of recovery dated 18.12.97 (page 21 of the paper book) are hereby set aside, without prejudice to the right of the respondents to issue show cause notice to the applicant. Then the applicant to give detailed representation as to how the pay has to be refixed; Then the respondents can take proper decision and pass a speaking order. After refixation of pay if any recovery has to be made, the respondents may take action according to the law. 11

Needless to say that, if any adverse order is passed by the administration, the applicant is at liberty to challenge the same according to law. Till such fresh order of refixation of pay is passed, the respondents should not make any recovery on the basis of the impugned order dated 18.12.97. In the circumstances of the case there is no order as to costs.


(D.S. Baweja)
Member(A)


(R.G. Vaidyanatha)
Vice Chairman

NS

29/11/99-8

Heard Shri Suresh
Kumar, Counsel for
Applicant.

Issue notice to respondents
on CP-47/99.

List for codes on
14/1/2000.

(S.L. Jain)
m(I)

(D.S. Bhatnagar)
m(A)

slp.

Notice
Applicant/Respondents on

10/12/99

m

OA 988/97 (10) Dated: 14.1.2000
Shri Suresh Kumar counsel
for the applicant. Shri S.S.
Karkera counsel for the
respondents.

Liberty granted to the
applicant to file rejoinder.
Adjourned to 31.1.2000.

(S.L. Jain)
Member(J)

(B.N. Bahadur)
Member(A)

NS

31/1/2000-9 (988/97)

Shri K.R.Yelwe for Shri
Suresh Kumar for Applicant. Shri
S.S.Karkera for Respondents.

We have seen the reply
filed and the Annexures relating
to pay fixation, etc in respect
of Shri D.M.Chapnerkar with
reference to the clear direction
given in order in OA-988/97 on
28/9/98.

It is clear from the
records in reply statement that
the directions given i.e issue
of show cause notice, receipt of
representation and then followed
by a decision through a speaking
order have been complied with.
Needless to say that any further
grievance in regard to this
fixation cannot be gone into in a
CP.

Therefore, the CP-47/99
is dismissed and *notice discharged*

S.L.J.
(S.L.JAIN)
MEMBER(J)

B.N.B.
(B.N.BAHADUR)
MEMBER(A)

31/1/2000
Order/Notice despatched
to Applicant (s)
on *11/2/2000*

15/2/2000