

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 954/98.

Tuesday, this the 20th day of June, 2000.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,  
Hon'ble Shri B.N.Bahadur, Member (A).

Premnath Magotra,  
House No.29 - 1475,  
West Kakatiyanagar,  
Neredmet, P.O. R.K.Puram,  
Secunderabad - 500 056. ....Applicant.  
(By Advocate Mr.R.P.Saxena)

Vs.

1. Union of India through  
The General Manager,  
Canteen Stores Department,  
Adelphi 119, M.K.Road,  
Mumbai - 400 020.
2. The Controller of Defence Accounts,  
Canteen Stores Department,  
Adelphi 119, M.K.Road,  
Mumbai - 400 020. ....Respondents.  
(By Advocate Mr.R.R.Shetty for  
Mr.R.K.Shetty)

: O R D E R (ORAL) :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed by the applicant challenging the impugned orders of fixation of pay and for consequential benefits. Respondents have filed reply opposing the application. We have heard Mr.R.P.Saxena, the learned counsel for the applicant and Mr.R.R.Shetty for Mr.R.K.Shetty, the learned counsel for the Respondents.

2. The applicant was a civilian employee in the office of the first respondent. He retired from service on 30th April, 1998. He had been given promotions to different cadres and pay had been fixed. The applicant has drawn pay in those promotional

...2.

*flw*

posts. Now, by virtue of the two impugned orders dt. 27.5.1998 which are at pages 12 and 13 of the paper book, the respondents have re-fixed the pay of the applicant in different grades from 1994 onwards and on that basis they have issued an order for recovery of excess amount paid to the applicant. Being aggrieved by the action of the respondents, the applicant has come up with the present application seeking a direction for refixing of his pay and for consequential benefits.

3. The respondents in their reply have justified the action taken and have given number of reasons in support of the <sup>impugned</sup> ~~interim~~ orders. According to them the fixation of <sup>pay of</sup> the applicant was done erroneously on previous occasions and that erroneous orders are being corrected by issuing the impugned orders.

4. We had heard this matter on 24.3.2000. After hearing both sides for some time on that day, we indicated orally as to how fixation is to be done and called upon both sides to give their calculations. On the basis of the said oral direction, the applicant and respondents have prepared a statement which is now placed before us and it is taken on record. In that chart, the applicant has given various dates and fixation of pay on different dates and in particular we are concerned with columns 4, 5 and 6. In Column No.4 fixation of pay is shown as per the version of the respondents. In Column No.6 shows the fixation of pay as demanded by the applicant. Then, in Column No.5, they have shown the fixation of pay as orally indicated by us on 24.3.2000.

Now, the learned counsel for the respondents fairly concedes that Column No.5 substantially <sup>meets</sup> ~~means~~ his claim ~~claim~~ except for a small mistake or error in fixation of pay on



1.5.1993 at Rs.2,725/- and according to him it should be Rs.2,725/- from 1.1.1993. In other words, the learned counsel for the applicant submits that applicant's pay should be fixed at Rs.2,725/- as on 1.1.1993 instead of 1.5.1993 as shown by the Respondents in Column No.5. The dispute is only about advancing the increment by four months. Though some arguments were addressed at the bar on this point, we find that the chart prepared by the respondents and in particular Column No.5 substantially <sup>meets</sup> ~~means~~ the claim of the applicant except the one dispute now raised for advancing the increment by four months from 1.5.1993 to 1.1.1993. Even, the learned counsel for the respondents also says that the figures shown in Column No.5 may be adopted.

After hearing both sides and going through the materials on record, we are not inclined to disturb the figures shown in Column No.5 as shown in the chart. The applicant was promoted on ad-hoc basis in May, 1993 and that is how the increments are given on first of May. But, according to the applicant, after his promotion in September, 1992 he is entitled to get his salary fixed in the promotional post in January, 1993. This is a very small dispute and therefore, we are not going to decide that question since both sides are fairly satisfied with the figures shown in Column No.5. The chart also shows that applicant is entitled to be fixed at Rs.9,100/- on 1.5.1996 after acceptance of the Vth Pay Commission Report. It further shows that applicant's salary should be Rs. 9,375/- as on 1.5.1997.

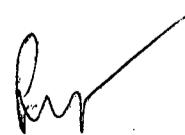
In our view, the respondents should now re-fix the applicant's pay on the basis of entries in Column No.5 of the chart and on that basis applicant's salary as on 30.4.1998 should



be fixed till the date of his retirement. On that basis, applicant's pension has to be re-calculated and fixed.

5. Now, the only point that remains to be considered is whether excess salary paid to the applicant from 1985 to 1998 should now be ordered to be recovered from the applicant. The learned counsel for the respondents vehemently contended that since excess payments are made erroneously or wrongly the respondents should have a right to recover that amount or adjust the same out of the amounts due to the applicant. The applicant's counsel first contended that this impugned fixation has been done without notice to him and since the impugned orders are going to affect the applicant monetarily and affects his pension, The order is bad since it is in violation of principles of natural justice. The learned counsel for the applicant relied upon the decision of the Apex Court in the case of Bhagwan Shukla Vs. Union of India & Ors. {(1994) 28 ATC 258} where the Apex Court has ruled that once pay has already been fixed and the official has drawn the salary for number of years, subsequently refixation order cannot be passed without observing the principles of natural justice.

Further, the learned counsel for the ~~respondents~~ <sup>applicant</sup> brings to our notice a copy of the order dt. 4.4.2000 in O.A. No.116/1999 in the case of Dr.Bhaskar Rao & Ors. Vs. Union of India & Ors., where we have held that in a matter like this where payments have been made for long time, the government <sup>should not be</sup> ~~were~~ allowed to recover the excess amounts from the officials. We have placed reliance on two decisions of the Apex Court in support of our reasoning. We adopt the same reasoning in the present case and hold that irrespective of the fixation of pay which is now approved by us as per entries in Column No.5 of the chart, the respondents



should not make any recovery of any excess amount said to have been paid to the applicant from 1985 till now. But, on the basis of the re-fixation of pay they can regulate the future pension of the applicant, but they should not recover any amount which is said to have been paid in excess till to day. For the purpose of easy reference, we are hereby marking this chart as Annexure - 9.

6. In the result, the OA is allowed partly.

The fixation of pay as mentioned in Column No.5 of the newly marked Annexure - 9 is accepted. The respondents should re-fix the pay of the applicant in terms of entries in Column No.5 of Annexure - 9 and on that basis fix his pension. However, on the basis of this re-fixation no recovery should be made from the applicant's pension or from any other amount due to the applicant. But, however, on the basis of refixation the applicant's future pension from to day and onwards may be regulated. As a result of this exercise, the applicant is neither entitled to any arrears nor is he liable to pay any excess amount to the respondents. By virtue of this order the applicant's pension shall be revised notionally from time to time. Whatever benefits that accrues to him as a result of revision of pension shall be effective from the pension due for the month of June, 2000 and onwards. The respondents shall release whatever amounts that were due to the applicant which were withheld like gratuity etc., since we hold that respondents should not recover any alleged excess amount from the applicant.

In the circumstances of the case, we direct the respondents to comply with this order within three months from



the date of receipt of copy of this order. In the circumstances of the case, there will be no order as to costs.

B.N.Bahadur

— (B.N.BAHADUR)  
MEMBER(A) /

R.G.Vaidyanatha

(R.G.VAIDYANATHA)  
VICE-CHAIRMAN

B.

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

C.P.NO.53/2000 IN  
O.A.NO.954/98.

13/3/2001

TRIBUNAL'S ORDER:-

Learned counsel for the Respondents Shri R.R.Shetty for Shri R.K.Shetty tenders a cheque of Rs.17,150/- to the applicant's counsel, Shri R.P.Saxena, who has accepted the same.

The learned counsel for the applicant contended that as the amount is paid belatedly, he is entitled to interest. There is no order for payment of interest to applicant.

Applicant is at liberty to agitate the matter in accordance with law.

Since the judgement of the Tribunal has been complied with, though there is delay in compliance, it is not a deliberate <sup>delayed, now to 18/4/01</sup> delay. The CP-53/2000 stands discharged. No costs.

*Shanta J*  
(SHANTA SHAstry)

MEMBER(A)

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

abp.

*ab. 13/3/01*  
order/judgement despatched  
to Applicant/Respondent(s)  
on 29/3/01

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