CENTRAL ADMINISTRATIVE TRIBUNAL:
MUMBAI BENCH

ORIGINAL APPLICATION NO:500/98

Dated, this Third Thursday the 2nd of December 1999.

Shri S.M.Sudge & Anr. Applicant.

Shri.S.P.Saxena Advocate for the Applicant.

VERSUS

Union of India & Anr Respondents.

Shri R.K.Shetty Advocate for the Respondents.

CORAM: HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

(i) To be referred to the Reporter or not? Yes

(ii) Whether it needs to be circulated to other Benches of the Tribunal? No

(iii) Library? No

B.Bahadur

(B.N.BAHADUR)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:500.98
DATED THE 2nd DAY OF ~~NOVEMBER~~ December,99

CORAM:HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

1. Shri Suresh Manaji Sudge
   Librarian & Information Assistant,
   National Defence Academy,
   Khadakwasla, Pune-411 023.

2. Atul Vinayak Patwardhan
   Librarian & Information Assistant,
   National Defence Academy,
   Khadakwasla, Pune-411 023. ... Applicants

By Advocate Shri S.P.Saxena

v/s.

1. Union of India
   Through The Secretary,
   Ministry of Defence,
   New Delhi-110 011.

2. The Commandant,
   National Defence Academy,
   Khadakwasla, Pune-411 023. ... Respondents.

By Advocate Shri R.K.Shetty.

(ORDER)

This is an application filed by Shri S.M.Sudge and Shri A.B.Patwardhan, jointly. It is stated that both applicants have one and the same cause, and hence come up jointly before the Tribunal. The applicant seek the relief for a declaration that the respondents' action of making recovery from the applicants is illegal and a direction to respondents to refund the already deducted amount.

2. The facts of the case, as brought out in the application are as follows: Applicant No.1, Shri Sudge, joined as Librarian Grade-III at the National Defence Academy (NDA) on 14/11/1987 was promoted as Librarian Grade-II on 1/6/91 and is officiating as Librarian Grade-I from April,1996. The scales of pay in

...2.

the different posts have been indicated. Applicant No.2 joined as Librarian Grade-III on 16/8/88 and was promoted in December,91 as Librarian Grade-II.

3. Applicants aver that their pay fixation in the post of Librarian Grade-II was done as per rules in the scale of Rs.5000-8000 and that they currently drew basic pays of Rs.5600/- and Rs.5450/- respectively. On being told orally that recovery is being contemplated in their cases, they submitted a representation orally that recovery was tobe made, they submitted representation dated 27/5/98 apprehending the impending recovery as being probably due to disputed pay fixation. It is contended that no reply was received. However recovery has been started from monthly salary of May,98 even though no orders/details of recovery have been communicated to the applicant. It is in grievance of such recovery that the applicants have come up before this Tribunal.

4. It is to be noted that an interim order was made on 29/6/98 directing respondents to stop further deductions from the salaries of the applicant. This Interim Order has been continued further.

5. The respondents have filed a written statement in reply, in which the facts relating to appointments of the two applicants have been given, and it is stated that their pay was fixed on promotion to Grade-II by the grant of one notional increment and fixation at next higher stage in the higher grade, as per usual rules. Subsequently, they became eligible for placement in the payscale of Rs.1400-2600 with retrospective effect of 24th July,1990. It is averred that both applicants gave their consent

for fixation of pay in the scale of Rs.1400-2600 through options, dated 18/5/93 copies of which are attached (R-3 and R-4).

6. It is contended that since both applicants have been placed in the payscale of Rs.1400-2600 with retrospective effect, they automatically stood to partly lose the benefit of pay fixation on promotion which was earlier given to them. At that time the sanction to extend revised payscale of Rs.1400-2600 had not been received. It is contended that it is because of this position that the situation of recovery has resulted. The recovery due from Shri Sudge and Shri Patwardhan is stated to be Rs.8897/- and Rs.13,269/- respectively.

7. It is stated that this recovery is in the nature of an adjustment, consequent upon the substantially higher benefit of the revised payscale. Having once opted for that scale they cannot turn back and avoid facing of the logical consequence of recovery of excess payment. They have given options in full awareness of all consequences, and logically therefore there was no need for any showcause notice to be given to the applicants. In the further part of the reply statement details of benefits of revised payscale have been elaborated.

8. I have perused all the papers in the case and have heard learned counsels on both sides. I have also considered the cases cited by learned counsel at the time of arguments.

9. The learned counsel for the applicant argued his case strenuously. The arguments made by him were as follows in gist:-

(a). The Counsel for applicant took me over the various annexures giving payscales and options given etc and explained

how the different payscales earlier operating were later merged into the common scale of Rs.1400-2600. Exhibit R-1 was referred to. It was contended that when a fresh fixation was made, the question of recovery would not arise.

(b). Exhibit R-2 clearly shows that recruitment rules were not changed and that the applicants impression while making the option for the revised scale was that this would be prospective .

(c). Any action which reduces the pay of a Government Servant can only be prospective and not retrospective and hence no recovery was justifiable.

(d). All action for recovery was void and even if any such action was to be taken, the recruitment rules would need to be amended first.

(e). It was strenuously asserted by learned counsel Shri Saxena, that no notice was given before recovery and that this was mandatory specially since this action has been taken after a long number of years. There was also the question of three year limit for recovery.

(f). The counsel for applicant cited the following cases in support of his stand

1. 1996(34) ATC 579- P.S.Jain v/s. Union of India.
2. 1995 SCC L&S 248 -Sahebram v/s. Haryana
3. 1994(28) ATC 258 - Bhagwan Shukla v/s Union of India.

10. Arguing the case strenuously, the counsel for respondents took me over the details regarding the methodology of pay fixation as explained in the written statement and reproduced

...5.

He also referred to the various documents filed and stated that the new scales to which option was made available, were beneficial to applicant in the light of the fact of their retrospective operation. There was adjustment in calculation however, resulting in minus and plus. While some recoveries had to be made for earlier period, in the process, the overall effect was one of benefit as explained in written statement.

11. It was strongly and repeatedly urged by Shri Shetty, learned counsel for respondents that the applicants had carefully considered and known these facts when an option was made by them with their eyes open. It was argued that there was no need for amendment of recruitment rules in such matters. The overall benefits which accrued to the applicants are very large and continue well into the future. He explained that a large number of OAs were filed and hence for several years, the respondents refrained from implementing the recoveries and that no delay and laches could be attributed to respondents.

12. Shri Shetty asserted that the judgements cited by learned counsel for applicants were all distinguishable and did not help the cause of the applicants. Further he stated that for the very reasons advanced by him, there was no necesity of a show cause notice.

13. All aspects of the case and the papers have been carefully considered. In the first place, it is seen that a fresh revised scale was sought to be provided to the applicants, as indeed to all others concerned, and that an option was provided. Thus, there was no element of coercion in the applicants being in

...6.

placed in a particular scale of pay. It is also to be accepted that when the option has to come into effect from a retrospective date there could well be periods of pluses and minuses. It is for one such spell, apparently that some excess payment has come to be involved, in view of the mechanics of pay fixation process.

14. Now, it is common that when new scales come into effect and when Government Servants are given options, they are expected to weigh the pros and cons of both options and exercise a decision. There is no reason to believe that present applicants who are educated persons and have been in service since 1987 and 1988 respectively had not considered and weighed the pros and cons before exercising their option. The argument made by their learned counsel about their assuming that options would be prospective cannot hold any water. All facts were clearly before them and they cannot pick and choose viz picking what is suitable to them only. Thus arrgument thus holds no water.

15. The other point made that recruitment rules should dhave been amended also cannot carry any weight. This argument perhaps would have held some validity if a certain payscale was applied to the applicants without any option. That is not the case. The case is one of Pay fixation and two modalities are available and quite simply the applicants have chosen one of them. The argument of Counsel for respondents that they have done so with their eyes open has validity. It is not refuted by applicants that the point made by respondents about there being overall benefit to the applicants is incorrect. They have not shown any calculation as to how this is wrong. In that case, they would

...7.

obviously not opt for it. It is only stated that their recovery is involved, and that it should not be made. To repeat, there would be no justifiability in allowing a pick and choose option to the applicants in this regard.

16. As regards the show cause notice, it must be stated that normally any recovery sought to be made, is to be preceeded by a showcause notice. For example, if overpayments are made by mistake or otherwise, it would be necessary to afford an opportunity to the concerned persons to put forth their part of the argument. However, in this case, the very fact that an option was provided meant that an opportunity was provided to consider all aspects of the decision to opt in a particular manner. This implies that opportunity was provided to consider the possibility of resulting recovery of some payments already made. Such is the case in the present facts and circumstances and it cannot be said that any there is any violation of the principles of natural justice. Thus in view of this particular fact, a show cause notice was clearly not required t6o be given to applicants.

17. In regard to the cases cited by counsel for applicant, the following observations have to be made:-

In the first case viz. that of P.S.Jain,it is seen that there is no option involved as in the present case, and this aspect is important as discussed in detail above.

Similarly in the case of Bhagwan Shukla, the point that is held is that notice should be given when a order of

...8.

before us, I have explained how the fact that opportunity for exercise of option covered the principles of natural justice and hence why a separate notice was not necessary.

The case of Sahebram v/s. Haryana cited by applicant is not relevant either as a perusal of the judgement will indicate.

18. In view of the detailed discussions made above, I do not find any ground for interference in the matter or to provide any of the reliefs sought for by the applicants. Hence this application is hereby dismissed with no orders as to costs.

19 The Interim Order staying the recovering from applicants is hereby vacated. It is hoped that recovery will be made in suitable and reasonable instalments.

(B.N.BAHADUR) 02/12/99.
MEMBER(A)

abp.