

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

U/R AT HYDERABAD

17 of CAT (P) Rules 1987
R.A.No. 29 of 1994

in

O.A.No.1357 of 1993

Between

1. The Union of India, rep.by its
Secretary to Government, Ministry
of Defence, New Delhi - 110 001
2. The Chief of Naval Staff,
Naval Headquarters,
New Delhi - 110 001
3. The Flag Officer Commanding-in-Chief,
Headquarters Eastern Naval Command,
Naval Base, Visakhapatnam-14
4. The Commanding Officer,
INS Circars, Naval Base,
Visakhapatnam-530 014.

.. Applicants/
Respondents

and

SK. Madeena

.. Respondent/
Applicant

For the reasons stated in the accompanying affidavit,
it is prayed that this Honourable Tribunal may be pleased
to review its judgement delivered on 4.7.1994 in O.A. No.
1357 of 1993 and pass such further and other order or orders
as this Hon'ble Tribunal may deem fit and proper in the cir-
cumstances of the case.

W. D. Jay
COUNSEL FOR THE APPLICANTS.

Hyderabad

20.8.1994.

AT HYDERABAD

REVIEW APPLICATION NO. 29 / 95 IN OA 1357 OF 1993

The Union of India
Represented by its Secretary
to Government Ministry of
Defence, New Delhi and
03 others

... Applicants/
(Respondents
in the OA)

Vs

Shri SK Madeena

... Respondent
(Applicant in
the OA)

REVIEW APPLICATION FOR REVIEW OF JUDGEMENT DATED
04 JUL 94 IN OA 1357/93

I, AC Avarachan, Son of Shri AC Chacko, aged 49 years
Commodore, Chief Staff Officer (Personnel and Administration),
Headquarters Eastern Naval Command, Visakhapatnam do hereby
affirm and state as follows:

1. I am the Chief Staff Officer (Personnel and Admini-
stration) Headquarters Eastern Naval Command, Visakhapatnam
and as such I am fully acquainted with the facts of the case.
I am filing this Review Application on behalf of all the
Respondents as I have been authorised to do so.

2. The Respondent Shri SK Madeena was appointed as
Asst. Store Keeper with effect from 29 Oct 69. The individual
officiated in the next post of Storekeeper (SK) for 585 days
on different occasions and promoted on regular basis to the
post with effect from 02 Feb 82. On his regular promotion
his pay was fixed erroneously with effect from 02 Feb 82
in that his next date of increment in the higher post was
preponed to 01 Jul 82 taking into account the past 585 days
of officiating service in that post while as per the rules
extant his next date of increment was to be fixed 02 Feb 83
i.e., after completion of 12 months qualifying service from
the date of promotion/pay fixation as Storekeeper. Thus he
was overpaid. The reasons for erroneous pay fixations
are as under:

(3)

(a) The basic pay of the individual as Asst. Store Keeper prior to his regular promotion to the post of SK was Rs.334/-. According to the then existing provisions relevant to the period in question, the following are the directives for fixation of pay on regular promotion of an individual.

(b) On promotion, pay of the individual is to be increased by one notional increment in the lower pay scale and the pay in the higher post is to be fixed at next stage in the higher pay scale.

In this connection Article 156-A of CSR Volume-I refers.

(c) The individual on his regular promotion, can exercise an option for fixation of his pay after one more increment in the lower post.

In this connection, Department of Personnel and Administration Reforms OM No.7/1/80/Estt(P&I) dated 26 Sep 81 is relevant.

(d) In case of an individual who has officiated in the higher post prior to his regular promotion to that post, the pay last drawn by him in the officiating period, is to be protected while fixing his pay on regular promotion to higher post.

(e) There is no provision for taking into account the officiating service for fixing the pay on regular promotion to the higher post/for ante-dating the increment in the higher post.

(f) The individual was promoted to the post of SK w.e.f. 02 Feb 82. Hence the individual's pay was to be fixed on his regular promotion as SK as follows:

(TVK Rao)
Adm. Attch. to Officer
Staff Officer (Civilians)

(Signature)
(AC Avarachan)
Commandant
Chief Staff Officer (P & A)
Naval Command

(u)

- (i) Last pay in the lower post as ASK .. Rs.334/-
 - (ii) Pay to be raised after adding one notional increment in lower post .. Rs.342/-
 - (iii) Pay to be fixed as SK in the next higher stage of the higher pay scale of Rs.330-10-380-EB-12-500-EB-15-500 .. Rs.350/-
w.e.f. 02-02-82
 - (iv) Date of next increment in the higher post should be 02-02-83/
01-02-83
- (i.e. after completion of 12 months qualifying service from 02-02-82 i.e. date of promotion)

(g) The pay fixations of the individual, on his regular promotions to the post of Storekeeper w.e.f. 02 Feb 82 were correctly done at appropriate stages as at (i) to (iii) above; but while determining the date of next increment in the higher post of SK, instead of fixing the increments date as 02 Feb 83 (i.e. after completion of 12 months qualifying service from 02 Feb 82), the past 585 days officiating service was taken into account and the date of next increment in the higher post of SK was erroneously preponed to 01 Jul 82. Thus the individual was paid increment by 220 days earlier each year from 01 Jul 82 resulting in overpayment to him.

3. It is submitted that in a similar case of one Shri D Muthu Swamy, Senior Storekeeper (SSK) of Weapon Equipment Depot, Visakhapatnam, the Area Accounts Office, Controller of Defence Accounts (Navy), Visakhapatnam observed the anomaly and advised the refixation/recovery of the over payment made to him. When that individual represented against the proposed refixation/~~individual represented against the proposed~~/recovery the matter was referred to Naval Headquarters vide Headquarters Eastern Naval Command, Visakhapatnam letter CE/4607/WED(V) dated 11 Aug 87 and NHQ in turn confirmed vide letter

(TVK Rao)
Attestor
Administrative Officer
Staff Officer (Civilians)

(Signature)
(AC Avarachan)
Commodore
Chief Staff Officer (P & A)
Eastern Naval Command

CP(P)/7979/CC, dated 21 Sep 87 the administrative action is correct. Consequently the pay of the individual was refixed and excess payments were recovered.

4. It is submitted that since the individual (Shri D Muthu Swamy) represented against some other cases (including that of Shri SK Madeena, the applicant in the present OA) of erroneous pay fixation as in his case, all such cases were reviewed and it was found that the case of Shri SK Madeena was also one warranting refixation/recovery.

Accordingly instructions were issued by HQENG(V) vide impugned letter CE/4607/WED(V)/1 dated 15 Jul 93 to refix the pay/recover the excess payment from him in 11 easy instalments.

5. Aggrieved over the Administrative action, the individual filed the instant OA opposing the refixation/recovery. Various Administrative formalities are to be completed as per existing rules, before filing ~~for~~ counter in CAT/Courts, viz. forwarding para-wise comments to the Standing Counsel concerned, obtaining draft counter, getting it vetted by the Addl. Legal Adviser, Bangalore and further by the Ministry of Defence, New Delhi. Thus the draft counter is processed with various authorities situated at various stations far off from each other i.e. Visakhapatnam Hyderabad, Bangalore and Delhi. In the process the draft counter was sent to Naval Headquarters, New Delhi for vetting by the Ministry of Defence.

6. In the meanwhile, the subject OA came up for final hearing on 04 Jul 94. Hence the Govt. Standing Counsel read out the arguments of the Respondents from the draft counter held by him and projected his contentions. After hearing to both sides,

(TVK Rao)
Administrative Officer
Staff Officer (Civilians)

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(AC Avarachan)
Commandant
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Eastern Naval Command

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the Hon'ble Tribunal disposed of the OA in favour of the individual vide its judgement dated 04 Jul 94 setting aside the order CE/4607/WED(V)/1 dated 15 Jul 93 and directing the Respondents (applicants herein) to refrain from revising the pay fixation already done and recovery of the excess amount.

7. The applicants herein/Respondents of the OA submit that the judgement of the Hon'ble Tribunal delivered on 06 Jul 94 needs review on the following grounds:-

- (i) The inadvertance in the instant case is purely due to clerical error. Administrative error is rectifiable at any time, as per judicial pronouncements also.
- (ii) The overpayment involved in the instant case may be around Rs.4,000/- but in some cases it may run into huge amounts and if there is no provision/scope for rectification of the Clerical/Administrative error/slip, it will result in heavy loss to the Exchequer.
- (iii) Due to any Clerical/Administrative slip/error, if any employee is less paid or not given any benefits due to him, in the past, and when he files a case for benefits even after very long time, the same Tribunal ordered for extending the benefits due to the applicant-employees with retrospective effect. This analogy should equally apply in the case of benefits not due but paid to the individual on account of Clerical error and requiring recovery of the overpayments.
- (iv) If the mistake crept in the case of respondent employee is not allowed to be rectified, the seniors would ask for stopping up of their pay on par with the respondent-employee imposing additional financial burden on the exchequer.

(TVK Rao)
Administrative Officer
Staff Officer (Civilians)

[Signature]
(AC Avarachen)
Commandant
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Eastern Naval Command

In the CAT
Hyd Bench

RA 194

In
O.A. 1357/93

Review Application

Received copy
probably 6/9/94
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Advocate



Filed by —

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