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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.258 of 1999

DATE OF JUDGMENT: 6th JANUARY, 2000

BETWEEN:

1. D.KRISHNA,
2. R.APPARAO,
3. B.CHINNA RAO,
4. M.APPALANAIDU,
5. V.DHANA RAJU,
6. K.V.NARASIMHA,
7. D.APPALASWAMY,
8. M.D.PRASAD,
9. J.RAJA RAO,
10. N.B.ROWLA,
11. KSN RAJU,
12. R.APPA RAO,
13. K.APPALA MURTHY,
14. R.SWAMIBABU,
15. D.PRATHAPRAO,
16. Ch.BANGARAI,
17. B.KRISHNA,
18. N.NARSINGA RAO,
19. K.MALLISWARA RAO,
20. K.S.NAIDU,
21. P.THATHA RAO,
22. E.JOSEPH,
23. V.SATYAVATHI,
24. S.VARALAKSHMI.

.. APPLICANTS

AND

1. Union of India rep. by its
Secretary, Ministry of Defence,
South Block, DHQ PO:
New Delhi,
2. The Flag Officer Commanding-in-Chief,
HQRS, Naval Base PO:
Visakhapatnam,
3. The General Manager,
Naval Armament Depot,
NAD Post Office,
Visakhapatnam.

.. RESPONDENTS

COUNSEL FOR THE APPLICANTS: Mr.P.B.VIJAY KUMAR

COUNSEL FOR THE RESPONDENTS: Mr.v.VINOD KUMAR, Adl.CGSC

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CORAM:

HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.)

JUDGMENT


ORDER (PER HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.))

None for the applicants. Heard Mr.V.Vinod Kumar, learned standing counsel for the respondents.

2. There are 24 applicants in this OA. They were all initially recruited as Unskilled Labourers in the Naval Armament Depot, Visakhapatnam. Afterwards, all of them were promoted as Semi-skilled Labourers in various trades of the Armament Depot. While fixing their pay on promotion as Semi-skilled Labourers, their pay was fixed in the pre-revised scale of Rs.210-280 (now revised to Rs.2650-4000 - Vth Pay Commission).

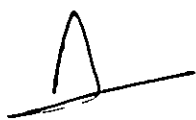
3. When the matter stood thus, some of the employees who were seniors to the applicants herein filed O.A.NO.1634/93 on the file of this Bench alleging that they being seniors were drawing less pay than the applicants herein (The judgment in OA 1634/93 is enclosed as Annexure A-III at page 57 to the OA). That OA was disposed of as under:-

"From the aforestated it would be evident that if the over payment made to the juniors is recovered, the applicants would have no case. If however, for any reasons, administrative or otherwise, the respondents decide not to recover the



overpayment from the juniors, the case of the applicants requires to be reconsidered by the respondents so that the resultant anomaly for which the applicants are not responsible, is eliminated. It is expected that the respondents resolve this issue keeping in view the aforesaid observation.

4. The applicants submit that their pay fixation was actually relates back to 1980 and the observation of this Tribunal is also made during the year 1994. The respondents herein have extended the benefit of pay fixation to the applicants herein based on the pay fixed during 1980 and extended the revision of IVth Pay Commission as well as Vth Pay Commission pay scale on the basis of the fixation. At this juncture, the respondents issued the impugned letter dated 12.11.98 to the applicants intimating that the pay of the applicants will be refixed in consultation with the Audit authorities (Annexure A-I at page 6 to the OA). Accordingly by the impugned order dated 31.12.98 (Page 7 onwards to the OA - The impugned orders issued to each applicant herein are enclosed), the 3rd respondent herein had issued the orders revising the pay of the applicants from the date of promotion till that date and also ordering recovery of overpayment made to the applicants. All of them had represented individually to R3 on 4.1.98 requesting R-3 not to effect recovery of excess paid amount to avoid financial hardship. In response to the representations, R-3 vide his proceedings dated 30.1.99 informed that the pay of the applicants is being regulated



in accordance with the CEO NO.50/98 dated 22.12.98.

5. The applicants contend as follows:-

(i) That they are not parties to the earlier OA No.1634/93. They also contend that the applicants in that earlier OA viz, OA 1634/93 were also extended stepping up of pay on par with their juniors and that they are in the same line of promotion when compared to the applicants herein. Their stepping up of pay remain untouched and only the applicants' pay is sought to be revised at this distance of time, besides recovering the alleged excess payment. Hence they filed this OA.

(ii) The refixation of pay and effecting recovery after a lapse of more than 15 years is arbitrary, illegal and discriminatory;

(iii) The pay of the applicants in OA 1634/93 was also stepped up on par with their juniors and subsequently the USLs have been redesignated as USLs on Ammunition Duty. Thus when the applicants in OA 1634/93 were enjoying higher pay refixation of pay, recovery from the pay of the applicants herein is erroneous.

6. This OA is filed to set-aside the individual proceedings NO.VA/2631/IND dated 31.12.98 of R-3.

7. An interim order was passed in this OA on 18.2.99 whereby the impugned order of recovery dated 12.11.98 (Annexure A-1) was kept suspended.



8. In the reply, the respondents submit that the refixation of pay and recovery by the impugned order dated 31.12.98 is the result of the judgment of this Tribunal dated 15.11.94 in OA 1634/93. Though the applicants in this OA are not direct parties to the said OA, they are juniors to the applicants in OA 1634/93 and recipients of higher pay and allowances. Even though the pay fixation of the applicants actually relates back to 1980 and the observation of the Tribunal is of 1994, the benefits of pay revision as per the recommendations of IVth and Vth Pay Comissions were granted across the board. The benefits of pay revision of Vth pay Commission were given to the applicants to avoid hardship as the matter was under examination as per the directives of this Tribunal. Refixation^{and} recovery was done in the light of the observation of this Tribunal with a view to eliminate the anomaly in respect of the applicants in OA 1634/93 and it was found that the pay of the applicants in this OA was wrongly fixed on their promotion to the grade of Semi-skilled and that necessitated refixation of pay and to recover the excess amount paid to them in accordance with the rules.

9. The pay fixation has been revised and as per the revised pay fixation, the recovery is being effected from January 1999 onwards for the period from 1980 till December 1998. The above recovery is subject to the stipulation of F.R.

10. As regards the contention of the applicants that the applicants in the earlier O.A.NO. 1634/93 were also



extended the benefits of stepping up of pay on par with their juniors is admitted. But the respondents say that stepping up of their pay has been done in the grade of Torpedo Fitter (Skilled) and not in the Semi-skilled cadre on par with juniors in accordance with the rules. Stepping up of pay of the applicants in OA 1634/93 on par with their juniors in the grade of Torpedo Fitters has been done in accordance with the rules and the reasons given for the above stepping up are reproduced below:-

"It is confirmed that subsequently the USL on Ammunition Duty (named as LOAD) have been granted pay scale of Semi-Skilled grade by the Govt. But it has no bearing on the pay fixation of applicants since they were promoted to the semi-skilled grade much earlier in 1980 when USL in Ammunition Duty were in USL grade only and were provided special allowance of Rs.10/- as obnoxious allowance for handling the explosives. The factual position is that as per Govt. instructions for fixation of pay on promotion to semi skilled grade, the special allowance of Rs.10/- was to be taken as part of pay while fixing the pay on promotion. But while fixing the pay in the higher scale, the pay is to be fixed at the stage where it actually falls and the fraction, if any, is to be shown as



personal pay which should be absorbed in future increments, thereby the pay drawn by the individual in the lower grade, including obnoxious allowance was protected. The pay of the applicants in OA No.1634/93 was correctly fixed in accordance with the rule position given above, whereas in the case of pay fixation of the applicants of this OA the fraction amount was erroneously taken into account and the pay was fixed at the next higher stage and thus the anomaly."

11. In view of what is stated above, the respondents submit that the OA is liable to be dismissed.

12. No rejoinder has been filed in this OA. It is an admitted fact by both sides that the applicants in OA 1634/93 are seniors to the applicants herein. While fixing ~~their~~ their pay initially in 1980, their pay was not higher than the applicants herein. When that irregularity was noticed, the applicants in OA 1634/93 had approached this Tribunal and a direction was given as extracted in para 3 supra. The respondents have complied with the observations of the Tribunal and brought down the pay of the applicants herein right from the day they were getting more pay than the applicants in OA 1634/93. If the applicants herein were aggrieved by the order of this Tribunal in OA 1634/93, they could have easily filed a review petition in 1994



itself when the order in OA 1634/93 was issued. They did not take any action at that time. They approached this Tribunal only on 11.2.99, after the impugned order dated 31.12.98 was issued. Reason for the said delay has not been explained by the applicants herein.


13. It is a fact that the applicants were given higher pay which appears to be incorrect and the applicants had not made out any case to come to the conclusion that their pay fixation in 1980 is in accordance with the rules. They have not quoted any rule to substantiate their claim that their pay fixation in 1980 was as per rules and hence the same cannot be refixed and the excess pay recovered. Even when the respondents submit in the reply that revision of pay fixation of the applicants herein right from 1980 and recovery thereon is warranted, the applicants have not filed any rejoinder. That goes to show that the applicants reconciled that they have no rule to quote to rebut the contentions raised by the respondents in their reply. It would mean that they agreed with the contentions of the respondents in this OA. Further, stepping up of pay of the applicants in OA 1634/93 had arisen in the Skilled category and not in the category of Semi-skilled or Unskilled. The reasons for stepping up of pay have been clearly indicated as seen from the extracted portion in Para 10 supra. We do not see any reason to come to the conclusion that the above said reasons are against the rules.


14. It is also to be stated that the applicants also have not brought out any rule by filing a rejoinder resisting the reply given in that connection. Hence, we do



the order of
not see any reason to ~~amend~~ refixation and revision of pay
and for ~~the~~ recovery of the excess amount paid.

15. In view of what is stated above, we find that the
OA is devoid of merits and hence is liable only to be
dismissed. Accordingly, it is dismissed. No order as to
costs.


(R. RANGARAJAN)
MEMBER (ADMN.)


(D.H. NASIR. j)
VICE CHAIRMAN

DATED: 6th JANUARY, 2000

vsn


6-1-2000