

(17)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 21.02.2000

OA No.388/99

Narendra Singh S/o Shri Jagdish Singh, aged 45 years, Plot No.4, Shriram Nagar G Extn., Jhotwara, Jaipur.

.. Applicant

Versus

1. Kendriya Vidyalaya Sangthan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
2. The Accounts-cum-Inspecting Officer, Kendriya Vidyalaya, Regional Office, 2-2A, Jhalana Doongari, Jaipur.
- ✓ 3. The Principal, Kendriya Vidyalaya No.2, Jaipur Cantt., Jaipur.

.. Respondents

Mr.M.S.Gupta, counsel for the applicant

Mr. V.S.Gurjar, counsel for respondent

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

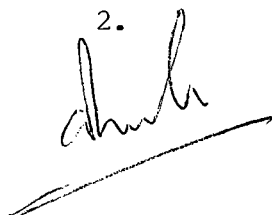
ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

The controversy in this case lies within a small compass and relates to the refixation (reduction) of pay of the applicant after a gap of eight years. The applicant, therefore, seeks directions to prohibit the respondents from reducing his pay as per order of 9.8.1995 and from making any recovery from him. Further, <sup>that</sup> the respondents may be directed to continue following the pay-fixation done on 9.12.1987 and not reduce his pay and allowances in any manner.

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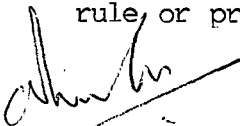
Admitted facts of the case are that the applicant was appointed



as Rifleman in the Indian Army as Combatant Clerk on 18.1.1969, was promoted as Havildar Clerk and retired on 31.8.1984. He was re-employed as Lower Division Clerk with the respondents on 16.12.1984 and his pay was fixed with the approval of the then Accounts & Inspecting Officer at Rs. 334/- plus Rs. 6.50 in the scale of Rs. 260-400 and with the implementation of recommendations of the Fourth Pay Commission, it was revised to Rs. 1175/- w.e.f. 1.1.1986 in the scale of Rs. 950-1500. It is contended by respondents that when one Arjun Singh filed a Civil Suit in which he had, inter-alia, claimed for his pay to be fixed at the level of his last pay drawn in the Army as in the case of applicant and it was only then that the mistake done in fixation of the pay of applicant on 9.12.1987, fixing it at the pay last drawn by the applicant was discovered and consequently the pay of the applicant was refixed by the order dated 9.8.1995 keeping in view the relevant provision under Central Civil Services (Fixation of pay of Re-employed Pensioners) Order, 1986 viz. Rule 4(a) and 4(b)(ii). In addition to refixation of pay of the applicant at a lower level, a recovery of Rs. 40,138/- was also slapped on him. The said recovery was stayed by order dated 29.1.1999 by the Additional Civil Judge No.5, Jaipur.

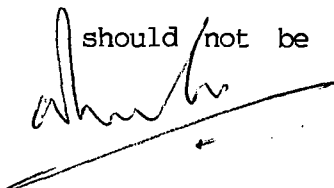
3. We have heard the learned counsel for the parties and have carefully gone through the material on record.

4. As regards fixation of pay of the applicant, it appears that his pay was fixed at the pay last drawn by him in Army. However, it has not been specifically so mentioned by the respondents, although it has been stated that the mistake in fixation of his pay on 9.12.1997 was discovered when another employee Shri Arjun Singh, LDC filed a Writ Petition in which he, inter alia, wanted his pay to be fixed on the basis of last pay drawn in the Army service. It has, however, been contended that there is no such rule or procedure of fixation of Ex-Combatant Clerk's pay on the basis of



last pay drawn in the Army and the pay fixation has been done under the relevant rules, which are Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986. If this position is correct, we feel that the respondents were within their rights to have refixed the pay of the applicant on the basis of the rules which are applicable.

5. As regards the recovery of Rs. 40,138/- proposed to be effected, it is now well settled law that if a Government official is visited with civil consequences on account of reduction of his pay and if this is done without an opportunity being given to the Government servant to explain his case, the principle of natural justice are violated. In the case of Bhagwan Shukla v. Union of India and ors., (1994) 6 SCC 154 the appellant's pay was reduced on the ground of having been wrongly fixed initially. It was held that prior opportunity ought to have been afforded. The order of reduction passed without affording opportunity, was held to be violative of principles of natural justice. The impugned order by which the pay of the appellant was sought to be reduced was held to be not sustainable and was set-aside. In Hindustan Petroleum Corporation Ltd. v. H.L.Trehan and ors., 1989(1) SCC 764 decided in Civil Appeal No.3214 of 1979, it was held that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a government servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard. In Shahib Ram v. State of Haryana and ors. 1995 Supp (1) SCC 18, the appellant was given upgraded pay scale but without any mis-representation by the employee, on account of wrong construction of relevant rules by the authority, the Govt. was restrained from recovering the overpayment already made. In Collector of Madras & Anr. v. K.Rajamanickam, (1995) 2 SCC 98, the employee was continued in service beyond the date of superannuation under a wrong decision of the Court. It was held that the period of service beyond the date of superannuation should not be counted. However, recovery of any amount paid during the

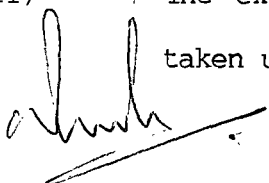


period was prohibited. In view of the legal position, we hold that the recovery of Rs. 40,138/- from the applicant will not be sustainable and whatever order has been passed in this regard should not be implemented by the respondents.

6. In the instant case, no show-cause notice appears to have been given to the applicant and revised fixation of pay has been made without affording a chance to the applicant to have his say. The deduction in pay must have come as a bolt from the blue for the applicant and that too after having enjoyed the pay according to fixation done more than 8 years ago. We, therefore, feel that there has been a violation of principles of natural justice and it will be proper that the exercise to refix the pay of the applicant is started de-novo and a prior notice is given to the applicant, inclusive of the details of the rules/procedure adopted for such fixation. Such an exercise is necessary even otherwise as it has merely been mentioned by the respondents that pay of the applicant was refixed in terms of Rule 4(b)(i) and (ii) and Kendriya Vidyalaya Accounts Code Rule 26 (a)(b)(i) (ii). This Tribunal has held in its order dated 10.12.1999 in OA No. 85/96, Ummed Singh v. Union of India and ors. that the pay of Ex-Combatant Clerks on re-employment has to be fixed in terms of order No. 16 of the Central Civil Services (Fixation of Pay of Re-employed pensioners) order 1986 and the amount of pension is to be ignored under explanation (ii) shall be as laid down in the Ministry of Defence OM No.2(1)83/D/Civ.I) dated 8.2.83 and as revised subsequently from time to time.

8. The OA is accordingly disposed of with the following directions:

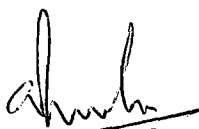
- i) The recovery of Rs. 40,138/- shall not be made from the applicant and any order requiring such recovery shall be treated as having been set-aside.
- (ii) The exercise to fix the initial pay of the applicant will be taken up afresh and the fixation will be done in terms of order



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16 of the Central Civil Services (Fixation of Pay of Re-employed Pensioners) order, 1986 keeping in view the Ministry of Defence OM dated 8.2.1983 which relates to ignoring of the pension being drawn by the Ex-Combatant Clerk as revised subsequently from time to time. Such refixation of initial pay of the applicant may be finalised after calling for his comments. This exercise of refixation of pay of the applicant may be completed within four months of the receipt of a copy of this order.

No order as to costs.

  
(N.P. NAWANI)

Adm. Member

  
(S.K. AGARWAL)

Judl. Member