

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

May 11/99
13/2
H.P.A. / Sec. Chaudhary
13/2

O.A. No. 499/99
T.A. No.

199

DATE OF DECISION _____

P.K.Sharma and two others. _____ Petitioner

Mr. P.P.Mathur _____ Advocate for the Petitioner (s)

Versus

Union of India and three others. _____ Respondent

Mr. Arun Chaturvedi _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. H.O.Gupta, Administrative Member.

- ND.
1. Whether Reporters of local papers may be allowed to see the Judgement ?
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgement ?
 4. Whether it needs to be circulated to other Benches of the Tribunal ?

(H.O.Gupta)
Administrative Member

(G.L.Gupta)
Vice Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR.

O.A. No. 499/99

Date of decision:

17.02.03

1. P.K. Sharma,
S/o late Shri Vijay Lal Ji Sharma
Plot No. 6, Lajpat Nagar,
Khatipura Road,
Jhotwara
Jaipur. 302 012

2. N.K.Verma
S/o Ram Dayal Verma
No.3211, Ghatgate,
Regron Ki Kothi,
Jaipur- 302 003

3. B.L.Verma
S/o Ram Dayal Verma
H.No. 3211, Ghatgate
Regron Ki Kothi
Jaipur 302 003

: Applicants.

rep. by Mr. P.P.Mathur: Counsel for the applicants

-versus-

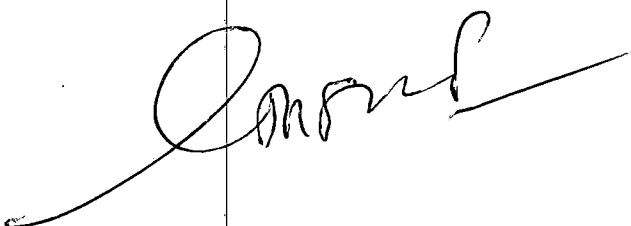
1. Union of India,
through the Secretary,
to the Government, Ministry
of Defence, Government of India
South Block
New Delhi 110 011

2. The Engineer-in-Chief,
Army Headquarters,
Kashmir House,
Rajaji Marg,
DHQ PO New Delhi 110 011

3. The Chief Engineer
H.Q. Southern
PUNE 411 001

4. Chief Engineer,
Jaipur Zone,
Power House Road,
Bani Park, Jaipur 302 006 : Respondents.

rep. by Mr. Arun Chaturvedi : Counsel for the respondents.




CORAM: The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.
The Hon'ble Mr. H.O. Gupta, Administrative Member.

ORDER

Per Mr. Justice G.L.Gupta:

The three applicants are Draftsman in the office of the Chief Engineer, Jaipur Zone. Initially they were appointed as Tracers in the years 1983 to 1985, in the pay scale of Rs.260-430. The pay scale of Tracers in the MES was revised to Rs.975-1540 with effect from 1.1.86, pursuant to the recommendations of the 4th Pay Commission.

The applicants were placed in the pay scale of Rs.1200-2040, on completion of 7 years service in the scale of pay of Rs.975-1540, as per the OM dated 15.9.95 of the Government of India, Ministry of Defence, New Delhi. After they put in 5 years service in the scale of Rs.1200-2040 they were placed in the pay scale of Rs.1400-2300 vide order dated 30.4.96 in terms of the above said OM issued by the Ministry of Defence. The applicant No. 1 was allowed the benefit of the pay scale from 18.4.95, the applicant No. 2 from 29.2.96 and the applicant No. 3 from 4.4.97. However, the Chief Engineer, Southern Command, Pune, respondent No. 3 informed respondent No. 1 vide letter dated 4.12.98, Annex. A.1, impugned in this O.A. that the pay fixation of applicant No. 1 under the RPR was wrong in the scale of Rs.5000-8000, and it ought to have been in the scale of pay of Rs.4500-7000. The Chief Engineer, Jaipur Zone was directed by letter dated 9.8.99, to make suitable amendments in the pay fixation of applicant No.2 and 3 also and to place them in the pay scale of Rs.4500-7000.



The facts stated in the O.A. indicate that the applicants on coming to know about the correspondence between the two functionaries, made representations on 12.10.99. It appears that no decision was taken on the representations of the applicants. Therefore, they have filed this O.A. on 25.10.99.

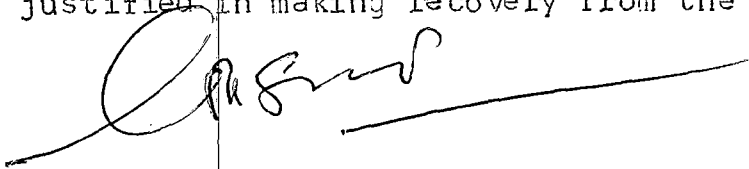
The say of the applicants is that the impugned orders have been issued without following the principles of natural justice and therefore they are liable to be quashed.

2. In the counter the respondents' have come out with the case that the applicants are Draftsman Gr.III and the pay scale of Rs.5000-8000 is for the Draftsman Gr.II, but by mistake, the applicants pay were fixed in the pay scale of Rs.5000-8000, and the respondents have a right to correct the mistake. It is stated that the applicants being Draftsman Gr. III, were entitled to the scale of pay of Rs.4500-7000, which is the corresponding scale of pay of Rs.1400-2300.

3. In the rejoinder, the applicants have reiterated their stand taken in the O.A.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

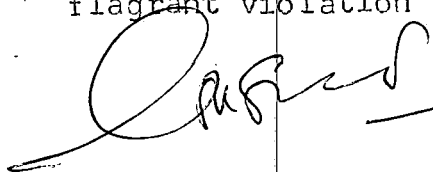
5. The main contention of the learned counsel for the applicants was that the impugned orders had been issued without following the principles of natural justice and therefore they are liable to be quashed on this ground alone. His further contention was that once the pay of the applicants had been fixed in the higher scale of pay without any misrepresentation on their part, the respondents could not be justified in making recovery from the applicants.



6. On the otherhand, the learned counsel for the respondents contended that by mistake the fixation of the pay of the applicants was done in the pay scale of Rs.5000-8000 and the mistake cannot be allowed to be perpetuate. His contention was where the fixation of pay was not done in accordance with the Rules, the respondents were not required to follow the principles of natural justice. In support of the above contention he relied on the case of Ahemadabad Municipal Corporation, vs. Nawab Khan Gulab Khan and others (AIR 1997 SC 152). He also contended that the applicants being Draftsman Gr.III were entitled to the scale of pay of Rs.1400-2300 which is the replacement scale of Rs.4500-7000.

7. We have given the matter our thoughtful consideration. The fixation of pay of the applicants has been done pursuant to the acceptance of the 5th Pay Commission Recommendations by the respondents, without any mis-representation on the part of the applicants. It is admitted position that before issuing the orders impugned Annex. A.1 and A.2, no show cause notice had been given to the applicants.

8. It is now settled legal position that whenever the pay of an employee is reduced, he/she is visited with civil consequences and if such an order is passed without giving an opportunity to the concerned employee against the proposed deduction of his pay, it violates principles of natural justice. For this proposition, reliance is placed on the case of Bhagwan Shukla vs. Union of India and others (1995 (2) SLJ 30), wherein it was observed by their Lordships that when opportunity to show cause against reduction of pay is not given to the employee, there is flagrant violation of principles of natural justice. It

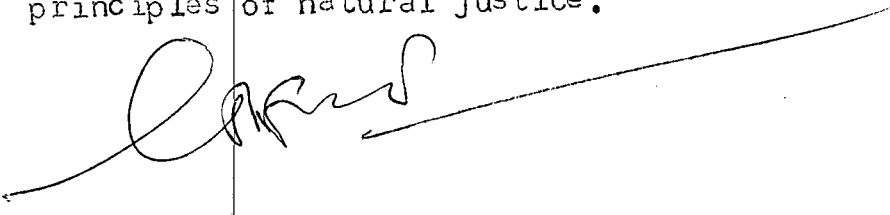


is relevant to point out that in that case also as in the instant case, the defence of the respondents was that due to mistake the pay of the applicant had been wrongly fixed initially.

9. As to the case of Ahmedabad Municipal Corporation's (supra) it may be stated that the fact situation in that case was very different. It was observed by their Lordships that where the encroachment of a public property is of a recent origin the need to follow the procedure of principle of natural justice could be obviated, in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing, which would be a tardious and time consuming process leading to putting a premium for high handed and unauthorised acts of encroachment and unlawful squatting. It may be pointed out that the Corporation therein had made a statement before the Apex Court that it had decided to give 21 days' time before taking action for ejectment of the encroachers. It is manifest from the decision that it was nowhere laid down in that case that principles of natural justice are not required to be followed.


10. As already stated, the ruling of Bhagwan Shukla's case (supra), applies on all fours to the instance case.

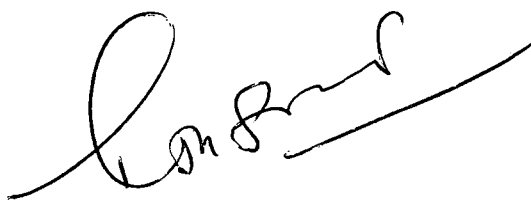
11. Keeping in view above, we do not think it proper to decide the instant case on merits. The orders impugned in the case are liable to be quashed on the ground that they had been issued without following the principles of natural justice.



12. Consequently, the orders impugned in this O.A are hereby quashed. The respondents are directed not to make any recovery or deduction from the salary of the applicants under the impugned orders. It is, however, made clear that this order will not prevent the respondents from passing any order after following the principles of natural justice.

13. No order as to costs.


(H.O. Gupta)
Administrative Member


(G.L.Gupta)
Vice Chairman

jsv.