

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, Jabalpur

Original Application No.591 of 2001

Jabalpur, this the 6th day of August, 2004

Hon'ble Shri Sarweshwar Jha-Administrative Member  
Hon'ble Shri Madan Mohan-Judicial Member

P.C.Sen, S/o F.L.Sen, Aged about 54 yrs,  
Ex.-Chargeman Grade-II(Tech), P.S.Station  
Grey Iron Foundry, Jabalpur, R/o House No.  
3094, Type-III, Sector-I, Vehicle Factory  
State, Jabalpur

- APPLICANT

(By Advocate - Shri S.Paul)

Versus

1. Union of India through the Secretary,  
Dept.t of Defence Production, South Block,  
New Delhi.
2. Director (Personal), Dept.of Defence Production  
and Supplies, Sena Bhawan, New Delhi.
3. Director General, Ordnance Factories,  
Ordnance Factory Board, 10-A, Sahid  
Khudiram Bose Road Calcutta.
4. General Manager, Grey Iron Foundry.
5. The Sr.General Manager, Ordnance Factory,  
Kalpi Road, Kanpur (U.P.) - RESPONDENTS

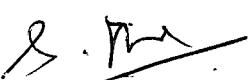
(By Advocate - Shri P.Shankaran)

O R D E R

By Sarweshwar Jha, Administrative Member -

Heard.

2. At the very out set, the learned counsel for the respondents, referring to the additional reply filed on behalf of the respondents in reply to the amendment made in the OA, has submitted that the respondent no.1 has reconsidered the penalty imposed on the applicant and the same has consequently been moderated from that of 'compulsory retirement' to that of 'reduction in rank to lower grade, that of Fitter HS-II and pay fixed at the minimum of the scale of Rs.4000-6000' vide order dated 14.6.2001 (Annexure-A-1). This has led to reinstatement of the applicant into service from 23.11.1998. Accordingly, the applicant was required to return the retiral benefits already received by him. The



respondents have calculated his entitlement during the said period as pay and allowances and what he drew as retiral benefits and accordingly have prepared due and drawn statement<sup>1</sup> and it has been found that an amount of Rs.29,981/- has been received by him in excess of his entitlement. The said amount is proposed to be recovered from his pay and allowances. They have also given a due notice of recovery of the said amount to the applicant. According to them, while the applicant has been reinstated in compliance with the direction of this Tribunal, he is liable to pay back the said amount. He cannot enjoy both the retiral benefits as well as pay and allowances at the same time. According to them, therefore, there is no illegality or arbitrariness in the action of the respondents in seeking to recover the said amount. It is further observed that the excess payment which is reported to have been made to the applicant on the basis of due and drawn statement<sup>2</sup> prepared by the respondents relates to the difference of payments as received by the applicant with effect from the date he was compulsorily retired till the date he was reinstated. He should, therefore, according to them, have no grievance against the excess amount being recovered from him.

3. We have considered the other submissions of the respondents as made in the said additional reply and we have found that the action of the respondents in recovering the excess amount is in order.

4. The learned counsel for the applicant, however, has submitted that the respondents may be directed to ensure that the difference of payment, which has been taken as excess payment made to the applicant, should relate to the period from the date of his compulsory retirement till the date of his reinstatement. He has also submitted that liberty may be allowed to the applicant to submit a representation, if necessary, to the respondents on the question of calculation/ recalculation of the payments made to him and due to the



respondents.

5. The learned counsel for the applicant has also disputed the moderated order of the respondents whereby the penalty of compulsory retirement has been moderated to that of reduction in rank vide impugned order dated 14.6.2001(Annexure-A-1) inasmuch as it has led to double jeopardy having been inflicted on the applicant. Clarifying his point, the learned counsel for the applicant has submitted that while Rule 11(vi) of CCS(CCA) 1965 stipulates that "reduction to lower time-scale of pay, grade, post or Service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or Service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or Service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or Service", under which the applicant has been reduced in rank, the said rule does not provide for fixing his pay in the lower time scale of pay, grade, post or service. He stressed the point to contend that while the applicant has already suffered by his being reduced in rank, he has suffered further by his pay being fixed at the minimum of the lower grade/time scale. In his opinion, this is certainly not the intention of the said rule.

5.1 The learned counsel for the respondents, however, maintained that reducing the Government servant to a lower time scale of pay/grade would not be sufficient unless his pay that he would be drawing in the lower time scale of pay is also indicated in the order. He has also submitted that it was quite inescapable on the part of the respondents not to have mentioned his pay in the lower time scale of pay and grade when the penalty was moderated from compulsory retirement to that of reduction in rank. It was done by the respondent-competent authority after having taken the totality of the matter and should not be seen in isolation.

5.2 We do not find any reason to disagree with the



learned counsel for the respondents, as we do not have the necessary facts before us as to what impelled the respondents to fix his pay at the minimum of the lower time scale of pay while moderating the penalty of compulsory retirement to that of reduction in rank in respect of the applicant. It is possible that they had a better perspective of the matter before them than this Bench has been given the benefit of. We would, therefore, not like to pass any opinion on this aspect of the matter.

6. Having regard to the above submissions, as made by both the sides and also having heard the learned counsel for the parties, we direct the respondents to consider any representation, if made, by the applicant on the question of calculation of the excess amount claimed to have been paid to the applicant and the same be disposed of within a period of two months from the date of the said representation having been received by them. We also stipulate that the applicant will, if so advised, be filing the said representation within one month of the receipt of a copy of this order.

6.1 On the question of double penalty having been inflicted on the applicant, as alleged by his learned counsel, we are of the opinion that under the circumstances and in the light of the facts as available on record, we do not find any merit in the said contention and, therefore, the same is rejected.

7. No further point was pressed.

8. In the result, the OA stands disposed of in terms of the above observation/directions. No costs.

(Madan Mohan)  
Judicial Member

(Sarweshwar Jha)  
Administrative Member