CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JABALPUR

Original Application No.786/2001
with
Original Application No.54/2002

Jabalpur, this the 16th day of December, 2003.

Hon'ble Shri M.P.Singh, Vice Chairman
Hon'ble Sh. G. Shanthappa, Judicial Member

O.A.No.786/2001:

P.D. Wakhle & 18 others
All applicants No.1 to 19
are resident of C/o P.D.Wakhle
J.W.M., Section M.C.O.,
Ordnance Factory
Khamariya, Jabalpur (MP). .. Applicants
(As per memo. of parties)

(By Advocate: Sh. S.Paul)

Versus

Union of India & Others
(As per memo. of parties) .. Respondents

(By Advocate: Sh. P.Shankaran)

with

O.A.No.54/2002:

A.K.Chakraborty & 35 others
All the above applicants
~~are~~ are
r/o C/o A.K.Chakraborty,
JWM Qr. No.21/6, Type-III
W/L Khamaria, Jabalpur.
Distt. Jabalpur (MP).
(As per memo. of parties) ... Applicants

(By Advocate: Sh. M.K. Verma)

Versus

Union of India & Others
(As per memo. of parties) ... Respondents

(By Advocate: Sh. S.A. Dharmadhikari)

O R D E R (Common)

By G. Shanthappa, Judicial Member:

As the facts of the case and the reliefs sought in the above two OAs are similar and identical, they are being disposed of by this common order.

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2. The applicants in both the OAs have sought to quash the order dated 11.8.2001 and continue to grant the OTA as per the rates prevailing in IV the CPC scale as per the OMs dated 1.7.1998 and 27.7.1998 with all consequential benefits. The applicants in OA No.786/2001 have also sought to set aside the order dated 8.8.1998(Annexure A/5).

3. The facts of the cases referred above in brief, are,that the applicants were paid Overtime Allowances (OTA) as per the directive issued by the Respondent No.1 vide order dated 1.7.1998 whereby it was decided to pay OTA as per the revised pay scale ~~rates~~ w.e.f. 1.1.1996. This circular was issued in pursuance of the revision of pay scale after implementation of the recommendations of the 5hh Central Pay Commission. The applicants are governed and covered by Clause (iii) of Circular dated 10.7.1998. The aforesaid circular was followed by another Circular dated 27.7.1998 as per Annexure A-3. In para 3 of the said circular dated 27.7.1998 which clearly shows that "Accordingly they will be paid as for I.Es but on pre-revised pay of (IVth)C.P.C. to be notionally determined". The said OTA has been paid to the applicants w.e.f. 1.1.1996 to 30.4.1999. As per the pay scale prevailing under the implementation of the recommendations of 4th CPC, the amount has already been paid to the applicants. Respondent No.4 has quoted some letter dated 8.8.1998 mentioning that OTA should have been paid on the basis of 3rd C.P.C. pay scale and it was directed that excess payment has been made to the applicants

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relating to his OTA and the same shall be recovered w.e.f. August, 2001. Subsequently, applicants have submitted the representation seeking stoppage of deduction of OTA from the month of August, 2001 onwards. The representations are pending, however, the respondents have issued the order dated 8.8.1998 quoted the impugned order which was not supplied to the applicants, but the applicants with great difficulty came to know that the order is a Fax Message from the Office of Respondent No.3, i.e., Chief Controller of Accounts (FYS), Kolkata, wherein he has amended para 7 of the Circular dated 27.7.1998 and was mentioned that OTA will be paid as per the pre-revised pay of 4th CPC has been amended and in ~~xxxxxx~~ place of "4th CPC" mentioned at line 10 of Para 7 may be read as '3rd CPC.' Being aggrieved by the said amendment the applicants have approached this Tribunal for relief as prayed for.

4. It is further stated by the applicants that there is no mis-representation or mistake on the part of the applicants. The OTA has been rightly paid to the applicants as per the existing provisions of OMs dated 27.7.1998 read with OM dated 1.7.1998. They further contended that the Respondent No.3 has no authority/jurisdiction to decide as to which pay scale will be the basis for calculating the OTA, and ~~xxxxxxx~~ the appropriate authority is the Respondent No.1, i.e., Ministry of Defence. According to the Ministry of Defence's Circular dated 1.7.1998, it was made clear that the employee will get pre-revised pay scale and accordingly applicants ~~have~~ were paid as per the scales prevailing w.e.f. 1.1.1996.

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5. Per contra, the respondents have filed their reply denying the averments made in the OA. The respondents have supported their action to recover the OTA amount paid to the applicants. The OTA was paid as per the 3rd CPC pay scales, for the post of Assistant Foreman was in the pay scale of Rs.700-30-760-35-900. With the implementation of the recommendations of 5th CPC, the pay of the Post of Assistant Foreman has been revised to that of Rs.6500-10500. Consequent to the Ministry of Defence, ~~xxxxxxxx~~ OM dated 1.7.1998 ibid, the Chief Controller of Accounts (Fys.), Calcutta issued a detailed instructions to all C of A (Fys.), all JC of A (Fys) and all branch AOs for regulating the payment of OTA for various categories of employees vide circular dated 27.7.1998. Immediately after issue of the aforesaid circular dated 27.7.1998, the Chief Controller of Accounts (Fys), ~~xxxxxx~~ Kolkata issued their FAX message dated 3.8.1998 carrying out amendment to their circular dated 27.7.1998 according to which the word 'IVth P.C.' mentioned in line 10th of Para 7 of their above circular dated 27.7.1998 was amended to read as IIIrd P.C.. That means the OTA in respect of Asst. Foreman should be regulated with reference to the pay of 3rd Pay Commission, to be notionally determined. The above authority has also circulated an updated ready reckoner for the purpose vide their FAX message dated 3.8.1998. According to the respondents, the amendment issued vide their FAX message is in order, hence, there is no illegality for passing the impugned orders. The said amendment was issued due to mis-interpretation of Chief Controller of Accounts (Fys.), Kolkota. Accordingly, the

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impugned order of recovery was issued which is in accordance with the rules on the subject. The respondents have further stated that there is no mistake on the part ~~of them~~ but there is a mis-understanding of the administration, accordingly, necessary amendment was issued to the earlier orders. Hence, they have requested for dismissal of the OA.

6. Applicants have, in their rejoinder, reiterated their pleas taken in the OA. The applicants have relied on the following Judgements of the Hon'ble Supreme Court in support of their claims:

1. Sahib Ram v. State of Haryana and Others, 1995 Supp.(1) SCC 18.

2. Chairman, Railway Board and Others v. C.R.Rangadhamaiah and Others, (1997) 6 SCC 623.

7. We have heard both the parties and perused the pleadings on record. We have also perused the Judgements relied by the applicants referred above. The short question involved in both the aforesaid OAs is that whether the action taken by the respondents to recover the CTA was proper or not?

8. The admitted facts of the cases are that the CTA was paid to the applicants according to the various circulars issued by the respondents. Since there is a mistake committed by the administration, the respondents have issued the necessary amdndments as per Annexure A-5, i.e., Fax Message which is retrospective in nature.

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9. When the applicants have not committed any mistake and there was no mis-representation to claim the OTA, the action of the respondents, to recover the amount paid to the applicant is not proper. If the respondents have stopped the payment of OTA subsequent to Annexure A-5, the applicants have no objection. Since the amount which was already paid, at this stage, the alleged recovery of OTA from the applicants is not proper. Moreover, the amendment was issued by the incompetent authority, the same shall not be acted upon.

10. The Hon'ble Supreme Court in Sahib Ram's case supra has held as under:

> "5. Admittedly the appellant does not possess the required educational qualifications Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the applicant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

11. The Apex Court in Chairman, Railway Board and others' case supra has held as under:

> " ..... Once it is held that pension payable to such employees had to be computed in accordance with Rule 2544 as it stood on the date of their retirement, it is obvious that as a result of the amendments which have been introduced in Rule 2544 by the impugned notifications dated 5.12.1988 the pension that would be payable would be less than the amount that would have been payable as per Rule 2544 as it stood on the date of retirement. The Full Bench of the Tribunal

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has, in our opinion, rightly taken the view that the amendments that were made in Rule 2544 by the impugned notifications dated 5.12.1988, to the extent the said amendments have been given retrospective effect so as to reduce the maximum limit from 75% to 45% in respect of the period from 1.4.1973 to 31.3.1979 and reduce it to 55% in respect of the period from 1.4.79 are unreasonable and arbitrary and are violative of the rights guaranteed under Articles 14 and 16 of the Constitution.

35. For the reasons aformentioned, the appeals as well as special leave petitions filed by the Union of India and Railway Administration are dismissed. But in the circumstances, there will be no order as to costs."

12. In the result, for the foregoing reasons, we are of the considered view that the impugned order dated 11.8.2001 which pertains to recovery of the OTA amount is liable to be quashed and set-aside and the impugned Fax Message dated 3.8.1998 (Annexure A-5) should not be given ~~xxxxx~~ retrospective effect but it should be prospective effect only. We order accordingly.

13. The aforesaid two OAs are accordingly partly allowed in terms of the above directions given to the respondents. In the circumstances, there will be no order as to costs.

Sd/—
(G. SHANTHAPPA)
Judicial Member

Sd/—
(M. P. SINGH)
Vice Chairman

/rao/

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
प्रतिलिपि अग्रेषित
(1) सचिव, उच्च न्यायालय ... जबलपुर
(2) आवेदक श्री/ [illegible]
(3) कानूनी श्री [illegible] के काउंसल
(4) [illegible] ...के काउंसल
सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार