

RESERVED ON 09.02.2018

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

This the **23rd** day of **FEBRUARY, 2018.**

PRESENT:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A

ORIGINAL APPLICATION NO. 1125 of 2016

1. R.N. Gupta aged about 60 years, Son of Shri A.B.L. Gupta, R/o H.No:807-C Block, Shyam Nagar, Kanpur – 208013.
2. B.P. Yadav aged about 56 years, Son of Late H.P. Yadav, R/o H. No. 41/1, Bhajjapurwa, Kanpur Cantt. 208 010.
3. A.K. Mishra aged about 55 years, Son of late Yagya Bhushan Mishra, R/o H. No: 117/767-P, Shivpurgi, Kakadeo, Kanpur- 208001.
4. R.K. Sharma aged about 58 years, Son of late Radhey Shyam Sharma, R/o H. No. 783/27, W-1 Saket Nagar, Kanpur – 208014.
5. Nabi Ullah aged about 59 years, Son of Shri Shafi Ullah, R/o Q.No: H-38/C, Subhash Colony, Phool Bagh, Kanpur- 20801.

.....Applicants.

V E R S U S

1. The Union of India through Secretary, Ministry of Defence, Deptt of Defence Production and Supplies, New Delhi-11.
2. The Chairman, Ordnance Factory Board, "Ayudh Bhawan", 10-A, S.K. Bose Road, KOLKATA- 700 001..
3. The General Manager, Ordnance Equipment Factory, Kanpur – 208001.

.....Respondents

Advocate for applicant : Shri M.K. Upadhyay
Advocate for the respondents : Shri S.N. Chatterji

O R D E R

By way of the instant original application, the applicant has prayed for following main reliefs: -

- "(i) To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 22.08.2016 (Annexure A-1).***
- (ii) To issue a writ, order or direction in the nature of mandamus directing the respondents as not to make any recovery from the pay and allowances of the applicant particularly, the applicant no. 1 who is going to be retire on 31.08.2016.***
- (iii) To direct the respondents to decide the applicant's representation dated 03.12.2015 pending with them."***

2. The brief facts of the case as stated in the O.A. are that initially the applicants were appointed to the post of L.D.C, thereafter, they were appointed on the post of Data Entry Operator (in short DEO) on transfer basis w.e.f. 15.05.1996, then to Senior Data Entry Operator and then to Chargemen and now they are holding the Group 'B' post of Junior Works Manager w.e.f. 22.12.2015. Consequent upon the rationalisation of pay scales of Electronic Data operators and also pronouncement of various judgements by various Benches of this Tribunal, the applicant no. 1 of this O.A. submitted a representation dated 06.11.2008 (Annexure A-6 to the O.A.) requesting therein to extend the benefits of pay scale of Rs. 1350-2200 with effect from the date of holding the post of DEO i.e., 15.05.1996. When the respondents took no action on the above preferred representation, the applicant filed O.A. No. 153 of 2010 before this Tribunal and this Tribunal vide order dated 04.02.2010 (Annexure A-7 to the O.A.) disposed of the O.A. with the direction to respondents to decide the representation within a period of three months by passing a reasoned and speaking order.

3. Another O.A. i.e., O.A. No. 20 of 2013 was also filed before this Tribunal and this Tribunal while disposing of the said O.A. vide order dated 31.10.2013 (Annexure No. A-8 to the O.A.) observed as under:-

"It is evident from the pleadings that the respondents have taken a favourable view in identical matters in which the High Court as well as the Tribunal have given direction to decide representation of the concerned applicants. Therefore, there is no reason to deny giving of similar benefit to the applicant when similarly situated persons, who had approached the court have been granted the same. To that extent we find that the order dated 25.02.2012 is untenable, therefore, set aside. The respondents are directed to decide the representation of the applicant dated 23.05.2011 afresh in the light of the decision which they have taken with regard to the similarly situated persons. No costs"

Accordingly, the pay scale of the applicants were revised to pay scale of Rs. 4500-7000 from Rs. 1350-2200 and likewise other employees of the factory also represented and they also got the same scale/benefits.

4. The matter was finally decided by the judgement dated 09.12.2014 of Hon'ble Supreme Court (Annexure A-9 to the O.A.) where it was held as under:-

"In view of the findings recorded above, we hold that Data Entry Operators Grade-A are not entitled for Scale of pay of Rs. 1350-2200 w.e.f., 1.1.1986 or thereafter merely on the basis of their qualifications or for the fact that they have completed their period of requisite service. We further hold that any decision rendered by any Tribunal or any High Court contrary to our decision is wrong. Further, in view of the reasons and findings recorded above while we hold that the respondents are not entitled to the benefit as they sought for before the Tribunal or the High Court, all the impugned orders passed by the CAT Benches and the High Courts in favour of the respondents being illegal are set aside."

5. In pursuance of the judgement dated 09.12.2014 passed by Hon'ble Supreme Court, the respondent no. 2, i.e., the Chairman, Ordnance Factory Board, Kolkata, issued a circular dated 17.02.2015 (Annexure No. A-10) to all Sr. General Manager/General Managers of Ordnance Factories stating in para 3 that:-

"All the factories are therefore, directed to re-fix the pay scale of DEOs and withdraw Higher Pay Scale already granted and initiate necessary action for recovery of excess payment due to grant of Higher Pay Scale following due procedure i.e., after issuing the Show Cause Notice for recovery of excess payment."

6. In a subsequent order no. 57 dated 08.04.2015 (Annexure No. A-11 to the O.A.) it was stated in para-2 of the said order:-

"According to the said order dated 09.12.2014, it is further ordered that no recovery or any adjustment is required to be made, if any excess amount has already been paid to the abovementioned individuals."

However, in spite of the order dated 08.04.2015, the respondents issued orders for recovery of the excess amount without making any fixation of pay. The respondents issued show cause notices dated

23.07.2015 and 08.08.2015 (Annexure A-2 to the O.A.) to the applicants, who submitted their representations also, but the respondents did not consider the same and the said representations are still lying pending for disposal.

7. The applicants further submitted in the O.A. that even though the Hon'ble Supreme Court in its judgement had not ordered to take any steps for recovery of excess amount from the salary of the applicants, the respondents have initiated action to recover the excess amount paid.

8. It was also stated in the O.A. that the recovery from pay & allowances of the applicants after a period of more than 20 years is causing great hardships to the applicants and no recovery can be made from the salaries of the applicants as they got higher pay scale in the year 1996 and recovery proceedings were initiated on 23.07.2015/08.08.2015, thus the excess payment have been made for a period in excess of five years, before the order of recovery was issued. In this regard reference was made to judgement passed by the Hon'ble Supreme Court in the case of ***State of Punjab and Os Vs Rafiq Masih (White Washer) etc. in CA No. 11527 of 2014*** based on which DoPT issued an order.

9. Upon notice, the respondents filed counter affidavit (in short C.A.) by which it has been stated that the issue of higher pay scale to DEOs/Sr. DEOs of the Ordnance Factory Board has been decided by the Hon'ble Supreme Court vide the judgment dated 09.12.2014, by which grant of higher pay scale to DEOs in the Ordnance Factory has been struck down. With passing of the judgment dated 09.12.2014, the matter in respect of the DEOs pay scale has finally been settled. It, therefore, became binding upon the Ordnance Factories to comply with the orders of the Hon'ble Supreme Court. Consequently, the grant of higher pay sales to the DEOs was to be corrected to the permissible pay scale and excess payment was

to be recovered from the applicants. Accordingly, the Ordnance Factory Board vide letters dated 14.01.2015 and 17.02.2015 (Annexure A-9 & A-10 to the OA) has directed all the Ordnance and Ordnance Equipment Factories under it to take necessary action in compliance of the judgement passed by the Hon'ble Supreme Court after re-fixing the pay scale of the DEO and initiating necessary action for recovery of excess payment paid to the DEOs due to grant of higher pay scale by following due procedure i.e., after issuance of show cause notice for recovery of excess payment. In compliance of the above order, the respondent factory issued show cause notice dated 23.07.2015 (Annexure A-2 to the O.A.) to the applicants detailing actions to be taken for compliance of the judgment of Hon'ble Apex Court. The applicants represented against the show cause notice vide letter dated 27.07.2015 and the same was disposed of by the respondents vide letter dated 08.08.2015 (Annexure A-2 to the O.A.). The respondent factory vide letter dated 22.08.2016 (Annexure A-1 to the O.A.) informed the applicants about the amount to be recovered from them along with the statement showing month-wise due pay, pay drawn and excess amount to be recovered from 1996 to 2015.

10. It was stated in the C.A. that an interim order dated 29.11.2016 was passed by this Tribunal in this case observing that:-

"The matter is pertaining to recovery but surprisingly the impugned order only states about the amount of recovery but does not state anything under which circumstances the respondents are recovering this much of amount from the salary of applicants."

In this regard it is stated in the C.A. that the reasons for recovery had already been detailed in the show cause notice issued to the applicants. However, in pursuance of the aforesaid order the respondents issued a fresh detailed and speaking order for recovery vide letter dated 15.12.2016 to the applicant no. 1. Similar letters were also issued to other applicants. It has also been submitted in the C.A. that the applicants are

Group 'B' Gazetted Officers and in no way they are facing extreme hardship. Hence, it is stated that the judgment in the case of State of Punjab & Ors. vs Rafiq Masih (supra) cited by the learned counsel for the applicant is not applicable here.

11. It was also submitted that if the recovery is not allowed to be made from the applicants, the Government exchequer would be deprived of a huge amount of Rs. 35,96,527/- (Rupees Thirty Five Lakhs Ninety Six Thousand Five Hundred and Twenty Seven). Besides, no recovery from the applicants would be willful disobedience of order of Hon'ble Apex Court.

12. The applicants have filed rejoinder affidavit basically reiterating the facts stated in the O.A.

13. Heard the learned counsel for the applicants as well as the respondents. Besides reiterating the contentions in the O.A., the applicants' counsel stressed on the judgment of Hon'ble Apex Court in the case of Rafiq Masih (Supra) to argue that the excess amount paid to the applicants should not be recovered by the respondents. It was also pointed out by him that no order of recovery has been taken against the DEOs working in the OFB Headquarter and no clarification has been received to this effect as stated in Para-13 of the C.A.

14. Learned counsel for the respondents pointed out to the operative part of the judgment dated 09.12.2014 of the Hon'ble Apex Court in the case relating to pay sale of the applicants and submitted that there is no direction with regard to recovery of excess amount paid. Hence, the respondents had to take action for recovery of excess amount from the applicants. It was further submitted that OFB has also taken action for re-fixing the pay as per the judgment dated 09.12.2014 and for recovery of the excess of salary paid to the DEOs working in the Headquarter, with regard to the submission of the applicants that OFB

has not taken action to recover the excess amount from the DEOs working in the Headquarter. Learned counsel for the respondents also submitted a copy of the letter dated 07.03.2017 received from the OFB at the time of hearing, stating that recovery would take place from DEOs working in OFB headquarter also. A written submission was also filed by the respondents' counsel reiterating the stand taken by the respondents in the pleadings and enclosing copy of two judgments of Hon'ble Supreme Court in the case of Rafiq Masih (supra) and in the case of High Court of Punjab & Haryana & Ors. vs. Jagdev Singh in Civil Appeal No. 3500 of 2006.

15. Learned counsel for the applicant pointed out that in para-30 and 31 of the judgment dated 09.12.2014, the Hon'ble Apex Court had discussed the case of ***Shyam Babu Verma & others v Union of India & others 1994 (2) SCC 521*** and this case is similar to the present case of the applicants. In that case recovery of excess amount paid was not taken as per the orders of the Hon'ble Apex Court. It was argued that since the Hon'ble Apex Court in the judgment dated 09.12.2014 has not directed for recovery of excess amount, no action for recovery is to be taken by OFB and in the light of the judgments of Hon'ble Apex Court in Shyam Babu (supra) and Rafiq Masih (supra), the applicants may also be allowed similar benefit of no recovery.

16. The pleadings and submissions made by the counsels for the parties in this case have been duly considered by me. The point that is required to be decided relates to the authority of the respondents to initiate recovery of excess amount paid to the applicants by virtue of wrong fixation of pay as per the judgment dated 09.12.2014 by the Hon'ble Supreme Court, in which there is no mention about recovery of excess amount paid to the applicants. In this case, there was no mistake of the respondents for

which higher pay scale was allowed to the applicants and the same was allowed as per the directions of this Tribunal, based on the applications filed by the applicants. In the case of Rafiq Masih (supra) and Shyam Babu (supra) cases, there was an element of mistake on the part of the Government/concerned authorities, while granting higher pay or pay scale to the employees. In this case, facts are different from the cases cited by the learned counsel for the applicants. Further, in the judgment dated 09.12.2014, there is no direction for not effecting any recovery of excess amount from the applicants. In all other cases cited by the applicants' counsel, there is a specific direction of the Hon'ble Apex Court not to recover the excess amount from the employees concerned, taking into consideration the hardship likely to be faced by the concerned employees.

17. In view of the discussions above, since in the judgment dated 09.12.2014 of Hon'ble Supreme Court, there is no direction for not recovering the excess amount already paid to the applicants and the effect of the judgment is to withdraw the higher pay scale for the applicants with effect from the date it was allowed, the respondents are legally bound to recover the excess amount already paid to the applicants on account of wrong fixation of the pay scales and the applicants cannot claim such benefit citing the judgments of Hon'ble Supreme Court in other cases where there is specific direction not to recover the amount already paid to the concerned employees.

18. Accordingly, the O.A. being devoid of merit is liable to be dismissed, hence, it is dismissed. No order as to costs.

(GOKUL CHANDRA PATI)
MEMBER-A

Arun...