

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 969/2003

New Delhi this the 24th day of July, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri S.K.Naik, Member (A)

1. Brahmpal S/O Shri Ravi Das,
working as Book Binder
Printing Section ENC Branch
AHQ, Kashmir House, New Delhi.
2. Hazari Lal S/O Shri Ramji Lal,
working as Machine Minder,
Printing Section ENC Branch
AHQ, Kashmir House, New Delhi.
3. Bhagmal S/O Shri Khazan Chand,
R/O P-7, 111 Mangolpuri,
New Delhi.

.. Applicants

(By Advocate Shri M.K.Bhardwaj)

VERSUS

Union of India through

1. Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Secretary (Finance),
Ministry of Defence,
South Block, New Delhi.
3. Engineer-in-Chief (EIC) (V)
Army HQ, Kashmir House, DHQ
New Delhi.
4. Garrison Engineer, R.R. Hospital,
Rao Tula Ram Marg, New Delhi.

.. Respondents

(By Advocate Shri R.P. Aggarwal)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

In this application, the applicants have impugned the action taken by the respondents in passing the order dated 25.6.2002 and earlier orders as mentioned in Para 7(a), whereby their pay earlier fixed in the grade of Rs. 4000-6000 has been fixed in S-V in the pay scale of Rs. 3050-4590.

87/

60

2. The brief relevant facts of the case are that admittedly, the applicants were erroneously granted pre-revised pay scale of Rs. Rs.4000-100-6000 by order dated 1.6.1998. The applicants have filed two earlier OAs, namely, OA 274/2002 which was disposed of by order dated 1.2.2002 and the another OA 1774/2002 which was disposed of by order dated 12.7.2002. Prior to filing of CP 472/2002, the applicants have filed the present OA on 16.4.2003 in which, inter-alia, they have sought a direction to the respondents to continue the applicants in the pay scale of Rs.4000-100-6000, which according to them is as recommended by the Vth Central Pay Commission instead of the revised pay scale of Rs.3050-4590. Learned counsel has drawn our attention to the legal notice issued by the respondents dated 4.1.2003. According to him, the amounts shown against each of the applicants, whose names appear at Serial numbers 17,16 and 8, are being recovered by the respondents. Applicant No.1 Shri Brahmpal who is present in Court has submitted that about Rs. 2000/-, are being recovered from his pay in pursuance of this order and he is getting only Rs.2000/-, after refixation of his pay in the pay scale of Rs. 3050-4590 in place of the earlier placement in the higher scale of Rs. 4000-6000. Learned counsel has, therefore, submitted that repeated OAs filed by the applicants have been necessitated on account of the erroneous actions taken by the respondents and even now, according to him, they are not fixing the pay of the applicants in the revised pay scale of Rs. 4000-6000. He has, therefore, prayed that cost may be awarded and recoveries from the pay of the applicants may be restrained, in case the pay is taken

✓

to have been correctly fixed in the revised pay scale of Rs. 3050-4590 because it was not the fault of the applicants.

3. We have heard the learned counsel for the respondents and seen the reply filed by them. They have controverted the above averments of the applicants. He has submitted that even though initially by order dated 1.6.1998 the pay of the applicants was fixed wrongly by the Department, later after considerable correspondence with the concerned Departments, a correct order has been issued re-fixing the pay of the applicants in the pre-revised pay scale of Rs. 3050-4590. Learned counsel has relied on the recent orders of the Tribunal in **Ram Pal Singh Vs. UOI and Ors.** (OA 925/2003) and in **Vijay Kumar Vs. UOI & Ors.** (OA 926/2003) dated 19.5.2003, which have dealt with cases of applicants who are similarly situated like the applicants in the present case. The Tribunal had come to the conclusion that the applicants were not entitled to the revised pay scale of Rs 4000-6000 but have to be correctly placed only in the pay scale of Rs. 3050-4590. He has also referred to the reasoning of the Tribunal in the order dated 30.4.2003 regarding the correct replacement scale of Rs. 950-1500 as Rs. 3050-4590. In the circumstances, therefore, he has prayed that the OA may be dismissed.

4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

Y2

5. In the facts and circumstances of the case and for the reasons which we have also recorded earlier in our order dated 30.4.2003, we see no good reason to defer from Tribunal's orders dated 19.5.2003 in OA 925/2003 and OA 926/2003. Therefore, the action of the respondents in later re-fixing the pay of the applicants who were admittedly in the pre-revised scale of Rs.950-1500 in the revised pay scale of Rs 3050-4590 cannot be assailed, having regard to the recommendations of the Vth Central Pay Commission.

6. However, we are constrained to make an observation with regard to the manner in which the respondents have issued the earlier order fixing the revised pay of the applicants in the higher pay scale of Rs. 4000-6000 which later they found was erroneous. No doubt, the concerned Officers cannot be absolved of their responsibility in carrying out their duties and functions, in the manner they were expected to do while initially issuing the erroneous order revising the pay scale in accordance with the Rules. This no doubt has led to multiple litigations by the applicants in the Tribunal. It is also relevant to note that the respondents have nowhere stated that the erroneous pay fixation of the applicants has been done on account of any fault or fraud on the part of the applicants but it appears that this was so only on account of negligence or lack of diligence on the part of the concerned officials of the Department who are concerned with pay fixation. We further note the submissions made by the learned counsel for the applicants that the applicants who are Group 'C' employees

V9

(18)

are burdened with heavy recoveries, based on the erroneous actions of the respondents themselves. This cannot, therefore, be held to be reasonable taking into account the totality of the facts and circumstances of the case. The fact that the respondents took nearly four years to discover their own erroneous actions cannot also be ignored. In the circumstances of the case, we are of the considered view that it would be necessary for Respondent No.1 to fix responsibility on the concerned officials who were responsible in passing the erroneous order in the first instance and make recoveries of the Govt. loss from them, in accordance with relevant Financial Rules and not to pass the entire financial burden on these Group 'C' employees who have not committed any ^{fault or Rs.} _✓ fraud in the first instance. The respondents have admitted that the previous erroneous order has been issued by the concerned officials and we, therefore, see no reason why Respondent No.1 should not fix responsibility and proceed also to take action against them in accordance with the provisions of the CCS(CCA) Rules, 1965 or other relevant Rules.

7. In the result, for the reasons given above, although we do not find any merit in the claim of the applicants for re-fixing their pay in the higher revised pay scale of Rs. 4000-6000 instead of re-fixation done in the pay scale of Rs. 3050-4590 which is correct, at the same time, we consider that this is a fit case in which exemplary cost

18

(14)

should be awarded in their favour against the respondents.

Accordingly, in the circumstances of the case -

(i) OA fails and is dismissed;

(ii) However, the respondents shall pay cost of Rs. 10,000/- (Rupees Ten thousand only) each to the applicants, which amount can be recovered by respondent No.1 proportionately from the concerned officials who initially passed the erroneous pay fixation order de hors the Rules;

(iii) Respondent No.1 shall also take further action against the concerned officials keeping in view the observations in para 6 above, as expeditiously as possible, in accordance with law and Rules;

(iv) The applicants may also make a detail representation to Respondent No.1 with regard to the recoveries ordered by the Department. This shall be done within two weeks from the date of receipt of a copy of this order. In case such a representation is received by Respondent No.1, he shall pass appropriate speaking orders, taking a lenient view in the matter and also keeping in view the settled law on the subject within two months from the date of receipt of such a representation.

Naik
(S.K. Naik)
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

sk