

Central Administrative Tribunal, Principal Bench

O.A. No. 1055/2003

New Delhi this the 11th day of November, 2004

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

Hon'ble Mr. Sarweshwar Jha, Member (A)

Lt. Col. (Retd.) K.N. Sharma
S/o Late Shri J.R. Sharma
R/o 101 Punjabi Bagh Apartments,
Opposite Bharat Petroleum, Rohtak Road,
New Delhi-110 063 and Ex-employee of Joint Secretary (Trg)
And CAO, Ministry of Defence,
C-II Hutments, Dalhousie Road,
DHQ PO New Delhi-110 011 having retired
On superannuation w.e.f. 1.6.2002.

..Applicant

By Advocate: Shri Yudhveer Yadav.

Versus

Joint Secretary (Trg) and Chief Administrative Officer,
Ministry of Defence,
C-II Hutments, Dalhousie Road,
DHQ PO New Delhi-110 011.

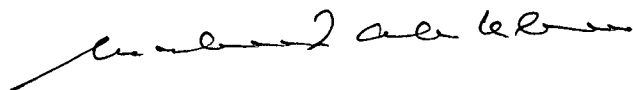
..Respondents

By Advocate: Shri R.N. Singh, proxy counsel for
Shri R.V. Sinha, Counsel.

ORDER (ORAL)

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

After hearing the arguments of the parties extensively and on perusal of record,
we have already allowed the OA today, i.e., 10.11.2004 reserving the reason therefore to
be recorded in a separate order. We are now recording the reasons.

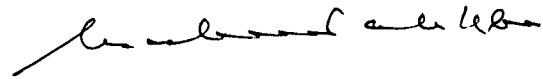


2. The applicant has filed this OA for a direction to the respondents to refund a sum of Rs.51,493/- which had been recovered in instalments from his salary by the respondents.

3. The facts are simple and short. The applicant retired from Army Service on 20.11.1986. He was reemployed as General Staff Officer Grade-II in the pay scale of Rs.3000-4500 (pre-revised) on 9.3.94 in the office of the respondents. On reemployment, his pay was fixed at Rs.3,000/- after deduction of Rs.1,500/- as non-ignorable portion of his Army Pension. On 17.9.1997 his pay was refixed at Rs.3338/- per month w.e.f. 9.3.1994 after deducting the non-ignorable part of Army Pension and PEG,, i.e., a sum of Rs.1162/- from the maximum of the pay scale, i.e., Rs.4500/-. His pay was refixed on 2.7.1998 at Rs.8798/- w.e.f. 1.1.1996 in the revised pay scale of Rs.10000-325-15200 after deducting non-ignorable part of pension. Consequent upon the fixation of the pay, a due-drawn-statement was prepared on 28.2.2001 by the respondents and a sum of Rs.51,493/- was found recoverable from the applicant as an excess payment made to him. This sum has since been recovered by the respondents from the salary of the applicant in 11 instalments.

4. The applicant filed an OA 1450/2001 for refixation of pay at Rs.14875/- in the revised pay scale of Rs.10000-15200 w.e.f. 1.1.1996 plus an increment of Rs.325/- accrued on 1.1.1996 and payment of arrears as a result of the refixation of the salary as prayed by him. This petition was dismissed on merit by a Bench of this Tribunal on 3.6.2002.

5. Without disclosing the fact relating to the filing of the earlier OA and its dismissal by the Tribunal, the applicant filed the present OA for a direction to the



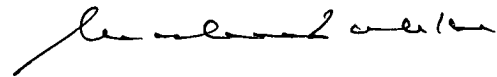
respondents to refund the amount of Rs.51493/-, recovery of which has already been made by the respondents, on the ground that other officers Col. (Retd.) R.G. Srivastava, Lt. Col. (Retd.) Prem Nath and Lt. Col. (Retd.) Ashok Bhatia had filed OAs No. 661, 1323 and 1324 of 2002 respectively before this Tribunal for correct fixation of their pay on reemployment under the respondents. They also sought direction of this Tribunal for stoppage of the recovery of the amount of excess payment received by them on account of wrong fixation of their pay on re-employment. This Tribunal by order dated 5.3.2003 disposed off the three OAs by passing the following common order:-

“ In the light of discussions aforesaid, we allow these OAs in part. We see no illegality in action of the respondents in re-fixing pay of the applicants on their repayment on civil posts under the impugned orders and these orders are upheld. However, the respondents are directed not to recover any over-payments made to the applicants because of erroneous fixation of pay done by the respondents themselves earlier. Interim stay granted against recovery of over-payments is made absolute. If any recoveries have been made in pursuance of the impugned orders, the same is directed to be refunded to the applicants within a period of two months from the date of receipt of a certified copy of this order. In the facts and circumstances of the cases, there shall be no order as to costs”.

In the light of this order, the applicant also approached the respondents for refund of the amount of Rs.51493/- deducted from his salary but in vain.

6. This OA was dismissed in limine by this Tribunal on 26.4.2003 holding that it was beyond the period of limitation prescribed and no application for condonation of delay had been filed.

7. The applicant felt aggrieved and filed WP (C) 5261/2003 assailing the order dated 26.4.2003 before the Hon'ble Delhi High Court. The Writ Petition was allowed by



the Hon'ble Delhi High Court by order dated 21.4.2004. The relevant extract of the order is reproduced as under:-

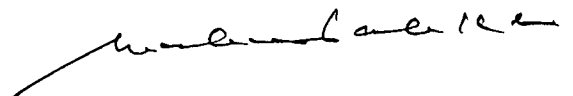
“Petitioner's limited prayer is that he was entitled to be treated alike with his other colleagues. But respondent opposes his plea on the ground that he was estopped from seeking this relief as he had omitted to do so in his first OA 1450/2001.

Petitioner's plea must prevail in our view because respondent had admittedly refunded the similarly recovered amount in other cases. So long as there is no denial to this position he was entitled to equal treatment. We also find that there was no occasion for him to challenge the recovery in his first OA as cause of action arose to him only after CAT's order dated 5.3.2003 by which recoveries were quashed in OAs. No.661, 1323 and 1324 of 2002 or similarly situated employees. There is no dispute that this order was implemented by respondent and therefore, there was no reason why petitioner should be treated differently.

Therefore, all this considered we find that Tribunal had given a short shrift to his OA and had dismissed it on a preliminary hearing without examining the merit of the contentions raised and without putting respondent on notice to ascertain whether respondent had implemented Tribunal orders in other similar cases. The impugned orders dated 26.4.2003 and 10.7.2003 are accordingly set aside on this parity of reasoning. Petitioner's OA No.1005/2003 shall consequently revive.

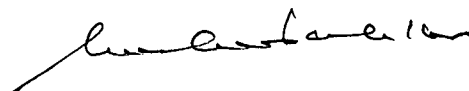
Mr. Sinha accepts notice for respondent. He may file reply to this OA, if any, within four weeks. Parties to appear before Tribunal on 17.5.2004 and the Tribunal is directed to consider the matter afresh and decide it on merits keeping in regard its decision in OAs No. 661, 1323 and 1324 of 2002”.

8. The respondents have filed the counter in which the material facts are not in dispute but the prayer made in the OA is resisted on preliminary objection that the applicant has not come to the court with clean hands as much as he has concealed that he had filed an OA No.1450/2001 before the Tribunal for refixation of his pay w.e.f. 1.1.1996 and had not claimed any relief against the recovery of Rs.51,493/-, from his pay and that the said OA was dismissed by the Tribunal on 3.6.2002. Other legal objections



are that the OA is also barred by the principles of re judicata since the order dated 3.7.2002 has become final and binding; the OA is also not maintainable for non-joinder of necessary parties since Union of India has not been arrayed; and lastly that the OA is not filed on the prescribed form. The respondents in the counter has admitted that in the OA Nos. 661, 1323 and 1324 of 2002 this Tribunal by order dated 5.3.2003 had restrained the respondents from recovering any overpayment made to the applicants on account of erroneous fixation of pay done by the respondents and further directed that if any recovery had been made, the same would be refunded to the applicants within a period of 2 months. The respondents has also not controverted the allegation of the applicant that the applicants of the OA Nos. 601, 1323 and 1324 of 2002 were similarly placed persons and their pay was also fixed and refixed on the same principle and same rules and a due-drawn statement disclosed excess payment having been made to them, an order of recovery of the amount of excess payment from their salary was made, which was challenged by them in the aforesaid OAs.

9. In the rejoinder to the counter-affidavit the applicant has reiterated his case.
10. We have given careful consideration to the submissions made at the bar and have perused the record.
11. Learned counsel of the respondents has raised a preliminary objection that the present OA is barred by time prescribed by Section 21 read with Section 20(1) of the Administrative Tribunals Act, 1985 and that no application for condonation of delay has been filed by the applicant. The question of the OA being barred by time has already been decided by the Hon'ble Delhi High Court by its order dated 21.4.2004 in WP (C) No.5261/2003 which was filed against the order of this Tribunal dated 26.4.2003. It is not




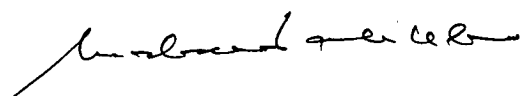
permissible for the respondents to raise the same question again before the Tribunal. The objection raised is accordingly rejected.

12. Another preliminary objection of the respondents is that Union of India has not been arrayed as a party. The OA is filed by the applicant in person and Joint Secretary (Training) and Chief Administrative Officer of Ministry of Defence, C-II Hutments, Dalhousie Road, DHQ PO, New Delhi has been impleaded as the sole respondent. No doubt Union of India is not impleaded and Union of India could have been impleaded through the Secretary of the concerned Ministry. But the notice of the OA was accepted by the respondents before the Hon'ble High Court in WP (C) 5261/2003 and the counter has been filed not by Joint Secretary (Training) and Chief Administrative Officer but on behalf of the department by Shri Ram Kumar, Deputy Director, who was working in the department. Ordinarily the applicant would have been given an opportunity to implead the Union of India as a co-respondent, but at the hearing, the counsel appearing on behalf of the respondents, has fairly admitted that he was representing the department and not the Joint Secretary personally. He also submitted that the counter was filed on behalf of the department. If it is so, it would be an exercise in futility if at this belated stage the applicant is asked to implead the Union of India also as a respondent when Union of India is properly represented through the department which has filed the counter. In the peculiarity of the facts, the preliminary objection raised in this regard is also rejected.

13. It is also contended on behalf of the respondents that the applicant has not come to the Tribunal with clean hands as much as the filing of the previous OA and its dismissal by this Tribunal has been kept concealed. Though the applicant in the OA has not disclosed about his filing the earlier OA 1450/2001 on 1.6.2001 and its dismissal on

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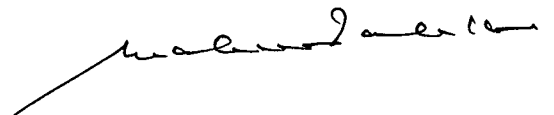
merit by the Court on 3.6.2002, but in that OA, the applicant has not sought the relief against the order of recovery of overpayment of salary to the applicant consequent upon refixation of the pay. At a first glance the contention of the respondents that having omitted to claim relief against the order of recovery of overpayment in the OA No.1450/2001, the applicant was not entitled to file a subsequent petition seeking the relief against recovery order, attractive. But in the peculiarity of facts and circumstances this objection also deserves to be rejected.  The instant OA has been filed by the applicant on the ground that similar overpayment of salary to three officers Col (Retd.) R.G. Srivastava, Lt. Col. (Retd) Prem Nath and Lt. Col. (Retd.) Ashok Bhatia consequent upon the erroneous fixation of salary, akin to the case of the applicant, has either been stopped or the money already recovered has been refunded to them in pursuance to the order of the Tribunal dated 5.3.2003 in their OAs. No. 661, 1323 and 1324 of 2002. The applicant has submitted that he was entitled to equal treatment at par with other similarly placed persons. The order of the Hon'ble Delhi High Court dated 21.4.2004 in WP (C) showed that the plea of the applicant had prevailed and it was observed that there was no denial of the fact by the respondents that it had refunded a similarly recovered amount in other cases and since there was no denial to this position, the applicant was also entitled to equal treatment. It was further observed by the Hon'ble High Court that the applicant had no occasion to challenge the recovery in his first OA as the cause of action arose to him only after this Tribunal's order dated 5.3.2003 by which recoveries were quashed in OA Nos. 661, 1323 and 1324 of 2002 of similarly situated employees and the order has already been implemented by the respondents and there was no reason why the applicant should be treated differently. The order of this Tribunal



dated 26.4.2003 was also set aside by the Hon'ble High Court for parity reasoning. The applicant has also alleged that he had made representation to the respondents to refund the amount similarly as it has been refunded to the applicants in OA Nos. 661, 1323 and 1324 of 2002 and it was rejected but the respondents in the counter has contended that the oral rejection would not give a fresh cause of action to the applicant. Any how, the decision dated 5.3.2003 in the above mentioned three OAs had given a fresh cause of action to the applicant as held by the Hon'ble High Court in its order dated 21.4.2004, therefore, the present OA cannot be held to be not maintainable. The plea of the respondents that the same is barred by res judicata or otherwise or for omitting to claim relief against the recovery of overpayment in the earlier OA, does not have any merit and is rejected.

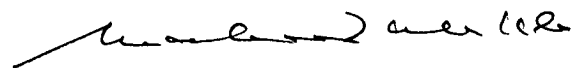
14. No doubt, the applicant has not disclosed the filing of the earlier OA 1540/2001 by him before this Tribunal, but the factum of the filing of the earlier OA and its result was disclosed by the respondents in the counter and the present OA, as stated above, is based on a fresh cause of action which has accrued to the applicant after the decision in the earlier OA. In view of this, the non-disclosure of this fact in the present OA which has been filed by the applicant in person, does not bring any infirmity in the OA and it cannot be thrown out on this preliminary objection since the earlier OA had no bearing on the facts pleaded in the present OA and it was based on fresh cause of action as held by the Hon'ble High Court.

15. During the course of hearing no defect has been pointed out in the format of the OA. Even otherwise the rules are made for dispensing justice and not throwing away the OA on technicalities at the final stages. This objection has not been



raised during arguments and it shall be deemed to have not been pressed on behalf of the respondents.

16. Coming to the merit of the case counsel for the respondents has fairly and candidly conceded that there is no averment made in the counter controverting the allegation of the applicant that the applicants in OA Nos. 661, 1323 and 1324 of 2002 too suffered recoveries of overpayment of the salary in exactly similar situation. The applicants in the above mentioned three OAs and the applicant in the present OA both were retired Army Officers. They were employed after their retirement in the Ministry of Defence. There was erroneous fixation of their salary by the respondents. As a result either order of recovery of over-payment of salary was passed or recovery of various sums was made from their salary. No fault was found with the re-fixation of their salary but the recovery was stopped or the refund of the amount already recovered was directed by this Tribunal in OAs filed by Col. (Retd.) R.G. Srivastava, Lt. Col (Retd) Prem Nath and Lt. Col (Retd.) Ashok Bhatia who were similarly placed persons. If the applicant and those persons were in similar situation and the overpayment was sought to be recovered from their salary for similar reasons, there is no reason why the applicant should be denied equal treatment. In fact, the Hon'ble High Court in its order dated 21.4.2004 WP (C) No.5261/2003, had observed that the applicant was entitled to equal treatment if the respondents had admittedly refunded the similarly recovered amount in other cases of similarly situated employees. Moreover, the Hon'ble High Court had directed the Tribunal to decide the OA on merit keeping in regard its decision in their OAs 661, 1323 and 1324 of 2002. In view of this direction and also the fact that there is no controversy that the present applicant and the applicants in the above mentioned three OAs were

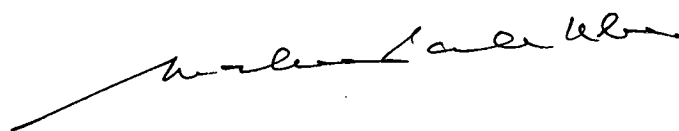


similarly situated persons and similar order of recovery about overpayment of the salary was made, there is no reason for this Tribunal not to pass order similar to the order passed in the three OAs.

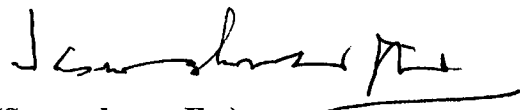
17. Moreover the overpayment of salary was made to the applicant on account of erroneous fixation/re-fixation of the pay of the applicant by the respondents in which the applicant had no role to play. It is not pleaded by the respondent that excess payment was in consequence to a misrepresentation committed or fraud perpetrated by the applicant. Hon'ble Supreme Court in Shyam Babu Verma & Others Vs. Union of India and Others (1194) 27 ATC 121 has held that overpayment erroneously paid without a fault of the employee should not be recovered. Similar observations were made by the Apex Court in Sahib Ram Vs. State of Haryana, 1995 (2) RSJ 139, Gabriel Saver Fernandes and Others Vs. State of Karnataka & Others, 1994 (5) SLR 625 and P.H. Reddy & Others Vs. Natural Institute of Rural Development & Others, 2002 (2) ATJ 208. In the instant case also excess payment of salary has been made by the respondent to the applicant on account of erroneous fixation of his pay. The applicant was not at fault in receiving the excess payment. Overpayment was not the result of any misrepresentation made or fraud played by the applicant. The principles of law laid down by the Hon'ble Supreme Court in the above cited judgments will squarely apply to the facts of the present case. As a result it is held that the respondent is not entitled to recover the amount of overpaid salary from the applicant in this case.

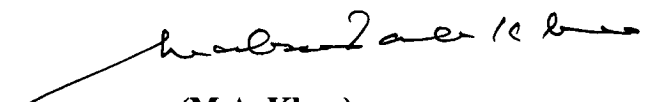
18. Accordingly the applicant ^{is} succeeds.

19. In view of the above, OA is allowed.. The impugned order is quashed. The respondents shall refund the sum of Rs.51,493/-, already recovered from the salary of the



applicant, to the applicant, within 2 months from the date on which the order is communicated to it. But in the peculiarity of facts and circumstances, the parties are left to bear their own costs.


(Sarweshwar Jha)
Member (A)


(M.A. Khan)
Vice Chairman (J)

Rakesh