

(JY)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1333/2003.

New Delhi this the 5th day of April, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. S.A. SINGH, MEMBER (ADMNV)

Dr. (Mrs.) Vishwaiata Naidu,
W/o Lt. Col. A.N. Naidu,
Civilian Lady Medical Officer
(Family Welfare), Military Hospital,
Agra and R/o Plot No.2, Taj Nagri,
Opposite Shanti Manglik Hospital,
Agra-282 001. -Applicant

(By Advocate Shri D.N. Sharma)

-Versus-

1. The Controller General of Defence Accounts,
Ministry of Defence, Govt. of India,
West Block-V, New Delhi-110066.
2. The Deputy Controller of Defence Accounts,
Area Accounts Office (Army),
Mahatma Gandhi Marg,
Agra Cantt. -Respondents

(By Advocate Shri Mohar Singh)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 9.5.2003, wherein a recovery of Rs.1,87,499/- w.e.f. 1/96 to 4/2003 has been ordered on account of over-payment.

2. Applicant on 15.5.2002 on fixation was paid arrears of Rs.3,22,467/-. While fixing her pay NPA has been added by over sight w.e.f. 1.1.96 to which applicant was not entitled. Accordingly, by an order dated 9.12.2002 a fresh fixation proforma has been ordered to be initiated.

3. In pursuance of letter dated 9.5.2003 applicant submitted revised refixation proforma.

4. Learned counsel for applicant contends that as civil consequences ensued without following due process of

law and without according of an opportunity the recovery has been ordered, which cannot be sustained in the light of several decisions, including **Bhagwan Shukla v. Union of India**, 1995 (2) SLJ SC 30.

5. On the other hand, respondents' counsel contends that recovery is on account of over payment where inadvertently NPA was added towards pay fixation, which is not permissible under the Rules. Accordingly, in pursuance of a letter dated 9.5.2003 applicant has sent her proforma for refixation and recovery of Rs.10,000/- per month has been ordered.

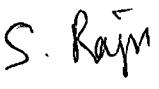
6. It is settled principle of law that a wrong fixation would not confer upon applicant a right to its benefits. Admittedly, applicant was not entitled on refixation addition of NPA, realising the inadvertent mistake respondents have sent proposal to applicant on 9.12.2002 as well as on 9.5.2003, in pursuance of which refixation proforma was submitted by applicant, which is due compliance of principles of natural justice.

7. In so far as recovery is concerned, it is settled principle on the basis of rules that not more than 1/3rd of the salary would be adjusted towards recovery. As applicant has been asked to pay Rs.10,000/- per month towards recovery, in our considered view the same is in excess. Applicant has a long service to go.

(3)

8. In this view of the matter, though upholding the recovery, we dispose of this OA, with a direction to respondents to effect the recovery in such a manner that the recovery should not exceed 1/3rd of the salary paid to applicant. No costs.


(S.A. Singh)
Member (A)


(Shanker Raju)
Member (J)

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