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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1336/2003

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

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. SARWESHWAR JHA, MEMBER (ADMNV)

1. Shri Ashok Giri TNo.2761 EE Mech
R/o 104, Devi Nagar, S.K.Road, Meerut.
2. Shri Dinesh Kumar TNo.2789 VM (AFN)
R/o Gali No.1 Om Nagar, Kanker Khera,
Meerut.
3. Shri Vikaram Singh TNo.2764 EE Mech
R/o 371/13 New Govind Puri Kanker Khera, Meerut.
4. Shri Srichand TNo.2798 EE Mech
R/o Village Nangli Azmabad post, Inchote Meerut.
5. Shri Rakesh Kumar TNo.2802 EE Mech
R/o Gali No.6, Sainik Nagar Kasampur, Meerut.
6. Shri Tezvir Singh TNo.2803 EE Mech
R/o Shiv Lok Puri Kanker Khera, Meerut.
7. Shri Ram Phal Singh TNo.2804 EE Mech
R/o 510 Army Base Workshop Colony,
Sardhana Bye-pass.
8. Shri Bijendra Pal TNo.2809 EE Mech
R/o Village & Post H.No.1108 Maliyana, Meerut.
9. Shri Ashok Kumar TNo.2835 EE Mech
R/o Near Balmiki Mandir, Khekra Baghpat
10. Shri Ram Mehar TNo.2784 VM (AFV)
R/o Village & Post Behrampur Morana Distt Meerut.
11. Shri ^{DHANWAN} Singh TNo.2765 EE Mech
R/o Gali No.6 Sainik Nagar Kasampur Distt Meerut.

...Applicants

(By Advocate : Shri V.P.S.Tyagi)

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-Versus-

1. Union of India through
Secretary
Ministry of Defence South Block,
New Delhi.
2. The Director General of EME, Army Headquarters,
DHQ, P.O., New Delhi.
3. CDA (Army),
Belvedier Complex,
Meerut Cantt.,
4. The ALAO
510 Army Base Workshop

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Meerut Cantt.,
5. The Commandant,
510 Army Base Workshop,
Meerut Cantt.,

... Respondents

(By Advocate : Shri K.R.Sachdeva)

O R D E R (ORAL)

By Mr. Shanker Raiya, Member (J):

PT for transfer and MA for joining together have already been allowed.

2. Applicants impugn orders dated 9.5.2002, wherein necessary recovery on account of wrong fixation of pay has been ordered.

3. By an order dated 28.5.2003, recovery has been stayed.

4. Applicants are civilian industrial employees. By an order dated 8.5.2003 while fixing the pay finally under Revised Pay Rules, 1997 the pay came on reduction and arrears arrived are ordered to be recovered.

5. On coming into being three grade structure in the Vth Central Pay Commission 25% of total strength of skilled grade were in the pay grade of Rs.950-1400 were given the pay scale of Rs.1200-2040 and remaining in the grade of Rs.940-1400. The others have also been given the pay scale of Rs.1320-2040. The line of promotion from Grade-II to highly skilled grade is in the pre-revised grade of Rs.1320-2040 after three years qualifying service in grade-II. Applicants stood promoted to highly skilled grade in the grade-I w.e.f. 30.1.96 or later.

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6. In pursuance of recommendations of 5th CPC pay scale of Rs.1200-2040 and 1320-2040 were merged and revised pay scale introduced was Rs.4000-6000, applicable w.e.f. 1.1.1996. CCS (Revised) Pay Rules, 1997 were introduced and orders have reached various departments in November, 1997 or later. As applicants had already been promoted and their pay was fixed in pre-revised pay scale the date of annual increment was fixed accordingly. This has been arrived at by the Department without any fraud or misrepresentation by applicants.

7. With a view to protect employees from any adverse financial loss due to fixation of pay under Revised Pay Rules, 1997 from 1.1.1996, Ministry of Defence issued orders on 29.9.1999, seeking option for revised pay scale from a date subsequent to 1.1.1996. The aforesaid letters though received in the office of the respondents but was not circulated and applicants have been prevented from seeking option to switchover to the Revised Pay Scale from a subsequent date after 1.1.1996 or any other date after 1.1.1997.

8. Being aggrieved with the recovery, applicants filed OA-1194/2001 before the Allahabad Bench of this Tribunal, wherein by an order dated 5.9.2002, impugned order was set aside for want of an opportunity of show cause with liberty to respondents to pass a fresh order, affording an opportunity to applicants to file their objection for the proposed pay fixation.

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9. Accordingly, vide impugned orders without stating reasons and without issuing a show cause notice, recovery has been ordered, giving rise to the present OA.

10. Learned counsel for applicants Sh. Tyagi contends that after the PT was allowed this Bench has jurisdiction to deal with the issue. It is also stated that in a contempt petition contentious matter cannot be gone into. However, referring to the directions issued by the Tribunal (supra) it is stated that the present order is not a show cause notice. The objections have not been considered and no reasons have been assigned, which is an illegality.

11. On the other hand, respondents' counsel Sh. K.R. Sachdev took a preliminary objection as to jurisdiction of the Principal Bench and contends that assuming that directions have not been complied with remedy was to file a contempt petition before the Allahabad Bench and the present OA is not maintainable.

12. On merits as well, it is stated that the liberty has been afforded as per the directions and orders have been passed, which are show cause notices as well as decisions to recover the amount, which on account of wrong fixation was paid to applicants.

13. We have carefully considered the rival contentions of the parties and perused the material on record.

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14. In so far as issue of jurisdiction is concerned, earlier the Allahabad Bench for want of show cause notice and due to the fact that evil consequences had ensued, set aside the order, directing the respondents to pass a fresh order after accord of liberty. In compliance thereof, orders have been passed. It is well settled principle of law that in a contempt petition contentious matter having a fresh cause of action cannot be gone into. The orders passed by the respondents are not in fact show cause notices and moreover when the PT is allowed and the OA is maintained at the Principal Bench, objection of the respondents regarding jurisdiction is overruled.

15. From the perusal of the order dated 9.5.2002, it transpires that instead of giving an opportunity to show cause, the respondents with a pre-determined mind ordered recovery. The contentions put-forth by applicants in their representations have not at all been taken into consideration and the orders passed are non-speaking.

16. It is equally settled by the Apex Court in *Shyam Babu Verma v. Union of India*, (1994) 2 SCC 521 that when wrong fixation is not at all attributable to a government servant without fraud or misrepresentation, recovery in such circumstances cannot be ordered.

17. In this view of the matter, we are constrained to hold that the orders passed by the

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respondents cannot be treated as show cause notices, as no reasonable opportunity has been extended to them.

18. In the result, for the foregoing reasons, OA is partly allowed. Impugned orders are quashed and set aside. If any recovery is made in pursuance of the impugned orders shall be refunded to applicants. However, this shall not preclude respondents from issuing show cause notices and passing detailed and speaking orders, keeping in view the decision of the Apex Court in Shyam Babu Verma's case (supra), within a period of three months from the date of receipt of a copy of this order. Till then no recovery shall be effected from applicants. No costs.



(Sarweshwar Jha)
Member (A)



(Shanker Raju)
Member (J)

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