

(5)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

RA No.330/2004

In

MA No.2598/2004

In

OA No.1333/2003

New Delhi this 13th day of April, 2005.

**HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. S.A. SINGH, MEMBER (A)**

Dr. (Mrs.) Vishwalata Naidu,
W/o Lt. Col. A.N. Naidu,
Civilian Lady Medical Officer (Family Welfare),
Military Hospital,
Agra-Cantt.

-Review Applicant

(By Advocate – None)

-Versus-

1. The Controller General of Defence Accounts,
Ministry of Defence, West Block-V,
R.K. Puram, 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

Mr. Shanker Raju, Hon'ble Member (J):

None appeared for the review applicant, despite second call. The RA is, therefore, proceeded under Rules 15 of the Central Administrative Tribunal (Procedure) Rules, 1987.

2. MA-2598/2004, seeking condonation of delay is allowed in the light of the Full Bench decision of the Tribunal in **Nand Lal Nichani v. Union of India**, CAT Full Bench Judgments Vol.-II (Bahri Brothers) 85. The decision of the Apex Court cited by the learned counsel of the respondents in **Commissioner, Trade Tax, U.P. v. M/s The Dhampur Sugar Mills Ltd.**, 2004 (10) SCALE 332, would not be applicable, as in the wake of a specific provision as to power to condone the delay in filing review application the grounds adduced are justified.

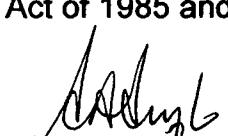


3. By an order dated 5.4.2004, upholding the recovery effected by respondents inadvertently including non practising allowance (NPA) towards pay fixation, excess payment and recovery thereof has been ordered not to be exceeding 1/3rd of the salary till its realization.

4. Applicant in this review stated that in the light of FR 9 (21) and in the wake of Government of India's Health and Family Welfare letter dated 2.11.1989 for fixation of pay NPA would be treated as pay for all service matters, including pay fixation, DA, HRA etc. Accordingly it is stated that the aforesaid notification was not taken into consideration.

5. On the other hand, respondents' counsel Shri Mohar Singh contended that there is an attempt to re-argue the matter on the part of review applicant and as per CCS (Revised Pay) Rules, 1997 Rule 7 (D) existing emoluments would not include NPA but would be computed for basic pay, DA etc. Referring to Ministry of Family Welfare OM dated 7.4.1998 it is stated that NPA was counted as pay for all service benefits and would be available only for other allowances like DA, HRA etc. but not in the matter of pay fixation.

6. On careful consideration of the pleadings in the RA and the reply as also in the light of the decision of the Apex Court in **Union of India v. Tarit Ranjan Das**, 2004 SCC (L&S) 160, we do not find any error apparent on the face of record. Our finding as to justification of recovery effected due to inadvertent inclusion of NPA towards pay fixation is fortified by the Ministry of Health OM dated 7.4.1998 and also CCS (Revised Pay) Rules, 1997. Accordingly, this RA does not come within the scope and ambit of Section 22 (3) (f) of the Administrative Tribunals Act of 1985 and is dismissed.


 (S.A. Singh)
 Member(A)


 (Shanker Raju)
 Member (J)