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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI

O.A.NO. 1732 OF 1989

DATE OF DECISION: 13-9-1991.

Gopinath Ojha.

.. Applicant.

Vs.

Executive Engineer (Civil)  
CPWD, New Delhi and others.

.. Respondents.

Shri R.V.Sinha, Counsel for the applicant.

Shri K.C.Mittal, Counsel for the respondents.

CORAM:

Hon'ble Mr.G.Sreedharan, Nair, .. Vice-Chairman.

Hon'ble Mr.S.Gurusankaran, .. Member(A)

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J U D G M E N T

Hon'ble Mr.S.Gurusankaran, Member(A):

The applicant on his retirement from the Army on 31-7-1980, where he was holding the post of Subedar Major Grade-I with a basic pay of Rs.800/- per month in Grade Rs.700-800, was appointed as a Draughtsman Grade-III in the scale of Rs.330-560 under respondent No.1 w.e.f. 16-10-1980. On his initial appointment, his pay was fixed at Rs.423/- at the stage of Rs.416/- plus Rs.7/- as special pay, taking into account his Army pension of Rs.502/- out of which the ignorable portion was Rs.125/-(Annexure-A7). Vide circular dated 8-2-1983 (Annexure-A8), it was advised that with effect from 25-1-1983, the entire Army pension in the case of personnel below Commissioned Officer's rank retiring before attaining the age of 55 years, should be ignored and an option was to be exercised by retired Army personnel already employed before that date within a period of 6 months. In cases of persons, who opt to have their pay refixed as per the circular at Annexure-A8, then their terms will be determined afresh, as if they have been employed from the date of these orders and the option once exercised would be final. The applicant exercised his option

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within the 6 months period. However, his pay was not refixed inspite of a number of representations. Finally vide Annexure-A12 dated 15-10-1986, respondent No.1 opined to the Superintending Engineer that the pay should be refixed at Rs.560/- plus Rs.15/- from 8-2-1983. The Superintending Engineer vide his letter dated 7-11-1986 (Annexure-A13) addressed to respondent No.2 opined that the earlier pay fixation of Rs.423/- plus Rs.7/- per month from 16-10-1980 was erroneous and it should have been only Rs.380/- and also suggested recovery of excess payment. It was, therefore, informed to the applicant that his option for refixation of pay with effect from 8-2-1983 would not be beneficial to him, as he had already crossed the pay limit. Hence, the applicant did not press for his revision of pay. However, without obtaining his reply, as indicated in Annexure-A15, respondent No.1 refixed his pay at Rs.380/- per month with effect from 8-2-1983 and since by that time, the revised pay scales as per IV Central Pay Commission's Recommendations had been introduced, his pay was also fixed at Rs.1380/- per month from 1-1-1986. Aggrieved by this action, the applicant represented, vide Annexure-A16 to the Ministry of Personnel, who indicated that refixation of his pay at Rs.380/- from 16-10-1980 would amount to <sup>a</sup> drop from his preretirement pay, which is to be protected and further, it would not be beneficial to the applicant to get his pay refixed with effect from 25-1-1983 as per the revised circular. However, respondent No.2 refixed his pay at Rs.330/- per month with effect from 16-10-1980 and at Rs.380/- per month from 25-1-1983 and ordered recovery of excess payment already made. Aggrieved by the same, he has filed this application praying for setting aside the orders dated 12-4-1988 fixing his pay at Rs.380/- per month from 25-1-1983 and at Rs.1380/- from 1-1-1986, orders dated 24-7-1989 refixing his pay at

Rs.330/- p.m. from 16-10-1980 and orders dated 28-7-1989 ordering respondent No.1 to recover Rs.800/- per month from his pay and also directing the respondents to refix his pay correctly at Rs.417/- plus Rs.7/- per month w.e.f. 16-10-1980 and at Rs.530/- per month w.e.f. 25-1-1983.

2. The facts have not been disputed. The counsel for the applicant explained as to how the pay, which was originally fixed correctly, has been wrongly revised downwards. He pointed out that the refixation of pay has been done wrongly because, the ~~correct~~ number of years for which the applicant had worked in an equivalent or higher grade had not been taken into account correctly. He pointed out that he held the rank of Subedar-Major Group-A from 17-8-1967 to 16-7-1975 and Subedar Major Group-A from 17-7-1975 till his retirement on 31-7-1980. Hence, his total service in the higher or equivalent grade is for 13 years and his pay should be fixed at Rs.530/- w.e.f. 16-10-1980 and not at Rs.403/-. He argued that in any case, even if the respondents had fixed his pay wrongly, they have violated the principles of natural justice in refixing his pay downwards without even giving him a chance to explain his position. He also specifically pointed out that after the issue of letter dated 5-1-1987 and 15-1-1987 (Annexures-A14 and A15), he had not given any request for revising his pay and hence, refixation of his pay downwards with effect from 25-1-1983 at Rs.380/- was also without any authority. The counsel also referred to the judgment of the Full Bench of this Tribunal delivered on 13-3-1990 in the case of B.Ravindran v. Director General of Posts, New Delhi and others (1990(2) ATJ 416) and argued that his pay should be refixed as per that judgment. He has also stated that since he had not given any request for revision of his pay with effect from 21-1-1983 after the position was explained to him vide Annexure-A15, his earlier option given in 1983, which had not been acted upon by the respondents till 1986, should be treated as withdrawn.

3. The counsel for the respondents in all fairness conceded that no opportunity was given to the applicant before fixing his pay downwards at Rs.380/- with effect from 16-10-1980. The respondents have also admitted in para 6 of their reply that no reply was received from the applicant for refixing his pay w.e.f. 25-1-1983 and still went ahead and refixed his pay at Rs.330/- by order dated 12-4-1988. It is well settled that a vested right cannot be taken away without following the principles of natural justice and hence the orders of the respondents dated 24-7-1989 refixing the applicant's pay downwards at Rs.330/- per month with effect from 16-10-1980 is illegal and is liable to be set aside. Similarly once the respondents had explained the consequences of his option for refixation of pay w.e.f. 25-1-1983 and wanted the applicant to give in writing as to whether he still wanted fixation, their action in refixing his pay with effect from 25-1-1983 without any reply from him is also liable to be set aside. Further, any refixation of pay thereafterwards can be done only on the lines of the judgment of the Full Bench in the case of Ravindran (supra).

4. In the circumstances of the case, we allow the application and give the following directions:

- (i) The orders dated 12-4-1988 (Annexure-A1), 24-7-1989 (Annexure-A2) and 24-7-1989 (Annexure-A3) regarding refixation of his pay on different dates and 28-7-1989 (Annexure-A4) for recovery of Rs.800/- p.m. from his pay are set aside.
- (ii) Since the applicant has not given any further request for fixation of his pay with effect from 25-1-1983, in view of the position explained to him vide Annexure-A15, his earlier option shall be treated as withdrawn and no refixation of pay with effect from 25-1-1983 shall be done.

(iii) The respondents shall re-fix the pay of the applicant with effect from 16-10-1980, keeping in view the orders of the Full Bench in Ravindran's case (supra) and in case it involves any downward revision, they shall do so only after issuing a show cause notice to the applicant to obtain his explanation before taking a final decision. Until such a decision is taken, the respondents shall not make any recovery from his settlement dues.

(iv) We also observe that since the applicant has retired in July, 1990, the respondents shall take immediate action to settle his dues expeditiously and in any case not later than 3 months from the date of receipt of the copy of this order.

*[Signature]*  
13/9/1991  
MEMBER (A)

*[Signature]*  
13.9.1991  
VICE-CHAIRMAN.