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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A.No.438/91

Date of Decision:24.01.1992

Shri M.K. Narula & Ors. ... Applicant  
Shri R. Doraiswami ... Counsel for the Applicant  
Vs.  
Director General of  
Supplies and Disposals  
and another ... Respondents  
Shri P.P. Khurana ... Counsel for the respondents

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(Judl.)

The Hon'ble Mr. B.N. Dhoundiyal, Member (Admn.)

1. Whether reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the reporter or not? *yes*

JUDGEMENT

(of the Bench delivered by  
Hon'ble Member Shri B.N. Dhoundiyal)

The 17 applicants in this OA who are permanent LDCs of the Department of Supply of the C.S.C.S. cadre in the Directorate General of Supply and Disposals(DGS&D), New Delhi are aggrieved by the impugned order dated 7.2.91, whereby their pay has been retrospectively fixed resulting in reduction of pay by many stages and recovery of over-payment has been ordered.

2. All the applicants were working as LDCs and were selected from time to time to work as Stenographers on adhoc basis in the scale of UDC i.e. Rs.130-280 per month.

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Some of them continued to work as Stenographers for as long as over thirteen years as in case of Shri D.K. Mathur, who has since retired (Annexure-I). The applicants allege that at no time, they were informed that services rendered by them as Stenographers would not be reckoned towards pay fixation and for the increments in the post of UDCs. As and when vacancies arose, the applicants were promoted as UDCs in the clerical cadre. Since they had worked in the identical pay scale of Stenographer Grade 'D', their pay was not disturbed on being appointed as UDCs. However, without giving them any show cause notice, orders were issued during the period 07.11.1988 to 16.02.1989, fixing their pay in the grade of UDC retrospectively many stages below what they had actually drawn on the relevant dates and recoveries of excess amounts was ordered. Some of the applicants had submitted representation which was also rejected. On 07.02.1991, the respondents issued orders to recover the over-payment.

3. The recoveries have been stayed by an interim order passed by this Tribunal on 19.02.1991, which has been continued till the final hearing of the case on 22.10.1992.

4. The respondents have contended that the applicants had worked as Steno/Typist/Stenographer Grade 'D' on adhoc basis and not as members of Central Secretariat Stenographers Service(CSSS) and the posts in question were temporarily excluded from that cadre. The anomaly of their pay as UDC being fixed on the basis of their last pay as Stenographers came to their knowledge on receipt of representations from their seniors, who were drawing lesser pay than them. UDCs of CSCS and Stenographers

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of CSSS cadre are two separate cadres and the adhoc services rendered by the applicants as Stenographers cannot be reckoned towards pay fixation and for increments in the post of UDCs. The question of punitive recovery does not arise as the applicants were actually over paid as a result of wrong fixation of pay in UDC grade. Orders rectifying a mistake cannot be regarded as punitive and there was no need for giving any notice.

5. We have gone through the records of the case and heard the learned counsel for both parties. Normally adhoc appointment in a different cadre should not continue for more than six months. In this case, the deputation/adhoc appointment has continued in some cases for as long as thirteen years. It is not clear whether any option was given to the applicants to continue as Stenographers. The applicants should either have been absorbed in the cadre of CSSS or proper orders for deputation with detailed terms and conditions should have been issued. This was not done.

6. Admittedly, the post of LDC is not a feeder cadre for appointment as Stenographer Grade 'D'. The applicants were promoted as UDCs on various dates but they continued to draw the same pay as they were drawing at the time of their promotion as UDCs. After several years, their pay was fixed in the grade of UDC under FR.22C, which has resulted in the proposed order of recovery of over-payment.

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7. After the applicants were promoted as UDCs, they were allowed to draw the same pay which they were drawing as Stenographer Grade 'D'. The respondents did not inform them that their pay was being paid subject to adjustment on refixation and that it was provisional in nature. This is not a simple case of over-sight or administrative errors which could be corrected without giving show cause notice to the applicants. The payment already made to them cannot be recovered retrospectively either in law or in equity.

8. As regards the future, we are of the opinion that there is no illegality in refixing the pay of the applicants on the basis of the scale of pay of UDC. Any other view would result in injustice to those who are admittedly senior to the applicants.

9. In the light of the foregoing, the application is disposed of with the following orders and directions:-

1. We set aside and quash the impugned order dated 07.02.1991 at Annexure A-2 to the application and direct the respondents not to recover any amounts from the applicants on the ground of over-payment of pay and allowances. <sup>by P</sup> ~~Any~~ recovery already made, if any, shall be refunded to the applicants.

2. We uphold the validity of refixation of pay and allowances of the applicants prospectively, that is, from the date of issue of the order.

3. We allow MP.2275/91 and direct that the sum of Rs.15,813/- withheld from the gratuity of Shri D.K.Mathur, the petitioner therein, shall be released to him within a period of two months from the date of communication of this order. There will be no order as to costs.

*B.N. Dhoondiyal*  
(B.N. DHOUNDIYAL) 24/1/92  
MEMBER(A)

*P.K. Kartha*  
(P.K. KARTHA)  
VICE CHAIRMAN(J)