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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**NEW DELHI**

**O.A. No.** 82.9/91  
**T.A. No.**

199

**DATE OF DECISION** 2-7-96

<u>Mrs Kanta Rathor</u>	<b>Petitioner</b>
<u>Shri V.K.Mehta</u>	<b>Advocate for the Petitioner(s)</b>
<b>Versus</b>	
<u>U.O.I. &amp; Others</u>	<b>Respondent</b>
<u>Shri J.Banerjee proxy counsel for Shri Madhav Panikar.</u>	<b>Advocate for the Respondent(s)</b>

**CORAM**

**The Hon'ble Mrs** Lakshmi Swaminathan, Member (J)

**The Hon'ble Mr.** R.K.Ahooja, Member (A)

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan )  
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

...  
O.A.No.829 of 1991.

Dated New Delhi, this 2nd day of July, 1996.

HON'BLE MRS LAKSHMI SWAMINATHAN, MEMBER (J)  
HON'BLE MR R. K. AHOOJA, MEMBER (A)

1. Mrs Kanta Rathor  
W/o Late Shri O. S. Rathor  
R/o A-122, Pandara Road  
NEW DELHI.
2. Master Bhawani Singh Rathor
3. Miss Poonam Rathor  
(Applicants 2&3 through  
applicant no.1, legal guardian.) ... Applicants

By Advocate: Shri V. K. Mehta

versus

1. Union of India, through  
Secretary  
Ministry of Personnel, Public  
Grievances & Pensions  
Department of Personnel & Training  
North Block  
NEW DELHI-110001.
2. Union of India, through  
Secretary  
Ministry of Defence  
Defence Research & Development  
Organisation, Sena Bhawan  
NEW DELHI-110001. ... Respondents

By Advocate: Shri J. Banerjee, proxy counsel  
for Shri Madhav Panikar.

O R D E R

Mrs Lakshmi Swaminathan, M(J)

This application has been filed under Section  
19 of the Administrative Tribunals Act, 1985 against  
the order dated 26.12.1989 issued by the respondents

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against Shri O. S. Rathor, the original applicant who has since died and is represented by the legal representative, his wife Mrs Kanta Rathor, the applicant No.1. By the order dated 26.12.1989 it had been ordered that a sum of Rs.981/- per month should be recovered from the original applicant for 34 months on account of overpayment of pay and allowances of Rs.33,354/- till November 1989 (Annexure-V).

2. The brief facts of the case are that the original applicant Shri O. S. Rathor had taken premature retirement from Army with effect from 7.7.1985 after putting in 24 years of service. At that time he was in receipt of basic pay of Rs.1700/- per month in the pre-revised pay scale of Rs.1500-1800. He was getting pension of Rs.1,335/- per month, <sup>Rs</sup> ~~there~~ after he served as Secretary, Zila Sainik Board, Kota under the State Government of Rajasthan in the pay scale of Rs.1490-3050 (pre-revised) from 15.7.1985 to 4.2.1987. As he held this post on a purely temporary capacity, he was not granted any terminal benefits for this service which was less than two years. He was subsequently appointed as Senior Administrative Officer Grade-I (SAO-I) in the pay scale of Rs.1100-1600 (pre-revised) with effect from 5.2.1987 through UPSC. The

respondents, viz., Defence Research & Development Organisation (DRDO) fixed his pay at the minimum of the scale ignoring the entire pension and this pay he drew till July 1989. From the statement of fixation of pay, it is seen that he was fixed in the revised pay of Rs.3750/- per month with effect from 5.2.1987. After the Government of Rajasthan refixed his pay in the revised State Government scales with effect from 1.1.1986 and issued revised Last Pay Certificate, the original applicant applied for refixation of pay in terms of the revised Last Pay Certificate. When this was forwarded by the DRDO to CDA(R&D) for refixation, it was pointed out by that authority that the original applicant had been allowed wrong pay as his pay should have been fixed only in terms of Department of Personnel & Training's O.M. dated 31.7.1986 and that a total amount of about Rs.33,000/- was overpaid to him which was required to be deducted at Rs.818/- per month from his pay on this account. The revised pay of the applicant was advised to be fixed at Rs.3300/- per month in accordance with the paragraph-4(b)(ii) of O.M. dated 31.7.1986 as per the details furnished to the original applicant in reply to his representation.

3. After filing of this application on 9.4.1991, on the demise of the original applicant on 15.5.1991, by the order of the Tribunal dated 24.9.91, his legal representatives were allowed to be impleaded.

4. We have heard Shri V. K. Mehta, learned counsel for the applicants and Shri J. Banerjee, learned proxy counsel for Shri Madhav Panikar, learned counsel for the respondents, and have also perused the records and the written statements submitted on behalf of the parties which are taken on record.

5. The learned counsel for the applicants has submitted that the appointment of the original applicant as SAO-I through UPSC is not a case of re-employment in Government service, but a fresh appointment. He has disputed the stand taken by the respondents that since the officer was in receipt of pensionary benefits on his pre-mature retirement from Army, his pay on his appointment as SAO-I with the respondents with effect from 5.2.1987 can be fixed in accordance with the provisions of the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986. The learned counsel for the applicants submitted that since the original applicant had been appointed

directly as a direct recruit through UPSC in the post of SAO-I, he cannot be considered to be a re-employed Government servant who is re-employed in the public interest. He has relied on the judgement of the Tribunal in Uma Sharma Vs UOI & Ors (1994) 27 ATC 1.

6. The respondents, on the other hand, have submitted that there is no doubt that the original applicant is a re-employed pensioner and is fully covered under the provisions of the Re-employed Personnel (Conditions of Service) Rules, 1932 as well as the provisions of the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986. According to them, even if the original applicant is a direct recruit to the post of SAO-I, the fact that he is in receipt of pension from the Government, cannot be ignored. They have, therefore, submitted that in accordance with the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986 which came into effect with effect from 1.7.1986, the original applicant's pay has been correctly fixed taking into account the pensionary benefits he was entitled to in accordance with the rules. They have, therefore, submitted that his pay has been

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correctly fixed treating him as a re-employed pensioner. We find force in the arguments advanced by the respondents that the original applicant was a re-employed Government servant when he was appointed as direct recruit SAO-I.

(a) Clause (2)(a)(1) of the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986 provides that save as otherwise provided in these orders, these orders shall apply to all persons who are re-employed in Civil Services and posts in connection with the affairs of the Union Government after retirement on pension, gratuity, and/or Contributory Provident Fund benefits from the services of the Union Government including Defence. Rule (4)(b) of the Orders provides that these orders shall not apply to persons re-employed in posts, the expenditure of which is not debitable to the Civil Estimates of the Union Government. In this case, it is an admitted fact that the original applicant who was a Major in the Army retired from the Defence service with effect from 7.7.1985. In the letter of offer of appointment as SAO-I dated 30.12.1986, the terms and conditions of the appointment have been given which includes the following conditions in

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paragraph-2(V):

You will be subject to conditions of service as applicable to temporary civilian Government servants paid from Defence Services Estimates in accordance with the orders issued by the Government of India from time to time."

This condition in the appointment letter shows that the original applicant was appointed as a civilian Government servant paid from Defence Service Estimates, and, therefore, does not fall within the provisions of Clause 4(b) of the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986. Therefore, in the facts of the case, it is clear that the applicant who was receiving pension as a retired Major in the Defence Force, is a re-employed Government servant and his pay has been correctly fixed in accordance with the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986. We have seen the judgment in Uma Sharma's case (supra) relied on by the applicants. But the facts in this case are not applicable here and, therefore, the case will not assist the applicants. Similarly, the other cases referred to by the learned counsel for the applicant regarding retrospective application of <sup>the</sup> law/rules are not relevant.

7. The other main ground taken by the learned counsel for the applicants is that by the impugned order dated 26.12.1989 the original applicant's vested and valuable rights had been adversely affected with retrospective effect and without complying with the principles of natural justice as laid down in the case of Bhagwan Shukla Vs UOI & Ors. (1994) 28 ATC p.258. The respondents have, in their reply merely stated that the recovery order is in accordance with the rules, but have not denied the averment of the original applicant that he had not been given a reasonable opportunity to explain his case. We are aware that the Supreme Court in Managing Director, ECIL, Hyderabad Vs B. Karunakar JT 1993 (6) SC 1 has held that:

"The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case."

Although this case dealt with the furnishing of the inquiry report in disciplinary proceedings the

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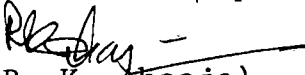
decision will also be relevant in the context of this case. However, in Bhagwan Shukla's case (supra), the Supreme Court quashed the impugned order dated 25.7.1991 by which the Appellant's pay which was re-fixed since 1970 at Rs.190/- per month was reduced to Rs.181/- per month retrospectively with effect from 18.12.1970 which was in violation of the principles of natural justice and as the Supreme Court held, "without following any procedure known to law." In the facts of the case, the Court, therefore, quashed the order passed by the Central Administrative Tribunal as well as the impugned order dated 25.7.1991 reducing the appellant's pay holding that "fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the (sic employee) concerned to notice and giving him a hearing in the matter."

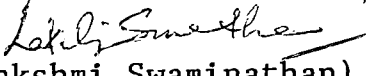
8. In the present case, admittedly the original applicant has not been given a show cause notice or reasonable opportunity of hearing before the impugned order of recovery of the amount of Rs.33,354/- as overpayment of pay and allowances was passed on 26.12.1989 by the respondents.

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9. Having regard to the decision of the Supreme Court in *Managing Director, ECIL case (supra)* since the respondents have re-fixed the pay of the original applicant in accordance with the relevant rules/orders, we are unable to see what prejudice would have been caused to the original applicant in the case in such re-fixation of the pay. However, in <sup>a</sup> similar situation, the Supreme Court has quashed the impugned order reducing the basic pay of the appellant with retrospective effect from 1970 in *Bhagwan Shukla's (supra)*. Therefore, having regard to this decision of the Supreme Court, the recovery of pay and allowances from 5.2.1987 vide order 26.12.1989 in violation of the principles of natural justice, is bad in law. Further, considering also the fact that the original applicant has since expired, we direct the respondents not to make any recovery of the overpayment of pay and allowances made to the original applicant between 5.2.1987 and 26.12.1989 and if any such recovery has been made, they shall be returned to the applicant no.1 within one month from the date of this order.

10. With the above observations and directions, the OA is disposed of finally. No costs.

  
(R. K. Ahooja)  
Member(A) 2/3

  
(Mrs Lakshmi Swaminathan)  
Member(J)