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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 2993/2004

recd 26th May, 2005

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.K.NAIK, MEMBER (A)

1. Sh. A.Raman,
S/o Late Shri Raman A.
R/o RZ-26P/151 Indra Park,
Palam Colony, New Delhi-110045.
2. Shri N.J.Davis,
S/o Late Shri Joseph N.P.
R/o JC-1, First Floor, Khirkhi Extension,
Malviya Nagar, New Delhi-110017.
3. Shri Krishnan Kutty,
S/o Late K.Kutty,
R/o 297A, Masjid Modh,
South Extension Part II,
New Delhi-110049.
4. Shri O.P. Yadav,
S/o Late Shri Chand Ram,
R/o III H/14, Nehru Nagar,
Ghaziabad, U.P.
5. Shri Jogi Ram Singhal,
S/o Late Shri M.L.Singhal,
R/o WZF-35, Milap Nagar,
Uttam Nagar,
New Delhi-110059.
6. Shri H.S.Bhella,
S/o Late Shri Gurur Ditta,
R/o RZ-D III/46, Vinodpuri,
Vijay Enclave, Palam, New Delhi-45.
7. Shri Govind Singh Khatri,
S/o Late Shri D.S.Khatri,
R/o 56/7, R.K.Puram,
New Delhi-110022.
8. Shri Rameshwar Dass Rohilla,
S/o Late Shri Chottu Ram,
R/o RZF 166, Gali No.38,
Sadh Nagar, Part II,
Palam Colony,
New Delhi-45.
9. Shri Jai Singh Tak,
S/o Late Shri Mange Ram,
R/o Vill. Goyala Kalan,
P.O. Goyala Kalan,

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Distt. Jhajhar, Haryana.

10. Shri Ved Prakash,
S/o Late Shri Puran Chand,
R/o C-II/2580, Vasant Kunj,
New Delhi-110070.
11. Shri Dharampal Dhruv,
S/o Late Shri Bhola Ram,
R/o 272, Naya Bans,
Delhi-82.
12. Shri Satvir Singh,
S/o Late Shri Mir Singh,
R/o Village Safiabad,
P.O. Nataupur,
Distt. Sonipat,
Haryana.
13. Shri Tomichan K.M.
S/o late Shri K.M.Mathew,
R/o 54-B Pocket 'A',
Dilshad Garden,
Delhi-95.
14. Shri Pratap Singh Negi,
S/o Late Shri C.S.Negi,
R/o L-II/195-B, DDA Flats,
Kalkaji,
New Delhi-110019.
15. Shri Dharampal,
S/o Late Shri Khema Ram,
R/o House No.494,
Vill. Daryapur Kalan,
P.O. Daryapur Kalan,
Delhi-110034.
16. Shri Phillip P.J.
S/o Late Shri John Philipose,
R/o Qr. No.455/Type III,
Ayur Vidyan Nagar,
New Delhi-110049.
17. Shri Suraj Bhan Dhagar,
S/o Late Shri Ram Sarup,
R/o House No.561,
Vill. & P.O. Jharodakalan,
Delhi-110072.

(By Advocate: Sh. George Paracken)

Versus

1. Central Provident Fund Commissioner,
Employees Provident fund Organization,
(Head Office),

Subrahmanyam

Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place,
New Delhi-110066.

2. Addl. Central Provident Fund Commissioner,
Regional Office, Delhi
9th Floor, Mayur Bhawan,
Connaught Circus,
New Delhi-110001.
3. The Secretary,
Govt. of India,
Ministry of Personnel, PG & Pensions,
Department of Personnel and Training,
New Delhi-110001.

(By Advocate: Sh. V.S.R.Krishna)

ORDER

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

These applicants, 17 in number, have filed the OA for grant of the following relief:-

- (i) Quash and set aside the following orders:
 - (a) No. Adm.I (43)/Pt.II/2004 Office Order No.748/2004 dated 24.9.2004 in respect of Shri A.Raman (Applicant No.1)
 - (b) No. Adm.I (43)/Pt.II/2004 Office Order No.754/2004 dated 27.9.2004 in respect of Shri N.J.Davis (Applicant No.2)
 - (c) No. Adm.I (43)/Pt.II/2004 Office Order No.755/2004 dated 27.9.2004 in respect of Shri Krishnan Kutty (Applicant No.3)
 - (d) No. Adm.I (43)/Pt.II/2004 Office Order No.860/2004 dated 27.10.2004 in respect of Shri O.P.Yadav (Applicant No.4)
 - (e) No. Adm.I (43)/Pt.II/2004 Office Order No.752/2004 dated 27.9.2004 in respect of Shri Jogi Ram Singhal (Applicant No.5)
 - (f) No. Adm.I (43)/Pt.II/2004 Office Order No.861/2004 dated 27.10.2004 in respect of Shri H.S.Bhalla (Applicant No.6)
 - (g) No. Adm.I (43)/Pt.II/2004 Office Order No.856/2004 dated 27.10.2004 in respect of Shri Govind Singh Khatri (Applicant No.7)

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(h) No. Adm.I (43)/Pt.II/2004 Office Order No.900/2004 dated 9.11.2004 in respect of Shri Rameshwar Dass Rohilla (Applicant No.8)

(i) No. Adm.I (43)/Pt.II/2004 Office Order No.753/2004 dated 27.9.2004 in respect of Shri Jai Singh Tak (Applicant No.9)

(j) No. Adm.I (43)/Pt.II/2004 Office Order No.899/2004 dated 9.11.2004 in respect of Shri Ved Prakash (Applicant No.10)

(k) No. Adm.I (43)/Pt.II/2004 Office Order No.885/2004 dated 3.11.2004 in respect of Shri Dharampal Dhruv (Applicant No.11)

(l) No. Adm.I (43)/Pt.II/2004 Office Order No.886/2004 dated 3.11.2004 in respect of Shri Satvir Singh (Applicant No.12)

(m) No. Adm.I (43)/Pt.II/2004 Office Order No.777/2004 dated 6.10.2004 in respect of Shri Tomichan, K.M. (Applicant No.13)

(n) No. Adm.I (43)/Pt.II/2004 Office Order No.859/2004 dated 27.10.2004 in respect of Shri Pratap Singh Negi (Applicant No.14)

(o) No. Adm.I (43)/Pt.II/2004 Office Order No.773/2004 dated 6.10.2004 in respect of Shri Dharampal (Applicant No.15)

(p) No. Adm.I (43)/Pt.II/2004 Office Order No.775/2004 dated 6.10.2004 in respect of Shri Phillip P.J. (Applicant No.16)

(q) No. Adm.I (43)/Pt.II/2004 Office Order No.776/2004 dated 6.10.2004 in respect of Shri Suraj Bhan Dagar (Applicant No.17)

(r) Adm.I(43)/Pt.II/99/2541 dated 17.11.2004 in respect of Sh. A.Raman for Rs.2,81,803/-

(s) Adm.I(43)/Pt.II/99/2543 dated 17.11.2004 in respect of Sh. N.J.Davis for Rs.3,01,670/-

(t) Adm.I(43)/Pt.II/99/2544 dated 17.11.2004 in respect of Sh. Krishnan Kutty for Rs.2,27,562/-

(unseen) *sent*

(u) Adm.I(43)/Pt.II/99/2691 dated 7.12.2004 in respect of Sh. P.J.Phillip for Rs.1,07,507/-

(v) Adm.I(43)/Pt.II/99/2542 dated 17.12.2004 in respect of Sh. Jai Singh for Rs.78,929/-

(ii) Declare that the provision of OM No.3(i)/85/Estdt (P-II) dated 31.7.86 cannot be applied on the applicants as the same is violative of the basic rule of fixation of pay of the reemployed ex-servicemen.

(iii) Declare that the pay fixation order issued in terms of OM No.2(1)83/D (Div-I) dated 8.2.83 is in accordance with the basic rule of fixation of pay of the re-employed ex-servicemen and it does not need any refixation as ordered by the impugned order.

(iv) Direct the respondents not to recover any amount of arrears as a result of the refixation from the retirement benefits of the concerned applicants and direct them to release the same with interest at 18 per cent forthwith.

2. These 17 applicants are ex service men. After their retirement applicants No.1 to 8, 12 to 14, 16 & 17 who retired from Indian Army between 1986 and 1991 and the applicants No. 10 & 11 who retired from Indian Air Force in 1986 and 1990 respectively (first set of applicants), were reemployed as LDC in the pay scale of Rs.950-1500 in the office of the Employees Provident Fund Organisation (Organisation for short) between 1989 and 1991. Applicants No.9 & 15 (second set of applicants) have retired from Indian Army in 1990 and they were reemployed in the Organisation on a class IV post in 1991 in the pay scale of Rs.750-940. All of them were personnel below Commissioned Officers rank when retired. On their reemployment the pay of these applicants was fixed in terms of OM No.2(1)83/D/Civ-I) dated 8.2.83 at different sums ignoring their entire pension received for the previous Army/Air Force service. The first set of applicants was promoted from the post of LDC to the post of

UDC from different dates between 1993 and 1996. Applicant No.1 retired on attaining the age of superannuation from 31.5.2004, applicant No.2 retired w.e.f. 30.9.2004, applicant No.3 retired on 30.6.2004, applicant No.4 had retired on 30.4.2003, applicant No.5 had retired w.e.f. 30.4.2004, applicant No.6 retired on 31.5.2003, applicant No.7 retired on 30.6.2003, applicant No.8 retired on 31.12.2002 and applicant No.9 retired on 30.9.2004. By different orders, the respondent have revised the pay of all these applicants from the date on which they were initially appointed on the post of LDC, class-IV as the case may be in terms of the order (Ex Combatant clerks) 4 (b)(ii) & d (ii) of the Central Civil Services Fixation of pay of Reemployed Pensioners) Orders 1986. The pay of the applicant No.1 was revised vide order dated 24.9.2004 from Rs.5700/- to 3511/- p.m. and he was directed to refund Rs.2,81,803/- which was overpaid to him on account of earlier erroneous fixation of his pay. The pay of applicant No.2 was revised vide order dated 27.9.2004 from Rs.5600/- to 3276/- p.m. and he was directed to refund a sum of Rs.3,06,670/- which was paid in excess to him as a result of wrong fixation of his pay. Vide order dated 27.9.2004 the pay of the applicant No.3 was revised from Rs.5600/- to 4350/- and a recovery of a sum of Rs.2,27,562/- was ordered on account of erroneous overpayment of the salary made to him. Vide order dated 27.10.2004 the pay of the applicant No.4 was reduced from Rs.5200/- to 2417/- p.m. The pay of applicant No.5 was reduced from 27.9.2004 from Rs.5500 to 2621/- p.m. The pay of applicant No.6 was reduced by order dated 27.10.2004 from Rs.5400/- to 1897/- p.m. The pay of applicant No.7 was revised by order dated 24.9.2004 from Rs.5600/- to 1491/- p.m. The pay of the applicant No.8 was revised by order dated 9.11.2004 from Rs.5600/- to Rs.1691/- p.m. The pay of applicant No.9 was revised by order dated 27.9.2004 from Rs.3380/- to 3140/- p.m. and a sum of Rs.78,929/- has been directed to be recovered from him as erroneous overpayment. The pay of applicant No.10 was revised vide order dated 9.11.2004 from Rs.5300/- to Rs.3535/- p.m. The pay of applicant No.11 was

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also reduced vide order dated 3.11.2004 which is shown at Annexure A-3. The pay of applicant No.12 was reduced to Rs.3570/- vide order dated 3.11.2004. The pay of applicant No.13 was reduced to Rs.4800/- vide order dated 6.10.2004. Similarly the pay of applicant No.14 was reduced to Rs.3411/- p.m. vide order dated 27.10.2004 and the pay of applicant No.15 was reduced to Rs.3215/- p.m. vide order dated 6.10.2004. The pay of applicant No.16 was refixed and reduced vide order dated 6.10.2004 from Rs.5500/- to Rs.5000/- p.m. and a sum of Rs.1,07,507/- is also sought to be recovered from him as an excess payment. The pay of applicant No.17 was also revised vide order dated 6.10.2004 from Rs.5500/- to Rs.4800/- p.m. Applicants have filed the copies of pay fixation order on their re-employment collectively at Annexure P-1 from page 59-92. The orders by which the pay of some of these applicants have been refixed at a lower sum and overpayment have been directed to be recovered are filed collectively at Annexure P-2, they are from pages 93-97 of the OA.

4. Respondents were given several opportunities to file their reply to the OA but have failed to file it.

5. We have heard the learned counsel for the parties and have gone through the relevant record.

6. The question that arises for decision in this OA is whether the orders of the respondent by which the pay of these applicants have been refixed in terms of Central Civil Service (Fixation of Pay and Re-employed Pensioners) orders, 1986 by various orders which are impugned in the OA and the resultant proposed recovery of erroneous overpayment from the salary from all these applicants, is in accordance with law. Secondly, whether the respondent may direct recovery of the excess/overpayment of the salary from the applicant.

7. In the OA it was stated that the pay of these applicants was correctly fixed by the respondent on the re-employment. The pay of the applicants, who are retired ex service men, on their re-employment on the post of LDC/class IV,

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as the case may be, was fixed in accordance with the Ministry of Defence OM No.2(1)83/D/(Civ-I) dated 8.2.83. It is alleged that refixation of their pay from the date on which they were re-employed as LDC/class IV in the establishment of the Organisation in terms of OM No.3(i)/85/Estd.(P-II) dated 31.7.86 is bad in law. It will be apt to reproduce here OM dated 31.7.86 (Annexure P-3) to the OA.

“The President is now pleased to decide that in supersession of all the previous orders on the subject, the initial fixation of pay and other benefits on reemployment of ex-servicemen pensioners as also civilian pensioners will be governed by the Central Civil Services (Fixation of pay of Reemployed Pensioners) orders, 1986 as detailed in the Annexure. With reference to all the appointments made on or after the 1st July, 1986 the pay of the reemployed pensioners may be fixed as per the enclosed orders”

8. The relevant paragraphs from 4,5, and 16 of the order referred to in this OM which have been relied upon by the learned counsel for both the parties are extracted below:

“4. Fixation of pay of reemployed pensioners.

- (a) Reemployed pensioners shall be allowed to draw pay only in the prescribed scales of pay for the posts in which they are reemployed. No protection of the scales of pay of the posts held by them prior to retirement shall be given.
- (b) (i) In all cases where the pension is fully ignored, the initial pay on reemployment shall be fixed at the minimum of the scale of pay of the reemployed post.
- (ii) In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial pay on reemployment shall be fixed at the same stage as the last pay drawn before retirement. If there is no such stage in the reemployed post, the pay shall be fixed at the stage below that pay. If the maximum of the pay scale in which a pensioner is reemployed is less than the last pay drawn by him before retirement, his initial pay shall be fixed at the maximum of the scale of pay of the reemployed post. Similarly, if the minimum of the scale of pay in which a pensioner is reemployed is more than the last pay drawn by him before retirement his initial pay shall be fixed at the minimum of the scale of pay of the reemployed post. However, in all these cases, in non-ignorable part of the pension and pension equivalent of retirement benefits shall be reduced from the pay so fixed.
- (c) The reemployed pensioner will in addition to pay as fixed under para (b) above shall be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefits.



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(d) In the case of persons retiring before attaining the age of 55 years and who are reemployed, pension (including pension equivalent of gratuity and other forms of retirement benefits) shall be ignored for initial pay fixation to the following extent:

- (i) in the case of ex-servicemen who held posts below commissioned officer rank in the Defence Forces and in the case of civilians who had posts below Group 'A' posts at the time of their retirement, the entire pension and pension equivalent of retirement benefits shall be ignored
- (ii) in the case of service officers belonging to the Defence Forces and Civilian pensioners who held Group 'A' posts at the time of their retirement, the first Rs.500/- of the pension and pension equivalent of retirement benefits shall be ignored.

5. Drawal of increments:

Once the initial pay of a reemployed pensioner has been fixed in the manner indicated above, he may be allowed to draw normal increments in the time scale of the posts to which he is appointed as if the pay had been fixed at the minimum or the higher stage as the case may be, (i.e., before an adjustment on account of pension and pension equivalent of other forms of retirement benefits is made) provided that the pay and gross pension/pension equivalent of other retirement benefits taken together do not at any time exceed Rs.3300/- per month."

16. Fixation of pay of Ex-Combatant Clerks/Storemen:

(1) In partial modification of the provisions contained in order 4 and 5 above, ex-combatant Clerks on their reemployment as Lower Division clerks or Junior Clerks in the Civil posts and Ex-Storemen in the Armed Forces on their reemployment as Storemen in Civil Posts shall have the option to get their pay fixed under order 4 and 5 above in accordance with the procedure indicated in sub para (2) below.

Explanation:

- (i) The option once exercised is final. The reemployed pensioner should be asked to exercise the option within the period of three months from the date of his reemployment.
- (ii) Ex-combatant Clerks and Storemen referred to in this order will include reservists released at their own request or on compassionate or medical grounds.

(2) Service rendered as Combatant Clerks and Storemen in Armed Forces shall be treated as equivalent to service as Lower Division Clerks/Junior Clerks and Storemen respectively in Civil posts, irrespective of the pay drawn in those posts in the Armed Forces. The initial pay in such cases shall be fixed in the time scale of the reemployed posts at a stage equivalent to the stage that would have been reached by putting in the civil posts, the number of completed service rendered in the posts in the Armed Forces. The pay so fixed will not be

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restricted to the 'pre-retirement pay'. The fixation of pay in these cases shall be done by invoking the provisions of Fundamental Rules 27.

Explanation:

- (i) For the purpose of calculation of completed years of service rendered in the Armed Forces the non-qualifying service in the Armed Forces will not be taken into account.
- (ii) Pension as defined in Order 3 (1) above shall be deducted from the pay fixed under this rule after ignoring Rs.15 thereof and only the net pay is payable.
- (iii) If the resultant amount does not correspond to a stage in the scale applicable to the reemployed post, pay may be fixed at the next lower stage and the difference allowed as personal pay to be absorbed in future increases of pay.
- (iv) Where the pay in such cases is fixed below the minimum of the pay scale of the reemployed post, as a result of adjustment of amount of pension drawn by him from the Army in excess of Rs.15/- per month, increases in pay may be allowed after each year of service at the rate of increment admissible as if the pay has been fixed at the minimum till the minimum of the scale is reached. Thereafter, subsequent increments may be granted in the scale of the reemployed post in the usual manner.

(3) In the case of appointment of persons during 'released leave/terminal leave', their pay may be fixed at the minimum of the scale of pay of the civil post of Lower Division clerk/Junior Clerk/Storemen and they will draw leave salary separately from the military authorities. Their pay in accordance with the formula mentioned at (2) above will be fixed from the date of their final discharge from the Army.

(4) The power to fix the pay under this order is delegated to the Administrative Ministries/Departments of the Government of India. For this purpose the Comptroller and Auditor General of India will have the same powers as the Ministries of the Government of India. Orders fixing the pay in such cases should be issued by invoking the provisions of Fundamental Rule 27."

9. Applicants have based their case on OM dated 8.2.83 (Annexure P-5)

which is extracted below:-

"Sub: Fixation of pay of re-employed pensioners

The undersigned is directed to refer to this Ministry's OM No.2(7)/76/6664/D(Civ.I) dated 30.8.1978, and to say that the question of raising the limit of the present ceiling of pension which has to be ignored in fixing the pay on re-employment of ex-servicemen, who retire before attaining the age of 55, has been under the consideration of the Government for some time. The President is pleased to decide that in the case of those ex-servicemen retiring before attaining the age of 55, the pension as indicated below may be ignored in fixing their pay on re-employment.

Ministry of Defense

(i) In the case of Serving Officers, the first Rs.250/- on pension.

(ii) In the case of personnel below Commissioned Officers rank, the entire pension

Note: The pension for the purpose of these orders includes pension equivalent to gratuity and other forms of retirement benefits.

2. These orders will take effect from 25th January, 1983 and the existing limits of military pensions to be ignored infixing pay of re-employed pensioners will, therefore, cease to be applicable to cases of such pensioners who are re-employed on or after that date. In the case of persons who are already on re-employment, the pay may be refixed on the basis of these orders with immediate effect provided they out to come under these orders. If they so opt, their terms would be determined afresh as if they have been re-employed for the first time from the date of these orders. The option should be exercised in writing within a period of six months from the date of these orders. The option once exercised shall be final.

3. This issues with the concurrence of the Ministry of Finance (Department of Expenditure) conveyed vide Secretary (Expenditure)'s Dy. No.286-SE/83 dated 4.2.1983."

10. Applicants have also referred to a letter of Assistant Provident Fund Commissioner of the office of Central P.F. Commissioner dated 1.12.92 sent to Regional Provident Fund Commissioner, Delhi which reads as under:-

"It is confirmed that while fixing the pay of Ex-servicemen in the re-employed post the entire pension should be ignored provided the ex-servicemen was below the rank of commissioned officer in Military service. Copy of the clarification issued vide letter No.P.III/83/PB dated 20.3.92 is also enclosed for your ready reference. The concerned individual's pay may be fixed accordingly under intimation to the undersigned."

11. They also rely upon another letter of the Central Provident Fund Commissioner addressed to Regional Provident Fund Commissioner dated 20.3.92 which is also extracted below:-

"In cases where prior to 1.1.86 whole pension was ignored while fixing the pay of reemployed pensions in terms of Ministry of Finance's OM dated 25.11.58 read with OM dated 8.2.83 of the Ministry of Defence, no adjustment of revised pension would be required while refixing the pay of ex-servicemen in the revised scales of pay. In so far as the question of adjustment of revised pension in the cases where the part of military pension was to be ignored in terms of Ministry of Defence OM dated 8.2.83, is concerned, it may be stated that the CAT Bench at Ernakulam at Chandigarh have held that even in this type of cases, where part of Military pension was to be ignored before 1.1.86, the part of revised pension will continue to be ignored for the purpose of refixation of reemployment of pay in the revised scale after 1.1.86."

12. Having extracted the two OMs and the correspondence, the moot question which arises for decision is whether the respondents have correctly fixed the pay of the applicants on their re-employment in the office of the Organisation as LDC/class IV post applying OM dated 8.2.83. Though in the OA, in particular the relief clause, it has been the case of the applicant that OM dated 31.7.1986 would not be applicable to the fixation of their pay but during the course of argument, counsel for applicant has also relied upon this OM in support of his arguments. It is admitted that Central Civil Services (Fixation of Pay of Reemployed Pensioners) Orders, 1986 (Orders 1986) had come into force w.e.f. 1.7.1986. We have already extracted the office memorandum dated 31.7.1986. This OM clearly spelt out that Orders 1986 were issued "in supersession of all the previous orders on the subject". The language of the OM is simple and does not admit any other interpretation. All orders on the subject "the initial fixation of pay and other benefits on reemployment of ex service men pensioners and also civilian pensioners" have been superseded. All the previous orders or administrative instructions and clarifications etc. have been altered modified and rescinded by the Orders 1986. No exception to any of the orders or instructions or OMs which were issued prior to the orders 1986 came into force has been made in this OM. Applicants who are ex service men pensioners and who were reemployed long after Orders 1986 had come into force would be covered by the Orders 1986 and not by any previous OM which stood superseded by the Orders 1986. The fixation of the pay of the applicant in terms of OM dated 8.2.1983, therefore, was improper. The respondent on discovering the administrative lapse in the matter of fixation of pay of the applicants on their reemployment in the post of LDC/Class IV were perfectly within their right to rectify the mistake and fix the pay of the applicants in accordance with the applicable rules which in this case is Orders 1986.

13. OM dated 31.7.1986 in unequivocal terms has stated that all the previous orders on the subject of fixation of pay on reemployment of retired ex service

Subrahmanyam

men pensioners stood superseded. Faced with this situation the learned counsel for applicants has argued that even in accordance with Orders 1986 the pay of the applicants has been correctly fixed on their initial appointment as LDC/class IV, as the case may be, in the respondent Organization after reemployment of these ex servicemen pensioners. At the same time, counsel for applicant has also fervently argued that the pay of these applicants have been revised and reduced by the respondent without giving any opportunity of hearing to these applicants which is violative of the principles of natural justice. During the course of arguments, counsel for applicant has referred to a copy of the letter No.84577/Org 4 (Civ)(d) dated 28.8.1987 which was issued regarding fixation of pay and regularization of late submission of option certificate exercised by ex service men on their reemployment in civil post. He also referred to Swamy's Fundamental Rules para 13 under FR 27 where it is stated that once fixation was done by the competent authority in exercise of the discretion vested in it under R 27 that authority was not competent under the law to reduce initial pay originally fixed even when such pay was based on some data which subsequently turned to be incorrect. Counsel for applicant also referred to the judgment of the Hon'ble Supreme Court in Director General of Posts and others vs. B.Ravindran and others (1997) 1 SCC 641 and the orders of the Patna Bench of this Tribunal in Uday Pratap Singh and another vs. Union of India and others reported in Swamy's CL Digest 1994/2, order of Chandigarh Bench of this Tribunal dated 14.7.95 in OA No.1026/PB/94 and the order of Ernakulam Bench of this Tribunal dated 22.11.1990 in OA No.283/1990, in support of his argument that the entire pension was ignorable in fixing the pay of these applicants on their reemployment. Conversely counsel for respondents has heavily relied upon the Orders, 1986 extract of which has been reproduced above to controvert the arguments of the counsel for applicant in particular the para 16 of the Orders 1986 that the orders did not intend to give double benefit

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to the applicants ignoring the pension as well as adding the increments for each year of their service rendered in the Army.

14. Since the respondents have not filed their reply to the OA and we are also of the view that the orders of the respondents which are impugned in this OA carry serious civil consequences to the applicants, they could not have been passed by the respondents without giving reasonable opportunity of hearing and following the principles of natural justice enshrined in the doctrine of audi alteram partem. We consider it proper that the impugned orders should be set aside and the matter be remitted back to the respondents for a fresh decision after hearing the applicants. In the regard, we may also point out as appeared from the judgments cited by the applicant that even after the Orders, 1986 certain other OMs and clarifications have been issued on the subject of refixation of the ex servicemen pension on their reemployment in civil post after 1.7.1986 which have neither been referred to by the applicants nor have been submitted on behalf of the respondents. Therefore, the interest of justice would be met if the respondents give opportunity of hearing to these applicants and decide the question of refixation of the pay afresh in accordance with the rules and the law.

15. The question whether FR 27 would come to the rescue of the applicant in case the respondent decided to refix the pay of the applicants at a lower sum is also left open. We do not want to express our view on the question as to how the pay of the applicants is to be refixed on their initial appointment as LDC/class IV post in the respondent organization in accordance with Order, 1986 or subsequent OMs and clarification issued by the Government on the subject lest it causes prejudice/embarrassment to the parties.

16. As regards the second question, it should not detain us much. It is now well settled that excess payment made to a government servant on account of administrative lapse and not as a result of any misrepresentation or fraud played by the employee himself, particularly when the employee had no role to play in



wrong fixation of his pay resulting in excess payment of pay and allowances to him cannot be recovered from the government servant. Suffice to mention the judgment of the Hon'ble Supreme Court in Shyam Babu Verma and others vs. Union of India and others 1994 (27) ATC 121 where this principle of law has been laid down.

17. Learned counsel for respondents though did not file the reply but has argued that at the time of fixation of pay as LDC/class IV these applicants had given an undertaking that in case of any excess payment they would refund the amount in lump sum with interest. He has produced a copy of an option certificate issued and signed by one of the applicants. It is submitted that all other applicants have given similar certificates. The certificate is reproduced below:-

“OPTION CERTIFICATE

I, Ex No.13908972-Y rank HAV (HON/NBSUB) Name DAVIS N.J. re-employed in the office of the Regional Provident Fund Commissioner, Delhi, hereby exercised my option for fixation of pay and allowances from the date of my joining as LDC in this office under the provision of Govt. of India, Ministry of Defence O.M. No. 2(I)83/D(Civ) I dated 8.2.1983.

In case of any excess payment I shall refund the amount in lumpsum with interest.

This option will stand last and final.

(Signature of the individual)

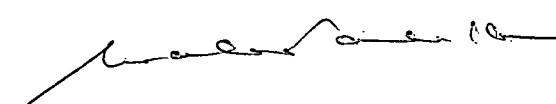
Ex.No.13908972/Y Rank HAV (HON/NB SVS)

Name DAVIS N.J.

Dated: 28 Oct., 1992

COUNTERSIGNED

(RAMINDER SINGH)
A P F C (ADM)
For R P F C”



18. A perusal of this certificate shows that the signatory of the certificate had given his option for fixation of the pay and allowance from the date of joining as LDC in the respondent organization in accordance with OM dated 8.2.1983 and had undertaken that he would refund in lump sum in case of any excess payment. It is not the case of the respondent that some arithmetical or clerical mistake was committed or rule was wrongly interpreted while fixing the pay of the applicant in terms of the OM dated 8.2.1983. Conversely the argument of the counsel for respondent is that the respondent erroneously fixed the pay of the applicant applying OM dated 8.2.83 and that the pay of the applicant should have actually been fixed in accordance with OM dated 31.7.1986. Assuming that all the applicants had signed the option certificate as reproduced above there is no undertaking of the applicants, that they would refund the excess payment in case it was later found that OM 8.2.1983 did not apply. The error in fixation of the pay of the applicant has not occurred on account of some wrong application of the instructions contained in OM dated 8.2.1983 but on account of overlooking OM dated 31.7.1986 which had already superseded OM dated 8.2.1983. Therefore, this argument, would not come to the rescue of the respondent. As a result, we are of the view that the respondent are not entitled to recover the excess payment of salary and allowances paid by the respondents to the applicants who have since retired on attaining the age of retirement and to the applicants who are in service till the date of revision order was passed which are impugned in the OA.

19. We have been told that the applicants who have retired in the year 2002, 2003 and 2004 have not been paid their pension and other pensionary/retrial dues. Applicants would be suffering great hardship. Therefore, it is necessary that the respondent take a decision in the matter at an early date so that the applicant's pension/pay is fixed and the pensionary/retrial benefits are paid to the retired applicants at an early date without further delay.

.....



20. In the totality of the facts and circumstances, we accordingly partly allow the OA. We set aside the orders impugned in the OA details of which has been mentioned in para 8 (i) sub para (a) to (v). The matter is remitted back to the respondent for giving an opportunity of hearing to all these applicants before passing a fresh order in the light of the observation made herein above. The fresh order shall be passed by the respondent within a period of 3 months from the date on which the certified copy of the order is received by the respondent.

21. In case the respondents decide that some over or excess payment of the pay and allowance has been made to the applicant till the date of their retirement or till the date on which impugned orders were passed in the case of employees who are in service, the amount of erroneous overpayment shall not be recovered from the applicants. But it will be open to the respondents to fix the pay and pensionary/retrial benefits of the retired applicants and the pay and allowances of the applicants who are in service in accordance with the order which will be passed by the respondent afresh under the above directions.

22. In case the applicants are not satisfied with the orders of refixation of pension/pensionary/retirement dues or their pay and allowances, as the case may be, by the respondent in accordance with the direction given above, it will be open to them to challenge the order by filing proper proceeding in accordance with law for redressal of their grievances. OA stands disposed of.

S.K. NAIK
(S.K. NAIK)
Member (A)

'sd'

M.A. KHAN
(M.A. KHAN)
Vice Chairman (J)

26/5/05