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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A.No.2773/92.

Date of decision

28.5.1993

Shri Surendra Singh ... Applicants
and Others.

v/s

Union of India ... Respondents
and Others.

The Hon'ble Shri B.S. Hegde, Member (Judicial).

For the Applicant ... Shri H.N. Verma, counsel.

For the Respondents ... Ms. Pretima Mittal, Counsel.

(1) Whether Reporters of local papers may be
allowed to see the judgement ?

(2) To be referred to the Reporter or not ?

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Delivered by Hon'ble Shri B.S. Hegde, Member (J)

The applicant has filed this application
under Section 19 of the Administrative Tribunals
Act, 1985 being aggrieved by the order of re-fixation
of pay of the applicants vide Office Order No.F.32-
1/86-Estt-I, dated 7th January, 1992 of the National
Archives of India, which is at Annexure P-I.

2. The applicants, on retirement from Army, were
absorbed in the National Archives of India as Sepoys

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in the payscale of Rs. 196-232 and later pursuant to revised scale of Rs. 750-1025. Their main contention was that the pay-fixation in the National Archives of India was lower than the payscale drawn by them in the Army. It is not in dispute that all the applicants retired from the Army before attaining the age of 55 years. The respondents fixed their payscale in the minimum scale of Rs. 196-232 pending final fixation. The applicants joined the National Archives on 2.2.1978, 8.12.1980, 8.6.1981, 26.2.1984, 15.9.1984 and 13.8.1985 respectively. In 1988, consequent on the promulgation of the CCS(RP) Rules, 1986, the pay-scales of the applicants were suo moto revised vide order dated 6.5.1988 giving retrospective effect with effect from 1.1.1986 which is at Annexure P-I. The statement at Annexure P-I shows refixation from retrospective effect on the date of their re-employment in Group 'D' civil post in the National Archives of India. The emoluments situation is reiterated in para 4.6 of the O.A.

3. The contention of the Learned Counsel for the applicant is that the rules cannot be given retrospective effect unless the Act permit them to do so to the detriment of the interest of the employees. Further, the

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refixation or reducing the pay is not only unreasonable but also arbitrary and against the principle of equal pay for equal work. The applicant represented to the respondents on 3.4.1992, which is at Annexure P-8, which has been turned down by the respondents. Further, they contend that those who are similarly placed in other Ministries like Defence, Home and C.A.O., while revising their pay subsequent to the Pay Commission's recommendations, had not been reduced, therefore, there is no justification to refix their pay reducing them which is detrimental to their interest that too from retrospective effect which is not only discriminatory but also arbitrary and against the principle of natural justice.

4. As against that, the respondents, in their reply, denied the contention of the applicants and reiterated that in respect of the applicants the order of re-fixation of their pay in the scale of Rs. 196-232 (pre-revised) and Rs. 750-940 (revised scale) and not the revision of the pay scale under CCS(RP) Rules, 1986. They further contend that their pay in the pre-revised scale fixed at higher stage by allowing increment of each year of service which the officer has rendered before the retirement in the military service. Since their cases were referred to the competent authority

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for delay for option with reference to Ministry of Defence, the cases received back from the competent authority with the remarks that under Ministry of Defence O.M. dated 8.2.1983 once pension is fully ignored, they have to be fixed minimum of the pay-scale. Since pay at the minimum together with the gross pension exceed pre-retirement pay, there is no hardship and no advance increment is justified.

5. I am not inclined to agree with the views expressed by the respondents in their reply. The short question for consideration is whether the refixation of their pay subsequent to the Pay Commission is in order and whether the respondent is justified to give a retrospective effect in reducing the pay and the answer is in the negative. In this connection, the counsel for the applicant relied upon FR 27 which states " once fixation was done by competent authority in exercise of the discretion vested in it under FR 27, the 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. Secondly, in support of his contention he cited Principal Bench's decision in ATR 1988(2)CAT 510

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CS Bedi vs. UOI wherein it is held rectification of an order resulting in serious civil consequence to an employee cannot be done without issuing him a show-cause notice setting out of the circumstances and afford him an opportunity of hearing to state his case which is a basic requirement of principle of natural justice. Further, in support of his contention whether the respondent is empowered to recover the alleged over-payment giving a retrospective effect, he cited a decision of the Calcutta Bench in Nilkantha Shah Vs. UOI 1987(3) CAT SLR 306 wherein it was held that one cannot take double benefit of fixation under State as well as Central Scales. Whenever over-payment has not been caused by employees' mistake, recovery should be waived.

6. Further, the question of rectification of pay of ex-servicemen obtaining re-employment in Government service has been duly considered by the Full Bench decision in B.Ravindran Vs D.G.Posts 1991 (15) ATC 195 wherein it was held that the administrative instructions cannot be issued with retrospective effect so as to adversely affect persons who have enjoyed any benefit under law or earlier instructions issued thereunder. Hence, the clarifications issued in 1985 later will have the retrospective effect. Therefore, fixation of pay of establishment on their re-employment in Government service will have to be done on the basis of the

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instructions in force at the relevant time before the issuance of the clarifications. Those clarifications will have no retrospective operation so as to prejudicially affect the pay already fixed in respect of ex-service men.

7. In the light of the aforesaid decisions, I am satisfied that the alleged re-fixation of pay by the respondents vide their order dated 7-1-1992 is not valid and deserves to be quashed. Accordingly, the respondents are hereby directed not to recover the alleged over-payment made to the applicants by virtue of re-fixation of pay. If the emoluments drawn by the applicants by virtue of the revised pay are more than what they had been drawn in the pre-revised scale then only the respondents are empowered to re-fix the pay after giving notice to them and make necessary adjustment after hearing the applicants.

8. In the facts and the circumstances, the O.A. is allowed and disposed with the following directions to the respondents :-

(1) In the facts and circumstances of the case, the refixation pay order dated 7-1-92 (Annexure P-1) is hereby quashed and set aside for the reasons stated above.

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(2) Consequently, the Respondents are not resort to any deductions or recovery from the applicants for the alleged drawn of pay in re-revised pay in the scale.

9. Accordingly, this O.A. is allowed, but with no order to costs.

B.S. Hegde 28/5/93
(B.S. HEGDE)
MEMBER (JUDICIAL)