

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 6<sup>th</sup> day of November 1997.

Original Application no. 225 of 1995.

Hon'ble Dr. R.K. Saxena, Judicial Member  
Hon'ble Mr. S. Dayal, Administrative Member.

1. Lajpat Rai, s/o Late Shri Karam Chand, r/o E3/1369, Shaheed Nagar, Agra.
2. O.P. Kurian, s/o Late Kurian Phillopose, r/o 63A/37 Kirti Nagar, Agra Cantt.
3. Ramasish Chatterjee, s/o Late R.R. Chaterjee, r/o P 28, Dayanand Colony, Agra.
4. Lakhan Singh, s/o Late Rayam, r/o Niagla Jai Ram, P.O. Akola, Agra.
5. S.P. Bali, s/o Late Shri D.M. Bali, r/o 37A/12 Madhu Nagar, Agra.
6. Nam Deo Owe, s/o Rundrik, r/o 36/74, Deori Road, Agra.
7. Ram Kumar, s/o Shri N. Ranjan, r/o 74 Defence Estate, Agra.
8. Trilok Chand, s/o Sri Banarsi Das, r/o 14, Dayanand Colony, Agra.
9. Devi Dayal, s/o Shri Ram Deen, r/o Nagla Latoori Singh, Deveri Road, Agra.
10. A.R.P. Selvam, s/o Late Shri A Swamy, r/o 37A/2A, Madhu Nagar, Agra.
11. Pritam Singh, s/o Shri Banta Singh, r/o E 3/1935, Shaheed Nagar, Agra.
12. D.B. Moses, s/o late G. Moses, r/o 63A/58, Defence Colony, Agra.
13. N.D. Badada, s/o Late S.D. Badada, r/o 203, West Arjun Nagar, Agra.
14. Noor Alam, s/o Late Mohd. Isha, r/o 34, Govind Vihar, Deori Road, Agra.
15. Surya Bhan Sharma, s/o late R.S. Sharma, r/o 75A, Dashrath Kunj, West Arjun Nagar, Agra.
16. S.P. Kapoor, s/o Sri C.L. Kapoor, r/o 37/219A, Amrit Puri, Bindu Katra, Agra.
17. S.L. Chopra, s/o late Gian Chand, r/o 37A/87A, Madhu Nagar, Agra.

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18. Bal Krishan, s/o Sri Lallu Singh, r/o Nai Abadi, Gumat, Deori Road, Agra.
19. Ram Nath, s/o Sri Lala Ram, r/o 108/5, Gumti, Takhat Pahalwan, Agra.
20. R.K. Asija, s/o Sri Ram Ditta Asija, r/o F-593, Kamla Nagar, Agra.
21. Jagdish Prasad, s/o late Devi Sahaya, r/o 36/344/384, Kasturi Vihar, Agra.
22. Sheo Raj Bali, s/o Sri Godilal, r/o 203, West Arjun Nagar, Agra.

... Applicants.

C/A Shri A. Chatterjee

Versus

1. Union of India, through Ministry of Defence, New Delhi.
2. The Commandant, 509 Army Base Workshop, Agra.
3. Establishment Officer, EME O (Civ), 509, Army Base Workshop, Agra.

... Respondents.

C/R Shri Amit Sthekar.

O R D E R

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant seeks following reliefs through this application:-

- i. a direction to set aside the order dated 16.02.95 and direction to the respondents to give applicant full salary as earlier.
- ii. award the cost of the application.

3. The facts as given in the application are that

the applicants are ~~that the applicants are~~ re-employed ex-serviceman who retired from Military service before attaining age of 55 years. They were appointed in ~~the~~ trade different trades after written test and interview in 509, Army based work shop at Agra from 1982 to 1984 in the pay scale of Rs. 380-12-500-EB-15-560. Ministry of Defence Govt. of India, issued letter no. 87089/1113/EME/Civ-2/473/D (Civ-i) dated 12.2.88 for fixing of pay of re-employed pensioners in civilian employment. The applicants started receiving pay on the basis of this order of fixation of their pay. They continue to receive the pay till the order no. D O Part-2 27/Est-Ind dated 16.02.95 reducing and refixing <sup>the</sup> fixation of pay of the applicants was passed.

4. Arguements of Shri A. Chatterjee learned counsel for the applicant and Shri A. Sthelekar learned counsel for the respondents were heard. Pleadings on records have been taken into consideration.

5. Order dated 12.02.88 shows that the pay of one of the applicant Shri S.N. Chopra who was re-employed as Radar Mechanic at 509 Army work shop at Agra was fixed at Rs. 416 pm w.e.f. 2.2.84 in the pay scale of Rs. 380-12-500-EB-15-560 in addition to his pension and pension equivalent of gratuity but without ad-hoc increase in terms of O.M. of Ministry of Defence dated 15.07.60 and 08.02.83. The O.M. dated 15.07.60 has been annexed as annexure CA-1(A) to the counter affidavit. According to this O.M. re-employed pensioners were to be given minimum stage of ~~whatever~~ the latest prescribed scale of pay for the posts in which they were re-employed in addition they were permitted to draw separately any pension sanctioned to them and retain any other retirement benefits e.g. Government's contribution to a Contributory

Provident Fund, gratuity, commuted value of pension etc. The O.M. also allowed for fixation of pay at higher scale by allowing one increment for each year of service rendered before retirement in the post not lower than that in which he reemployed if it was felt that fixation at minimum of the prescribed pay scale would cause undue hardship, provided that the total amount of initial pay and gross amount of pension or pension equivalent other form of retirement benefits did not exceed the pay they drawn before the retirement or Rs. 3000/- which ever was less. If there were any other retirement benefits, they were to be paid in full and necessary adjustment were to be made in the pay to ensure that the total of pay, pensionary benefits were within prescribed limits. The O.M. dated 08.02.83 laid down that w.e.f. 25.01.93 existing limits of Military pensioners were to be ignored in fixing pay of re-employed pensioners. Those who were already on re-employment were to be given option to be exercised within 6 months from the date of these orders, whether they opted to come under provisions of these orders. Since the applicant's were employed earlier than 25.01.83, the audit authority suggested reduction in their pay which led to the impugned order. The respondents in their counter affidavit have defended this action of passing the impugned order by stating that the pay had to be fixed at the minimum of pay scale after application of orders dated 08.02.83. If the applicants were allowed to retain their pension and also granted advance increments they would be getting double benefits which were never contemplated under any of the orders. The respondents have stated in the counter affidavit that Trivandrum bench of Central Administrative Tribunal had upheld the ruling of the Department of Personnel that where the entire pension is ignored the pay is to be fixed at the minimum scale of pay under the orders dated 08.02.83. This ruling

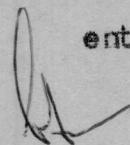
has been challenged in the Apex Court and the judgment of the Apex Court was awaited. Annexures OA-5 and OA-9 which are letters of Controller General of Defence Accounts dated 6.10.93 and 29.10.93 show that advance increment could, however, be granted in case the minimum of the scale plus gross pension and pension equivalent of gratuity fell short of last pay drawn. The respondents have taken the stand that the initial pay fixation of the applicant on their re-employment was erroneous, and re-fixation of pay simply corrected the errors made earlier.

6. The main ground on which the impugned order has been assailed by the applicants is that the order was passed without giving the applicant any opportunity to show cause, although the order visited them with civil consequences. The respondents have cited AIR 1980 SC 1461 to stress the contention that misinterpretation of rule resulting in an error could be rectified at any stage. This begs the issue raised by the applicants, who are not challenging the authority of the Govt. to re-fix the pay ~~butxxkx~~ but are objecting to an order passed behind their back without giving them any opportunity to show cause specially when the order visit them with adverse civil consequences. The initial pay fixation was done in 1988 and the refixation was done on 16.2.1995. Thus the applicant had been paid at the rate fixed at the time of initial pay fixed for seven years before the respondents undertook to rectify their mistake. The applicants are within their rights in making this contention that they were entitled to show cause notice and the least the respondents could have done was to issue show cause notice to them inviting their objections to the proposed action of re-fixing

of their pay downwards before passing orders of re-fixation.

7. Another contention of the applicants is that their pay was fixed under an order of the Government of India Ministry of Defence while the order of re-fixation was made by established officer filed in 509. Army Based Head Quarter at Agra who ~~made~~ ~~xxestxalixhadxfikxerxfikxidxi~~ had no authority to do so. This contention of the applicant is also valid because the respondents have in their counter affidavit admitted that the order of re-fixation of pay have been passed by the Director General of E.M.E in consultation with Controller General of Defence Accounts. It is not clear under what authority the orders of Government were revised by the Authority subordinate to the Government.

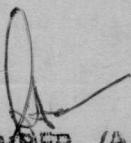
8. We, therefore, set aside the impugned order dated 16.2.1995 and direct the respondents to give opportunity of showing cause of the applicants regarding re-fixation of their pay before taking any decision to revise the pay as initially fixed in case of the applicant at the time of induction in civilian service. We also direct that those applicants who have retired in the meanwhile or are retiring before the orders of giving opportunity to show cause are passed, shall be given provisional terminal benefits based on notional fixation of pay under O.M. dated 8.2.83 subject to upward revision in case the applicants are found entitled to advance increments after issuance of

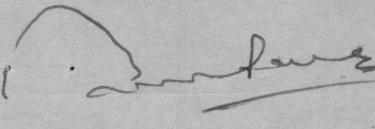


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show cause notice. These directions shall be carried out by the respondents within a period of four months of the receipt of a copy of this order from the applicants.

9. There shall be no order as to costs.

  
MEMBER (A)

  
MEMBER (B)

am/