CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 30 JAN 1989

APPLICATION NO (S) 346 to 349 C/W 525 /88(F)

W.P. NO (S) /

Applicant (s) Respondent (s)

Shri D. Devasahayam & 4 Ors V/s The Director General, Telecom, New Delhi & 5 Ors

To

1. Shri D. Devasahayam
T.O.A.(TRA)
Office of the Telecom District Engineer
Sujatha Complex
Hubli - 580 029

2. Shri S.S. Shivapur
T.O.A.
Office of the Telecom District Engineer
Sujatha Complex
Hubli - 580 029

3. Shri S.F. Bagban
Telephone Operator
Sub Fault Control
Coaxil Building
Hubli - 580 020

4. Shri Shivaji Jadhav
T.O.A.
Office of the Telecom District Engineer
Sujatha Complex
Hubli - 580 029

5. Shri C.C. Sawkar
Telephone Operator
Office of the Telecom District Engineer
Sujatha Complex
Hubli - 580 029

6. Dr. M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
Ist Main, Gandhinagar, Bangalore - 560 009

7. The Director General
Telecommunications
Sanchar Bhavan
New Delhi - 110 001

8. The General Manager
Telecommunications
Karnataka Circle
Bangalore - 560 009

9. The Telecom District Engineer
Hubli - 580 021

10. The Divisional Engineer
Telegraphs
Hubli - 580 002

11. The Assistant Chief Accounts Officer
Office of the Telecom District
Engineer
Hubli - 580 021

12. The Accounts Officer (M) (STR)
Office of the General Manager (M)
(STR)
No. 39, Rajaji Salai
Madras - 600 001

13. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/~~STAY~~/~~INTERIM ORDER~~ passed by this Tribunal in the above said application(s) on 17-1-89.

30-1-89

DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE SEVENTEENTH DAY OF JANUARY 1989

Present : Hon'ble Shri P. Srinivasan ... Member (A)

APPLICATIONS No.346 TO 349/88(F)
C/w 525/88(F)

Sri D. Devasahayam,
T.O.A.(TRA)
O/o Telecom District Engineer,
Sujatha Complex, Hubli-580 029.

Sri S.S.SHivapur,
T.O.A.,
O/o Telecom District Engineer,
Sujatha Complex,
Hubli-580 029.

Sri C.C. Sawkar,
Working as Telephone
Operator,
O/o the Telecom Dt.Engineer,
Sujatha Complex,
Hublie-580 029.

Sri S.F. Bagban,
T.C. Sub Fault Control,
Coaxil Building,
Hubli - 580 020.

Sri Shivaji Jadhav,
TOA,
Office of Telecom District Engineer,
Sujatha Complex, Hubli-580 029. Applicants

(Dr. M.S.Nagaraja ... Advocate)

v.

TheDirector General,
Telecom, New Delhi-110 001.

The General Manager,
Telecom, Karnataka Circle,
Bangalore.

The Telecom District Engineer,
Hubli-580 021.

The Divisional Engineer,
Telegraphs,
Hubli-580 002.

The Assistant Chief Accounts Officer,
O/o Telecom District Engineer,
Hubli-580 021.

The Accounts Officer (M)(STR),
O/o the General Manager(M)(STR),
No.39, Rajaji Salai,
Madras-1. Respondents

(Shri M.S.Padmarajaiah .. Advocate)

These applications came up for hearing before this Tribunal today. Hon'ble Shri P. Srinivasan, Member (A), made the following.

ORDER

All these five applicants are ex-servicemen re-employed in civilian service in the Telecommunications Department on different dates between 9.8.1979 and 15.7.1983. The posts to which they were appointed carried the pay scale of Rs.260-480. However, their initial pay in that scale had to be fixed in terms of Memorandum dated 25.11.1958 issued by the Government of India. In addition, dates of annual increments had also to be determined. Normally the pay of a re-employed pensioner had to be fixed at the minimum of the scale but in cases of hardship, a higher pay could be allowed. A re-employed pensioner could also draw separately any pension sanctioned to him in his earlier employment and also retain any other form of retirement benefit to which he was eligible in respect of his former employment. The initial pay fixed on re-employment plus gross pension and/or the pension equivalent of other retirement benefits could not exceed the pay he drew before his retirement or Rs.3,000/- whichever was less. Individual orders were passed in the cases of the applicants on different dates between 28.7.1984 and 27.6.1985 fixing their initial pay at the time of re-employment as also the pay to be drawn by them from time to time till the date of those orders. They drew pay and allowances in accordance with that fixation till 3.2.1988. On 3.2.1988, separate orders were passed in respect of the applicants refixing their initial pay as on

the dates of their re-employment as well as the pay to which they were eligible from time to time till 3.2.1988 and beyond. In the refixation so made, the initial pay allowed earlier was reduced in some cases and in others, the pay fixed on dates subsequent to re-employment was reduced. As a result of these orders, excess amounts paid in pursuance of the earlier orders of pay fixation had to be recovered from the applicants. The grievance of the applicants is that the second set of orders issued on 3.2.1988 reducing the pay already fixed in their cases, which caused substantial financial loss to them had been passed without giving them an opportunity of being heard. In the second set of orders refixing their pay, no reason had been given for the downward revision of their pay except to say that it was being made in pursuance of a letter dated 10.8.1987 said to have been issued by the Director General, Telecommunications, thecontents of which were unknown to the applicants.

2. Shri S.K. Srinivasan, appearing for the applicants, submitted that the respondents themselves having initially fixed the pay to which the applicants were eligible from time to time after their re-employment, they could not alter that fixation to the disadvantage of the applicants without giving them an opportunity of being heard. He, therefore, submitted that the respondents should be directed to confront the applicants with reasons for which it was considered necessary to disturb the earlier fixation and to consider their objections before proceeding to refix their pay.

3. Shri M.S. Padmarajaiah, appearing for the respondents, submitted that an error had been committed in the earlier orders

fixing the pay of the applicants on their re-employment in civilian service and the pay to be drawn by them from time to time thereafter. Though the fixation of pay of re-employed pensioners is basically governed by orders issued by the Government on 25.11.1958, it was also subject to orders issued from time to time after that date, but the effect of these orders had not been properly taken into account at the time the pay of the applicants was fixed in the first instance. The DG, Telecom, by his letter dated 10.8.1987 addressed to the General Manager, Telecom, Bangalore, issued instructions as to how the initial pay and the pay to be drawn subsequently by re-employed pensioners should be fixed with reference to the letter dated 24.11.1958 and subsequent instructions bearing on the subject. The cases of the applicants were reviewed in the light of those instructions resulting in the downward fixation of their pay. The initial fixation of pay suffered from an error insofar as it did not take into account instructions bearing on the subject issued from time to time. The respondents were entitled to rectify that error without giving the applicants an opportunity of being heard.

4. I have considered the rival contentions carefully. There is no doubt that a patent error committed by its officials does not preclude the Government from rectifying it and such rectification does not amount to a punishment requiring an opportunity of being ~~xxxx~~ heard being given to the affected officials. What has happened in these cases is that the pay of the applicants was initially fixed and the orders fixing their pay purported to act in accordance with the extent instructions on the subject. The revised orders dated 3.2.1988 resulting in a downward revision

of their pay are said to have been issued on the basis of a letter dated 10.8.1987 by the Director General, Telecom, in which he had pointed out that the pay of re-employed pensioners should be fixed in accordance with the Memorandum dated 25.11.1958 read with instructions issued later. The instructions issued subsequent to 25.11.1958 to which the letter of the DG, Telecom, is stated to have drawn attention were already there when the pay of the applicants was fixed in the first instance and the orders passed then alluded to these instructions. The authorities appear to have felt later that the effect of these subsequent instructions on pay fixation had not been fully understood and therefore the DG, Telecom, issued instructions on 10.8.1987 explaining the correct position in this regard. Thus it cannot be said that a patent error in the original pay fixation was being sought to be rectified by the subsequent fixation: the later fixation purported to proceed from a different appreciation of the instructions on the subject which was claimed to be the correct one. As already stated, the contents of the letter dated 10.8.1987 issued by the DG, Telecom, were not conveyed to the applicants leaving them guessing as to why their pay was being revised downwards. In these circumstances, I am of the view that the applicants should indeed have been given an oppottunity of being heard, after confronting them with the reasons for which the respondents wished to revise the fixation of their pay.

5. In view of the above, the respondents are directed to give the applicants anopportunity of being heard before altering the fixation of their pay. The applicants should be

told of the precise nature of the mistake occurred in the earlier orders and the manner in which it is sought to be rectified and their objections should be heard before coming to a final decision. It goes without saying that till this process is completed, no recovery should be effected from the applicants of alleged over-payments made in the past.

6. All the applications are disposed of on the above terms, leaving the parties to bear their own costs.

Sd/-
MEMBER (A)

TRUE COPY

bsv

DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE