

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.2240 OF 2011

New Delhi, this the 5<sup>th</sup> day of January, 2017

CORAM:

**HON'BLE SHRI V.N.GAUR, ADMINISTRATIVE MEMBER**

**AND**

**HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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1. Shri Kuldeep Kumar,  
S/o Late Shri Pritam Das,  
R/o H.No.248, Sec-09,  
R.K. Puram, New Delhi
2. Sh. Ravinder Singh,  
S/o Sh. Bhagwan Singh,  
R/o H.No.1047, Gali No.32,  
DDA Flats, Madangir, New Delhi
3. Sh. N.S. Rawat,  
S/o Sh. Anand Singh Rawat,  
R/o N-12/A-3, L Pkt. Dilshad Garden,  
Delhi
4. Sh. Narender Singh,  
S/o Late Shri Shyam Singh,  
R/o I-350, Sarojini Nagar,  
New Delhi-110023
5. Sh. V.P. Bhardwaj,  
S/o Late Shri Son Pal Sharma,  
R/o D-1/774, Gali No.07-B,  
Shiv Gali, Ashok Nagar,  
Shahdara, Delhi-110093
6. Sh. R.P. Maurya,  
S/o Sh. Prem Chand Maurya,  
R/o L-119, Sarojini Nagar,  
Delhi-110023
7. Sh. M.C. Azad,  
S/o Late Shri Prabhati Ram,  
R/o Q.No.618, Sect.02, Type-II,  
Sadiq Nagar, New Delhi-110049

8. Sh. Devender Kumar,  
S/o Sh. Balak Ram,  
R/o Vill. & PO Kanona,  
Distt. Bahadurgarh, Jhajjar,  
Haryana
9. Ms. Sunita Dass,  
S/o Sh. RR Diwan,  
R/o 244-D, JG-3, Vikas Puri,  
New Delhi
10. Sh. Birender Singh,  
S/o Late Shri Laxman Singh,  
R/o C-237/5,  
Pravatiya Anchal,  
Sant Nagar, Burari,  
New Delhi
11. Sh. Vikas Guwalani,  
S/o  
R/o
12. Sh. Suraj Mal,  
S/o Sh. Rajinder Singh,  
R/o H.No.13, Gali No.05,  
Ashok Vihar, Phase-III,  
Gurgaon, Haryana
13. Sh. Rainder Ram,  
S/o Sh. Ram Prasad,  
R/o A-29, Gali No.2,  
Madhu Vihar, Delhi-110089
14. Sh. Siya Ram,  
S/o Late Shri Rajo Prasad,  
R/o A-145/50, Krishna Puri,  
Gali No.02, Mandawali,  
Delhi-110092
15. Sh. D.S. Rawat,  
S/o Sh./Lpk Man Singh,  
R/o C-213, IInd Floor,  
Pandav Nagar,  
Delhi-110092
16. Sh. Ashok Aggarwal,

S/o Sh. Jagdish Prasad,  
R/o 172, Sec I, Type III  
Sadiq Nagar, New Delhi-110049

17. Sh. Sushil Kumar,  
S/o Late R.K. Prasad,  
R/o C-229, 1<sup>st</sup> Floor,  
Hari Nagar, Clock Tower,  
New Delhi-110064

18. Sh. P.R. Meena,  
S/o  
R/o

- Applicants

(By Advocate: Mr. M.D. Jhangra for Mr. M.K. Bhardwaj)

Versus

Union of India & Ors.

1. The Secretary,  
Ministry of I & B,  
Shastri Bhawan,  
New Delhi
2. The Chief Executive Officer,  
Prasad Bharati,  
Mandi House, New Delhi
3. The Director General,  
Doordarshan Kendra,  
PTI Building, Parliament Street,  
New Delhi
4. The Director,  
CPC Khel Gaon,  
New Delhi

- Respondents

(By Advocate: Ms. Vertika Sharma)

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### **ORDER**

**Per Raj Vir Sharma, Member(J):**

The applicants have filed this Original Application under  
Section 19 of the Administrative Tribunals Act, 1985, seeking the following

reliefs:

- õ(i) To quash and set aside the impugned order dated 06.05.2011 and restore order dated 18.06.2010.
- (ii) To direct the respondents to restore the pay of the applicant as fixed vide order dated 18.06.2010 and release all arrears of pay with 18% interest.
- (iv) To allow the OA with exemplary costs.
- (v) To pass any such other order as this Honøble Tribunal may deem fit and proper in the facts and circumstances of the case.ö

2. Resisting the O.A., the respondents have filed a counter reply.

The applicants have also filed a rejoinder reply thereto.

3. It has been contended by the applicants that the impugned order dated 6.5.2011 was issued by the respondents without application of mind and in violation of the principles of natural justice. The pay of the applicants fixed in accordance with O.M. dated 13.11.2009 issued by the Ministry of Finance, vide order dated 18.6.2010, could not have been reduced by the respondents by issuing the order dated 6.5.2011. Note 2A below Rule 7 of the CCS (RP) Rules, 2008, was not applicable to the case of the applicants for fixation of their pay. In support of their case, the applicants placed reliance on the decision of the Honøble Supreme Court in **Bhagwan Shukla Vs. Union of India and others**, (1994) 6 SCC 154, where it has been held thus:

õThat the petitioner's basic pay had been fixed since 1970 at Rs.190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs.181 p.m. from Rs.190 p.m. in 1991 retrospectively w.e.f. 18.12.1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the

department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. 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. Since that was not done the order (memorandum) dated 25.7.1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17.9.1993 as well as the order (memorandum) impugned before the Tribunal dated 25.7.1991 reducing the basic pay of the appellant from Rs.190 to Rs.181 w.e.f. 18.12.1970.ö

4. *Per contra*, it has been contended by the respondents that by the order dated 18.6.2010 the pay of the applicants was not re-fixed in accordance with the O.M. dated 13.11.2009 issued by the Ministry of Finance and, therefore, the said order dated 18.6.2010 was defective. By the impugned order dated 6.5.2011(Annexure A/1) the mistake that had crept in the order dated 18.6.2010, bid, has been rectified, and the pay of the applicants has been re-fixed in the 6<sup>th</sup> CPC revised pay scales as per Note 2A below Rule 7 of the CCS (RP) Rules, 2008, and Illustration 4A appended thereto and also in accordance with the O.M. dated 13.11.2009, *ibid*. Therefore, no prejudice has been caused to the applicants.

5. We have carefully perused the records, and have heard Mr. M.D. Jhangra for Mr. M.K. Bhardwaj, the learned counsel appearing for the applicants, and Ms. Vertika Sharma, the learned counsel appearing for the respondents.

6. The applicants were working as Floor Assistants (Rs.4000-6000) with the respondent-Prasar Bharati. At the relevant point of time, they were granted 1<sup>st</sup> financial upgradation (Rs.6500-10500) under the ACP Scheme for their having completed 12 years of regular service as Floor Assistants (Rs.4000-6000/-). The pay of the applicants was fixed in PB-2 with GP Rs.4200/- corresponding to the pre-revised pay scale of Rs.6500-10500/- with effect from the dates opted by them.

7. In view of the recommendation of the 6<sup>th</sup> CPC for merger of three pre-revised pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 and for replacing them by the revised pay structure of grade pay of Rs.4200 in the pay band PB-2, and further recommendation of the 6<sup>th</sup> CPC that in case it was not feasible to merge the posts in these pay scales on functional consideration, the posts in the pay scales of Rs.5000-8000 and Rs.5500-9000 should be merged with the posts in the scale of Rs.6500-10500 being upgraded to the next higher grade in the pay band PB-2 with grade pay of Rs.4600 corresponding to the pre-revised scale of Rs.7450-11500, and that in case a post already existed in the scale of Rs.7450-11500, the post being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500, the Government of India, Ministry of Finance, Department of Expenditure, vide O.M. dated 13.11.2009, decided that the posts which were in the pre-revised pay scale of Rs.6500-10500 as on 1.1.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 in the pay band PB-2

would be granted grade pay of Rs.4600 in the pay band PB-2 corresponding to the pre-revised scale of Rs.7450-11500 with effect from 1.1.2006. It was also decided that in terms of Rule 6 of CCS (RP) Rules, 2008, revised pay of Government servants in the pre-revised scale of Rs.6500-10500 who were earlier granted grade pay of Rs.4200 and who have already exercised their option for drawal of pay in the revised pay structure in the format prescribed in the Second Schedule to the rules would be fixed again in accordance with Illustration 4A appended to CCS (RP) Rules, 2008. Accordingly, the respondent-Prasar Bharati issued order dated 5.4.2010 communicating the decision of the Government of India contained in the O.M. dated 13.11.2009, *ibid*, to all concerned for implementation. Subsequently, a clarification was also issued by the respondent-Prasar Bharati reiterating the said decision of the Government of India.

8. Note 2A below Rule 7 of the CCS (Revised Pay) Rules, 2008, reads thus:

“Note 2A- Where a post has been upgraded as a result of the recommendations of the Sixth CPC as indicated in Part B or Part C of the First Schedule to these Rules, the fixation of pay in the applicable pay band will be done in the manner prescribed in accordance with Clause (A)(i) and (ii) of Rule 7 by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and rounding the resultant figure to the next multiple of ten. The grade pay corresponding to the upgraded scale as indicated in Column 6 of Part B or C will be payable in addition. Illustration 4A in this regard is in the Explanatory Memorandum to these Rules.”

9. Illustration 4A appended to the CCS (Revised Pay) Rules, 2008, is reproduced below:

Illustration 4A: Pay fixation in cases where posts have been upgraded e.g. posts in pre-revised pay scale of Rs.3050-75-3950-80-4590 to Rs.3200-85-4900 scale.

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|---|---|
| 1. Existing Scale of Pay  | Rs.3050-75-3950-80-4590<br>(corresponding to Grade Pay Rs.1900) |
| 2. Pay Band applicable  | PB-1 Rs.5200-20200  |
| 3. Upgraded to the Scale of Pay   | Rs.3200-4900<br>(corresponding to Grade Pay Rs.2000)            |
| 4. Existing basic pay as on 1.1.2006  | Rs.3125   |
| 5. Pay after multiplication by A factor of 1.86   | Rs.5813(Rounded off to Rs.5820)                                 |
| 6. Pay in the Pay Band PB-2   | Rs.5820   |
| 7. Pay in the pay band after including benefit in the pre-revised scale of Rs.3050-4590,if admissible | Rs.6060   |
| 8. Grade pay attached to the Scale of Rs.3050-4590  | Rs.2000   |
| 9. Revised basic pay ó Total of pay in the pay Band and grade pay                                     | Rs.8060ö  |

10. In spite of the aforesaid clear decisions of the Government of India and Prasar Bharati, referred to in paragraph 7 above, it is found that the order dated 18.6.2010 was issued by the Administrative Officer, Prasar Bharti, Central Production Centre, Doordarshan, Asiad Village Complex, New Delhi, re-fixing the pay of the applicants without having regard to Note 2A below Rule 7 of the CCS (Revised Pay) Rules, 2008 and Illustration 4A appended to the CCS (Revised Pay) Rules, 2008. Therefore, the respondent-Prasar Bharati again issued the order dated 6.5.2011 re-fixing the pay of the applicants in accordance with Note 2A below Rule 7 of the CCS (Revised



Pay) Rules, 2008 and Illustration 4A, *ibid*, and correcting the mistake that had crept in the order dated 18.6.2010, *ibid*. The applicants have not challenged the legality and/or validity of the O.M. dated 13.11.2009 issued by the Ministry of Finance, and the decision and clarification contained in the order dated 5.4.2010 and O.M. dated 7.6.2010 issued by the respondent-Prasar Bharati in the matter of re-fixation of pay of the applicants and other similarly placed persons. By the impugned order dated 6.5.2011 the re-fixation of pay of the applicants is found to have been done in accordance with the O.M. dated 13.11.2009, *ibid*, issued by the Ministry of Finance, and the corresponding order and clarification issued by the respondent-Prasar Bharati. The applicants have failed to demonstrate before this Tribunal that the re-fixation of their pay vide order dated 18.6.2010 was done in accordance with the O.M. dated 13.11.2009, *ibid*. It is rather found by us that the respondent-Prasar Bharati has rectified their mistake that had crept in the order dated 18.6.2010, by issuing the order dated 6.5.2011 re-fixing the pay of the applicants in accordance with the O.M. dated 13.11.2009 issued by the Ministry of Finance. When the applicants' claim is that their pay ought to have been re-fixed in accordance with the O.M. dated 13.11.2009, *ibid*, and when by order dated 6.5.2011 the pay of the applicant is found to have been re-fixed in accordance with the O.M. dated 13.11.2009, *ibid*, no prejudice can be said to have been caused to the applicants on account of not affording the opportunity to them to make representation. Therefore, we find no scope to interfere with the impugned

order dated 6.5.2011 on account of non-affording of any opportunity to the applicants to make representation. This view of ours is fortified by the decision of the Honøble Supreme Court in **State of Karnataka Vs. Mangalore University Non-teaching Employees Association and others**, AIR 2002 SC 1223, where it has been held by the Honøble Supreme Court that in all cases of violation of principles of natural justice the Court exercising jurisdiction under Article 226 of the Constitution need not necessarily interfere and set at naught the action taken. The genesis of the action contemplated, the reasons thereof and the reasonable possibility of prejudice are some of the factors which weigh with the Court in considering the effect of violation of principles of natural justice. When indisputably the action taken is within the parameters of the Rules, it is difficult to visualize any real prejudice to the employees on account of not affording the opportunity to make representation.

11. In the light of our above discussions, we have no hesitation in holding that the applicants have not been able to make out a case for the reliefs claimed by them. The O.A, being devoid of merit, is dismissed. The interim order stands vacated. No costs.

**(RAJ VIR SHARMA)**  
**JUDICIAL MEMBER**

**(V.N.GAUR)**  
**ADMINISTRATIVE MEMBER**