



2025:DHC:1143-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 4144/2023 & CM APPL. 16019/2023

NATIONAL INSTITUTE OF RURAL
DEVELOPMENT AND PANCHAYATI RAJ
(NIRD AND PR)

.....Petitioner

Through: Mr. S.K. Rungta, Sr. Adv. with
Mr. Prashant Singh, Adv.

versus

K. N. SATI AND ORS.Respondents

Through: Mr. Ankur Chhibber, Adv. for
Private Respondents.

Ms. Pratima N. Lakra, CGSC with Mr.
Chandar Prajapati, Adv. for UOI.

+ W.P.(C) 4148/2023 & CM APPL. 16040/2023

NATIONAL INSTITUTE OF RURAL
DEVELOPMENT AND PANCHAYATI RAJ
NIRD AND PR

.....Petitioner

Through: Mr. S.K. Rungta, Sr. Adv. with
Mr. Prashant Singh, Adv.

versus

DEVENDER RAWAT AND ANRRespondents

Through: Mr. Ankur Chhibber, Adv. for
Private Respondent.

Ms. Arunima Dwivedi, CGSC with
Ms. Kritika Sharma and Ms. Pinky Pawar,
Adv. for UOI.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

21.02.2025

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C. HARI SHANKAR, J.

WP (C) 4144/2023

1. Respondents 1 to 6¹ had initially joined the Council for Advancement of People's Action and Rural Technology². The CAPART was later merged with the National Institute of Rural Development and Panchayati Raj³. The NIRDPR is the petitioner before us in these writ petitions.
2. Consequent to the acceptance of the recommendations of the 6th Central Pay Commission⁴, the pay of the respondents was upwardly fixed by the CAPART by Office Orders dated 26 June 2012.
3. This was, apparently, done without obtaining the requisite approval from the Ministry of Rural Development⁵. The MORD communicated as much to the CAPART in May 2013.
4. Nothing happened for over seven years thereafter.
5. On 27 October 2020, the NIRDPR, which had by then succeeded the CAPART, issued an Office Order, referring to certain audit objections raised by the internal audit being of the MORD, apparently again objecting to the upward fixation of pay of the respondents as granted by the Office Order dated 26 June 2012. The

¹ "the respondents" hereinafter, for the sake of convenience

² "CAPART", hereinafter

³ "NIRDPR", hereinafter

⁴ "6th CPC", hereinafter

⁵ "MORD", hereinafter



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Office Order dated 27 October 2020 noted that the fixation of pay of the respondents consequent on the 6th CPC was incorrect and had been effected without obtaining approval of the MORD. As such, it proceeded to downwardly re-fix the pay of the respondents, with effect from 1 July 2007 till the date of passing of the Office Order. The Office Order also stated that arrears towards the overpayments allegedly made to the respondents, would also be recovered from them in lumpsum without notice.

6. It is not in dispute that, prior to the passing of the aforesaid Office Order dated 27 October 2020, none of the respondents were ever put on notice or granted any hearing. After the Office Order was passed, part recovery was also effected from the respondents.

7. It appears that, thereafter, a committee was set up to examine the grievances of the respondents. However, the Committee was unwilling to reverse the decision to re-fix the respondents' pay. The Committee, in its report dated 27 April 2021, opined that the upward revision of pay of the respondents had occurred owing to an inadvertent mistake. While not deeming it appropriate to interfere with the Office Order dated 27 October 2020, insofar as it corrected the said purported mistake, the Committee nonetheless was of the view that no recovery should be effected till a final decision was arrived at by the MORD.

8. Be that as it may, the respondents petitioned the Central



Administrative Tribunal⁶, against the re-fixation of their pay by the office order dated 27 October 2020 and the decision to recover allegedly over paid amounts in the past, by way of OA 2193/2021⁷.

9. By judgment dated 16 November 2022, the Tribunal has allowed the OA.

10. The reasoning for doing so is to be found in paras 10 to 13 of the judgment, which read thus:

“10. Having heard the learned counsel for the applicant and going through the pleadings on record meticulously, we are of the view that basic facts of the case are not disputed at all. It is not the case of anyone that the applicant got his pay fixed in the appropriate pay scale by any misrepresentation, or it was done on account of any act of omission or commission on the part of the applicant. In fact, the respondents in their counter reply, specifically para 7 of the same have themselves admitted that no one can be held blameworthy for the inadvertent mistake. While appreciating the admission made by the respondents in their counter reply, we have to also recognise and record the fact that while no one may be blameworthy, if there was a mistake, even though inadvertent the same has been made by the respondents or by an agent of respondents. Hence they have to take responsibility. Moreover, despite our specific query there is no answer forthcoming as to what was the trigger to conduct an audit for a sanction of 1994 in the year 2020 i.e. 26 years after the pay fixation had been done.

11. We cannot draw any other inference except for the fact that probably no internal audit had been conducted all these years and if it has been conducted none of these audits ever pointed out any irregularities or mistake in the pay fixation. Moreover, it has been established on record that while revising and reducing the applicant’s pay he was not put to any notice nor was any other opportunity afforded to him whatsoever. It is the applicant himself who subsequently made a representation which has been considered by a Committee and thereafter as brought out in the counter reply of the respondents, the matter referred to the Ministry

⁶ “the Tribunal”, hereinafter

⁷ **Davender Rawat v M/o Rural Development**



but even after a lapse of 2 years, the Ministry is yet to take a decision.

12. Moreover, it has also been established by the applicant and their learned counsel during the course of the arguments that the initial pay as fixed in the year, 1994 and in subsequent years was in accordance with the vacancy notification for the said post and the pay scale as contained in the offer of appointment dated 09.03.1994 issued to the applicant. Therefore, the respondents could not have changed these terms and conditions to the detriment of the applicant at a later stage, and in this case after a lapse of 26 years under the garb of what they claim to be correction of a mistake. We are of the view that by way what is called correction of mistake, the respondents, in fact, have committed another more serious mistake.

13. According to the facts detailed and discussion held we have no hesitation in allowing the original application and setting aside the impugned order dated 27.10.2020 vide which the pay of the applicant has been revised w.e.f. the date of his initial appointment. If any recovery already stands made from the applicant pursuant to the impugned order, the same shall be refunded to the applicant forthwith, in no case later than a period of six weeks from the date of receipt of a certified copy of this order. If such refund is not made within the stipulated time, the applicant shall be entitled to interest at the rate applicable for interest upon the GPF. Further, the respondents are directed forthwith to release the other withheld emoluments and entitlements of the applicant such as contributory provident fund (CPF), gratuity, leave encashment and/or other retiral benefits within the period of six weeks. The applicant shall be entitled for similar interest in case the requisite payment of retiral and other dues as per his entitlement is not made within this period. The OA is disposed of in the background of these directions.”

11. The NIRDPR has challenged the aforesaid judgment dated 16 November 2022 of the Tribunal before us by means of the present writ petition instituted under Article 226 of the Constitution of India.

12. We have heard Mr. S.K. Rungta, learned Senior Counsel appearing for the petitioner, Mr. Ankur Chhibber, learned Counsel for the respondents, Ms. Pratima N. Lakra and Ms. Arunima Dwivedi,



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learned CGSC appearing for the Union of India.

Rival Contentions

13. Mr. Rungta drew our attention to an undertaking to which the respondents have affixed their signature, provided by them consequent to the acceptance, by the Government, of the recommendations of the 6th CPC. The recommendations were accepted in August 2008. The undertaking, to which Respondent 1 subscribed on 8 October 2008, which is representative of the undertakings provided by the other petitioners, as well as the Form in which the undertaking was given, read thus:

“Form of Option

(i) I _____ hereby elect the revised pay structure with effect from 1st January 2006.

(ii) I K.N. Sati hereby elect to continue on the existing scale of pay of my substantive / officiating post mentioned below until:

The date of my next increment.

The date of my subsequent increment raising my pay to Rs.____

I vacate or cease to draw pay in the existing scale

The date of my promotion to E.S.

Existing Scale Rs.5500 – 9000/-

Signature _____

Name : K. N. Sati

Designation E.S.

Office in which employed CAPART (AED)

Date: 08/10/2008

Station: NEW DELHI

* To be scored out, if not applicable.

UNDER TAKING



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I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise.

Signature _____

Name: K.N. Sati

Designation E.S.

Office in which employed CAPART (AED)”

14. Mr. Rungta submits that, in view of the aforesaid undertaking, the decision to downward re-fix the respondents’ pay cannot be said to be illegal. Even otherwise, he submits that as the upward re-fixation of the respondents pay on 26 June 2012 had taken place without obtaining the approval of the MORD, and an audit objection have been raised in that regard, the petitioner had no option but to downwardly re-fix the pay. He also submits that there were certain other similarly situated persons whose pay was never upwardly re-fixed and who continued to draw the lower pay.

15. Mr. Rungta, however, acknowledges the fact that, though the MORD had written to the CAPART as far back as in May 2013, objecting to the re-fixation of the respondents’ pay by Office Order dated 26 June 2012, the CAPART, and, later, NIRDPR, passed the downward re-fixation order over 7 ½ years thereafter on 27 October 2020.

16. We have also heard Ms. Lakra, learned CGSC appearing for the UOI. She has drawn our attention to OM dated 6 February 2014 issued by the Department of Personnel and Training⁸, specifically to

⁸ “DOP&T”, hereinafter



the following clause contained therein:

“II Procedure to deal with the issue of wrongful/excess payments:

In view of the law declared by Courts and reiterated by the Hon’ble Supreme Court in the case of *Chandi Prasad Uniyal and Ors Vs State of Uttarakhand and Ors*⁹, the Ministries/Departments were advised to deal with the issue of wrongful/excess payments as follows:

ii. In a case where the authorities decide to rectify an incorrect order, a show-cause notice may be issued to the concerned employee informing him of the decision to rectify the order which has resulted in the overpayment, and intention to recover such excess payments. Reasons for the decision should be clearly conveyed to enable the employees to represent against the same. Speaking orders may thereafter be passed after consideration of the representations, if any, made by the employees.”

(Emphasis supplied)

17. Ms. Lakra submits that the respondents had, after the order dated 27 October 2020 had been passed, being granted an opportunity of representation before the Committee which has been constituted to look into the grievance and which, thereafter, returned a decision upholding the re-fixation order. In these circumstances, she submits that the Tribunal ought not to have interfered.

18. Mr. Chhibber, appearing for the respondents, submits that the undertaking dated 8 October 2008 has no bearing on the present case. He submits that the said undertaking was provided immediately after the recommendations of the 6th CPC were accepted by the Government in August 2008. That undertaking was in the context of

⁹ (2012) 8 SCC 471



the option available with the government servants as to whether to accept the re-fixed pay immediately or to accept it after they drew their increments. It was in that context that the aforesaid undertaking was obtained from the respondents – as had been obtained from all other similarly situated government servants.

19. In any event, Mr. Chhibber submits that there could be no question of the aforesaid undertaking being of any relevance, as the order of upward fixation of the respondents' pay was itself issued almost four years thereafter on 26 June 2012. Quite obviously, the respondents could not, four years prior to the upward fixation of their pay, have predicted the re-fixation and subscribed to an undertaking expressing willingness for recoveries being effected at a later stage.

20. Mr. Chhibber submits that on the aspect of recoveries, the case is fully covered by the judgment of the Supreme Court in *State of Punjab v Rafiq Masih*¹⁰, particularly para 18 thereof which reads thus:

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

¹⁰ (2015) 4 SCC 334



(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

21. Mr. Chhibber submits that the rigour of para 18 of *Rafiq Masih* was diluted, in the subsequent decision in *High Court of Punjab and Haryana v Jagdev Singh*¹¹, only in respect of persons from whom recoveries were being effected from their retiral benefits, envisaged in category (ii) of para 18 in *Rafiq Masih*. No exception to the beneficial dispensation contained in category (iii) of para 18 of *Rafiq Masih* was subsequently carved out by any other decision. As such, there is an absolute proscription against effecting of recoveries more than five years from the date where the excess payments were made. Inasmuch as the allegedly excess payments were made to the respondents on 26 June 2012 and the order of recovery and the office order downwardly re-fixing the pay and directing recoveries was passed on 27 October 2020, Mr. Chhibber submits that the order of recovery was in the teeth of *Rafiq Masih*. He places reliance, in this context, on the decision of this Bench in *New Delhi Municipal Council v Naresh Verma*¹².

22. We have heard learned Counsel for both sides and perused the

¹¹ (2016) 14 SCC 267



record.

Analysis

23. To our mind, the issue is elementary.

24. The undertaking and its effect

24.1 Insofar as the undertaking dated 8 October 2008 is concerned, it really has no bearing on the issue of an undertaking for two reasons.

24.2 The first is that the undertaking was only agreeing to recovery in the case excess payments were found to have been made. Such an undertaking can dilute the rigour of para 18 of *Rafiq Masih* only in case the recovery was being made from retiral benefits. In other words, if recovery was being made from retiral benefits, *Jagdev Singh* holds that the recovery could be made provided the employee concerned had subscribed to an undertaking, at the time of fixation of payment, agreeing to recovery if the fixation was found to have been made in excess, at the later stage. It does not apply where the recovery of payment made more than five years anterior to the date of recovery.

24.3 Paras 10 and 11 of *Jagdev Singh* are clear in this regard.

“10. In *State of Punjab v. Rafiq Masih* this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:

¹² (2025) SCC OnLine Del 353



- (i) Recovery from employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) *Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

(Italics in original; underscoring supplied)

24.4 *As such, para 18 of Rafiq Masih contains an absolute proscription against any recovery from a government servant of payments allegedly wrongfully made to the government servant, more than five years after the payment has been made. This dispensation has not been diluted in any subsequent decision. The only other caveat to which this dispensation is subject is to be found in Thomas Daniel v State of Kerala¹³ in a case in which the excess payment was made by fraud or with the conscious knowledge of the person who was availing*



the payment. It is nobody's case that that caveat applies in the present case.

24.5 The second reason why the undertaking dated 8 October 2008 would not apply is because the upward re-fixation of the respondents' pay, consequent to acceptance of the 6th CPC recommendations was by order dated 26 June 2012 passed by the CAPART. It is obvious that the undertaking of 8 October 2008 could not apply to an upward re-fixation order passed nearly four years thereafter on 26 June 2012. The respondents cannot be credited with clairvoyance.

24.6 Besides, at the cost of reiteration, the undertaking can be of no use as para 18 (iii) of *Rafiq Masih* absolutely proscribes recovery of excess payment made more than five years anterior to the date of recovery.

25. Recovery without prior show cause notice impermissible

25.1 Besides, the order dated 27 October 2020 is also in the teeth of the judgment of the Supreme Court in *Bhagwan Shukla v UOI*¹⁴. The Supreme Court has clearly held, in that case, that an order of downward fixation of pay visits the employee with civil consequences and cannot be passed without granting the employee an opportunity to show cause. The decision in *Bhagwan Shukla* is brief, and may be reproduced as under:

“1. Leave granted.

¹³ 2022 SCC OnLine SC 536

¹⁴ (1994) 6 SCC 154



2. The controversy in this appeal lies in a very narrow compass. The appellant who had joined the Railways as a Trains Clerk w.e.f. 18-12-1955 was promoted as Guard, Grade-C w.e.f. 18-12-1970 by an order dated 27-10-1970. The basic pay of the appellant was fixed at Rs 190 p.m. w.e.f. 18-12-1970 in a running pay scale. By an order dated 25-7-1991, the pay scale of the appellant was sought to be refixed and during the refixation his basic pay was reduced to Rs 181 p.m. from Rs 190 p.m. w.e.f. 18-12-1970. The appellant questioned the order reducing his basic pay with retrospective effect from 18-12-1970 before the Central Administrative Tribunal, Patna Bench. *The justification furnished by the respondents for reducing the basic pay was that the same had been 'wrongly' fixed initially and that the position had continued due to 'administrative lapses' for about twenty years, when it was decided to rectify the mistake.* The petition filed by the appellant was dismissed by the Tribunal on 17-9-1993.

3. We have heard learned counsel for the parties. That 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.

4. No costs.”

25.2 To the same effect is the mandate of the DOPT OM dated 6



February 2014 *supra*, on which Ms Lakra places reliance. Para ii thereof, extracted in para 16 *supra*, clearly required authorities, who decide to rectify an incorrect order, to (i) issue, *a priori*, a show cause notice to the employee, informing him of the decision to rectify the error, as well as the intention to recover excess payments, (ii) convey, through the show cause notice, the reasons for recovery, so that the employee concerned could represent thereagainst, and (iii) pass speaking orders after consideration of the representations made by the employees. The respondents cannot act contrary to this mandate.

25.3 Ms Lakra's contention that the requirements of the law stand satisfied by the later consideration of the respondents' case by the Committee, and by the order which the Committee took with respect thereto, cuts no ice. From *Taylor v. Taylor*¹⁵, through *Nazir Ahmed v. King Emperor*¹⁶, through several decisions of the Supreme Court till as late as *UOI v. Mahendra Singh*¹⁷, the law is that, when the statute – or, in this case, the DOPT OM dated 6 February 2014 and the law as declared by the Supreme Court in, *inter alia*, *Bhagwan Shukla* – requires a particular act to be done in a particular manner, that act has to be done in that manner or not at all, all other modes of doing the act being necessarily forbidden. Ergo, when *Bhagwan Shukla*, as well as the DOPT OM dated 6 February 2014, as well as the requirement of compliance with the most elementary principles of natural justice and fair play, require a decision to refix the pay granted to an employee downwards, even if it is by way of correction of an earlier error, to be preceded by a show cause notice to the employee, setting out the

¹⁵ (1875) 1 Ch D 426

¹⁶ AIR 1936 PC 253



reasons for the proposed re-fixation, an opportunity to represent thereagainst, and an opportunity to the employee to be heard, and the passing of a speaking order on the employee's representation, that, and nothing less, would suffice. A post-decisional hearing is, therefore, no panacea for breach of the law.

25.4 In *K.I. Shephard v. UOI*¹⁸, the Supreme Court expounded the principle thus:

“12. Mullan in Fairness: The New Natural Justice has stated:

“Natural justice co-exists with, or reflected, a wider principle of fairness in decision-making and that all judicial and administrative decision-making and that all judicial and administrative decision-makers had a duty to act fairly.”

In the case of *State of Orissa v. Dr (Ms) Binapani Dei*¹⁹ this Court observed:

“It is true that the order is administrative in character, but *even an administrative order which involves civil consequences* as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof *and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence*. No such steps were admittedly taken: the High Court was, in our judgment, right in setting aside the order of the State.”

In *A.K. Kraipak v. UOI*²⁰ a Constitution Bench quoted with approval the observations of Lord Parker in *Re: (H) K (an infant)*²¹. Hegde, J. speaking for the Court stated:

“Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be

¹⁷ (2022) 6 SCR 1001

¹⁸ (1987) 4 SCC 431

¹⁹ AIR 1967 SC 1269

²⁰ (1969) 2 SCC 262

²¹ (1969) 3 SCC 84



added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Oftentimes it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry.”

These observations in *A.K. Kraipak* were followed by another Constitution Bench of this Court in *Chandra Bhavan Boarding and Lodging, Bangalore v. State of Mysore*²². In *Swadeshi Cotton Mills v. UOI*²³ a three Judge Bench of this Court examined this aspect of natural justice. Sarkaria, J. who spoke for the court, stated:

“During the last two decades, the concept of natural justice has made great strides in the realm of administrative law. Before the epoch-making decision of the House of Lords in *Ridge v. Baldwin*²⁴ it was generally thought that the rules of natural justice apply only to judicial or quasi-judicial proceedings; and for the purpose, whenever a breach of the rule of natural justice was alleged, courts in England used to ascertain whether the impugned action was taken by the statutory authority or tribunal in the exercise of its administrative or quasi-judicial power. In India also, this was the position before the decision dated February 7, 1967, of this Court in *Dr Binapani Dei*; wherein it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. This supposed distinction between quasi-judicial and administrative decisions, which was perceptibly mitigated in *Binapani Dei* was further rubbed out to a vanishing point in *A.K. Kraipak v. Union of India ...*”

²² (1969) 3 SCC 84

²³ (1981) 1 SCC 664

²⁴ (1963) 2 All ER 66 (HL)



On the basis of these authorities it must be held that even when a State agency acts administratively, rules of natural justice would apply. *As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet.*

15. Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural justice have developed with the growth of civilisation and the content thereof is often considered as a proper measure of the level of civilisation and Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities. We do not think in the facts of the case there is any justification to hold that rules of natural justice have been ousted by necessary implication on account of the time frame. On the other hand we are of the view that the time limited by statute provides scope for an opportunity to be extended to the intended excluded employees before the scheme is finalised so that a hearing commensurate to the situation is afforded before a section of the employees is thrown out of employment.”

25.5 The law does permit post-decisional hearings in exceptional cases, where a pre-decisional hearing cannot be granted. However, that is a course of action ordinarily to be reserved for emergent situations, and can certainly not be an alternative in the present case, especially as the revisitation of the pay fixation of the petitioners was being effected eight years after the pay had been fixed, and seven years after the MORD had written, in this connection, to the CAPARD in May 2013. Besides, as already noted, where the law requires a show cause notice, an opportunity to represent, and a



reasoned order to precede the downward refixation of pay, that, and that alone, would suffice.

25.6 Inasmuch as no show-cause notice had been issued to the respondents prior to the passing of the downward re-fixation office order dated 27 October 2020, the office order stands vitiated on that ground as well.

The sequitur

26. The refixation of the petitioners' pay by the Office Order dated 27 October 2020, and the recoveries effected, or proposed to be effected, from the respondents, on the basis thereof, are both, therefore, vitiated in law.

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27. Apropos Respondent 1 in this writ petition, Ms. Dwivedi endeavoured to submit that the undertaking provided by him was not in 2008, but was on 2 August 2016.

28. Mr. Chhibber submits that the said undertaking has nothing to do with this case, as that related to fixation of pay under the 7th CPC.

29. That apart, as we have already observed, the dilution of the rigour of para 18 of *Rafiq Masih*, where an undertaking has been given by the employee concerned, has been read, in the subsequent judgment in *Jagdev Singh* only in two cases covered by category (ii)



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in para 18 of *Rafiq Masih*, which deals with recovery from retired employees. There is an absolute proscription against recovery of any over-payment more than five years after the over-payment has been made.

30. As such, even if it were to be assumed for the sake of argument – though that does not appear to be the case – that Respondent 1 in the present writ petition had subscribed to an undertaking in 2016, that cannot justify recovery of the alleged over-payment, as the over-payment in any case had been made more than five years prior to the order of recovery, and the recovery was not being effected from retired person as envisaged by para 18 (ii) of *Rafiq Masih*.

Conclusion

31. For all the aforesaid reasons, we find no cause to interfere with the impugned judgment of the Tribunal which is affirmed in its entirety.

32. Any amounts which stand recovered from the respondents shall be returned to them within a period of eight weeks from today, failing which the amount shall carry interest at the rate of 8% per annum till the date of actual payment.

33. It appears that some amounts stand deposited with the petitioner. We have already, in an earlier order, directed that the amount should be retained in an interest bearing FDR. In case any such amounts are with the petitioner, the petitioner would return the



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amount to the concerned employee with the interest that is accrued thereon within the aforesaid period of eight weeks.

34. With the above observations and directions, these writ petitions are dismissed.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

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Click here to check corrigendum, if any