

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8400 OF 2008

The Security Printing and
Minting Corporation of India
Ltd. and ors .

...Petitioners

Versus

N.D. Ugale and ors.

...Respondents

WITH

WRIT PETITION NO. 1852 OF 2009

Union of India and ors.

...Petitioners

Versus

Shri. R.R. Chaudhary and ors.

...Respondents

Ms N.V. Masurkar a/w. Mr. V.S. Masurkar, Mr. S.G. Thakur &
Ms Nieyaati V. Masurkar for the Petitioners in both the
petitions.

Mr. S.A. Deshpande for Respondent Nos.1 to 19 in WP
8400/08 & for Respondent Nos.1 to 18 in WP 1852/08.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 13.07.2018.

ORAL JUDGEMENT:

1] Heard learned counsel for the parties.

2] Learned counsel for the parties state that both these
petitions can be disposed of by common judgment and
order, since, the challenge in both the petitions is to the
judgement and order dated 29.08.2008 made by the

Central Administrative Tribunal (CAT), Bombay allowing several separate Original Applications (O.As) by the respondents. The number of such O.As. are reflected in common judgment and order made by the CAT, as also in paragraph 1, in each of the petitions. The CAT, by the common impugned judgment and order, has directed the petitioners, i.e., The Security Printing and Minting Corporation of India Ltd., India Security Press and Pay and Accounts Officer, Central Pension Accounts Office, Union of India to recalculate the pension and pensionary benefits payable to the respondents, to issue revised Pension Payment Order (PPO) and refund the recovered amounts with interest at the rate of 9% per annum within a period of three months from the date of the order.

3] Ms N.V. Masurkar, learned counsel for the petitioners, submits that Writ Petition No. 8400 of 2008 be taken as lead petition, since, the facts and circumstances in the connected petitions are also quite identical to the facts and circumstances in Writ Petition No. 8400 of 2008. Mr.S.A.Deshpande, learned counsel for the respondents, also accepts this position.

4] Ms Masurkar submits that the common impugned judgment and order made by the CAT is a nullity inasmuch as the same has been made by a single Member bench of the CAT when in fact, matter of this nature, was required to be dealt with by the Division Bench. In this regard, she relies upon the provisions in Rule 154 (c) of the Central Administrative Tribunal Rules of Practice, 1993 read with Appendix VII. She submits that since this was the matter relating to “*scale of pay*” , the same could have been decided only by the Division bench and the common impugned judgment and order made by the single Member bench of the CAT, is *ultra vires* and therefore, a nullity.

5] Ms Masurkar submitted that the CAT, in the common impugned judgment and order, has virtually proceeded to regularise the ad-hoc appointment of the respondents by purporting to condone the breaks between their promotions on ad-hoc basis and reversions. She submits that this was in fact not even the issue before the CAT and therefore, the CAT clearly exceeded its jurisdiction in purporting to regularise the services of the respondents and on such basis, award reliefs to the respondents.

6] Ms Masurkar submits that the respondents form a part of 242 employees, which were declared as surplus by the petitioners and whose names were forwarded to the DoPT for redeployment. She submits that a special Voluntary Retirement Scheme (VRS) was floated vide O.M. Dated 22.5.2002 and the surplus employees were given an option to opt for the same or to continue in service until redeployment. She points out that about 169 employees, including the present respondents, opted for the special VRS scheme and were accordingly allowed to voluntarily retire with effect from 1.3.2006.

7] Ms Masurkar submits that at the stage of working out the pensionary benefits to the respondents, it was realised that the pay fixation in respect of such employees was mistaken, in that, the fact that such employees had been promoted from time to time on ad-hoc basis and even reverted from time to time had escaped attention.

8] As a result, Ms Masurkar submits that the last pay drawn, as reflected in the records was found to be in excess of what such last pay should have actually been, in case,

the pay fixation had been correctly resorted to from time to time. She points out that such objections were raised by the Audit and until, suitable rectification orders were passed, there was some delay in release of retiral benefits of by way of issuance of pension payments orders.

9] Ms Masurkar points out that ultimately, necessary orders were issued to correct pay fixation orders in respect of all these employees, which came to be issued from time to time and it is on basis of such corrected pay fixation orders that the correct last pay drawn in respect of these employees was determined and pension payment orders issued.

10] Ms Masurkar points out that as a result of correction, it was realised that some excess payments had been made to each of these employees and therefore, such amounts were recovered from out of retiral benefits payable to such employees, including the respondents.

11] Ms Masurkar submits that all these actions were not only in order to rectify the anomalies pointed out by the

Audit, but further, such actions were entirely consistent with the CCS (Pension) Rules, 1972, Fundamental Rule 22, the relevant Supplementary Rules and delegation of Financial Powers Rules as applicable to the matter.

12] Ms Masurkar submits that the CAT, was not at all justified in interfering with this exercise and the impugned judgments and orders are in excess of jurisdiction, not to mention that they are vitiated by perversity.

13] Ms Masurkar submits that there is no dispute that the respondents were promoted from time to time on ad-hoc basis and were even reverted from time to time, only to be repromoted again on ad-hoc basis. Ms Masurkar submits that in such circumstances, the gap between reversion and subsequent promotion, results in forfeiture of earlier service in the promoted posts.

14] Ms Masurkar points out that ad-hoc service, even otherwise, is not required to be counted for computation of pensionary benefits. She points out that for over years, this aspect was ignored and pay fixation was effected, as if,

such issues did not exist. She points out that as a result, the PPO as originally issued, reflected pay inclusive of additional 3 to 4 increments, which were mistakenly availed by employees over the years.

15] Ms Masurkar submits that in fixing the respondents' pay from time to time, the principles in F.R. 22, were not appropriately applied. She submits that in such a situation, the petitioners were not only entitled to but were duty bound to determine what should have been the correct pay of the employees and if any excess was paid, the petitioners, were well within their rights to recover such excess amounts. Ms Masurkar submits that since the CAT has not appreciated this position, the common impugned judgment and order made by the CAT warrants interference.

16] Ms Masurkar points out that in terms of S.R. 202, it shall be the duty of every Head of Office to initiate action to show the Service Books to the Government servants under his administrative control every year and to obtain their signature therein in token of their having inspected the Service Books. She points out that the note appended to

this S.R. clearly requires that the orders of the Competent Authority regarding the counting or otherwise of periods of extraordinary leave or periods preceding breaks in service as qualifying for pension should be obtained invariably at the same time as the occasion arises and not later. Such orders should be noted in the Service Books. Unless otherwise shown in the Service Book, it will be presumed that the orders of competent authority have been obtained and the periods of extraordinary leave and periods preceding break in service will count for pension. From this, she contends that the competent authority is entitled to exclude the periods of service preceding break in service, for purposes of determination of pension.

17] Ms Masurkar makes particular reference to the provisions in Rule 32(2) of the CCS (Pension) Rules, 1972 which provides that notwithstanding anything contained in sub-rule (1), where a Government servant is transferred to another department from a temporary department or on account of the closure of the department he had been previously serving or because the post he held had been declared surplus, the verification of his service may be

done whenever such event occurs. She submits that the provisions in Rule 32(2) explain the delay, if any, on the part of the petitioners in refixing the employees pay, at the stage of payment of retiral benefits to them. She submits that the reasoning of the CAT that pay fixation orders effected from time to time over the years could not have been varied, is the reasoning, which ignores the specific provisions of Rule 32(2) of the CCS (Pension) Rules.

18] Ms Masurkar submits that in the present case, since, pay fixation of the employees had not been undertaken inconsonance with F.R. 22 (I) (a) (I) during the course of their service tenure, the petitioners, had every right to rectify such pay fixation and on such basis, issued rectified PPO. She further submits that no employees have a right to retain any excess amount paid to them and therefore, the petitioners were very much entitled to recover the excess amount from out of the retiral benefits payable to the employees – respondents.

19] Ms Masurkar submits that since the provisions of relevant F.R., S.R. as well as delegation of Financial Powers

Rules, have not been considered by the CAT in making the common impugned judgment and order, the same deserves to be set aside.

20] Mr. S.A. Deshpande, learned counsel for the respondents, defends the common impugned judgement and order by submitting that the reasoning therein, not only reflects correct legal position, but further, the view taken by the CAT is in consistent with the principles of justice and equity. He points out that the respondents were induced to accept voluntary retirement on the basis of their last pay drawn as reflected in their service records for over several years. However, after the notices for voluntary retirement were accepted, the petitioners have sought to effect changes in the pay fixation orders, which have been finalised for over several years and on such basis deny the petitioners their rightful pension and retiral dues commensurate to the actual last pay drawn by them. He points out that as if this were not sufficient, the petitioners, in an high handed manner and even without compliance of principles of natural justice and fair play proceeded to recover the so called alleged excess amounts from the

already reduced retiral dues payable to the respondents.

21] Mr.Deshpande submits that the CAT has correctly noted the factual position that the respondents were promoted from time to time after compliance with all the regular promotion procedures. For no explicable reasons, such promotions were styled as ad-hoc promotions. In some cases, reversions were ordered and immediately after 2-3 days, such employees were repromoted. Mr. Deshpande submits that in such circumstances, to insist that the service prior to such artificial breaks of 2-3 days must be completely ignored, is a contention which squarely violates not only Articles 14 and 16 but also Article 21 of the Constitution of India.

22] Mr. Deshpande submits that all the while when the respondents were in service, no such draconian interpretation was ever adopted by the petitioners. Only after the petitioners were induced and thereafter permitted to voluntarily retire that all such belated interpretations are put forth and on such basis, the respondents have been deprived their rightful retiral benefits, not to mention the

severe prejudice suffered by them on account of arbitrary and high handed recoveries effected by the petitioners.

23] Mr. Deshpande points out that pay fixation was consistent with the relevant F.R., S.R. and belated and purported rectification, was an high handed illegal action to deprive the petitioners of their retiral dues. Mr. Deshpande points out that pension and retiral benefits is not some kind of a bounty, but is a legal right of the respondents, not to mention that it also constitutes property, which has protection of Article 300-A of the Constitution of India. Mr.Deshpande submits that the CAT has examined the matter in great details and there is neither any illegality nor any perversity in the view taken by the CAT in the common impugned judgment and order.

24] Mr. Deshpande submits that in fact, the respondents had claimed for interest at the rate of 12% per annum, but the CAT has awarded only 9% per annum interest. Mr.Deshpande, on the basis of instructions from the respondents, submits that since they cannot afford any further litigation, they are agreeable to accept interest at

the rate of 6% per annum, in place of 9% interest awarded by the CAT. In the matter of recoveries, Mr. Deshpande relies upon the Hon'ble Supreme Court in ***State of Punjab and ors. vs. Rafiq Masih (White Washer) and ors. - (2015) 4 SCC 334***. For all these reasons, Mr. Deshpande submits that both these petitions be dismissed with costs.

25] The rival contentions now fall for our determination.

26] In the present case, we see no force in the contentions of Ms Masurkar that a single Member bench had no jurisdiction to deal with and dispose of the O.As. instituted by the respondents. The objection of Ms Masurkar proceeds on the basis that the original applications raised the issues relating to "*scale of pay*". From the perusal of the issues raised in the O.As. as well as the issues decided by the CAT in the impugned judgment and order, it is very clear that the issue involved was not the issue of "*scale of pay*". Rather, the issue involved, very squarely related to grant of pension, other retirement benefits and interest on retirement benefits. Incidentally, the issue of fixation of pay can also be said to have been involved in the O.As.

However, the issue of “*scale of pay*” was certainly not the subject matter of the O.As. and therefore, we are unable to accept Ms Masurkar's first contention that the impugned judgment and order is a nullity.

27] Section 5 of the Administrative Tribunals Act, 1985 deals with composition of tribunals and benches thereof. Section 5(1) provides that each tribunal shall consist of a Chairman and such number of judicial and administrative members as the appropriate Government may deem fit and, subject to the other provisions of the Act, the jurisdiction, powers and authority of the tribunal may be exercised by benches thereof. Section 5(2) provides that subject to the other provision of the Act, a bench shall consist of one Judicial member and one Administrative Member. Section 5(4) provides that notwithstanding anything contained in sub-section (1), the Chairman may, for the purpose of securing that any case or cases, which having regard to the nature of the questions involved, requires or require, in his opinion under the rules made by the Central Government in this behalf, to be decided by a bench composed of more than two Members issue such general or special orders, as

he may deem fit. Provided that every bench constituted in pursuance of this clause shall include at least one Judicial Member and one Administrative Member.

28] Section 5(6) of the Administrative Tribunals Act, 1985, which is, some what relevant in the context of the objection raised by Ms Masurkar begins with a *non obstante* clause and provides that notwithstanding anything contained in the foregoing provisions of the section, it shall be competent for the Chairman or any other Member authorised by the Chairman in this behalf to function as a bench consisting of a single Member and exercise the jurisdiction, powers and authority of the tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may by general or special order specify. Provided that if at any stage of the hearing of any such case or matter it appears to the Chairman or such Member that the case or matter is of such a nature that it ought to be heard by a bench consisting of two Members, the case or matter may be transferred by the Chairman or, as the case may be, referred to him for transfer to, such bench as the Chairman may deem fit.

29] Rule 18(c) of the Central Administrative Tribunal Rules of Practice, 1993 provides that a category of cases specified in Appendix - I to VI Rules as may be amended by the Chairman from time to time, may as far as possible be posted before the single Member Bench and dealt with in accordance with the procedure prescribed therein.

30] Appendix - I, in fact, incorporates Order of Chairman bearing No. 1/32/87-JA dated 18th December 1991 made in supersession of previous orders and in exercise of power conferred upon the Chairman by section 5(6) of the Administrative Tribunals Act, 1985 referred to above. This order, authorises all the Members of the Central Administrative Tribunal to function as a bench consisting of a Single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of classes of cases specified in the Schedule with effect from 1.1.1992, subject to procedural requirements specified in Classes (1) and (2). Clause (1) deals with all cases not involving validity of any statutory provision or the interpretation of any provisions of the Constitution. Clause (2) grants liberty to either party to submit to the Single Member bench before the matter is

taken up for admission or for final hearing, or it may be placed before a bench of two Members. If such a request is made at the outset, the Single Member shall direct that the case be placed before an appropriate bench of two Members. Once the case is taken up, no such request shall be entertained at any subsequent stage of the proceedings for admission or final hearing, as the case may be.

31] Schedule to the order dated 18th December 1981 in Appendix - I to the Central Administrative Tribunal Rules of Practice 1993 lists several classes of cases which can be taken up by bench comprising Single Member. They include *inter alia* the following:

- (a) *Cases relating to fixation of pay; (entry 5)*
- (b) *Cases relating to grant of pension, family pension, other retirement benefits, and cases relating to interest on retirement benefits; (entry 8)*
- (c) *Cases relating to grant, refusal or recovery of allowances; (entry 12)*

32] As noted earlier, from the perusal of the original applications as also, issues actually decided by the CAT in

the common impugned judgment and order, it is clear that the O.As. related mainly to grant of pension, other retirement benefits and interest on retirement benefits. Incidentally, the issue of fixation of pay may have also arisen in the matters. Clearly, all these are subjects which a Single Member bench of the CAT was quite competent to entertain and decide.

33] Since Ms Masurkar had made reference to Rule 154 of the Central Administrative Tribunal Rules of Practice 1993, it is necessary to note that this rule deals with classification of cases subject-wise/ department-wise. This rule provides that the scrutiny branch of the registry shall at the time of scrutiny make classification of the cases as (i) department-wise; (ii) subject - wise; and (iii) cases which can be heard by Single Member bench. Rule 154 (c) provides that subject-wise classification shall be made in accordance with Appendix - VII, as may be modified by the Chairman from time to time. Similarly Rule 154 (d) provides that Single Member bench cases shall be classified in accordance with Appendix - VIII as may be modified by the Chairman from time to time.

34] From the title of Rule 154 as well as its placement in the Rules of Practice, it is quite clear that this is a Rule which does not relate to determination of jurisdiction of the benches, but rather, this is a Rule of Practice to facilitate the scrutiny branch of the registry to classify the cases subject-wise/department-wise. Therefore, reliance placed by Ms Masurkar upon Rule 154 of the Central Administrative Tribunal Rules of Practice 1993, is quite mis-placed. In any case, such reliance, in no manner, supports her contention that the Single Member bench lacked any jurisdiction to make the common impugned judgment and order.

35] In terms of Rule 154 (c) read with Appendix – VII subject-wise classification of Division Bench cases, includes *inter alia*, cases relating to “*scale of pay*”. In the present matters, there was no issue of “*scale of pay*” as such involved. There was no dispute as regards the scale of pay applicable to any of the respondents who had instituted the O.As. There was no issue of implementation of any recommendations of “*pay commissions*”. There was no dispute as regards the scale of pay applicable to the post held by the respondents/ O.As. from time to time.

36] The issues squarely involved in all the O.A.s, however, relate to items 'g' and 'i' and to some extent 'k' in Appendix-VIII, which contains subject-wise classification of Single Member bench cases. Item 'g' relates to *“fixation of pay”*, item 'i' relates to *“grant of pension, family pension, other retirement benefits and interest on retirement pension”* and item 'k' relates to *“grant, refusal or recovery of allowances”*. Thus, very clearly, the O.As. instituted by the respondents warranted subject-wise classification as Single Member bench cases, even in terms of Appendix – VIII to the Central Administrative Tribunal Rules of Practice 1993.

37] In the present case, there is no dispute that the common impugned judgment and order has been made by the Judicial Member of the CAT. In fact, very fairly, this was pointed out by Ms Masurkar and therefore, any objection on this score was neither raised nor arises.

38] Ms Masurkar, at the opening of her arguments, had in fact commenced by pointing out that the pleadings in paragraph 2 of affidavit in rejoinder filed by Shri. N.J. Sunny, Dy. General Manager for and on behalf of the petitioners.

She had submitted that the entire summary of her contentions is in fact contained in paragraph 2 of this rejoinder. In the context of the objection based upon the jurisdiction of Single Member Bench of the CAT, this is what was stated in the rejoinder.

“2. At the outset, I repeat and reiterate that the impugned judgment and order is without jurisdiction passed by Ld. Single Judge. I say that the issue of pay fixation and promotion, which is decided by the Ld Single Judge, is not within the powers to be exercised by the Single Judge of the Hon'ble Tribunal.”

(emphasis supplied)

39] From the aforesaid, it is clear that it was not even the case of the petitioners that the O.As. instituted by the respondents even remotely involved any issue relating to “scale of pay”. Even according to the petitioners themselves the issue involved “pay fixation” and “promotion”. From the perusal of the O.As., it is clear that there was no issue of promotions as such involved in the matter. The impugned action of the petitioners had not disturbed the promotions granted to the respondents. The respondents were not seeking any promotion. As noted earlier, the main issue involved related to grant of pension, other retirement benefits and interest on retirement benefits. Incidentally, the issue of pay fixation also may

have been involved. All these are matters which very clearly pertain to the jurisdiction of Single Member bench.

40] Further, from the perusal of the common impugned judgment and order, it does not appear that such issue of jurisdiction of Single Member bench was ever raised by the petitioners before the commencement of hearing in the O.As. This was necessary taking into consideration the provisions of section 5(6) of Administrative Tribunals Act and Appendix - I to the Practice Rules 1993. There is no clarity as to whether such an issue was raised in the reply of the O.As. However, even assuming that the same was raised in the reply, that by itself, would not suffice. From the perusal of the common impugned judgment and order, it does not appear that such an issue was actually raised at the time of arguments since, such an issue, finds no reflection in the common impugned judgement. This is relevant in view of the decision of the Hon'ble Supreme Court in ***Indermani Kirtipal vs. Union of India and ors - (1996) 2 SCC 437.***

41] In *Indermani Kirtipal (supra)*, the Hon'ble Supreme Court has held that the question whether the learned Single Member of the bench was competent to decide the matter or not is not an issue going to initial lack of jurisdiction. The Hon'ble Supreme Court has further observed that undoubtedly, the vice-Chairman of the Tribunal by operation of sub-section (1) of section 5 has been empowered to classify classes of cases and make sitting arrangements of benches for convenient disposal of cases, he had ordered accordingly. Sub-section (2) enumerates various categories of cases which the members would be competent to dispose of. When its member would dispose of which matter is one of administrative convenience, it does not relate to its jurisdiction. Even under section 21 of the Civil Procedure Code objections relating to pecuniary or territorial jurisdictional should be raised at the earliest and if the parties omit to plead and raise the objections, at a later stage, unsuccessful party would be precluded to raise lack of jurisdiction. Since the Tribunal consists of several members, a bench consisting of a Single Member may also be competent to dispose of certain matters. The matter having been decided by him

after considering the case on merits, it is no longer open to the unsuccessful party to plead that the member had no jurisdiction to decide the issue of that the order suffers from initial lack of jurisdiction. It may be a case of improper disposal of the matter without touching the jurisdiction of the member who decided the matter.

42] The aforesaid ruling in *Indermani Kirtipal (supra)*, is only an additional reason for rejecting Ms Masurkar's contention based upon the jurisdiction of the Single Member bench of the CAT. As noted earlier, even upon examination of the objection on its merits, we find that the subject matter of the O.As. was well within the competence of a Single Member bench of the CAT. Therefore, this is not a case of exercise of jurisdiction, which was not vested in the bench and the contention on the basis of *ultra vires*, fails.

43] For all the aforesaid reasons, we see no force whatsoever in Ms Masurkar's contention that the Single Member bench of the CAT had no jurisdiction to entertain the O.As. instituted by the respondents and to make common impugned judgment and order.

44] Now coming to the merits, the CAT, with the consent of learned counsel for the parties, had treated O.A. No. 401 of 2007 instituted by Shri. N.D. Ugale as the lead O.A., since the facts and circumstances involved in case of Shri. N.D. Ugale were by and large representative of the facts and circumstances involved in the rest of the O.As. This position was in fact, reiterated by learned counsel appearing before us. The learned counsel for the parties also made reference to the facts and circumstances pertaining to Shri. N.D. Ugale in support of their respective contention.

45] There is no dispute and even otherwise, the record bears out that Shri. N.D. Ugale was appointed as a Security Guard on 2.6.1975 and thereafter he was promoted as a Senior Security Guard with effect from 7.10.1986, though, this promotion was styled as ad-hoc promotion. This promotion was extended by order dated 11.6.1988 upto 30.06.1988. On 1.7.1988, an order was issued to revert Mr.Ugale to the post of Security Guard. Though, factually, such reversion never took effect, because, by order dated 17.03.1989, Shri. Ugale was once again promoted to the post of Senior Security Guard with effect from 4.7.1988.

This means that factually there was no reversion at all and on paper, there was reversion (notional) for only three days between 1.7.1988 and 4.7.1988. Again, after some time, on 1.7.1989, Mr. Ugale was ordered to be reverted from Senior Security Guard to Security Guard, but was again re-promoted with effect from 3.7.1989 vide order made on 8.8.1989. Again, in fact, there was no reversion at all, but on papers, there was reversion (notional) for only two days between 1.7.1989 and 3.7.1989.

46] Mr. Ugale, then continued without such paper reversions between 3.7.1989 and 8.11.1994. when by order dated 31.10.1994, Mr. Ugale was purported to be reverted notionally for only a couple of days. The fact that even the petitioners never treated these paper reversions of 2 or 3 days seriously is evident from the circumstance that the petitioners themselves, by order dated 4.3.1997 regularised Mr. Ugale as a Head Security Guard with effect from 4.3.1997.

47] Again, during the period 5.11.1994 and 31.10.1995, the petitioners themselves, even promoted Mr.Ugale to the

post of Assistant Sub-Inspector, though on ad-hoc basis. Again, the cycle of paper reversions followed. Mr. Ugale was reverted from the post of Assistant Sub-Inspector by order dated 31.10.1994, but once again, promoted on ad-hoc basis after a few days. There was yet further paper reversions vide order dated 4.1.1996, though this order, purported to retrospectively revert Mr. Ugale from 4.1.1996.

48] There is no dispute that throughout of this period, Mr. Ugale had worked on the promoted post. In fact, the order dated 31.10.1995, by which, such paper reversions was sought to be effected, promotes Mr. Ugale to the post of Assistant Sub-Inspector on ad-hoc basis for the period from 3.11.1995 to 31.10.1996. The CAT has quite rightly observed that this unique phenomenon of oscillating promotion and reversion went on for years together until 8.4.2001 when by order dated 9.5.2001 Mr. Ugale was promoted on regular basis as Assistant Sub-Inspector. There is no dispute that this unique phenomenon of oscillating promotion and reversion with artificial gaps of 2-3 days applies to the case of rest of the original applicants, whose

O.As. came to be disposed of by the common impugned judgments and orders.

49] The petitioners, themselves, throughout the period when they inflicted upon the respondents the paper reversions, without actually reverting them from the promotional posts, did not take such reversions seriously. The respondents, were not only paid salary due and payable to the promotional posts but routine and regular increments were also released and paid to the respondents from time to time. This means that for almost a decade and half (10 to 15 years), the petitioners detected no error in the matter of pay fixation and payment of allowances to the respondents on the basis of their ad-hoc promotions, notwithstanding the paper reversions and the artificial gaps of 2-3 days between such promotions and paper reversions.

50] In fact, even when the petitioners were permitted to voluntarily retire in terms of VRS Scheme floated by the petitioners themselves, last drawn pay, as reflected in the pay slips of the respondents, indicated the correct amount, about which, none of the respondents had any serious

grievance. In such circumstances, it is reasonable to proceed on the basis that the respondents opted for the VRS Scheme on the basis of the last pay drawn as reflected in their pay slips as on the date when they completed formalities to avail the benefits of voluntary retirement. The petitioners, almost six months after the respondents were permitted to be voluntarily retired, purportedly based upon the Audit objections raised in the case of an Administrative Officer Shri. R.N. Baggolli have undertaken the exercise of refixing the respondents last pay drawn. On this basis, the petitioners have sought to deny to the respondents benefits of pay fixation increments of pay, already drawn by them over a period of 10 to 15 years.

51] The petitioners contend that since the respondents were reverted from time to time, services prior to reversion need to be ignored for purposes of pay fixation in their entirety. This means that on the basis of those artificial gaps of 2-3 days and paper reversions, the petitioners, have virtually denied the respondents benefits against the promotional post on which the respondents, have admittedly, worked continuously. All this was done at a

stage when the respondents were already permitted to voluntarily retire and the payment of their retiral benefits had been delayed by over six months.

52] Even if the issue of promissory estoppel or estoppel is to be kept aside for the moment, there can be no dispute that the exercise undertaken by the petitioners to not only drastically reduce the respondents last pay drawn, but further, the petitioners unilateral and high handed action of even recovering the alleged excess amounts from out of already reduced retiral benefits paid to the respondents, certainly, amounted to visiting the respondents with very serious civil consequences. Despite this, the petitioners, undertook and effected such an exercise without even minimum compliance with the principles of natural justice and fair play. In such circumstances, we agree with the CAT that the action of the petitioners deserves to be struck down not only by applying the principles of estoppel but also on the ground of failure of natural justice.

53] The CAT has pointed out that though the action of the petitioners herein was based upon the audit report in

respect of Administrative Officer Shri.R.N Baggolli, the case of the said officer, and the cases of the respondents, where by no means similar. The CAT has noted that Shri. R.N. Baggolli was not even the applicant in any of the O.As. instituted before the CAT. The facts and circumstances relevant to Shri. Baggolli are discussed by the CAT in paragraphs 13 and 23 (v) of the impugned judgment and order. From the discussion in paragraph 23(v), it does appear that the promotion of Shri. R.N. Baggolli as Administrative officer may not have been correct and therefore, the Audit raised objections to his pay fixation and recommended recoveries of the excess payment made to him. The petitioners, were not at all justified in applying such Audit objection to the case of the respondents and on the said basis drastically reducing the respondents last pay drawn and consequentially the respondents pensionary and other retiral benefits. All this, as noted earlier, was without even minimum compliance with the principles of natural justice and fair play.

54] In case of Mr. Ugale itself, the petitioners, have unilaterally, deducted a sum of Rs. 1,10,343/- from ex-gratia

payment and Rs.87,345/- from DCRG payments otherwise due to Mr. Ugale on the ground of so called “*excess payment*” made over a period of almost 15 years to Mr.Ugale. Mr. Ugale in his O.A. has demonstrated and the CAT has agreed that the petitioners, by reducing last pay actually drawn by Mr. Ugale under the guise of “*pay fixation*” or in the name of complying with the Audit objections, have not only reduced the actual pension and pensionary benefits, which Mr. Ugale was entitled to draw on the basis of his last pay drawn, but further, this deduction, has affected connected matters like commutation of pension, DCRG, Pension, leave encashment etc. Certainly, all such consequences involve very serious prejudice to Mr.Ugale and the other O.A.s. before the CAT. All these actions of the petitioners, inflict very serious civil consequences upon the respondents. Therefore, apart from the issue of estoppel, minimum compliance with principles of natural justice and fair play was imperative.

55] Apart from the issue of natural justice, the impugned action of the petitioners was untenable even on merits, in

the facts and circumstances of the present case. The reasoning adopted by the CAT warrants no interference.

56] This is not a case where the CAT has “*regularised*” any services of the respondents. Ms Masurkar is right in her submission that the issue of regularisation of the respondents was not at all involved in the O.As. instituted by the respondents. However, Ms Masurkar is not right in her submission that the CAT, by the common impugned judgment and order, has regularised the services of any of the respondents.

57] In most cases, the petitioners themselves have promoted the respondents on regular basis and therefore, there was no issue of regularisation. However, since, the petitioners were seeking to justify their action on the basis that the respondents were promoted only on ad-hoc basis and on account of short and artificial gaps between their promotions and reversions, the CAT has made some observations in dealing with such rival contentions. The CAT, according to us, has correctly appreciated the facts

and circumstances and there is no case of perversity made out by the petitioners.

58] Most of the legal provisions relied upon by Ms Masurkar, in fact, assist the case of the respondents rather than the petitioners. Rule 32 (2) of the CCS (Pension) Rules 1972 was stressed upon by Ms Masurkar, in support of her contention that the action for correction of error in pay fixation arose only in the year 2006 when the respondents were permitted to voluntarily retire. On a plain reading of Rule 32 of the CCS (Pension) Rules, 1972, we are unable to agree.

59] Rule 32 of the CCS (Pension) Rules deals with verification of qualifying service after 25 years of service or 5 years before retirement. Rule 32 (1) provides that on a Government servant completing twenty-five years of service or on his being left with five years of service before the date of retirement, whichever is earlier, the Head of Office in consultation with the Accounts Officer shall, in accordance with the rules for the time being in force, verify the service rendered by such a Government servant,

determine the qualifying service and communicate to him, in Form 23, the period of qualifying service so determined. There is nothing on record as to whether the petitioners had at any stage complied with the provisions in Rule 32(1) of the CCS (Pension) Rules.

60] Rule 32 (2) of the CCS (Pension) Rules, however, provides that notwithstanding anything contained in sub-rule (1), where a Government servant is transferred to another department from a temporary department or on account of the closure of the department he had been previously serving or because the post he held had been declared surplus, the verification of his service may be done whenever such event occurs.

61] In the present case, the petitioners had declared the respondents as surplus on 9.9.2005. However, that was not the occasion on which the petitioners undertook the verification of the respondents' service. In any case, Rule 32 deals with verification of the "*qualifying service*". This rule has nothing to do with pay fixation. In the present case, for over 10 to 15 years, the respondents, were being promoted

though, such promotion, was being interpreted by paper reversions and artificial breaks of 2-3 days as is illustrated in the case of Mr. Ugale. There was absolutely no dispute regards the “*qualifying service*” in respect of the respondents. The reference to Rule 32 is therefore, entirely misplaced. The action of the petitioners, has no nexus with Rule 32 of the CCS (Pension)Rules, and in any case, the provisions of Rule 32 offers no defence whatsoever to the action of the petitioners.

62] Ms Masurkar then referred to Supplementary Rule (SR) 202. This provides that it shall be the duty of every Head of Office to initiate action to show the Service Books to the Government servants under his administrative control every year and to obtain their signature therein in token of their having inspected the Service Books. A certificate to the effect that he has done so in respect to the preceding financial year should be submitted by him to his next superior officer by the end of every September. The Government servants shall *inter alia* ensure before affixing their signature that their services have been duly verified and certified as such. In the case of a Government servant

on foreign service, his signature shall be obtained in his Service Book after the Audit Officer has made therein necessary entries connected with his foreign service.

63] The note upon which Ms Masurkar placed particular reliance is in fact, not a note attached to S.R. 202 but is a part of O.M. No. F.18(7)-E.V (B)/65-Part-V, dated the 24.06.1966). This note reads as follows:

“3. The orders of the Competent Authority regarding the counting or otherwise of periods of extraordinary leave or periods preceding breaks in service as qualifying for pension should be obtained invariably at the same time as the occasion arises and not later. Such orders should be noted in the Service Books. Unless otherwise shown in the Service Book, it will be presumed that the orders of Competent Authority have been obtained and the periods of extraordinary leave and periods preceding break in service will count for pension”.

64] S.R. 202 and aforesaid note in fact, assist the case of the respondents rather than the case of the petitioners. In first place, there is nothing produced on record by the petitioners that the Head of Office had in case of respondents, complied with the requirements as set out in S.R. 202. The requirement prescribed in S.R 202 are in fact for the benefit of Government servants. Compliance with requirement in S.R. 202 would enable the Government

servants to acquaint themselves with the entries in their service books so that, if there is any error therein, they can apply for its correction. Compliance with the requirements also protects the interests of the employer – Government because once the employees sign the service books in token of inspection, the Government, can always urge delay and laches, if, the employees, after lapse of considerable time seek to challenge or reopen the entries in the service books.

65] However, in the facts of the present case, the petitioners cannot seek to prejudice the respondents for the petitioners' own omission to comply with the requirements of S.R.202. The petitioners have nowhere demonstrated any compliance with the provisions of S.R. 202 by producing the entries in the Service Books or certificates of compliance as prescribed. In fact, from the facts and circumstances on record, it is even possible to infer that there is nothing in the Service Books of the respondents – employees to suggest any errors in pay fixation. Otherwise, it is inconceivable that the petitioners pay the respondents on regular basis for over 10 to 15 years, not only the pay in

the promotional posts to which they were actually promoted but also released and pay increments from time to time.

66] The note upon which Ms Masurkar relies, provides that the orders of the competent authority regarding counting or otherwise of periods of extraordinary leave or periods preceding breaks in service as qualifying for pension should be obtained invariably at the same time as the occasion arises and not later. Such orders should be noted in the Service Books. Unless otherwise shown in the Service Book, it will be presumed that the orders of competent authority have been obtained and the periods of extraordinary leave and periods preceding break in service will count for pension.

67] The aforesaid note completely supports the case of the respondents. In the first place, there is no issue of extraordinary leave applicable in case of the respondents. Secondly, there is also no case of breaks in service as qualifying for pension. In the present case, so called breaks have no nexus with the determination of qualifying service, but these are cases of artificial breaks between actual

promotion and on paper reversion. In any case, even if the note applies, the note squarely supports the case of the respondent. The note requires competent authority to make orders regards counting or otherwise of period preceding breaks in service as qualifying for pension invariably at the same time as the occasion arises and not later.

68] Admittedly, no such orders have been made by the competent authority on the several occasions when paper reversions or artificial breaks were resorted to. The note further requires that such order should be noted in the service book. Since there were no orders made by the competent authority, there was no question of noting such orders in the service books. The note, very unambiguously and categorically provides that *“unless otherwise shown in the service book, it will be presumed that the orders of competent authority have been obtained and the periods of extraordinary leave and periods preceding break in service will count for pension”*. The note entirely supports the case of the respondents and not the case of the petitioners. In fact, in the light of such note, which the petitioners themselves state is applicable, the petitioners have to

proceed on the basis that the service preceding breaks, (if at all, they can be regarded as any serious breaks,) will have to count for the pension of the respondents.

69] Ms Masurkar did make reference to F.R. 22, which deals with the fixation of pay consequent upon appointment or promotion. However, she did not elaborate or demonstrate in what manner, the pay fixation of the respondents could be held as erroneous.

70] Admittedly, pay fixations in respect of the respondents came to be effected multiple occasions in the span of almost 10 to 15 years. Until the respondents retired in the year 2006, at which point of time, their last pay drawn was reflected in the pay slips issued to them. Their pension and retiral benefits had to be determined on this basis. However, after almost 6 months, the petitioners unilaterally decided that some errors have crept into the pay fixation of the respondents over a period of almost 10 to 15 years. The error, according to the petitioners or on account of the petitioners themselves, for all these years, ignoring the

paper reversions and the artificial breaks of 2-3 days on most occasions.

71] On basis of such material, there was absolutely no occasion to style the pay fixation made by the petitioners themselves over a span of 10 to 15 years as being erroneous or to purport to correct the same and thereby visit the respondents with very serious civil consequences. Therefore, the CAT has quite correctly held that there was absolutely no breach of F.R. 22 in the matter of pay fixation undertaken by the petitioners themselves over a span of 10 to 15 years. The CAT was also quite right in holding that Audit objection had no real nexus with the case of the respondents and therefore, the petitioners were not at all justified in their impugned action.

72] Ms Masurkar referred to delegation of Financial Powers Rules and stressed upon a truncated note dealing with the procedure to be adopted when recurring payment found to be inadmissible by Audit. In the present case, since there was no error in the pay fixation, it cannot be said that any recurring payment was found to be inadmissible. As noted

earlier, there was no specific Audit objection insofar as the cases of the respondents are concerned. Even assuming that there were any Audit objections on the lines indicated in the impugned action, such objections, lack merit since the objections proceed on the basis of the paper reversions and artificial breaks. The CAT has dealt with these aspects in great details and there is really no case of perversity made out by the petitioners.

73] In any case, the delegation of Financial Powers Rules, invest powers in the prescribed authorities to order recoveries where payments have been made to the Government servants erroneously or undeservingly. Existence of power is one thing, but the exercise thereof, in the absence of establishing that erroneous payments had in fact been made, is quite another. Besides, if we were to proceed on the basis that some excess payments had been made to the respondents, in the facts and circumstances of the present case, the petitioners, were not at all justified in making recoveries unilaterally and without even minimum compliance with the principles of natural justice and fair play.

74] In *Rafiq Masih (supra)*, the Hon'ble Supreme Court, at paragraph 18, has summarised few situations, wherein recoveries by employers would be impermissible in law. The same reads as under:

"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.

(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 or recover."

(emphasis supplied)

75] In the present case, we agree with the CAT that no excess payments had in fact been made to the respondents and therefore, there is no question of any recovery of excess payments. Secondly, the recoveries already effected by the petitioners were unilateral and without even minimum compliance with the principle of natural justice and fair play. Therefore, the respondents, really do not even require the protection of the ruling of the Hon'ble Supreme Court in case of *Rafiq Masih (supra)*.

76] In any case, even assuming that some excess payment had in fact been made, the principle set out in *Rafiq Masih (supra)* would apply and consequently, it would be impermissible for the petitioners to make such recoveries.

77] In the present matters, it is not even the case of the petitioners that any of the respondents had indulged into any misrepresentation or fraud so as to avail the so called alleged excess benefits. It is the case of the petitioners that they have themselves granted such benefits to the respondents spread over as span of 10 to 15 years. It is the

case of the petitioners that such error was realised when the Audit raised objections in case of Mr. R.N. Baggolli.

78] In *Rafiq Masih (supra)*, it is held that recovery from the retired employees or the employees who are due to retire within one year, of the order of recovery is impermissible. It is further held that recovery from employees, when excess payment had been made for a period in excess of five years, before the order of recovery is issued is also impermissible. It is also held that 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 is impermissible. All these are illustrations where it would iniquitous or harsh or arbitrary to permit recovery. All these illustrations apply to the case of the respondents. Therefore, the petitioners were not at all entitled to unilaterally recover alleged excess amount from out of the already reduced retired benefits payable to the respondents.

79] For all the aforesaid reasons, the common impugned judgment and order made by the CAT warrants no interference except perhaps some modification to the interest rate awarded by the CAT. The CAT has directed the petitioners to pay the respondents interest on delayed payment as also wrongfully recovered payment at the rate of 9% per annum. However, as agreed by Mr. Deshpande, learned counsel for the respondents, this interest rate can be reduced to 6% per annum.

80] Accordingly, we uphold the common impugned judgment and order with modification that the interest payable by the petitioners to the respondents shall be 6% instead of 9%. Save and except, this modification, the petitioners, are directed to implement the CAT's judgment and order within a period of six weeks from today.

81] Since, there is no dispute that the issues raised in Writ Petition No. 8400 of 2008 and the issues raised in Writ Petition No. 1852 of 2009 are common, the aforesaid reasoning and modification will apply in Writ Petition No.1852 of 2009 as well.

82] Rule is disposed of in both the petitions in the aforesaid terms.

83] There shall, however, be no order as to costs.

84] The request for stay of this judgment and order is rejected since the matter involves payment of retiral dues to employees who have retired in the year 2006. Besides, we have granted six weeks time to implement the directions issued by the CAT as modified by us.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)