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

+ **W.P.(C) 8301/2008 & CM APPL. 15955/2008**

D.D.A.

.....Petitioner

Through: Mr. Arun Birbal and Mr. Sanjay Singh, Advs.

versus

V.N. GUPTA & ANR.

.....Respondents

Through: Mr. Arun Sanwal, Adv. for R-1
Mr. Mukul Singh, CGSC with Ms. Ira Singh
and Mr. Aryan Dhaka, Advs. for UOI

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

11.03.2025

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AJAY DIGPAUL, J.

1. The present writ petition has been filed under Article 226 of the Constitution of India, challenging the judgment dated 14.02.2008 passed by the Id. Central Administrative Tribunal¹, Principal Bench, New Delhi, in T.A. No. 83/2007.

2. The respondent no. 1 was initially appointed as a Supervisor (Technical) in the Inspectorate of Electronics, Gun Carriage Factory, Jabalpur, under the Ministry of Defence in 1968 and was confirmed in 1972. He was subsequently promoted to Supervisor (Technical) Grade-II in 1974.



3. In September 1979, the respondent no. 1 was appointed as a Technical Assistant with respondent no. 2.
4. In the year 1981-82, the DDA, petitioner herein, issued an advertisement inviting applications for the post of Junior Engineers, which was open to all, including government employees and those from autonomous bodies.
5. The respondent no. 1, on 29.09.1981, applied for the said post and was offered appointment in DDA, vide Letter dated 15.10.1982, with the explicit condition that no benefit of past service would be provided. He was required to submit an undertaking to this effect, which he duly did. The Letter dated 15.10.1982 issued by the Deputy Director, Delhi Development Authority, along with the undertaking are reproduced under:

“No. F.10(44)/82/P.B.II New Delhi, the 15/X/1982

From

*Deputy Director (p)-I
Delhi Development Authority*

To,

*Shri Vijay Narain Gupta,
Directorate of Production and Inspection (Naval)
Ministry of Defence (DGI)
West Block No. 5, R.K. Puram,
New Delhi-110012*

MEMORANDUM:

The undersigned is directed to offer Shri Vijay Narain Gupta, a temporary post of Junior Engineer (E/M) is the pay scale of Rs. 425-12-500-EB-15-560-20-700/-. The appointee will also be



entitled to draw dearness and other allowances at the rates admissible subject to the conditions laid down in rules and orders governing the grant of such allowances, in force from time to time.

2. a) *The post is purely temporary and the appointment of Shri Vijay Narain Gupta will be valid until further orders, and his services can be terminated anytime without notice.*

b) *Further, the appointment of Shri Vijay Narain Gupta is on probation for a period of 2 years (liable to be extended by the appointing for a period and subject to the condition that he will qualify a departmental examination in accounts within this period failing which he will not be allowed to draw the next increment nor considered for further promotion.*

c) *Other conditions of service will be governed by the relevant rules and orders in force from time to time.*

3. *In joining duty, Shri Vijay Narain Gupta will have to produce the following.-*

a) *Medical certificate of fitness from the Staff Surgeon, Police Hospital, Delhi Medical examination charges will be borne by him/her.*

b) *Production of the following original certificates with attested copies there of :-*

(i) *Matriculation or an equivalent certificate and other higher educational certificates, if any;*

(ii) *Certificate of age*

(iii) *Discharge certificate from the previous employer, if any; and*

(iv) *Diploma Degree in Elect./Mech. Engineering*

c) *Attestation form in duplicate duly attested by a Gazette officer or a member of the legislature or any other authority prescribed by the appointing authority (form A" enclosed)*

Particulars of close relation who are nationals of or are domiciled in other countries/other relations resident in India who are of non Indian origin (form 'B' enclosed)

d) *An undertaking to the effect that he / she will not claim any benefit of his/ her past service (form 'C' enclosed)*

e) *A certificate to the effect that in case he/ she absents himself/ herself from duty or resigns his/her post without giving 1 month notice to the Director (Personnel) Delhi Development*



Authority he/ she shall be liable for the disciplinary action being taken against him / her (Form 'D' enclosed)

f) A declaration in the (form 'E' enclosed) event of the candidate having more than 1 wife living, the appointment will be subject to his being exempted from the enforcement of the requirement in this behalf.

g) Declaration of:

i) Family details for the purpose of family pension (form 'F' enclosed)

ii) Home town (form, "G" enclosed);

iii) Mother tongue (form "H" enclosed) and

iv) Oath of allegiance for Indian Nationals (form "I" enclosed)

h) The appointment will be subject to his character and antecedents being found satisfactory through Police. He will on joining duty, have to produce character certificates from two Gazette Officers, duly countersigned by the District Magistrate or Sub-Divisional Magistrate (form "J- I and II" enclosed)

4.(a) The appointment is also subject to the production of a certificate from the District Magistrate or other competent authority if the candidate belongs to Scheduled Caste/Scheduled tribe.

b) He/she will inform the Vice-Chairman, DDA in writing immediately about any change in his/her religion as and when such change is made.

c) He/she will also produce three copies of Passport size photographs duly attested by a Gazette Officer at the time of his/her joining duty.

5) No traveling allowance will be granted for joining the post.

6. It may please be stated whether he/she is serving or is under obligation to service another Central Government Department, a State Government or Public Undertaking.

7. He will not be permitted to apply for any other post in any office for a period of one year from the date of his joining duty.

8. If any declaration given or information furnished by the candidate proves to be false, or if the candidate is found to have willfully suppressed any material information he/she will be liable to removal from service and to such other action this authority may deem fit.

9. If Shri Vijay Narain Gupta accepts the offer on the above



terms, he should report for duty to the undersigned by the 31st October 1982. If no reply is received, or the candidate fails to report his duty by the prescribed date, the offer will be treated as cancelled.

Sd/

Deputy Director (P)-I

End;

11 forms "A" to "J"-I and III.

F O R M - 'C'

DELHI DEVELOPMENT AUTHORITY

UNDERTAKING

I hereby undertake that I wont claim any benefit whatsoever regarding my seniority, promotion or pay fixation etc. on the basis of any past services rendered in other departments.

Dated: 8th Dec. 82

Signature of the candidate"

----- sd/-

6. The respondent no.1, who was already employed in the Ministry of Defence, accepted the offer voluntarily and joined DDA as a Junior Engineer on 31.12.1982.

7. As per OM No. 70/62/62-Ests (A) dated 22.01.1966, the respondent no. 1 was permitted to retain lien on his post in the Ministry of Defence for two years after joining DDA.

8. Prior to the respondent no. 1's appointment in DDA, the issue of pay protection for employees joining DDA after resigning from previous government service had been considered. It was decided that future appointments would be assessed on a case-to-case basis by the



selection committee, and where pay protection was not recommended, an undertaking was to be obtained and strictly enforced.

9. The respondent no. 1 submitted several representations seeking pay protection. Initially, his request was denied, but he was later granted the benefit, vide office order dated 08.11.1990, which reads thus:

“ ***DELHI DEVELOPMENT AUTHORITY***
(PERSONNEL BRANCH II)

Estt. Order No. 4371

Dated: 8.11.90

Vice-Chairman, DDA is pleased to allow the benefit of the fixation of pay to Shri V.N. Gupta, J.E. (E/M) at the stage of Rs. 580/- p.m. with effect from 1.1.1983, in the pay scale of Rs. 425-700 (pre-revised). The next increment shall be due to him w.e.f. 1.9.1983.”

10. Subsequently, similar requests by other employees led to a review by the Central Government, which advised DDA that employees joining DDA as probationers would not be entitled to pay protection and seniority based on past service. Consequently, the pay protection granted to the respondent no. 1 was withdrawn by office order dated 18.10.1994. The office order dated 18.10.1994 reads thus:

“ **DELHI DEVELOPMENT AUTHORITY**
(PERSONNEL BRANCH-II)

E.O. No. 3323

Dated: 18-10-94

OFFICE ORDER

In supersession of E.O. No. 4371 dated 8.11.90, it has been decided to withdraw the benefit of pay protection granted to Shri V.N. Gupta, J.E. (E/M) w.e.f. 1.1.83.

This issues with the concurrence of Finance Department and approval of V.C., DDA.



(GURMAIL RAM)
Jt. Director (P) II”

11. Aggrieved by the withdrawal, the respondent no. 1 filed Civil Writ Petition No. 935 of 1995 before this Court. During its pendency, the case was transferred to the Tribunal as T.A. No. 83/2007.

12. The Tribunal, vide judgment dated 14.02.2008, allowed the application and directed that the respondent no. 1's service be treated as continuous and entitled to pensionary benefits as if he had been in DDA throughout. The relevant paras of the impugned judgment is reproduced hereunder:

“xxx

xxx

xxx

17. We have to take notice of the situation that the employee concerned was in the midst of two giant organizations, who among themselves might have held some dispute about a manner in which, liabilities in respect of the services of the employee would be dealt with. When clearly the DDA had indicated that past service would be counted even for the purpose of pension, logically it also should have been considered as recognizing past service for fixation as well. Also, at this juncture, much time is not to be invested on technicalities, since after the retirement at least a person is to know where he stands. The DDA had held out that the full service of the applicant would be recognizable, and the issue has to settle at that point.

18. In the result, we are of the view that the fixation granted by P-21, dated 8.11.1990 require to be restored in its full vigour. The later orders, which are impugned here, offend fair play, and are too arbitrary so as to upset the basic rights of Government servant. The orders were clearly illegal as they transgressed natural justice. They will stand set aside. As the applicant had been rendering service uninterruptedly, initially under the Government of India and later on under the DDA, his services are to be treated as continuous for all purposes, and fixation benefits granted will stand restored. He will be entitled to pension and other benefits as if his services are continuous and rendered under the DDA all

Signature Not Verified

Signed By: MEENU KALRA
Signing Date: 22.03.2025
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through out.

19. We may also note that we had come across instructions issued by the Central Government, which can be general guidelines. It supports the view that has been taken here. By Government of India, Dept. of Personnel & A.R., OM No.28-10/84-Pension Unit, dated 29.08.1984, Appendix-7 [Swamy's Pension Compilation (Edition 18 of 2007)], President was pleased to decide that Central Government employees going over to Central Autonomous bodies or vice versa are entitled to the benefits of the service rendered under the Government at least in cases where he is borne on pensionable establishment. The service is to be counted towards pension under the autonomous body in such instances. This benefit is available even to an employee who was treated as temporary, while in the Government service.

20. The rights of the applicant for benefit of fixation as well as the benefits of pension, cannot be avoided. A contrary view will be too harsh to be supported as it cannot boast of any equity. We direct the DDA to fix and grant the pensionary benefits of the applicant as consequence of this order and in the light of our observations made above. The 3rd Respondent is to remit pro-rata amounts as required to be payable on demand being made by the DDA so as to recoup them technically. However, delay in such payments is not to be put as an excuse by the 1st Respondent DDA to withhold benefits to the applicant. They are to fix and pay the pensionary benefits, in full, payable and admissible for the full service rendered by the applicant both as a Government employee and DDA staff member, within three months from today. Liberty is given for them to claim reimbursement, as legally permissible, and to demand contribution from the Central Government. The Central Government will have the liability to remit the dues to DDA as decided by the competent authority as payable.

21. The application is disposed of as above. No order as to costs.

13. Dissatisfied by the decision of the Tribunal, the petitioner has approached this Court contending that the impugned judgment is erroneous and liable to be set aside.

14. Having heard Mr. Arun Birbal, learned Counsel for the petitioner and Mr. Arun Sanwal, learned Counsel for Respondent 1,

Signature Not Verified

Signed By: MEENU W.P.(C) 8301/2008
KALRA
Signing Date: 22.03.2025
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we hold that the withdrawal of the pay protection granted to Respondent 1 by order dated 18 October 1994, having been effected without any prior notice to Respondent 1, was not in accordance with law.

15. A similar view was taken by this Bench in ***National Institute of Rural Development and Panchayati Raj (Nird & PR) v. K.N. Sati & Ors.*** and ***National Institute of Rural Development & Panchayati Raj Nird & PR v. Devender Rawat & Anr.***². The relevant paragraphs are reproduced hereunder for ready reference:

“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, through Nazir Ahmed v. King Emperor, through several decisions of the Supreme Court till as late as UOI v. Mahendra Singh, 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 reasons for the proposed refixation, 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***, 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** 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** a Constitution Bench quoted with approval the observations of Lord Parker in **Re: (H) K (an infant)**. 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 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**. In **Swadeshi Cotton Mills v. UOI** 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** 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** ...”*

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 wellbeing 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.

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.”

16. Accordingly, we sustain the decision of the Tribunal to set aside the withdrawal of the pay protection granted to respondent no.1 by order dated 18 October 1994.

17. We are informed that, pursuant to earlier orders passed by this



Court, the petitioner has restored the decision to revoke the pay protection granted to Respondent 1. He would, therefore, continue to be entitled to the benefit of the pay protection granted to him by order dated 8 November 1990. He would also be entitled to computation of his pensionary benefit on that basis.

18. Needless to say, there can be no question of any recovery from Respondent 1, as in any case we are upholding the pay protection granted to respondent no.1.

19. We do not feel that the judgment of the Tribunal has clearly decided any other aspect of the matter including the right to seniority, promotion etc. We are informed that the respondent no.1 has moved a review application before the Tribunal in that regard.

20. We do not express any opinion on the maintainability on merits of the said review application which would be decided by the Tribunal on its own accord.

21. With the above observations, this writ petition is disposed of.

AJAY DIGPAUL, J.

C.HARI SHANKAR, J.

MARCH 11, 2025/aky/ssc

Click here to check corrigendum, if any