*Before S.S. Nijjar & S.S. Saron, JJ.*

DEEN DAYAL SHARMA—*Petitioner*

*versus*

STATE OF HARYANA AND ANOTHER—*Respondents*

*C. W. P. NO. 2490 of 2004*

The 12th May, 2005

*Constitution of India, 1950—Arts. 14 & 226—Principles of natural justice—Respondents withdrawing benefit of military service wrongly granted about 40 years back to the petitioner—Reduction in the retiral benefits—No show cause notice issued before taking the decision—Neither any information was withheld nor any misrepresentation made by the petitioner at the time of his recruitment—Action of respondents to recover the amount over-paid to the petitioner is not justified and violates Art. 14—Petition allowed.*

*Held,* that the respondents had refixed the pay of the petitioner by order dated 23rd December, 2002 unilaterally without issuing any show cause notice to the petitioner. After excluding the period from 19th January, 1963 to 30th April, 1963 the pay of the petitioner was re-fixed. He was merely informed that his pay has been re-fixed and a sum of Rs. 29,900 is recoverable from him. At the end of the order dated 31st March, 2003, he was asked if he wanted to say something in this connection. The aforesaid order can hardly be said to be a show cause notice. Even then the petitioner submitted a reply on 16th April, 2003. Still the respondents have proceeded to pass an order of recovery basing its conclusion on the advice rendered by the LR and the Finance Department. This is evident from the orders dated 13th January, 2004. The orders passed by the respondents clearly cause civil consequences. Such orders cannot be passed without complying with the Rules of Natural Justice.

(Paras 6 and 7)

*Further held,* that the entire action of the respondents is arbitrary, being violative of rules of natural justice and, therefore, contrary to Article 14 of the Constitution of India. The petitioner had joined the respondent-department on 28th October, 1971. We find it a little difficult to accept that wrongful fixation of the pay could not

be discovered for a period of almost 40 years. We are also satisfied that the petitioner cannot be held respoonsible for having made any misrepresentation to the respondents which resulted in the wrong fixation of his pay. Now the petitioner has retired. It would be wholly unjust to permit the respondents to recover the amount allegedly over-paid to the petitioner.

(Paras 9)

Ram Prasad, Advocate, for the petitioner.

Anil Rathee, Addl. A.G. Haryana, for the respondent.

**JUDGMENT**

**S.S. NIJJAR, J. (Oral),**

(1) With the consent of counsel for the parties, the writ petition is taken up for final disposal today itself.

(2) The petitioner served in the Military during Emergency from 19th January, 1963 to 5th November, 1967. Thereafter he joined Zila Sainik Board, Jind on 12th March, 1969 where he worked till 26th October, 1971. On 28th October, 1971, he joined as Junior Auditor in the Office of Director, Women and Child Development Department, Chandigarh (hereinafter referred to as respondent No. 2). *Vide* order dated 12th May, 1986, the petitioner was allowed the benefit of military service for the period from 19th January, 1963 to 5th November, 1967 towards fixation of pay. A copy of the order is attached as Annexure P1 to the petition. The petitioner retired from service on 30th April, 2003. However, prior to the date of his retirement, on 23rd December, 2002, the pay of the petitioner was re-fixed by excluding the period from 19th January, 1963 to 30th April, 1963 of military service. Service during this period was treated as "boy" service. Therefore by withdrawing the benefit of boy service, the deemed date on the basis of military service of the petitioner, for joining the Government Service, was considered as 23rd April, 1967. The petitioner sent a representation against the order dated 23rd December, 2002. On 31st March, 2003, the respondent again issued an "Order" informing the petitioner that as a result of refixation of pay, a sum of Rs. 22,900 is recoverable from him. He was directed

to deposit the amount in the office otherwise the same would be deducted from the benefits payable to him. In the end of the letter it was stated thus :—

> "If you want to say something in this connection, you may submit your representation within 15 days of issue of this letter otherwise it will be presumed that you have nothing to say in your defence."

(3) The petitioner submitted a reply to the show-cause notice. He stated that about 3 to 4 months before his retirement, he was verbally informed that the department had allowed him one extra increment from the very beginning. Thereafter, by order dated 23rd December, 2002, his pay had been illegally re-fixed, after reducing one increment. He also pleaded that he had not made any misrepresentation to the department. He submittted that the department should have informed him in writing before passing an adverse order. By not doing so, the department has done gross injustice to him and the same was intolerable. He further submitted that he may be granted an opportunity of personal hearing. Keeping in view the request of the petitioner, he was granted a personal hearing on 29th August, 2003. On the request of the petitioner, his case was referred to the Finance Department for advice. By order dated 13th January, 2004, (Annexure P-6), the respondents have rejected the explanation rendered by the petitioner. The amount of Rs. 22,900 have been withheld from the retirement benefits of the petitioner.

(4) On notice of motion having been issued, the respondents have filed a written statement. They have pleaded that the period from 19th January, 1963 to 30th April, 1963 has been excluded from the Military service for which the benefit cannot be given to the petitoner as the aforesaid period was before the petitioner attained the age of 18 years.

(5) The counsel for the petitioner submits that he has been condemned unheard as the respondents ought to have issued as show-cause notice before they took a decision, to re-fix the period of military service. He further submits that since the petitioner has not withheld any information from the respondents at the time of his recruitment, the benefit of service could not be withdrawn now at the time when he has retired. In support of the submission, the learned counsel relies

on the judgment of the Hon'ble Supreme Court in the case of **Sahib Ram** *versus* **State of Haryana (1).** Mr. Rathee, however, submits that the aforesaid judgment is not applicable in the facts and circumstances of this case as the respondents have merely re-calculated the period for which the petitioner was entitled to the benefit of military service. Further more, necessary show-cause notice has been issued before any recovery has been effected from the petitioner.

(6) We are of the considered opinion that the respondents have not acted fairly. It was necessary for the respondents to serve a show-cause notice on the petitioner before a decision was taken which would result in reduction in the retiral benefits of the petitioner. A perusal of the facts narrated above makes it abundantly clear that the respondent had re-fixed the pay of the petitioner by order dated 23rd December, 2002 unilaterally without issuing any show-cause notice to the petitioner. After excluding the period from 19th January, 1963 to 30th April, 1963, the pay of the petitioner was re-fixed. He was merely informed that his pay has been re-fixed and a sum of Rs. 29,900 is recoverable from him. At the end of the order dated 31st March, 2003, he was asked if he wanted to say something in this connection. The aforesaid order can hardly be said to be a show-cause notice. Even then the petitioner submitted a reply on 16th April, 2003. Still the respondents have proceeded to pass an order of recovery basing its conclusion on the advice rendered by the LR and the Finance Department. This is evident from the order dated 13th January, 2004 (Annexure P-6).

(7) The orders (Annexures P-3, P-4 and P-6) clearly cause civil consequences. Such orders cannot be passed without complying with the Rules of Natural Justice. This view of ours finds support from the judgment of the Supreme Court in the case of **S. L. Kapoor** *versus* **Jagmohan and others, (2).** In the aforesaid case, it has been held by the Supreme Court that "the requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose". It has further been observed that "the term "Civil Consequences"

(1) 1995 (2) R.S.J. 139
(2) AIR 1981 S.C. 136

undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and no-pecuniary damages, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence". The Supreme Court also observed as follows :—

> "24. In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently or proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal."

(8) This view was subsequently followed by a Division Bench of this Court in the case of **Virender Chawla** *versus* **The Chandigarh Administration and Another (3).** We are also fortified in our view by the observations of the Supreme Court in the case of **Sahib Ram** *(supra).* In the aforesaid case, the Supreme Court has observed as follows :—

> "Admittedly, the appellant does not possess the required educational qualifications. Under the circumstances, the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of higher pay-scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances, the amount paid till date may not be recovered from the

(3) S.L.R. 1984 (1) P&H 452

appellant. The Principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

(9) In view of the settled law, we have no hesitation in holding that the entire action of the respondents is arbitrary, being violative of rules of natural justice, and therefore, contrary to Article 14 of the Constitution of India. The petitioner has joined the respondent-department on 28th October, 1971. We find it a little difficult to accept that wrongful fixation of the pay could not be discovered for a period of almost 40 years. We are also satisfied that the petitioner cannot be held responsible for having made any misrepresentation to the respondents which resulted in the wrong fixation of his pay. Now the petitioner has retired. It would be wholly unjust to permit the respondents to recover the amount allegedly over-paid to the petitioner. In our opinion, the matter is squarely covered by the observations made by the Supreme Court in the case of **Sahib Ram** *(supra)*.

(10) Consequently, the writ petition is allowed. Orders (Annexures P-3, P-4 and P-6) are quashed. No costs.

***R.N.R.***

*Before Mehtab S. Gill and Surya Kant, JJ.*

KULWINDER SINGH,—*Appellant*

*versus*

STATE OF PUNJAB,—*Respondent*

*Crl. Appeal No. 110-DB of 2005 &*
Murder Reference 2 of 2005

5th July, 2005

*Indian Penal Code, 1860—S. 302—Gruesome murders by the accused of his own maternal grand-mother and maternal sister, in a most brutal, cold-blooded and barbaric manner without any provocation—Motive of the accused to rape his own maternal sister—Accused ravishing a pious and sacred relationship, betraying trust and impairing social values—Death sentence—Only in such cases where something uncommon about the crime for which imprisonment for life will be an inadequate sentence—Murder of two unarmed hapless/helpless women—Act of accused committing murders diabolic*