

**REPORTABLE**

**IN THE HIGH COURT OF DELHI**

**WRIT PETITION (CIVIL) NO.9 of 2003**

**Date of decision :27<sup>th</sup> October, 2004**

**COL.O.P. BAJAR (RETD.) & ORS.** ... Petitioners  
through Mr. S.M. Dalal  
Advocate

**VERSUS**

**UOI & OTHERS** .... Respondents  
through Mr. Adish C. Aggarwala  
Advocate

**AND**

**W.P. (C) No.27/2003**

**LT. COL. PARTAP SINGH & ORS.** Petitioner  
through Mr. S.M. Dalal

**VERSUS**

**UOI & OTHERS** Respondents  
through Mr. Adish C. Aggarwala  
Advocate

**CORAM:**

**HON'BLE JUSTICE DR. MUKUNDAKAM SHARMA:**  
**HON'BLE MS. JUSTICE GITA MITTAL.**

1. Whether reporters of local papers may be allowed to see the Judgment?

2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

**DR. MUKUNDAKAM SHARMA, J (ORAL)**

1. These writ petitions invoke similar questions of facts and law and, therefore, we propose to dispose of these writ petitions by this common judgment and order. These writ petitions were filed by the petitioners challenging the order of the respondents directing for recovery of payment made on the ground of fixation of pay on re-employment. Notices were issued on these petitions.

2. During the pendency of these petitions, the respondents have filed a counter affidavit contending inter alia that similar recoveries are also sought to be made in respect of about 1333 retired officers due to pay fixation in respect of re-employed officers at the time of implementation of Fourth Central Pay Commission's Recommendations. Therefore, a reference was made by the Service Headquarters with the proposal that in view of peculiar facts, there could be a waiver of recoveries on account of fixation of pay on re-employment of Defence Service Officers. The said recommendations and proposals sent by the Service Headquarters are pending with the Ministry of Defence for considerations and no decision has been taken so far.

3. When the matter was taken up today, the counsel for the

respondents has placed before us a communication from the Ministry of Defence dated 26<sup>th</sup> October, 2004 which refers to Army Headquarters letter dated 26<sup>th</sup> October, 2004 on the subject of fixation of pay on re-employment of Defence Service Officers - proposal for waiver of past recoveries. It is indicated therefrom that a proposal for waiver of recovery on account of the fixation of pay on re-employment of Defence Service Officers is under consideration of the Ministry of Defence. The contents of the said letter which are relevant are extracted below:-

“2. The proposal for waiver of recovery on account of the fixation of pay on re-employment of Defence Service Officers is under consideration of this Ministry. The total number of affected officers of the three Services are about 1333. The details of the amount to be waived in respect of each officers have been called from Service Headquarters. On receipt of the relevant information, the proposal will be taken up by this Ministry with the Ministry of Finance, Deptt. Of Expenditure for waiver of recovery. The same is likely to take some time.”

4. In view of the aforesaid position, it is submitted by the learned counsel appearing for the respondents that the Ministry could and should be given some time to take a decision in the matter.

5. We have considered the rival submissions of the counsel appearing for the parties. In our considered opinion since a proposal has already been mooted for waiver of recoveries on account of re-employment of Defence Service Officers and the same is under active

consideration of the Ministry of Defence, we direct that a decision on the said proposal shall be taken by the Ministry of Defence as early as possible in as much as the said question involves the question of fixation of pay of about 1333 officers. All the particulars shall be collected by the Service Headquarters and a decision thereto shall be taken by the Ministry of Defence within two months from today. Thereafter, the said matter shall be placed before the Ministry of Finance, Department of Expenditure for taking a final decision in the matter which shall be taken within six weeks from the date of receipt of the communication from the Ministry of Defence.

6. Having gone through the records, we are of the considered opinion that the aforesaid proposal needs a sympathetic consideration of both the concerned Ministries, namely Ministry of Defence as also Ministry of Finance, Department of Expenditure. We have no hesitation in our mind that while considering the said proposal, both the Ministries will take a holistic view in the matter. It is also made clear that till a final decision is taken by the Ministry of Defence as also by Ministry of Finance and, may be, by the Ministry of Personnel, no steps shall be taken for effecting recoveries from the petitioners on account of fixation of pay of the petitioners.

Any decision taken on the aforesaid subject by the concerned Ministries shall be communicated to the petitioners as expeditiously as possible.

7. Thereafter, if the petitioners are still aggrieved, it shall be open to the petitioners to approach this Court with a fresh petition and the same shall be considered.

9. In terms of the aforesaid observations and directions, the petitions stand disposed of.

Copies of the order shall be furnished **dasti** to the counsel appearing for the parties.

**DR. MUKUNDAKAM SHARMA  
(JUDGE)**

**GITA MITTAL  
(JUDGE)**

**OCTOBER 27, 2004**

**aa**