



2026:AHC:3301

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 19663 of 2025

Mahesh Kumar Nitharwal

.....Petitioner(s)

Versus

Union Of India And 5 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Malik Juned Ahmad
Counsel for Respondent(s)	:	A.S.G.I., Shiv Kumar Pal

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Malik Juned Ahmad, learned counsel for the petitioner as well as Sri S.K. Pal, learned counsel for the respondents.
2. A Statement has been made by Sri S.K. Pal, learned counsel for the respondents that he possesses complete instructions and he is in a position to argue the matter and does not propose to file any response and the writ petition may be decided on the basis of documents available on record.
3. With the consent of the parties, the writ petition is being decided at the fresh stage.
4. The case of the writ petitioner is that he was appointed on the post of Constable/GD on 09.04.2002. Thereafter he was promoted to the rank of SI/GD on 09.11.2007. He was further promoted to the rank of Inspector/GD on 11.03.2011 and he stood voluntarily retired post completion of 23 years of service on 30.06.2024.
5. According to the writ petitioner, two orders have been passed one dated 15.10.2024 and other dated 28.10.2024 by the respondents whereby pay fixation has been made made to the detriment of the petitioner and further recovery to the tune of Rs.5,88,444/- has been sought to be made. Learned counsel for the petitioner submits that the said action is per se illegal and not in accordance with law particularly when they are post voluntarily retirement of the petitioner and they are unilateral behind the back of the writ petitioner it is not a case of fraud, concealment or misrepresentation.
6. Learned counsel for the respondents as per the instructions submits that

whatever might be, it is always open for the employer to redetermine or to rectify the mistakes so done. He submits that the writ petitioner would be put to notice.

7. I have heard the submissions so made across the bar and perused the record.

8. The Court is of the opinion that any action to the detriment of an employee can only be taken post service of notice. Importantly also the order which is being sought to be impugned are dated 15.10.2024 and 28.10.2024 and the present petition has been presented in the month of December, 2025 after a period of one year. Even otherwise it is a principle of law that opportunity of hearing is to be accorded in such type of matters. The Hon'ble Apex Court in **Bhagwan Shukla vs. Union of India and others; (1994) 6 SCC 154** had observed as under:

"3. We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs. 190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs. 181 p.m. from Rs. 190 pan. in 1991 retrospectively w.e.f. 18.12.1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not, even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25.7.1991. which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17.9.1993 as well as the order (memorandum) impugned before the Tribunal dated 25.7.1991 reducing the basic pay of the appellant From Rs. 190 to Rs. 181 w.e.f. 18.12.1970."

9. Accordingly, the writ petition stands decided in the following term:

(i) The respondents shall issue a show cause notice to the writ

petitioner by 31.01.2026.

(ii) The writ petitioner shall submit his reply within a period of 15 days thereupon and an order shall be passed by 31.03.2026.

(iii) Any recovery so sought to be made and the orders dated 15.10.2024 and 28.10.2024 shall be subject to the final orders passed therein.

10. With the aforesaid observations, the writ petition stands **disposed of**.

January 7, 2026
R.S. Tiwari

(Vikas Budhwar,J.)