

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.661/2002
WITH
O.A. NO.1323/2002 &
O.A. NO.1324/2002

New Delhi, this the 5th day of March, 2003

HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. A.P. NAGRATH, MEMBER (A)

OA No. 661/2002

Col. (Retd) R.G. Srivastava S/o Late K. Srivastava,
resident of D-II/A21, Moti Bagh South,
New Delhi - 110023 and
employed with Joint Secretary (Trg) and
Chief Administrative Office,
Ministry of Defence, C-II Hutments,
Dalhousi Road, DHQ PO
New Delhi-110 011

... Applicant

(By Advocate : Shri J.C. Malik)

Versus

1. Joint Secretary (Trg) & Chief
Administrative Officer,
Ministry of Defence
C-II Hutments, Dalhousi Road, DHQ PO
New Delhi - 110 011
2. Principal CDA (HQ)
'G' Block, Maulana Azad Road, DHQ PO,
New Delhi-110 011
3. Secretary of Personnel & Training,
Ministry of Personnel, P.G. & Pension,
Government of India, North Block, w
New Delhi-110011

... Respondents

(By Advocate : Shri Madav Panikar)

OA No. 1323/2002

Lt. Col. (Retd) Prem Nath, Sena Medal
S/o Late Shri Sahib Ram
R/o 1329, Sector-29, Noida,
employed with Joint Secretary (Trg) and
Chief Administrative Office,
Ministry of Defence, C-II Hutments,
Dalhousi Road, DHQ PO
New Delhi-110 011

... Applicant

(By Advocate : Shri J.C. Malik)

Versus

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3. Secretary of Personnel & Training,
Ministry of Personnel, P.G. & Pension,
Government of India, North Block,w
New Delhi-110011

... Respondents

(By Advocate : Shri M.M. Sudan)

OA No. 1324/2002

Lt. Col.(Retd) Ashok Bhatia S/o Late Dr. Chunni Lal
Bhatia, R/o 37/I, Birbal Road,
Jangpura Extn., New Delhi
employed with Joint Secretary (Trg) and
Chief Administrative Officer,
Ministry of Defence, C-II Hutments,
Dalhousi Road, DHQ PO
New Delhi-110 011

... Applicant

(By Advocate : Shri J.C. Malik)

Versus

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C-II Hutments, Dalhousi Road, DHQ PO
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New Delhi-110011

... Respondents

(By Advocate : Shri Madav Panikar)

O R D E R

BY SHRI A.P. NAGRATH, MEMBER (A):

The applicants in these three OAs are all retired
Army Officers, who have been reemployed on civil posts.
They are aggrieved with the fixation of their pay on their
reemployment and have assailed the respective orders of
fixation of their pay and consequent orders of recovery.

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Initially their pay had been fixed at a higher stage in the pay scale, which later got revised to minimum of the scale in each case. Since the question which has come up for adjudication in these three OAs is exactly the same, these are being disposed of by this common order.

2. The relevant particulars in respect of these applicants, as culled out from the respective OAs, are as follows.

2.1. Applicant in OA 661/2002, Col. (Retd) R.G. Srivastava, retired from Army on 30.4.1994 when he was drawing pay of Rs.6250/-, including Rank Pay of Rs.1000/-. With effect from 1.1.1996 his pension was revised and fixed at Rs.8550/- with reference to the notional pay worked out as Rs.17100/-. He was reemployed on the post of GSO-I (MIS & SAP)I on 16.5.1997. On reemployment his pay, though initially fixed at Rs.13875/-, has now been fixed at minimum of the scale i.e. at Rs.12000/- in the scale of Rs.12000-375-16500.

2.2 Applicant in OA 1323/2002, Lt. Col. (Retd) Prem Nath, retired from the Army on 1.7.1994 when he was drawing pay of Rs.5100/-, including Rank Pay of Rs.600/-. With effect from 1.1.1996 his pension was fixed at Rs.2505/-, which was revised to Rs.7350/- by notional fixation of his pay at Rs.14700/-. He has been reemployed in the post of GSO-II MIS on 2.2.1999. On reemployment his pay, though initially fixed at Rs.12275/-, has been refixed at the minimum of the scale i.e. Rs.12000/- in the pay scale of Rs.12000-325-15200.

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2.3 Applicant in OA 1324/2002, Lt. Col. (Retd) Ashok Bhatia, retired from Army on 24.1.1993 when he was drawing pay of Rs.5600/-, including Rank Pay of Rs.800/-. His pension, which was earlier Rs.2746/-, was revised to Rs.7550/- w.e.f. 1.1.1996 based on the notional pay of Rs.15100/-. He was reemployed as GSO-I (MIS) w.e.f. 5.5.1998 in the pay scale of Rs.12000-375-16500. On reemployment his pay was initially fixed at Rs.13500/-, which has been refixed now at Rs.12000/- i.e. at minimum of the scale.

3. In respect of applicants Lt. Col. (Retd) Prem Nath in OA 1323/2002 and Lt. Col. (Retd) Ashok Bhatia in OA 1324/2002, recoveries had been ordered after refixation of their pay vide order dated 11.1.2002. This recovery was ordered to be stayed by the Tribunal vide order dated 21.5.2002 in these two OAs. The interim orders have continued to operate. Initially, on their reemployment, their pay in the civil posts held by them were fixed by the respondents with reference to the pay last drawn by them at the time of their retirement from Defence service. However, vide order dated 31.12.2001, their pay got refixed to minimum of the scale and adjustment of pension and the payable portion was worked out in a revised manner. Aggrieved with this refixation, the applicants have come before us by filling these OAs.

4. The applicants have essentially raised a plea that on their reemployment they are entitled to protection of pay last drawn by them while in the Army service by

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adopting the same rules as are applicable to the retired/released Armed Forces Officers on reemployment in the civil posts. The learned counsel for the applicants vehemently argued that pay of the applicants cannot be less than double of the pension which they are now drawing w.e.f. 1.1.1996. By referring to the case of Lt. Col. (Retd) Perm Nath, he submitted that the officer at the time of his retirement from army service w.e.f. 1.7.1994 was drawing total pay of Rs.5100/- i.e. basic pay of Rs.4500/- plus Rank Pay of Rs.600/-. Based on this pay, his pension was refixed at Rs.2505, which has been revised to Rs.7350/- w.e.f 1.1.1996 in implementation of Fifth Pay Commission's recommendations. It was canvassed by the learned counsel that the pension of Rs.7350/- was based on notional pay of Rs.14700/-, which had been worked out with reference to the last pay drawn by the applicant in 1994. He contended that if this revised pension was to be deducted (minus the ignorable portion) then the applicant cannot be fixed at minimum of the pay scale but has necessarily to be fixed at a stage in the scale which is just above the notional pay of Rs.14700/-, on which basis the revised pension has been worked out. He further contended that if pay of the applicant is not to be fixed notionally in the Fifth Pay Commission pay scales with reference to the last pay drawn by him while in Army service, then deducting enhanced pension from his pay is totally unjustified. Applicant's pension at the time of retirement was Rs.2505/-, which was based on the basic pay of Rs.5100/-. The applicant contends that it is only that pension which could be deducted from the pay now refixed or else his pay must be fixed at the highest of the

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revised scale of Rs.10000-325-15200 or at the appropriate stage in the revised scale, as per Fifth Pay Commission's recommendations. In support of this assertion, the learned counsel placed reliance on the Hon'ble Supreme Court's decision in Civil Appeal No. 3543-46/90, Union of India & Ors. v. G. Vasudevan Pillai & Ors.

5. The learned counsel for the respondents, while refuting the claim of the applicants, stated that the applicants appear to have some misconception about the manner and method of fixation of their pay on re-employment on civil posts. According to the learned counsel, this pay has been refixed as per DOP&T OM of 19.11.1997 read with their earlier OMs of 31.7.86, 3.6.88 and 2.5.94. Their contention was that rules clearly provide that on re-employment no protection of the scales of pay of the posts held by the retired Defence services Officers prior to their retirement is admissible under the rules. However, they are allowed protection of pay last drawn by them at the time of their retirement. This condition was stated to have been duly taken care of while fixing the pay of the applicants. In all these cases, as per the learned counsel, the minimum of the pay scale on which the pay of these applicants have been fixed is higher than the pay last drawn by them at the time of their retirement from Defence service. They conceded that the respondents had earlier erroneously applied the provisions of pay fixation applicable to those of the retired Defence Service Officers who are re-employed in the Army. Later, on receipt of clarification from DOP&T,

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the mistake was realised and the same has been rectified by the impugned order. The learned counsel, strongly urged that no person can claim, as a matter of right, to be paid the salary which is not due to him and any action to correct the mistake cannot be stated to be any infringement on the rights of individual who is enjoying the benefit which the rules do not permit.

6. We have given our anxious consideration to the arguments advanced by the learned counsel on either side and have also carefully perused the rules relating to fixation of pay of the retired Defence Service pensioners on their reemployment on civil posts.

7. Fixation of the pay of the re-employed pensioners is governed by the rules as contained in DOP&T OM No. 3/1/85-Estt(P:II) dated 31.7.1986. The relevant portion of the said order, read along with DOP&T OMs dated 7.11.97 and 19.11.97, reads as under:

"Fixation of pay of reemployed pensioners"

(a) Reemployed pensioners shall be allowed to draw pay only in the prescribed scales of pay for the posts in which they are reemployed. No protection of the scales of pay of the posts held by them prior to retirement shall be given.

(b)(i) In all cases where the pension is fully ignored, the initial pay on reemployment shall be fixed at the minimum of the scale of pay of the reemployed post.

(ii) In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial pay on reemployment shall be fixed at the same stages the last pay drawn before retirement. If there is no such stage in the reemployed post, the pay shall be fixed at the stage below that pay. If the maximum of the pay scale in which a pensioner

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is reemployed is less than the last pay drawn by him before retirement his initial pay shall be fixed at the maximum of the scale of pay of the post. Similarly, if the minimum of the scale in which a pensioner is reemployed is more than the last pay drawn by him before retirement his initial pay shall be fixed at the minimum of the scale of pay of reemployed post. However, in all these cases, the non-ignorable part of the pension and pension equivalent of retirement benefit shall be reduced from the pay so fixed.

(c) The employed pensioner will in addition to pay as fixed under para (b) above shall be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefits.

(d) In the case of persons retiring before attaining the age of 55 years and who are reemployed, pension (including pension equivalent of gratuity and other forms of retirement benefits) shall be ignored for initial fixation to the following extent:-

(i) In the case of ex-servicemen who held posts below commissioned officer rank in the Defence Forces and in the case of civilians who held posts below Group 'A' posts at the time of their retirement, the entire pension and pension equivalent of retirement benefits shall be ignored.

(ii) In the case of service officers belonging to the Defence Forces and Civilian pensioners who held Group 'A' posts at the time of their retirement, the first Rs.500/- of the pension and pension equivalent of retirement benefits shall be ignored."

These rules are not under challenge in these OAs. In implementation of Fifth Pay Commission's recommendations, as accepted by the Government of India, CCS (Revised Pay) Rules, 1997 were notified by the Department of Expenditure vide notification dated 30.9.1997. As per Rule-2(2)(g) persons reemployed in Government service after retirement were excluded from the purview of these rules. Later, however, vide DOP&T OM dated 19.11.1997, the benefit of these rules was also extended to the re-employed pensioners. The fixation of pay on re-employment is

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governed by Rule-7 of these rules, which has to be read in conjunction with rules of 1986. The cases of the applicants fall under Clause (b)(ii) of para-4 of the instructions contained in DOP&T OM No.3/1/85-Estt (P.II) dated 31.7.1986. The same reads as follows:

✓ "In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial pay on re-employment shall be fixed at the same stage as the last pay drawn before retirement. If there is no such stage in the re-employed post, the pay shall be fixed at the stage below that pay. If the maximum of the pay scale in which a pensioner is re-employed is less than the last pay drawn by him before retirement, his initial pay shall be fixed at the maximum of the scale of pay of the post. Similarly, if the minimum of the scale of post in which a pensioner is re-employed is more than the last pay drawn by him before retirement his initial pay shall be fixed at the minimum of the scale of pay of re-employed post. However, in all these cases, the non-ignorable part of the pension and pension equivalent of retirement benefits shall be reduced from the pay so fixed."

✓ It appears that the applicants have been labouring under the belief that for the purpose of pay fixation on their re-employment, the pay drawn by them at the time of retirement is required to be notionally fixed in the Fifth Pay Commission pay scales and their pay in the scale of the post in which they have been appointed now has to be determined with respect to such notional pay. We have scanned these rules carefully. It is nowhere stated that in the case of such of the re-employed pensioners, who retired prior to 1.1.1996, and were re-employed after that date, their pay at the time of retirement from the Defence service is required to be notionally fixed as on 1.1.1996. Under the

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rules, their pay which they had last drawn at the time of retirement is only required to be protected which, in all these three cases, has been done. The applicant, Col. (Retd) R.G. Srivastava, was drawing a basic pay of Rs.5100/- and Rank Pay of Rs.1000/- at the time of his retirement. His total pay including stagnation increment, DA & IR, worked out to Rs.11030/-. He has been fixed at the minimum of the scale of the post on which he has been reemployed i.e. Rs.12000/-. Obviously, higher than the pay last drawn by him.

8. Similarly, in the case of Lt. Col. (Retd) Prem Nath, his total pay at the time of retirement was Rs.9187/- and he has now been fixed at the minimum of the scale i.e. Rs.10000/-. In the case of Lt. Col. (Retd) Ashok Bhatia, the last pay drawn by him at the time of retirement was Rs.9464/- and he has now been fixed at Rs.12000/- which is minimum of the pay scale on which he has been re-employed.

9. Thus, it can be seen from the above that in all these three cases the pay now fixed on re-employment is more than the last pay drawn by them at the time of retirement. We may reiterate, at the cost of repetition, that the rules do not provide for first notionally fixing the last pay drawn by the retired Defence Officers to the Fifth Pay Commission pay scales before determining their pay in the pay scales of the posts on which they have been re-employed, it has to be borne in mind that they have

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all been re-employed after 1.1.1996. It is only the pay drawn by them at the time of retirement from Army Service which is required to be protected and this is precisely what the respondents have done. We do not see any reason for the applicants to feel aggrieved about the same.

10. Applicants' other plea is that the enhanced pension cannot be reduced while fixing their pay on re-employment. To fortify this contention, they have placed reliance on the case of Union of India & Ors. vs. G. Vasudevan Pillai & Ors. (referred to supra). In that case, the matter before the Apex Court was in respect of such of the ex-servicemen who were holding civil post on 1.1.1986 following their re-employment. The applicants cannot derive any support from the said case as they were not holding civil post on 1.1.1986 but came to be appointed only in the years from 1997 to 1999. With effect from 1.1.1996 their pension has been revised and rules for fixation of pay on re-employment clearly state that pay has to be fixed by deducting the amount of pension (of course minus the ignorable portion). This pension cannot, but be the pension being received by the re-employed pensioner on the date of his re-employment. We see no force in the contention of the applicants that if their last pay drawn at the time of retirement is not to be refixed notionally on the Fifth Pay Commission scale, then deductible portion should also be restricted to the pension drawn by them at the time of retirement.

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11. Another ground vigorously urged before us by the learned counsel for the applicants is that the pay of the applicants, on re-employment, cannot be less than double of the pension which they are enjoying w.e.f. 1.1.1996. We find absolutely no rationale in this argument. There are no rules which provide that on re-employment the pay has to be fixed based on the pension being received by the pensioner. This argument has merely been stated to be rejected outright.

12. Having held that pay of the applicants, on their re-employment, has been fixed correctly, the next question which comes up for our consideration is whether the respondents can recover the over-payments already made to the applicants because of their earlier erroneous fixation of pay. The legal position is well settled by various pronouncements of the Hon'ble Supreme Court in a catena of cases. The general rule of law, as laid down by the Apex Court, is that where excess amount has been paid erroneously to an employee, and in the payment of which he had no role to play, or committed no misrepresentation or fraud, in that event (even though the pay and the emoluments stand reduced as a result of re-fixation/correction), the amount so over paid cannot be recovered from him, unless there are certain glaring facts and circumstances to take a different view. This law, as stands today, flows from the basic opinion expressed in the case of Shyam Babu Verma & Ors. vs. Union of India & Ors. (1194) 27 ATC 121, that excess amount erroneously paid without the fault of the employee should not be recovered. In that

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case, the decision was rendered by a Bench of three Hon'ble Judges. The relevant para reads as under:

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. 1.1.1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from 1.1.1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

13. This principle of law was reiterated by the Apex Court in the subsequent decision in the case of Sahib Ram v. State of Haryana, 1995 (2) RSJ 139, and in the case of Gabriel Saver Fernandes & Ors. v. State of Karnataka & Ors., 1994 (5) SLR 625.

14. In a recent decision of the Apex Court rendered by a Bench of Hon'ble three Judges in the case of P.H. Reddy & Ors. v. National Institute of Rural Development & Ors., 2002 (2) ATJ 208, the Apex Court found that on facts the authorities were entitled to re-fix the pay if the same is erroneously fixed earlier, but, no recovery could be made from the employee concerned. The observations of the Apex Court run as follows:

".... the employees-appellants, who had been in receipt of a higher amount on account of erroneous fixation by the authority should not be asked to repay the excess pay drawn,

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and therefore, that part of direction of the appropriate authority requiring reimbursement of the excess amount drawn is annulled."

15. In the cases before us, the position is similar to what was considered by the Apex Court in the cases referred to supra. It is not the case of the respondents that there was any misrepresentation on the part of the applicants, which resulted into wrong fixation of their pay earlier. It is admitted by the respondents themselves that they had in fact misinterpreted the rules and fixed pay of the applicants wrongly. After discovering the error they proceeded to correct the same. The wrong fixation made earlier resulted into alleged over payments to the applicants, which the respondents contend, they have a right to recover. In view of the legal position so elaborately settled by Hon'ble the Supreme Court, we are of the considered view that the respondents cannot be permitted to make recoveries of the over payments made to the applicants. If any recovery has been made, the same is liable to be refunded.

16. In the light of discussions aforesaid, we allow these OAs in part. We see no illegality in action of the respondents in re-fixing pay of the applicants on their re-employment on civil posts under the impugned orders and these orders are upheld. However, the respondents are directed not to recover any over-payments made to the applicants because of the erroneous fixation of pay done by the respondents themselves earlier. Interim stay granted against recovery of over-payments is made absolute. If any

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recoveries have been made in pursuance of the impugned orders, the same is directed to be refunded to the applicants within a period of two months from the date of receipt of a certified copy of this order. In the facts and circumstances of the cases, there shall be no order as to costs.

(A.P. NAGRATH)
Member (A)

(V.D. NAGARAJAN)
Chairman

Patwal/

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