

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

OA 1450/2001

New Delhi, this the 03rd day of June, 2002

Shri Govindan S. Tampi, Member(A)

Lt.Col(Retd) K.N.Sharma
S/o ^{Late} Shri J.R.Sharma,
R/o 101 Punjabi Bagh Apartments,
Opposite Bharat Petroleum, Rohtak Road,
New Delhi-110063. ...Applicant
(By Advocate: Applicant in person)

Versus

1. Joint Secretary(Trg) & Chief
Administrative Officer
Ministry of Defence,
C-II Hutments, Dalhousi Road, DHQ PO,
New Delhi-110011.
2. Principal CDA (HQ)
'G' Block,
New Delhi-110011.
3. Secretary of Personnel & Training,
Ministry of Personnel, P.G. & Pension,
Government of India, North Block,
New Delhi-110011. ...Respondents
(By advocate: Shri B.K.Barera)

O R D E R

By Hon'ble Govindan S.Tampi, Member(A)

Following are the reliefs sought by the
applicant in para 8 of the OA.

"(i) my revised/consolidated pension as
per the Pension Pay Order (Annexure
A 15) is being taken into account by
the Respondents No.1 and 2 for my
pay fixation with effect from
1.1.96.

ii) my revised pension is based on the
minimum of the revised pay scale for
the rank from which I retired i.e.
Basic Pay (Rs.13500/-)+Rank Pay
(Rs.1200/-)=Rs.14700/-(Annexure A
15).


iii) therefore, my pay should be fixed
at Rs.14875/- i.e. at the stage in
the revised scale of my present
civil post, which is
Rs.10000-325-15200. Further one
increment of Rs.325/- is also
admissible w.e.f.1.1.96 as per CCS

(Revised Pay) Rules, 1997 since I did not get any increment for over a year as on 1.1.96. Thus my pay should be fixed at Rs.14875+325=Rs.15200/- as on 1.1.96 and

- iv) all my arrears of pay should be paid with interest at Provident Fund interest rate."

2. Heard Col.(Retd) Shri K.N.Sharma, the applicant in person and Shri B.K.Barera, learned counsel for the respondents.

3. Following his release from the Army, the applicant, on selection by UPSC, joined the respondents on re-employment basis, as GSO-II (MIS & SAP) on 9.3.1994, in the grade of Rs.3000-4500/-, on 9.4.94. His pay was fixed at Rs.4500/- at the maximum of the scale minus his pension less Rs.500/-(being the ignorable period). He was appointed in a substantive capacity in the new post on 12.1.1999 but w.e.f.9.3.1995. The applicant's complaint is that after his retirement, his pay had been fixed a number of times. In terms of DoPT OM No.3/4/97-Estt.(Pay-II) dated 19.11.97, "the initial pay of a re-employed Government Servant who had retired with a pension or any other retirement benefit and whose pay has been fixed on re-employment with reference to retirement benefits, shall have to be fixed in accordance with Rule 7 of the CCS(Pension) Rule, 1997 and that an amount equivalent to revised pension (in his case Basic Pay + Rank Pay) excluding the ignorable portion of pension effective 1.1.96 shall be deducted from his pay in accordance with the general policy. Ignorable portion of



pension has been enhanced from Rs.500/- to Rs.1500/- by order No.3/4/97-Estt.(Pay-II) dated 7.11.97. His pay should have been refixed w.e.f. 1.1.96 (as if he was re-employed for the first time as on 1.1.96. This had not been considered by the respondents while refixing his pay. Hence this OA.

4. Grounds raised by the applicant in this OA are as below:-

- (i) repeated refixation of his pay showed that the respondents were unable to interpret the Government's orders correctly or that the orders are not properly framed;
- (ii) his repeated representations have fallen on deaf ears. In clear violation of the Government's orders, Ex. Servicemen like him were being treated in a hostile and discriminatory manner.

5. He also referred to a number of representations filed by him which did not evoke any response. The only response was the letter No.11092/PFC/CAO/A-5(A) dated 23.4.2001, closing the matter. Hence the OA.

6. During oral submissions, Shri Sharma, the applicant also reiterated all the points raised by him in the written pleadings.


7. In the reply furnished by the respondents, duly reiterated by their learned counsel Shri B.K.Barera, during the oral submissions, it is pointed out that the applicant's pay was fixed in his re-employed civil appointment in terms of

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CCS(Fixation of Pay of Re-employed Pensioners) Orders, 1986. The said orders specifically provide that the re-employed pensioners shall be allowed to draw pay only in the prescribed scales of pay of the post in which they are re-employed and that no protection of scale of pay of the post held by them prior to retirement shall be given. Where pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the re-employed post and when the pension and pensionary benefits are not ignored, it will be fixed at the same stage as the last pay drawn before retirement. It is also pointed out that the ignorable part of pension has been raised with effect from 1.1.96 from Rs. 500/- to Rs.1500/- in the revised pay scale to the service officers and civilian officers only in Group 'A' before retirement. Further, in terms of DOPT's order of 19.11.97 an amount equivalent to revised pension (excluding ignorable portion of the pension) shall be deducted while refixing pay of re-employed pensioners. It is indicated that in the present case the pay of the applicant was fixed at Rs.8056/- after adjusting the pensionary benefits from the stage of Rs.12,600/- in the revised scale which corresponded to the stage of Rs.4500/- in the pre-revised scale wherein he had been fixed. And this has correctly been done. As against the request/suggestion from the applicant for fixation of his pay, on the basis of notional pay and rank pay it is indicated that only actual pay drawn prior to retirement can be taken into consideration in the re-employed posts. Therefore, applicant's request

for fixation of pay on the basis of notional pay cannot be considered. The applicant's pay has been correctly fixed at the time of re-employment in tune with the instructions, in force. After deducting the non-ignorable portion of the pension of Rs. 1500/-, he was granted pay of Rs.300/- with all allowances of Rs.4500/-. As his pay fixation for September, 1997 was incorrectly done the same was rectified by the revised order. As the applicant's pay was correctly fixed in terms of CCS (Fixation of Pay of Re-employed Pensioners) order, 1986. Therefore, he has no further case. Respondents further point out that as his pay was fixed erroneously, wherein an additional amount was ignored. This mistake continued for sometime, but as soon as the error was noticed, corrective measure has been initiated. No further relief was available or required to be granted in this OA, according to the learned counsel for the respondents.

8. In his rejoinder, the applicant points out that DoPT's OM dated 19.11.97 directed that pay of re-employed pensioners be fixed in accordance with Rule 7 of CCS (Revised Pay) Rules, 1997, with the stipulation that the consolidated pension shall not be brought on the level of 50% of the minimum of the revised pay of the post held by the pensioner at the time of retirement. It was only in 1999 directions were issued that the full pension of commissioned officers shall not be less than 50% of the minimum of the revised scale of pay introduced w.e.f.1.1.96 for the rank last held by them at the time of his/her



retirement. This was a sequel to the issue of Department of Pension & Pensioners' Welfare OM dated 17.12.1998 in respect of civilian employers. Following this CCS (Revised Pay) Rules, 1997 should have been modified to show that the pay be fixed on the basis of last pay drawn or the notional pay on which the pension is fixed. Fixing the pay on the last pay drawn and deducting the consolidated pension based on notional pay was unfair and unjust. That is what the respondents have done. In that manner, he has been incorrectly dealt with according to the applicant. He also relied upon the decision of the Supreme Court in the case Union of India and Ors. Vs. G.Vasudeven Pillai and Ors. in Civil Appeal No.3543-46-90 dated 8.12.94, in support of the proposition that the decision to reduce the enhanced pension from pay of those ex-servicemen who were holding civil post on 01.01.1986 following their re-employment was unconstitutional.

9. I have carefully considered the matter. While the applicant states that his pay has been revised incorrectly in his re-employed civil post, the respondents state that the same has been done correctly and they referred to DoPT's OM No. 3/1/85-Estt (P.II) dated 31.7.86 forwarding the CCS (Fixation of Re-employed Pensioners). Relevant portions of the said order reads as below alongwith DoPT's OMs dated 7.11.97 and 19.11.97:

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 re-employment 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 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 of 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 re-employed 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 re-employed, 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

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posts at the time of their retirement, the first Rs.500/- of the pension and pension equivalent of retirement benefits shall be ignored.

10. This has been kept in mind by the respondents while fixing the pay/pension of the applicant, the respondents have pointed out as to how the pay was worked out in the case of the applicant. The same is as below:

"As per Rule 7(A)(i) and (ii) read with the 'Explanation' given there under, an amount representing 40 percent of the basic pay in the existing scale shall be added to the existing emoluments of the employee. The existing emoluments include (a) basic pay in the existing scale (b) dearness allowance appropriate to the basic pay (c) the amount of first and second instalments of interim relief admissible on the basic pay in the existing pay. After the existing emoluments have been increased, the pay is to be fixed in the revised scale at the stage next above the amount computed as above. Govt. servants who have been drawing pay at the maximum of the existing scale for more than one year (Stagnation increment) as on 1.1.96, next increment in the revised scale shall be allowed on 1.1.96.

3. The petitioner was drawing the basic pay of Rs.4500 from more than one year in the pre-Revised Scale of Rs.3000-100-3500-125-4500. After the implementation of Pay Commission Report, his pay was fixed in the revised scale of Rs.10000-325-15200. The calculation is as under:-

Existing Emoluments

1. Basic Pay (as on 31.12.1995) : Rs.4,500/-
2. Dearness Allowance : Rs.5,180/-
@ 111% subject to minimum of
Rs.5180/- (as on 31.12.1995)
3. Amount of First and Second : Rs.550/-
instalment of interim relief
(Rs.100 + Rs.450)
4. Total Existing Emoluments : Rs.10,230/-
(Sl 1 to 3)

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Add

5. 40% of Basic Pay (40% of Rs.4500) : Rs.1,800/-
6. Total (Sl. 4 + 5) : Rs.12,030/-
7. The stage at which initial pay has to be fixed : Rs.12,275/-
8. After grant of annual increment as on 1.1.96 pay further raised to (Auth : Proviso to Rule 8 of the CCS : Rs.12,600/- (Revised Pay) Rules 1997)

11. It is thus found that the respondents have acted in accordance with the instructions in force to have the pay of the re-employed of the pension fixed in accordance with Rule 7 of the Rules, 1997. I do not see any reason to disturb the same. The applicant's plea that the Rules, 1997 should have been modified so as to give him the benefit does not warrant acceptance. The applicant had placed reliance on the Hon'ble Apex Court's decision in Civil Appeal 3543-46/90 Union of India and Others Vs. G. Vasudeven Pillai and Others (supra) against the decision to reduce the enhanced pension from pay of those ex-servicemen who were holding civil post on 01.01.1986 following their re-employment. The same does not apply in the case of the applicant as he was not holding re-employment civil post on 01.01.1986 but came to hold it only on 9.3.1994. The Rules, 1997 had been issued only much later than the Hon'ble Supreme Court's decision and after the adoption of the recommendations of the 5th Central Pay Commission and, therefore, the Rules cannot be assailed. So is the case with the respondents' action, issued in pursuance thereof.

12. In the circumstances, I am not convinced that applicant has made out any case for my interference. The OA being devoid of merit fails and is accordingly dismissed. No costs.

(Govindan S. Tampi)
Member(A)

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