

Central Administrative Tribunal, Principal Bench

Original Application No.1384 of 1996

New Delhi, this the 29th day of May, 2000

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice Chairman  
Hon'ble Mr. V. K. Majotra, Member (Admnv)

K. Nandakumaran, UDC, s/o late Shri N.C. Kesavan Nair R/o 54/5, Sector No.1, Pushp Vihar, Saket, M.B. Road, New Delhi-110017.  
Office of Executive Engineer, Exhibition Division-I, CPWD, Pushpa Bhavan, New Delhi-110062-Applicant

(By Advocate Shri A.P. Mohanty)

Versus

1. Union of India Represented by the Director General of Works, Central Public Works Department, EC.IV(C) Branch, Nirman Bhavan, New Delhi.
2. Deputy Director (Training), Directorate General of Works, Central Public Works Department, EC.IV(C) Branch, Nirman Bhavan, New Delhi. - Respondents

(By Advocate Shri R.V. Sinha)

O R D E R (Oral)

By Reddy, J. (Vice Chairman)

The applicant was initially employed as a Combatant Naik Clerk in the Army. He retired from Army in October, 1984. After his retirement he was re-appointed in the post of LDC in CPWD in October, 1985. Vide OM dated 5.5.1992 and letter dated 26.7.1992 his basic salary in the post of LDC was fixed at Rs.1475/- with effect from 1.10.1991. Subsequently, however, the respondents by an order dated 18.3.1996 sought to refix the pay of the applicant with effect from 3.10.1985 at basic pay of Rs.260/- per month on the ground that even adding the pension and pension equivalent of gratuity it would not exceed the last pay drawn at Rs.356/- per month and hence there would be no hardship to the applicant. In the above proceedings the respondents ordered to refix and recover the excess of pay and allowances drawn by him on account of wrong pay

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fixation in easy instalments. This order is challenged in this OA.

2. The learned counsel for the applicant draws our attention to the Govt. of India, Ministry of Finance, Memo No.F.6(8)/E.III/63 dated the 11th April, 1963 (reproduced under FR 27). In this proceeding it has been decided as a special case that "service rendered as a combatant clerk (Sepoy and above and equivalent ranks in Navy and Air Force) may be treated as equivalent to service as L.D.Cs/ Junior clerks in Civil Departments irrespective of the pay drawn in the Armed Forces and that when such persons are absorbed in posts of L.D.Cs/ Junior clerks in Civil Departments after their release/ retirement from the Armed Forces, their initial pay in the posts of L.D.Cs/ Junior Clerks may be fixed at a higher stage in the scale above the minimum equal to the number of completed years of service as combatant clerk". Placing reliance upon this, the learned counsel submits that as the applicant retired as Combatant Clerk (Naik) and joined the Civil Department of the Government as L.D.C. his pay should be fixed at the higher stage above the minimum equivalent to the number of completed years of service as Combatant Clerk. He further submits that the applicant's pay was rightly fixed at Rs.1475/- per month. Hence the impugned order seeking to refix and recover the alleged excess payment of pay and allowances is illegal and contrary to the Govt. of India's instructions and rules.

3. The learned counsel for the respondents, however, submits that the applicant is not entitled for

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advance increments as he does not suffer any hardship. It is clarified that the question of hardship is determined by adding full pension and pension equivalent of gratuity to the minimum pay of re-employed post and in case it is less than the last pay drawn in the Military service, <sup>it amounts to</sup> ~~there is~~ hardship and pay <sup>will</sup> ~~is~~ be fixed by giving advance increments. In case it <sup>exceeds</sup> ~~is more~~ <sup>than</sup> the last drawn pay, there is no hardship and pay is to be fixed at the minimum of the pay scale of the re-employed post. The respondents have taken into consideration the above principle and finding that the applicant would be getting the pay far excess than the last pay drawn by him at the time of his retirement and the pay fixed at Rs.1475/- being far excess, the same is sought to be refixed. It is contended that the said pay had been fixed by adding advance increments equal to the number of years of service in the Army, though he was not entitled for the said increments as he does not suffer any hardship. The learned counsel relies upon the judgment of the Supreme Court in Director General of Posts Vs. B.Ravindran and another, (1997) 1 SCC 641.

4. We have given careful consideration to the pleadings as well as arguments advanced by both sides.

5. The question of pay fixation of Ex-servicemen retiring before attaining the age of 55 has come up for consideration before the Supreme Court in the case of B.Ravindran (supra) and considering the policy decisions of the Govt. of India right from 25.11.1958 which stood modified and altered by the OMs of 1963, 1964, 1978 and <sup>as the court</sup> 1983, held that if there was no hardship, no advance increments should be granted. In the matter of fixation of pay of re-employed pensioners the first step required

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to be taken was to fix his initial pay at the minimum stage of scale of pay prescribed for the post on which he was re-employed. The next step to be taken was to find out whether his pay thus fixed plus pension, including other pensionary benefits, exceeded the pay which he drew before his retirement or Rs.3000. If it exceeded either of those limits, then necessary adjustment was to be made in the pay by reducing it below the minimum stage so as to ensure that the total pay including pension was within the prescribed limits. If the initial pay plus pension was found to be less, then it was to be regarded as a case of undue hardship and his pay was required to be fixed at higher stage by allowing one increment for each year of his service which the officer had rendered before retirement. The Supreme Court considering the question of retirement of pensioners at an early age than before 55 years held that the pay was to be adjusted. Thus, while totalling up the initial pay and the pension for the purpose of finding out whether the pensioner on re-employment was likely to get more or less than what he was getting earlier, Rs.10 in case of civil pensioners and Rs.15 in case of military pensioners, were to be ignored. In other words the amount of pension to be added to the initial pay was to be reduced to that extent. Thereafter his pay was to be adjusted depending upon whether the pensioner would thus get more or less on his re-employment. The Supreme Court also held that the orders issued in 1983 were supplementary in nature and did have a binding force and 1985 clarificatory instructions were not only inconsistent with the relevant provisions of the Civil Service Regulations but

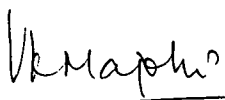
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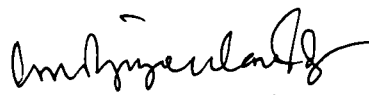
its effect was to supersede the orders and provisions.

6. Thus, it is clear from the above judgment of the Supreme Court that the basic principle was to see whether the applicant would suffer hardship in the fixation of the basic pay in the re-employed post. In this case, the respondents had taken into consideration the above principles and passed the impugned order.

7. The memo dated 11th April, 1963, which the learned counsel relies upon, will not help him. It was clearly stated in the said memo that the pension and pension equivalent of gratuity, if any, which does not exceed Rs.15 per mensem would be ignored. In respect of pensionary benefits exceeding Rs.15 per mensem, the same may be ignored. Thus, taking away the ignorable part of the pension, the remaining part of pension has to be added to the basic pay to find whether the applicant would suffer undue hardship. Only in case of hardship, he was entitled for the increments. The contention that irrespective of hardship, the applicant was entitled for increments depending on the number of years of service in the Army, is contrary to the ratio of the judgment of the Supreme Court and hence not acceptable.

8. In the circumstances, we do not find any error in the impugned order. It is also seen that the respondents had directed to recover the excess payment in easy instalments, so as to avoid any hardship to the applicant. The OA, therefore, fails and is accordingly dismissed. No order as to costs.

  
(V.K. Majotra)  
Member (Admnv)

  
(V. Rajagopala Reddy)  
Vice Chairman