

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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HON. SHRI R.K. AHOOJA, MEMBER (A)

O.A. NO.129/1997

NEW DELHI, THIS 4th DAY OF SEPTEMBER 1997.

GAJENDRA PAL SINGH
EDSPM Village Bijrol
Teh. Baraut
District Meerut

...APPLICANT

(By Advocate - Shri V.P.S. Tyagi)

Versus

1. Union of India, through
Secretary
Ministry of Defence
New Delhi
2. Director Gen. of Post Offices
New Delhi
3. Senior Suptd. of Post Offices
Meerut Division
Meerut
4. Senior Accounts Officer
Defence Pension Disbursing Office
Meerut Cant.
5. C.D.A. (PD)
Meerut Cantt.

...RESPONDENTS

(By Advocate - Shri R.V. Sinha)

ORDER

To be referred to the reporter? YES/NO

(R.K. AHOOJA)
MEMBER (A)

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The applicant retired as a Junior Commissioned Officer (JCO) from army service w.e.f. 1.2.1991 on a basic pension of Rs.1385/-. He was engaged as Extra Departmental Sub-Post Master (EDSPM for short), Village Bijrol, Teh. Baraut, District Meerut, w.e.f. 30.8.1993 on a fixed monthly salary of Rs.620/- (A-2). The applicant has been getting dearness allowance and interim relief instalments from time to time as sanctioned to the defence pensioners. However, no dearness allowance or interim relief was paid to him by the

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Postal Department on his EDSPM service. The applicant is aggrieved that the respondents have, vide impugned order (A-1), intimated him that he is not entitled to receipt of DA and interim relief on his military pension and therefore is liable to return a sum of Rs.77,617 on account of over-payment. Further release of DA and interim relief on his military pension has also been stopped from 1.1.1997. The respondents in their counter submit that as per rules ex-servicemen re-employed against civil posts are not entitled to D.A. and interim relief on their military pension. They also submit that the validity of this provision has been upheld by the Supreme Court in UOI VS.G. VASUDEVAN PILLAI & ORS. 1995(2) SCC 32.

2. I have heard the counsel on both sides. The ld. counsel for the applicant argued that the case of the applicant does not fall within the purview of Rule 55(a)(ii) of CSS (Pension) Rules 1965, as amended in 1991, as the payment made to the applicant as EDSPM is not a salary but a fixed payment. The EDSPMs work in the villages on a part time basis and their employment is contractual. They are thus not in regular civil employment and their cases fall outside the purview of Rule 55(a)(ii).

3. I have carefully considered the matter. As submitted by the respondents, in the case of G. Vasudevan Pillai (Supra), the Supreme Court has upheld the validity of Rule 55(a)(ii). The question therefore is only whether the case of the applicant falls within the purview of this rule. The Hon'ble Supreme Court has held as follows:-

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"8., according to us, even if dearness relief be an integral part of pension, we do not find any legal inhibition in disallowing the same in cases of those pensioners who get themselves re-employed after retirement. In our view this category of pensioners can rightfully be treated differently from those who do not get re-employed; and in the case of the re-employed pensioners it would be permissible in law to deny DR on pension inasmuch as the salary to be paid to them on re-employment takes care of erosion in the value of the money because of rise in prices, which lay at the back of grant of DR, as they get dearness allowance on their pay which allowance is not available to those who do not get re-employed."

4. In National Ex-Servicemen's Coordn. Committee etc. etc. Vs. Controller Gen. of Defence Accounts & Ors.
RA No.1002/93 in Civil Appeal No.1809/93 (copy at R-8),
the Hon'ble Supreme Court observed as follows:-

"We are not persuaded to accept this submission because the subject matter of 1983 OM is entirely different and cannot affect the rationale of denial of dearness relief on pension on re-employment as mentioned in the judgement rendered in the appeals - the same being that the dearness relief paid after re-employment takes care of the erosion in the value of the money because of rise in prices, which lies at the back of grant of dearness relief. Payment of dearness relief in such a situation on pension would amount to giving dearness relief twice, which is not visualised."


5. The ratio laid down by the Supreme Court is that the ex-servicemen cannot draw dearness allowance and other similar benefits on their pension as also on their civil post salary as the same would amount to payment of DA twice. In the present case, as pointed out by the ld. counsel for the applicant, the DG Posts's letter dated 9th December 1988 (A-4) lays down that in the case of pensioners working as EDAs, an option to draw either relief on pension or DA is required to be obtained from them. In case they want to draw DA, the same would be admissible from the date pension disbursement authority stops payment of DA relief. In other words, option has

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been given to the EDSPMs either to draw DA on their service pension or DA relief etc. on their salary as EDSPM. In the present case, it is the admitted position that the applicant is not receiving any DA relief on his salary of fixed amount of Rs.620/- per month as EDSPM. While the applicant, therefore, cannot be allowed to get DA relief both on pension as well as on civil service salary, he cannot similarly be denied DA relief both in respect of pension as well as civil service salary. Since the respondents are not paying him DA relief on his civil service salary as EDSPM, they cannot deny him payment of DA relief on his military pension. Quite obviously, the case of the applicant does not fall within the purview of Rule 55(a)(ii) and in the ratio of the judgement of Supreme Court in Vasudevan Pillai (Supra).

6. In the facts and circumstances of the case, the O.A. is allowed. The applicant is held to be entitled to receive DA relief on his military pension so long as in terms of DG Posts' letter (Supra), he does not opt to receive DA on his civil service salary as EDSPM. Accordingly, no recoveries of payment already made to him shall be made and he would also be entitled to the arrears of DA reliefs etc. from 1st January 1997.

7. The O.A. is disposed of accordingly. No order as to costs.


(R.K. AHOOJA)
MEMBER (A)