

Original Application No.1584 of 1997

New Delhi, this the 17<sup>th</sup> day of August, 1998

Hon'ble Mr. N. Sahu, Member (Admnv)  
Hon'ble Dr. A. Vedavalli, Member (J)

Vinod Kulshreshtha C/o Shri Shankar  
Singh Sisodia, New Sarvodaya colony,  
Jail Chungi, Meerut-250001

-APPLICANT

(By Advocate Shri U.S. Bisht)

Versus

1. Union of India through Comptroller & Auditor General of India, 7, Bahadurshah Zaffar Marg, New Delhi.
2. The Director General of Audit, Defence Services, L-II Block, Brassy Avenue, New Delhi-110011.
3. The Director of Audit, D.S., C.C., 22-A, The Mall, Meerut Cantt., U.P.
4. The Secretary of India, Ministry of Personnel, Public Grievances & Pensions, Deptt. of Personnel & Training, New Delhi.

-RESPONDENTS

(By Advocate Shri M.K. Gupta)

ORDER

By Mr. N. Sahu, Member (Admnv) -

The applicant is aggrieved by an order dated 26.6.1996 of the Director General of Audit (Annexure-A-1) and by the order of the Director of Audit Defence Services dated 14.5.1997 (Annexure-A-2). The first order is important and conveys reasons for rejecting the claim of the applicant relating to refixation of pay on opting for combined service for pension.

2. The background facts briefly are as follows - the applicant was appointed in the Office of the


Director of Audit on 20.9.1989. He served in the Indian Navy from 24.1.1971 to 31.1.1985 for a period of 14 years. He exercised his option for counting his previous Navy service within the period of one year from the date of joining under Rule 19(1) of the Pension Regulations, 1972. Accordingly by an order dated 20.9.1991 (Annexure-A-4) the Director of Audit ordered that the period of his service for 14 years 7 months and 24 days be treated as qualifying service towards his present civil service. The applicant deposited the amount of Rs.15,110/- comprising of Rs.13,490/- towards service gratuity and DCRG and Rs. 1619/- by way of interest. This is a condition which he fulfilled for counting the Naval service as qualifying service. He, thereafter, represented by Annexure-A-7 dated 20.9.1994 to the C&AG, New Delhi for granting him advance increments as per Para 15 of the O.M. dated 31.7.1986 [Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986]. Para 15 runs as under -

**"15. RETRENCHED EMPLOYEES**

In the case of ex-servicemen as well as civilians who are retrenched from service and are not granted pension and/or service gratuity, on their appointment to Government service they may be granted advance increments equal to the completed years of service rendered by them on a basic pay equal to or higher than the minimum of the scale attached to the civil post in which they are employed. The pay arrived at should not, however, exceed the basic pay drawn by them in the Armed Forces."

3. The respondents state that the applicant was not a "retrenched ex-serviceman" and, therefore, he is not entitled to 10 advance increments as per OM dated 22.1.1991 (Annexure-R-V). The second point

raised by the respondents is that the fixation of initial pay of the re-employed officer at the minimum of the prescribed pay scale did not cause undue hardship and therefore Article 510 of Civil Services Regulations enabling fixation at the higher stage by allowing one increment for each year of service rendered before retirement need not be applied. In fact, the total emoluments drawn by the individual before his discharge from the Indian Navy was Rs.1514/-. The total emoluments after re-employment with a basic pay of Rs. 1200/- worked out to Rs.1903/-. Hence there was no undue hardship to the applicant. It is made further clear that the applicant was neither a person retiring on invalid pension nor on compensation pension. Therefore, the respondents denied his claim on the ground that he is not covered by Para 6 and Para 15 of Fixation of Pay Rules, 1986 *ibid*.

4. The applicant states that he is covered by OM dated 22.1.1991. According to him the said O.M. has filled in the gap in the existing rules. The O.M. dated 22.1.1991 deals only with cases of ex-servicemen who can give an option for combined service for pension under Rule 19 of CCS(Pension) Rules, 1972 by surrendering their pensionary benefits. According to the applicant O.M. dated 22.1.1991 should be read as supplemental to the rules dated 31.7.1986.
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5. We have carefully considered the submissions. We are of the considered view that there is absolutely, no merit in this Original Application. We shall extract the relevant portion of the impugned order -

"The request made by Shri Vinod Kulshreshtha, Sr. Auditor seeking his fixation of pay in pursuance of para 15 of the guidelines notified by Government of India, Ministry of Personnel and Public Grievances letter dated 31st July 1986, and office Memorandum dated 22.1.91 has been examined thoroughly.

Actually, the provisions contained in para 15 of the letter dated 31st July, 1986 and Office Memorandum dated 22.1.91 are not applicable to Shri Vinod Kulshreshtha as he left Naval service on completion of his contracted terms and was not a "retrenched" servicemen.

Further, Shri V. Kulshreshtha may be advised not to move such irrelevant representation in future."

6. We are of the view that the O.M. dated 22.1.1991 cannot be applied to the applicant's case. A Full Bench of this Tribunal in the case of B. Ravindran and others Vs. Director General of Posts and others, CAT FB Vol. II 248 held that the fixation of pay of ex-servicemen on their re-employment in Government service will have to be on the basis of the instructions in force at the relevant time before the clarifications were issued by the DOPT. The applicant joined in 1989. We are of the view that the instructions and the statutory rules that were prevalent during 1989 will have to be applied. That apart there is a basic a flaw in the applicant's claim. We have read the impugned order which emphasized that the applicant was on contract

service. On the completion of his contracted period he was released. He was not "retrenched". He did not have any years of service to complete before superannuation. He was released on 31.1.1985. He took the civil re-employment with Government in 1989. This is not a case of a person who had only served for a portion of his service before superannuation and on his retrenchment he has more years of service left. Therefore, on his taking up a re-appointment in civil service he should not again start with a clean slate at the basic of the new scale. It was only to such people that the Government extended the benefit of giving one increment for one completed year of service provided he surrendered his pensionary benefits. The whole concept of pensionary benefit has a qualitative dimension in respect of employees who are regular reemployees up to superannuation and who retire either on superannuation or on voluntary retirement or who retire on invalid or compensation pension. These cases have to be distinguished from a contract service. The concept of pension per se does not apply to a contract service. The terms of the contract do not contemplate granting of a regular pension after the contract is over. Service gratuity is provided no doubt but that is something different from pension granted to the categories of regular employees. A retrenched employee has to leave service not because of his fault but because he is found surplus or because there is no work available. If such retrenched employee has to leave his job much before his retirement and he takes up a new civil

*has to be*

job, it will be a great hardship to him to start at the basic minimum as though the earlier service has to be rubbed off as nonexistent. The applicant is not a retrenched employee. We are absolutely satisfied that the impugned order does not call for any interference.

7. In the result, the O.A. is dismissed. No costs.

A. Vedavalli  
(Dr. A. Vedavalli)  
Member (J)

N. Sahu  
(N. Sahu)  
Member (Adminv)

rkv.