

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. Nos. 2263, 2264 and 2265 of 1994

NEW DELHI, THIS THE 14th DAY OF AUGUST, 1995.

HON'BLE MR B.K.SINGH, MEMBER(A)

O. A. No. 2263 of 1994

Shri Braham Singh,
S/O Shri Giruwar Singh,
I.D. No. 10162W,
Room No.8-B,
Cabinet Secretariat,
South Block, New Delhi. Applicant.

O. A. No. 2264 of 1994

Shri J.C. Sharma, Room No.8-B,
Cabinet Secretariat,
South Block,
New Delhi. Applicant.

O. A. No. 2265 of 1994

Shri Hari Chand S/O Shri Shiv Ram
Room No.8-B,
Cabinet Secretariat
South Block,
New Delhi. Applicant.

(Shri G.D. Bhandari, Advocate for the applicants
in all the above three O.A.s)

vs.

1. Union of India
through the Secretary,
Cabinet Secretariat,
Room No.8-B, Cabinet Secretariat,
South Block, New Delhi.
2. The Joint Secretary(Pers),
Cabinet Secretariat,
South Block, New Delhi. Respondents,
(in all the O.As)

(through Mr J.Banerjee for Mr Madhav Paniker, Adv.)

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ORDER

(delivered by Hon'ble Mr. B.K. Singh, Member(A))

The three O. As No. 2263, 2264 and 2265 of 1994 are connected matters, in which similar facts and legal issues are involved. In all the three aforesaid O.As, interim reliefs have been granted on 21.11.1994 by which the respondents have been restrained from giving effect to the order for recovery of the excess amount paid to the applicants. The respondents were given opportunity to file a short reply regarding the interim relief which had been granted for 14 days initially. The interim order has not been vacated and is continuing till date.

The facts of O.A. No. 2263/94 are that applicant is an Ex-serviceman and joined the office of the respondents on 25.6.1974. He was in receipt of military pension amounting to Rs.50/-. His pay was fixed at Rs.258/- by deducting the difference of Rs.20/-(Rs.70-50), being the ignorable portion of military pension. The applicant was granted annual increment of Rs.6/- w.e.f. 1.6.1978 raising his pay to Rs.264/-. The ignorable pension was increased to Rs.125/- under the Ministry of Finance (Dept. of Expenditure) O.M. No. F-5(14)-E-III(B)77 dated 19.7.78. These orders were effective from the date of the issue and applicable to all military pensioners as were re-employed on or after the date of issue of these orders. In case of persons, who were already on re-employment, these orders stipulated that their pay may be fixed on the basis of these orders provided they opted within

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six months to come under these orders. In case, they so opted, their pay was to be re-fixed as if they had been re-employed for the first time from the date of issue of these orders.

The applicant in OA No. 2264/94 joined the respondents' office on 7.11.1977. He was drawing a military pension amounting to Rs.93.50. As per the Govt. of India's instructions, an amount of Rs.50/- was ignored and his pay was fixed after taking into account the remaining portion of his military pension, amounting to Rs.43.50P. Subsequently, the ignorable portion of pension was increased to Rs.125/- under the O.M. dated 19.7.1978, quoted in O.A. No. 2263/94. The amount of Rs.93/- being less than Rs.125/- was thus to be ignored. In 1983, Ministry of Defense vide their O.M. No. 2(1)/83/D(7) dated 8.2.1983 and corrigendum dated 24.10.1983 made provisions for ignorance of entire amount of pension in the case of re-employed ex-servicemen below Commissioned Officer rank. These orders were made applicable to all re-employed military pensioners re-employed on or after 25.1.1983 and it further provided that in case of those already re-employed, their pay may be fixed in terms of these orders subject to their exercising option within six months from the date of issue of corrigendum, i.e. 24.10.1983. In tune with the earlier orders issued on 19.7.1978 for ignorance of Rs.125/- element of Military Pension in pay fixation, these orders also provided that in the case of those who opted to be governed by these orders, their pay was to be fixed at the minimum of pay scale w.e.f. 25.1.1983. In this case, it is admitted that the applicant



did not exercise any option and accordingly, his pay continued to be as it was earlier. Again, in April, 1986, another opportunity was given under DP & T's O.M. No. 3/1/85-Ett. (II) dated 4.4.1986 (Annexure R-IV) to opt for ignorance of full military pension as was done in 1983 with the same conditions i.e. if an individual opted for it his pay would be fixed at the minimum of the pay scale w.e.f. 1.4.1986.

In O.A. No. 2265/94, the applicant is also an ex-serviceman and he joined the respondents office on 15.12.1972. On the date of joining the fresh employment, he was in receipt of military pension amounting to Rs.40/-, which was raised to Rs.50/- from 1.1.1977. His pay was fixed by ignoring the entire amount of pension. Subsequently, as stated above, the ignorable portion of pension was increased to Rs.125/- under the O.M. dated 19.7.1978, quoted in O.A. No. 2263/94 above. As stated above, in 1983, Ministry of Defense issued O.M. dated 8.2.1983 and corrigendum dated 24.10.1983. Provisions were made for ignorance of entire amount of pension in the case of re-employed ex-servicemen below the Commissioned Officers rank. These orders were made applicable to all re-employed military pensioners re-employed on or after 25.1.1983 and it further provided that in case of those already re-employed, their pay may be fixed in terms of these orders subject to their exercising option within six months from the date of issue of corrigendum, i.e. 24.10.1983. In tune with the earlier orders issued on 19.7.1978 for



ignorance of Rs.125/- element of Military Pension in pay fixation, these orders also provided that in the case of those who opted to be governed by these orders, their pay was to be fixed at the minimum of pay scale w.e.f. 25.1.1993. Since the applicant did not opt, his pay was fixed after deducting Rs.250/(unignorable portion of increased his/military pension of Rs.325/- received by the applicant w.e.f. 1.1.1986 after the recommendations of the 4th Pay Commission) from his revised pay fixed as a result of the recommendations of the 4th Pay Commission.

In O.A. No. 2263/94, orders No. 29/88/79/E.9 (2524)/Pers-13-6374 to 6377 dated 24.5.1993(Annexure A-1). In O.A. No. 2264/94, orders No. 30/20/79/E.9(3129)/Pers. 13-4120 dated 20.5.1994(Annexure A-1) are under challenge. In O.A. No. 2265/94, orders No. 30/12/79 E.9(1751)/Pers-13-3638 dated 3.5.1994(Annexure A-1) are under challenge.

In the three aforesaid O.A.s, the pay has been fixed, after deducting an amount of Rs.250/- and the minimum revised pension w.e.f. 1.1.1986, i.e. Rs.375/- has been taken into account for fixation of pay of these applicants.

The reliefs sought in O.A. No. 2263/94 are as under:

- i) set-aside and quash the impugned re-fixation of pay orders dated 24.5.1993(A-1) ordering a reduction of pay initially Rs.20/-, then Rs.29/- and finally Rs.325/- in the basic pay by illegal adjustment of Applicant's Army pension alongwith Memorandum dated 14.7.1993 (A-5) and Orders dated 21.10.1993(A-6) whereby the respondents have in addition to reducing the pay of the Applicant as aforesaid, they have further ordered for recovery of an amount of Rs.31,534/- relating to the

3/78 to 5/93, from the monthly salary of the Applicant being badly vitiated on the grounds as aforesaid.

ii) command/order/direct the Respondents to restore the pay of the Applicant to the level of pre-reduction stage starting from 1.3.1978, in compliance with the stipulation Article 526 of Civil Service Regulations and Respondents Orders issued by CDA(P), Allahabad dated 13.3.1987(A-2) and extend the benefit of Full Bench Judgment in OA No.572/90(A-11) as the applicant is admittedly a similar situate Ex-Serviceman re-employed under the same respondents.

iii) any other relief deemed fit and proper may also be granted in addition to the rest of the case in the interest of justice."

In O.A. No. 2264/94, the following reliefs have been prayed for:-

"set-aside and quash the impugned re-fixation of pay orders dated 20.5.1994(A-1) alongwith Respondents orders dated 19.7.1994(A-3) ordering recovery of Rs. 25,250/- from the monthly salary of the Applicant, being badly vitiated as humbly submitted in the foregoing paras;

(ii) command/order/direct the respondents to restore the pay of the Applicant to the level of pre-reduction stage with effect from 1.7.1986 in terms of Article 526 of Civil Service Regulations and Respondents Orders dated 13.3.1987(A-2) and further extend the benefit of the Full Bench Judgment Order and Judgment in OA No.572/90(A-11) as the Applicant is admittedly a similar situate ex-serviceman re-employed under the same Respondents.

(iii) any other relief deemed fit and proper may also be granted in addition to the rest of the case in the interest of justice."

In OA No. 2265/94, the following reliefs have been prayed for:

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"(i) set aside and quash the impugned re-fixation of pay orders dated 3.5.94(A-1) ordering a reduction of Rs. 250/- in the Basic Pay by illegal adjustment of his Army Pension alongwith Memorandum dt. 11.10.94, Annexure A-8, whereby the representation of the applicant has been rejected and a recovery of Rs. 25,250/- / 22,805/- has been ordered from the monthly salary of the applicant being badly vitiated on the grounds as humbly submitted in the foregoing paras.

(ii) Command/order/direct the respondents to restore the pay of the Applicant to the level of pre-reduction stage with effect from 1.7.1986 in terms of Article 526 of Civil Services Regulations and Respondents orders dated 13.3.1987(A-2) and further extend the benefit of the Full Bench Judgment Order and Judgment in OA No.572/90(A-11) as the applicant is admittedly a similar situate ex-serviceman under the same Respondents.

(iii) any other relief deemed fit and proper may also be granted in addition to the cost of the case in the interest of justice."

On notice, the respondents filed a reply and contested the application and grant of reliefs prayed for.

Heard the learned counsel Shri G.D. Bhandari for the applicants in all the three connected O.A.s and Shri J. Banerjee proxy counsel for Mr. Madhav Panikar, counsel for the respondents and perused the records of these cases.

It is admitted by both the parties that all the three applicants are ex-servicemen and have joined the civil employment on different dates and in different capacities. It is also admitted

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that none of the three applicants exercised their option in 1978 nor in 1983 nor did they exercise the same in the year 1986. The Circular issued by the department of personnel and department of expenditure and Ministry of Defence have all been filed and enclosed with the counter-reply. O.M. No. 2(1)/83/D(Civ.-I) dated 8.2.1983 has been issued on the subject of fixation of pay of re-employed pensioners and the policy to be adopted and the question of ignoring Rs.50/- in case of persons retired before attaining the age of 55 years. These orders were to take effect from 25.1.1983 and this stipulated that the amount of Rs.250/- was to be ignored in the case of service officers and in case of personnel below Commissioned Officer rank, the entire pension was to be ignored. This Circular of the Defence Ministry was issued with the concurrence of the Ministry of Finance(Dept. of Expenditure) conveyed vide their letter dated 4.2.1983. The basic question was that of exercising of option and re-fixation of pay after the option was exercised. The Circular O.M. No. 3/1/85-Estt.(P-II) dated 4th April, 1986 of Govt. of India, Ministry of Personnel, Public Grievances & Pensions(Department of Personnel and Training) issued fresh instructions regarding fixation of pay of re-employed officers. It referred to the defence Ministry's O.M. No. 2(1)/83/D(C-IV)-I dated 8.2.1983 and the Ministry of Finance(Dept. of Expenditure) O.M. No. F.4(3)-E.III/82 dated 13.12.1983, according to which pension upto Rs.250/- was to be ignored on fixation of pay on re-employment of service officers and officers holding Group 'A' posts at the time of their retirement, retiring before the age of 55 years.

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The relevant portion of this O.M. reads as under:

....The President has now been pleased to decide that in the case of ex-servicemen and civilian officers retiring before attaining the age of 55 years, the pension as indicated below may be ignored in fixing their pay on re-employment:-

- i) in the case of service officers and officers holding Group 'A' posts in the civil side, the first Rs.500/- of pension; and
- ii) in the case of personnel below commissioned officer rank and officers holding Group 'B' or lower posts in the civilian side at the time of their retirement, the entire pension."

It further provided that the pension for the purpose of these orders includes pension equivalent of gratuity and other forms of retirement benefits. These orders were made effective from 1st April, 1986. It was clearly and categorically stipulated in this Circular that in case of persons who are already on re-employment, their pay may be fixed on the basis of these orders, w.e.f. 1.4.1986 provided they opt to come under these orders. If they so opted, their terms would be determined afresh as if they were re-employed for the first time w.e.f. 1.4.1986.

It was further submitted that option should be exercised in writing within a period of six months from 1st April, 1986 and that the option once exercised shall be final. Another O.M. dated 11.9.1987 bearing No. 3/9/87-Estt. (Pay-II), Govt. of India, Ministry of Personnel, P.C & Pensions (Department of Personnel and Training) was issued regulating the pay fixation of re-employed pensioners. In this Circular it was provided that if the revised option is not taken into consideration, certain unintended benefits are likely to accrue to

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re-employed pensioners as they will draw the revised amount of pension which would invariably be higher than the earlier amount of pension, in addition to pay already fixed on the basis of the pension granted to them earlier. The president was pleased to decide that the pay of the pensioners, who were in re-employment on 1.1.1986 and whose pay was fixed in accordance with the provisions of Department OM dated 9.12.1986 may be refixed w.e.f. 1.1.86 by taking into account the revised pension. Likewise, increase in the pension of ex-servicemen under separate orders of Ministry of Defence may also be adjusted by re-fixation of their pay in terms of provisions of this Department OM dated 9.12.1986. This O.M. further provided that over-payments already made may be recovered/adjusted as deemed necessary. All re-employed pensioners, would, therefore, be required to intimate to the heads of Offices in which they are working, the amount of revised pension sanctioned to them w.e.f. 1.1.1986 for the purpose of re-fixation of their pay after taking into account their revised pension.

It is admitted that in case of all the three applicants, excess payment was made by the respondents due to non-exercise of options and due to non-intimation of the revised pension granted to these applicants.

After hearing the rival contentions and going through the records, it is clear that the respondents neither exercise their option in 1978 nor did they exercise option in 1983 and 1986. They also did not intimate about the revised

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pension and they continued to draw the pay that was initially fixed. All the applicants are non-commissioned officers is an admitted fact. They were required to exercise option and the opportunity was granted to them thrice but they did not exercise their option. They were also required to intimate their revised pension so that their pay could be re-fixed but they were enjoying their dogmatic slumber and never wake up to the various circulars issued by DO PT, Ministry of Finance (Dept. of Expenditure) and Ministry of Defence. They were aroused from their slumber only when the respondents communicated the excess amounts drawn by them and ordered recovery by fixing the instalments as a result of various circulars issued, which are under challenge in these O.A.s. All these O.A.s were filed on 15.11.1994 assailing the orders issued by the respondents for recovery of the excess amount drawn by them.

All the three applicants are non-commissioned officers. The norm of their pay-fixation is that in case they opt to come to civil employment their pay would be fixed by ignoring one year of their service and taking into consideration the number of years put in by them for the purpose of grant of increments to them in the civil employment. If a person has put in 10 years service in the Army and has been discharged, he would be eligible to draw nine increments in the scale of pay in which he was given the re-employment. This would be subject to the various instructions issued from time to time foregiving the military pension.

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and gratuity etc. and exercising option for fixation of their pay accordingly. If they continue to draw the military pension and gratuity wish to retain the same pay would be fixed at the bottom of the pay-scale without any grant of increments to them. A perusal of the record of the three O.A.G. and the rejoinder filed by the applicants would show that they got the benefits of higher fixation of pay, taking into consideration their length of service in the army (-) one year and they also continued to draw the revised pension from time to time and even after the same was revised w.e.f. 1.1.1986, they continued to draw the same when liberalised pension the minimum of this amount was raised to Rs.375. Thus, they continued to draw the liberalised pension as well as the benefit of the increments on the basis of their length of service. The revised instructions envisage clearly that if a person opts to draw the liberalised pension of the Army or the Civil/being the minimum of Rs.375/-, his pay would be required to be re-fixed and that is the reason why they were given the opportunity to exercise option thrice and they were also required to intimate the revised pension, they were getting and the pay, they were drawing from the civil employment but they neither exercised the option nor they ever intimated to ^{their} heads of offices about the liberalised pension granted to them which they were enjoying alongwith enhanced pay from the time of their initial appointment. O.M. of 1987 clearly required re-fixation of their pay and these applicants were duty bound to communicate to their heads of offices

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about the liberalised pension given to them and also about the re-fixation of their pay in the light of their drawal of the liberalised pension. This they never did. They continued to draw the benefits of the increments which were given to them at the time of initial fixation of their pay when they came to civil employment and also got the liberalised pension and gratuity etc. It seems the audit must have detected anomalies in their pay fixation by adding the increments taking into account the length of their army service and also the drawal of liberalised pension.

In all these cases, it is clear that the applicants maintained complete silence regarding the various circulars issued by the Government on the question of exercise of option and also on the question of re-fixation of their pay and also on the question of adjustment of excess amounts paid to them as contained in the Circular issued in 1986 and 1987. The excuse given by all the applicants is that they were not aware of these circulars and the instructions contained therein. This cannot be a plea to draw the excess amount in the form of higher pay and also pension knowing fully well that they are not entitled to draw these amounts. Just because they did not inform the respondents about the liberalised pension and did not exercise their option and also did not inform about the initial fixation of pay given to them when they joined the civil employment they continued to draw the amounts to which they were not entitled and the respondents are well within their right to deduct the excess amount paid to them. There is

no arbitrariness involved in it and no show-cause was necessary because the applicants themselves were responsible for not exercising the option and not intimating their heads of offices regarding the initial fixation of their higher pay and also the drawl of enhanced pension as a result of recommendations of the 4th Pay Commission. They are responsible for suppression of facts and if the respondents discover sus-mete they are competent to re-fix the pay once they detect the mistake and once they discover that the applicants had deliberately kept mum with a view to derive double advantage and as such they had to pass an order to effect recovery of the excess amounts drawn by them. This does not appear to be unjustified. There is no arbitrariness involved in the action of the respondents since the mistake resulted because of the total silence maintained by the applicants themselves in regard to the option, non-intimation about the grant liberalised pension and about the benefit of higher pay-fixation taking into consideration their length of service.

The decision of the Hon'ble Supreme Court in the case of Union of India and others vs. G. Vasudevan and others etc. etc. is regarding classifying ex-serviceman into two classes, i.e., (i) group being employed before 1.1.1986 and another group employed after 1.1.1986 for grant of liberalised pension and the decision to reduce the enhanced pension from the pay of these ex-servicemen only who were holding civil posts on 1.1.1986 following their re-employment was declared unconstitutional being violative of Articles 14 and 16 of the Constitution.

This judgment does not deal with the modalities of pay fixation taking into consideration the length of service of a discharged ex-serviceman and addition of increments for the entire length of service minus one year spent on training. The various O.Ms envisage that pay will be fixed at the minimum of the pay-scale once they are allowed to retain their pension and gratuity and the benefit of military or civil pension of Rs.375/- They cannot have double benefits, i.e. higher fixation of pay (+) liberalised pension. Where they accept the liberalised pension, they will have to forego the initial fixation of pay giving them the benefit of their entire length of service. They will be entitled to be fixed at the minimum of the pay scale in a situation where they are allowed to retain their full pension including the liberalised pension effective from 1.1.1.1.1986. The excess amount drawn is in the form of increments granted to them for the entire length of service to which they are not entitled and the respondents are well within their right to recover this excess amount since inspite of repeated opportunities having been granted to them, they never informed their heads of offices about either the acceptance of the liberalised pension of Rs.375/- for re-fixation of their pay nor did they inform them about the number of increments added to their initial pay fixation taking into consideration their entire length of service minus one year. Their silence in not exercising the option and in not informing the heads of offices under whom they were working is enigmatic.

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In the conspectus of the facts and circumstances, the O.A.s fail and are dismissed leaving the parties to ^{bear} their own costs. The interim orders passed are vacated. However, while parting with these cases, the respondents are directed to deduct the excess amount drawn from their salaries in easy instalments.

(B.K.Singh)
Member (A)

/sds/

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