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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 239 of 1989.
T.A. No.

DATE OF DECISION 1.1.1990

Jaswant Singh Applicant (s)

Shri K.L. Bhatia, Advocate for the Applicant (s)

Versus

Union of India & Others Respondent (s)

Shri M.L. Verma, Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice- Chairman.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri Jaswant Singh, Inspector in the Inspectorate of Armaments, Dte. General of Security, Cabinet Secretariat, New Delhi, against impugned order No. 2/(2)/INSP/80 dated 20.1.1989 passed by the Chief Inspector of Armaments against wrong fixation of pay and arbitrary deduction from his pay and allowances.

2. Brief facts of the case, as stated by the applicant, are that he retired from the Army on 31.8.79 from the post of Subedar Major/Hony. Captain before attaining the age of 55 years. At that time he was getting a pay of Rs. 1,000/- p.m. The applicant was re-employed in the Inspectorate of Armaments as Sub-Inspector on 16.7.80 and his pay was fixed at Rs. 425/- minus Rs. 7.68 (the amount in excess of the last pay drawn) under the Ministry of Defence O.M. No. 2(7)/78/6664/D(Civ.I) dated 30.8.78 in the scale of Rs. 425-700 as under:

Army pension	Rs. 599.00
P.E.G.	Rs. 108.68
	Rs. 707.68

Less amount of pension ignorable for fixation of pay on re-employment:	<u>Rs. 125.00</u> 582.68
Pay fixed	<u>Rs. 425.00</u> Rs. 1007.68
Last pay drawn	<u>Rs. 1000.00</u>
Amount in excess	Rs. 7.68

Pay fixed at Rs. 425.00 (-) Rs. 7.68 = Rs. 418.32.

The applicant was given D.A./A.D.A. and I.R. etc. on the maximum of the scale of pay. Vide Ministry of Defence's O.M. dated 8.2.83 (Annex. II to the application), it was decided that in the case of the re-employed ex-servicemen retiring before the date of 55 years, the pension as indicated below may be ignored in fixing their pay on re-employment:-


- (i) In the case of serving officers, the first Rs. 250.00 of pension;
- (ii) in the case of personnel below Commissioned Officers rank, the entire pension. It was also stipulated that in case of those who were already on re-employment the pay may be refixed on the basis of these orders provided they opt to do so. If they so opt then terms will be determined afresh as if they have been re-employed for the first time.

The applicant did not opt for the fixation of his pay by ignoring his full pension in terms of O.M. dated 8.3.83 as it would have resulted in a substantial loss in his emoluments. The persons who did not suffer any loss gave their options for fixation of pay in terms of O.M. dated 8.2.83 and the persons who were appointed after the crucial date of 25.1.83 enjoyed the benefit of fixation of pay by ignoring their full pension.

3. In the meanwhile the applicant was promoted to the post of Inspector in the scale of Rs. 550-900 plus Rs. 75/- as Special Pay w.e.f. 1.5.86 and his pay was fixed at Rs. 550/- reduced by Rs. 7.68, the so-called excess over the last pay.

4. In accordance with the recommendations of the Fourth Pay Commission, instructions were issued vide Deptt. of Personnel & Admn. Reforms-O.M. No. 13/7/86-Estt. (Pay II) dated 9.12.86 for the fixation of pay of the re-employed persons in the revised scale of pay. It was also decided

vide O.M. dated 11.9.87 (Annex. IV to the application) that the pay of pensioners who were in re-employment on 1.1.86 and whose pay was fixed in accordance with the provision of O.M. dated 9.12.86 may be refixed w.e.f. 1.1.86 by taking into account the revised pension. It has also been ordered that the over-payments already made may be recovered/adjusted. The applicant's pay was fixed in the revised pay scale of Rs. 1640-2900 as Sub-Inspector at Rs. 1029.32 w.e.f. 1.1.86 and in the revised scale of Rs. 2000-3200 at Rs. 1329.32 as Inspector w.e.f. 1.5.86 after deducting Rs. 7.68 (element of pension) and Rs. 663.00 (amount of pension increased w.e.f. 1.1.86). The revised pension of the applicant has been fixed at Rs. 1262.00 with an increase of Rs. 663.00. The impugned order is discriminatory as the enhanced amount of pension with effect from 1.1.86 will be deducted from the pay of the applicant whereas the pensioners whose pay has been fixed by ignoring full pension will get a full amount of pay without any deduction. It will thus be violative of Articles 14 and 16 of the Constitution of India. The applicant has cited the case of Shri Rohitaswa Singh, who retired as Sub/Hony. Lt. on 31.12.87 and re-employed as Sub-Inspector will draw his full pension of Rs. 1650/- plus his pay of Rs. 1640/-, being the minimum of the revised pay scale of the post, whereas the applicant who retired as Sub. Maj/Hony. Capt. in 1979 will in effect draw a pension of Rs. 599/- only as the enhanced amount of pension of Rs. 663.00 will be deducted from his pay. Thus Shri Rohitaswa Singh gets double benefit i.e. full pension calculated on the revised pay scale of the post in the Army as well as pay in the revised pay scale of the re-employed post of Sub-Inspector. Similarly, a Sub-Major/Hony. Lt. retired from the Army after 1.1.86 and re-employed directly in the post of Inspector will draw pay of Rs. 2000/- plus his full pension of Rs. 1650/- totalling Rs. 3650/- whereas the applicant in the post of Inspector and who has been in the service on re-employment for 8 years draws Rs. 2591.32 (Rs. 1329.32 + Rs. 1262). The applicant has also cited the case of Shri Jagan Nath who is junior in Army rank to the applicant but who gets more emoluments by adding military pension to their respective salaries.



5. The applicant has contended that the very principle of taking into account the pensionary benefits of re-employed personnel for the purpose of fixation of pay in the Civil service of the Central Government is arbitrary, unconstitutional and violative of Articles 14 and 16 of the Constitution. The pay of the applicant has been fixed in accordance with the guidelines contained in the Deptt. of Personnel's O.M. dated 11.9.87 which does not envisage any reduction on account of enhanced pension. Thus the impugned order is violative of Government rules. While fixing the pay of the applicant in accordance with Department of Personnel & Training O.M. dated 9.12.86, the applicant was not given any special gain over other similarly placed persons. As such, the reduction of the increased amount of pension is uncalled for. Rule 7 of the C.C.S. (Revised Pay) Rules, 1986, does not provide for making any distinction in pay fixation of military pensioners in respect of those whose pay was fixed with reference to the pension as well as in respect of those whose pay was fixed ignoring their pension.

6. The respondents in their reply have stated that the application is misconceived and is not maintainable under law. No cause of action has accrued in favour of the applicant against the respondents. The application is bad for mis-joinder of parties. Respondent Nos. 2 and 3 are neither necessary nor proper parties to the application. They are liable to be deleted from the pleadings. The applicant has not come with clean hands to the Tribunal. He has suppressed material facts as Annex III to the application at page No. 28 is not correct. The application is devoid of any merit and is liable to be rejected.

7. According to the respondents, the applicant has represented against pay fixation in the revised pay scales of Sub-Inspector w.e.f. 1.1.86 and Inspector w.e.f. 1.5.86. He has pleaded that the amount of pension of Rs. 7.68 relating to his pre-revised pension and Rs. 663.00 on account of enhanced pension, admissible to him w.e.f. 1.1.86, may not be deducted from his pay. As regards the amount of Rs. 7.68, the Department of Personnel & Training's O.M. dated 9.12.86 laid down that any amount which was being deducted from the pay in the pre-revised pay scale shall continue to be deducted from the pay fixed in the revised pay scale. The amount of Rs. 663- on account of the enhanced pension admissible to him from 1.1.86 has been deducted from the applicant's pay in accordance with the Deptt. of Personnel & Training's O.M. dated 11.9.87 which lays down that the pay fixation thereunder amounts to only deduction of increased amount

of pension from the pay already fixed in the revised pay scale. His pay in the grade of Inspector has been fixed in accordance with the rules. The applicant has brought the anomaly while quoting the cases of other re-employed Inspectors and has, therefore, sought relief stating that the Inspectorate's order dated 20.1.89 may be modified to exclude the provision relating to deduction of the amount of Rs. 7.68 on account of the pre-revised pension, and Rs. 663/- being the increase in the revised pension and also no recovery of arrears should be made. According to the respondents, the pay fixation has been done in accordance with the Department of Personnel's O.M. dated 9.12.86 and 11.9.87. The pay fixation by deducting pension is, therefore, in order. As such, the applicant's statement cannot be accepted that the pay fixation is wrong and deduction of pension is arbitrary.

8. According to the respondents, the applicant's contention that he had not been given an opportunity to exercise option for fixation of his pay under the provision of O.M. dated 11.9.87, this order did not provide for obtaining any option from the concerned persons. As per the clarification issued by the Cab. Sectt. vide their U.O. dated 5.2.88, the pay fixation in terms of OM dated 11.9.87 was not to be done with reference to their pension, and last pay drawn but only the enhanced amount of pension admissible from 1.1.86 was to be deducted from the pay already fixed in the revised pay scale w.e.f. 1.1.86. The inference drawn by the applicant that the guidelines contained in the Deptt. of Personnel's O.M. dated 11.9.87 does not envisage any deduction of account of enhanced pension is not correct as clarified in the aforesaid Cabinet Sectt.'s U.O.No 1/48/87-EA.I dated 5.2.88.

9. It has been argued on behalf of the applicant that he did not get any advantage of the pension in fixation of pay on re-employment as the last pay drawn by him in the Army was Rs. 1000/- and pension from the Army was only Rs. 599.00 and since the pay fixed was less than the pay drawn in the Army, less pension, the question of deduction of pension did not arise. This may not be entirely correct as in fixing his pay at Rs. 425.00 per month, the amount of pension ignorable for fixation of pay amounting to Rs. 125.00 has been taken into consideration. It may also be correct that he did not exercise any option in 1983,

because he would not have gained anything by exercising an option. It is, however, clear that when the Government gave an option to re-employed ex-servicemen for ignoring the pension, the intention was to help such ex-servicemen. Even in the case of Commissioned Officers pension upto Rs. 500.00 was not to be deducted from their salary on re-employment. When these rules were made, it was not contemplated that pensions would be increased substantially as a result of the recommendations of the 4th Pay Commission. The applicant apparently did not give any option as he would not have been helped in any way by giving such an option as he was in fact getting pay of the post plus pension or substantial part of the pension. After declaring that in the case of non-commissioned officers, the pension would be ignored completely while fixing pay on re-employment, it might not be correct to relate enhanced pension to the revised scales of pay. The increments plus pay at the starting level of the scale were allowed by Government under the then existing rules prior to 1983 but the principle that in the case of Defence personnel below the rank of Commissioned officers, pension would be ignored completely while fixing the salary on re-employment continues since 1983.

10. This case is somewhat similar to the case of Shri Bishan Dass in OA 931 of 1989 where it has been held that the enhanced portion of pension should not be deducted from the salary with effect from 1.1.86. In fact, the case of the applicant appears to be on a better footing as he had not got advantage of advance increments due to past service and his pay was fixed even lower than the initial pay of the scale. I would not like to go into the question of the fixation of the salary of applicant at the time he was appointed, but as in the case of Shri Bishan Dass, I hold that the applicant should not be deprived of enhanced scale of pay as well as enhanced pension as the two are quite separate. It appears that in the case of ex-servicemen the amount of pension, enhanced or otherwise, would not be taken into consideration while fixing their pay on re-employment. As such, the application is allowed to the extent that the respondents will not deduct the enhanced portion of pension from the salary of the applicant with effect from 1.1.1986 and recoveries

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made from the applicant on this account, if any, should be refunded to him within a period of three months. There will be no orders as to cost.

B. C. Mathur
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(B. C. Mathur)
Vice-Chairman