

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

540

1989

DATE OF DECISION 1st Sept. 1989

K.D. Sharma

Applicant (s)

Shri K.L. Bhatia

Advocate for the Applicant (s)

Versus

Union of India & Ors.

Respondent (s)

Shri M.L. Verma

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Kaushal Kumar, Vice-Chairman (A)

The Hon'ble Mr. T.S. Oberoi, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT
(delivered by Hon'ble Shri Kaushal Kumar, VC).

The applicant, who is an ex-serviceman, re-employed in the Inspectorate of Armaments, under the Directorate General of Security (Cabinet Secretariat), has in this application, filed under Section 19 of the Administrative Tribunals Act, 1985, called in question the order dated 20th January, 1989, re-fixing his pay in the grade of Sub-Inspector/Inspector, after deducting the increased amount of pension, to which the applicant became entitled consequent upon the liberalisation of the pension on the recommendations of the Fourth Pay Commission.

2. The facts of the case may be noticed below.

The applicant retired from the Army on 1.12.1977 from

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the post of Subedar Major/Hony. Captain, before attaining the age of 55 years. At that time, he was getting a pay of Rs. 1000/- per month. He was re-employed in the Inspectorate of Armaments under the Directorate-General of Security, Cabinet Secretariat, New Delhi, as Sub-Inspector with effect from 5th July, 1979. His pay was fixed under the provisions of the Ministry of Defence O.M. No. 2(7)/78/6664/D (Civ.I) dated 30th August, 1978, in the scale of Rs. 425-700 at Rs. 515.00 after giving him six advance increments. At that time, the Army pension of the applicant was fixed at Rs. 458/-.

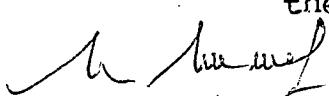
On 8th February, 1983, the Ministry of Defence issued an Office Memorandum, which is filed as Annexure A-2 to the application, which provided that:

"...in the case of those ex-servicemen retiring before attaining the age of 55, 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/- on pension
- (ii) In the case of personnel below Commissioned Officers rank, the entire pension

NOTE The pension for the purpose of these orders includes pension equivalent of gratuity and other forms of retirement benefits.

2. These orders will take effect from 25th January, 1983 and the existing limits of military pensions to be ignored in fixing pay of re-employed pensioners will, therefore, cease to be applicable to cases of such pensioners as are re-employed on or after that date. In the case of persons who are already on re-employment, the pay may be refixed on the basis of these orders with immediate effect provided they opt to come under these orders. (If they so opt, their terms would be



determined afresh as if they have been re-employed for the first time from the date of these orders.) The option should be exercised in writing within a period of six months from the date of these orders. The option once exercised shall be final...."

3. The applicant did not exercise his option in terms of the above mentioned order. Subsequently, on revision of the pay-scales on the recommendations of the Fourth Pay Commission, the pay of the applicant was fixed at Rs. 1940/- vide office order No. 1/DGS/INSP/86(1) II dated 3.4.1987 in the revised pay scale of Rs. 1640-2900 in the post of Sub-Inspector with effect from 1.1.1986 in terms of the Department of Personnel & Training O.M. dated 9.12.1986 (Annexure III). Paras 2 (i) and 2 (ii) of the O.M. dated 9.12.1986 read as follows:-

"2(i) The initial pay of a re-employed Government servant who elects or is deemed to have elected to be governed by the revised pay scale from the 1st day of January, 1986 shall be fixed in the following manner, namely -

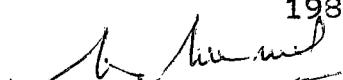
According to the provisions of Rule 7 of CCS (RP) Rules, 1986, if he is

(i) a Government servant who retired without receipt of pension, gratuity or any other retirement benefits,

(2) a retired Government servant who received pension or any other retirement benefits but which were ignored while fixing pay on re-employment.

2(ii) The initial pay of a re-employed Government servant who retired with a pension or any other retirement benefits and whose pay was fixed on re-employment with reference of these benefits or ignoring a part thereof and who elected or is deemed to have elected to be governed by the revised scale from the first day of January 1986, shall be fixed in accordance with the provisions contained in Rule 7 of the Central Civil Services (Revised Pay) Rules,

1986.



In addition to the pay so fixed, the re-employed Government servant would continue to draw the retirement benefits he was permitted to draw in the pre-revised scale in accordance with the provisions of note I below para 1 (c) of the Ministry of Finance Office Memorandum No.F.8(14) Estt. III/57 dated 25th November, 1958 shall continue to be deducted from the pay and the balance will be allowed as actual pay..."

4. The pension of the applicant was also increased by Rs. 589/- with effect from 1.1.1986 but the same was not taken into account while fixing his pay in the revised scale of Rs. 1640-2900. Subsequently, the Government of India, Department of Personnel & A.R., issued another Circular O.M. No. 3/9/87-Estt. (Pay II) dated the 11th September, 1987, which reads as under:-

"(15) Pay of re-employed pensioners shall be fixed on 1-1-1986, with reference to their revised pension.- The undersigned is directed to invite attention to this Department O.M. of even number, dated the 9th December, 1986 (G.I. Decision above) whereby persons re-employed in civil posts under the Government after retirement and who were in re-employment as on 1.1.1986, were allowed to draw pay in the revised scales under C.C.S. (R.P.) Rules, 1986. A point has arisen as to whether consequent on the revision of the pension of the employees with effect from 1.1.1986, the revised pension should be taken into reckoning for the purpose of fixation of pay of such re-employed persons in the revised scale.

2. The matter has been considered. It has been held that if the revised pension is not taken into consideration, certain unintended benefits are likely to accrue to 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 is accordingly pleased to decide that pay of pensioners who were in re-employment on 1-1-1986, and whose pay was fixed in accordance with the

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provisions of this Department O.M. dated 7-12-1986, may be refixed with effect from 1-1-1986, 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 refixation of their pay in terms of provisions of this Department O.M. dated 9-12-1986. Overpayments already made may be recovered/adjusted, as is 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 with effect from 1-1-1986, for the purpose of refixation of their pay after taking into account their revised pension."

5. After issue of the above mentioned Circular, a clarification was also given by the Cabinet Secretariat that "the re-employed military pensioners whose pay was earlier fixed after taking into account their military pension or part thereof, the refixation in their case with reference to the enhanced pension does not involve fixation of pay afresh with respect to their pre-retirement pay but only the increased amount of pension is to be deducted from the pay already fixed."

6. The short point for determination in this case is whether in terms of the Government of India O.M. dated 11th September, 1987, the enhanced amount of pension was required to be deducted from the pay of the applicant as fixed in the revised scale with effect from 1.1.1986.

7. The learned counsel for the applicant contended that when the pay of the applicant was fixed on re-employment with effect from 5.7.1979, his army pension was not taken into account. At the time of retirement, the pension of the applicant was Rs. 350/- per month (subsequently raised to Rs.458) and the pension equivalent of gratuity was Rs. 100/- approximately. This would total to Rs. 450/- (approx).

As per the Government of India Decision No. 1 incorporated

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in the Ministry of Finance O.M. No. 5(14)-E.III (B)/77 dated 19th July, 1978, quoted at pages 28-29 of Swamy's Compilation on Re-employment of Pensioners (Civilians and Ex-Servicemen) Second Edition, the first Rs. 125/- of the pension was to be ignored while fixing the pay of re-employed pensioners and, therefore, the applicant was entitled to fixation of pay at a much higher stage, if the criterion that the pension, the pension equivalent of gratuity and the pay fixed on re-employment should not exceed the last pay drawn by the applicant after his discharge from the Army had been applied in his case. The fixation of pay of the applicant at Rs. 515.00 after giving him six advance increments did not have any relationship whatsoever with the pension entitlement of the applicant and, therefore, deduction of the enhanced amount of pension on re-fixation of pay with effect from 1.1.1986, was unwarranted and not covered by the Circular issued by the Government of India.

8. In this connection, the learned counsel for the applicant also referred to the cases of one Shri Rohitaswa Singh and Shri Jagan Nath, who were also re-employed like the applicant, but in their cases, the enhanced amount of pension was not deducted on re-fixation of pay in the revised scale. These cases have been referred to in para 4.20 of the application.

9. The case of the respondents is that in the case of the applicant, his original fixation of pay at Rs. 515.00 on re-employment, was done after taking into account his pension and that since the applicant did not exercise his option in terms of the O.M. dated 8th February, 1983, the difference between the enhanced pension and the original pension was required to be deducted from his revised pay in terms of the Government

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of India Circular of September, 1987. It has been stated in the counter affidavit in reply to para. 4.15 of the application that "the illustration of Rohitaswa Singh and Jagan Nath have been verified and found to be correct." It is contended that in their cases, the pay was fixed on re-employment at the minimum of Rs. 425/- of the pre-revised scale of Rs. 425-600 and since this pay fixation was done without taking into account the pension granted to these persons, the difference between the enhanced amount of pension and original pension was also not recovered in their cases. The position has been explained in the counter affidavit as follows:-

"....Thus, in the case of the applicant his pay was fixed at Rs. 515/- on his re-employment w.e.f. 5.7.79, instead of the minimum of Rs. 425/- in the pre-revised pay scale of Rs. 425-600, plus special pay of Rs. 50/- per month. This benefit was given to him by giving him 6 additional increments in protection of the last pay (Rs. 1000/-) drawn by him in Army Service. Shri Sharma was drawing basic pay of Rs. 650/- on 1.1.86 when his pay was fixed at Rs. 1940/- ~~in the revised pay scale of Rs. 1640-2900~~ in the revised pay scale of Rs. 1640-2900 in terms of DP&T OM dated 9.12.86, which lays down guidelines for fixation of pay of re-employed military pensioners. Had the applicant not been given the benefit of 6 additional increments, his pay would have been fixed at Rs. 1640/- instead of Rs. 1940/- w.e.f. 1.1.86, as in the case of Shri Jagan Nath who was also re-employed as Sub-Inspector in 1979. The protection of pre-retirement pay amounts to giving credit for the past service which is not done in cases where the entire pension is ignored."

10. Having heard both sides, we have to examine whether the fixation of pay as per orders dated 20th January, 1989 in the case of the applicant, was in accordance with the instructions of the Government on the subject. The O.M. of September, 1987, clearly

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states as follows:-

" ...It has been held that if the revised pension is not taken into consideration, certain unintended benefits are likely to accrue to re-employed pensioners as they will draw the revised amount of pension, in addition to pay already fixed on the basis of the pension granted to them earlier..."

(emphasis supplied).

11. Thus, it is clear that the difference between the enhanced amount of pension and the original pension is to be recovered only in those cases where the earlier pay had been fixed on the basis of the pension granted to a re-employed person. In the present case, we are not satisfied that the earlier fixation of pay at Rs. 515/- was in any manner linked with the pension which was granted to the applicant. Giving of advance increments on re-employment, keeping in view the past service, does not have any bearing or relationship with the pension which a person may have been granted. It was upto the respondents whether to give him advance increments or not on re-employment. In this case, the advance increments also did not protect the pre-retirement pay of the applicant, as would appear to be implied from the averment in the counter affidavit. We fail to understand as to why if the pay of the applicant had been fixed at the minimum of the scale at Rs. 425/-, the enhanced amount of pension would not have been recoverable, whereas since he was given advance increments, the difference would be recoverable. The recovery of the difference between enhanced amount of pension and the original pension is authorised by the O.M. dated 11th September, 1987 only in cases where the earlier fixation on re-employment was linked with the pension granted earlier.

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12. The learned counsel for the applicant also relied on the ruling of the Supreme Court in D.S. Nakara & Ors. Vs. Union of India - 1983 (2) SLR 246. We are afraid that reliance on the said ruling is mis-placed. The ruling in the case of D.S. Nakara is an authority for the proposition that all pensioners form one class and no discrimination can be made between pensioners retiring on different dates or a 'cut-off' date cannot be arbitrarily fixed for giving liberalised pension. Their Lordships observed as follows:-

"...All pensioners whenever they retired would be covered by the liberalised pension scheme because the scheme is a scheme for payment of pension to a pensioner governed by 1972 Rules. The date of retirement is irrelevant. But the revised scheme would be operative from the date mentioned in the scheme and would bring under its umbrella all existing pensioners and those who retired subsequent to that date. In case of pensioners who retired prior to the specified date, their pension would be computed afresh and would be payable in future commencing from the specified date. No arrears would be payable. And that would take care of the grievance of retrospectivity."

(Para. 49)

13. In the present case, the pension of the applicant is not sought to be affected in any manner. It is the pay fixation on re-employment which is the point at issue and not the quantum of pension admissible to the applicant.

14. In view of the above discussion, the application is allowed and the office order dated ^{2nd Feb 1989} ~~29th January, 1989~~ ^{13.8.90} concerning the applicant, is quashed to the extent that the difference between the enhanced amount of pension and the original pension of the applicant shall not be recovered

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from the pay fixed with effect from 1.1.1986, in terms of the O.M. dated 9.12.1986. The applicant shall be entitled to arrears of pay and allowances on the basis of the pay as already fixed vide order dated 3rd April, 1987.

There shall be no order as to costs.

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(T.S. Oberoi)
Member (J)

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(Kaushal Kumar)
Vice-Chairman.