

Central Administrative Tribunal
Principal Bench New Delhi.

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Date of Decision: 5-5-1989.

Regn. No. O.A. 1321/88.

Sri Krishan ... Applicant

Vs.

UOI & Ors. ... Respondents.

CORAM:

Hon'ble Mr. Ajay Johri, Member (A)

Applicant present in person, with Advocate Sh. Yashpal Singh.

Mrs. Raj Kumari Chopra, Counsel for the respondents.

JUDGMENT.

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985. The applicant is working in the Vehicle Depot Workshop at Delhi Cantt. His case is that he was re-employed, after retirement from the Indian Army, in the E.M.E. Workshop as a Sr. Chargeman on 28.7.1980 in the scale of Rs. 425-700 plus allowances. He was later on promoted as a Foreman with effect from 1.5.1986. When the Fourth Pay Commission Report became applicable, his pay was refixed in the revised scales with effect from 1.1.1986. According to him, instead of counting the allowances at the maximum of the pay scale in terms of Army Instructions 304/55 as was done at the time he was re-employed, his allowances have been calculated on the basic pay. In this process, instead of his pay being fixed at Rs. 1850/- p.m., it has been fixed only at Rs. 1560/- p.m. This is lesser than the pay he was drawing earlier which was Rs. 1713/- p.m. He has, therefore, by this application prayed that his pay may be fixed at Rs. 1850/- w.e.f. 1.1.1986 taking into consideration

the provisions of A.I. 304/55 issued in 1978.

2. In their reply, the respondents have said that the applicant's pay was fixed under the Fourth Pay Commission recommendations taking into account the allowances with respect to basic pay. The drop of emoluments was protected by granting the applicant personal pay equivalent to the drop to be absorbed in future increments. This was done in terms of C.D.S. (R.P.) Rules, 1986.

3. I have heard the learned counsel for the parties and have also perused the case file and CDS (RP) Rules, 1986 carefully.

4. Army Instructions 304 of 1955 regulate the grant of allowances to civilians paid from Defence Service Estimates. According to these instructions, retired Government servants who have been or may be re-employed and who are allowed to draw their pension in addition to pay are made eligible to draw the allowance if their pay plus pension does not exceed the monetary limits prescribed. In such cases, the allowance is calculated as follows:-

- (a) In case of officers whose pay plus pension exceeds the sanctioned maximum pay of the post, the allowance is calculated on maximum.
- (b) In other cases it is calculated on pay plus pension.

5. When the applicant joined the E.M.E. Workshop after retirement from the Army, his pay was fixed by calculating the allowances on the basis of the maximum of the pay as his case fell under item (a) of the A.I. 304/55 as quoted in para. supra.

6. On the acceptance of the Fourth Pay Commission Recommendations, the CDS (RP) Rules, 1986 were circulated for the implementation of the Revised Pay Scales w.e.f. 1.1.1986. These rules lay down that all regular employees

who were in Government service prior to 1.1.1986 had to exercise an option whereby either they will opt to draw the existing scale untill date on which next increment or any subsequent increment fell due or they will draw pay under the revised pay scales. After the exercise of the option, the pay had to be fixed. These Rules were made applicable to persons re-employed after retirement as well. According to these Rules (para. 7) the fixation of initial pay in the Revised Scale for those who elected to be governed by them was to be done in the following manner:-

A. in the case of all employees:-

- (i) an amount representing 20% of the basic pay in existing scale, subject to maximum of Rs. 75/- shall be added to existing emoluments.
- (ii) After the existing emoluments have been so increased the pay shall thereafter be fixed in the Revised Scale at the stage next above the amount thus computed provided that
 - (a) if the minimum of revised scale is more than the amount so arrived at, the pay shall be fixed at the minimum of the revised scale.
 - (b) if the amount is more than the maximum, the pay shall be fixed at maximum.

7. The existing emoluments have been defined in these Rules to include-

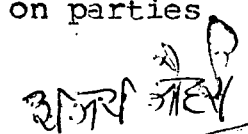
- (i) the basic pay.
- (ii) dearness pay, addl. dearness allowance, ad-hoc dearness allowance appropriate to basic pay admissible at index 600, and
- (iii) the amount of 1st and 2nd instalments of interim relief admissible on the basic pay in the existing scale.

8. It has also been laid down in the rules that where the existing emoluments exceed revised emoluments, the difference shall be allowed as personal pay to be absorbed in the future increases of pay, so that there is no financial loss to the employee.

9. It is thus clear that to come to the revised scales of pay, each employee had to give the option and the pay had to be fixed in accordance with these CDS (RP) Rules, 1986. The applicant on his re-employment was correctly governed by A.I. 304/55. But once he got fixed in 1980, the exercise now done by the respondents was in terms of CDS (RP) Rules, 1986 which lay down the procedure of fixation of the pay of existing employees in the revised scales. It is obvious that for fixation in revised scales, A.I. 304/55 has no relevance. It is also clear that the applicant must have exercised the option.

10. Since the CDS (RP) Rules, 1986 do not provide for fixation by taking the allowances at the maximum of the scale as in A.I. 304/55 which apply for fixation at the time of ^{re-}employment, the applicant's prayer for his fixation in terms of A.I. 304/55 for bringing him under the revised scales is founded on incorrect perception of the rules. The applicant has been correctly fixed in the revised scales and no error is apparent in this fixation.

11. On the above consideration, the application has no merit and is dismissed with cost on parties.


(Ajay Johri)
Member (A)