

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.
* * * *

Date of Decision: 15.05.92

OA 798/90

AMARJIT SINGH

... APPLICANT.

Vs.

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant ... Shri Sudhir Kulshrestha,
Counsel.

For the Respondents ... Ms. Monika Aggarwal,
proxy counsel for
Shri K.C. Mittal,
Counsel.

1. Whether Reporters of local papers may be A
allowed to see the Judgement ?

2. To be referred to the Reporters or not ? L

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant was found medically unfit in the
Military Service and, therefore, was retired from
Defence services and he was given employment in the
office of the Development Officer, Iron and Steel, New
Delhi, where he joined on 30.10.1979 as LDC vide
appointment letter dated 9.10.1979. The pay of the

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applicant as per provisions of Article 510 of CSR was fixed at Rs.296/-. The applicant was working as Combatant Clerk in the Army and served there for about 17 years. At the time of his retirement from Army he was drawing salary in the pay scale of Rs.388.50 p. The applicant was promoted to the post of UDC on 8.5.1984. In this application, the applicant has challenged the order dated 9.4.1990 passed by Regional Development Commissioner, Iron and Steel, asking the applicant that his pay has been wrongly fixed with retrospective effect and the salary amounting to Rs.170/- p.m. has been directed to be recovered from the pay of the applicant w.e.f. 30.4.1990.

2. The applicant has claimed the relief that the impugned order dated 19.4.1990 be set aside and the respondents be restrained from making recovery of Rs.170/- p.m. from the salary of the applicant and to refix the pay of the applicant in accordance with the Circular dated 8.2.1983 under Article 510 of CSR and also FR 27. This application was filed on 30.4.1990 and ex-parte interim relief was granted to the applicant restraining the respondents from effecting recovery @ Rs.170/- p.m. from the salary payable to the applicant for the month of April, 1990. Interim order has since been continuing. The matter came up for hearing on

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30.4.1992 then the applicant and his counsel were not present and the learned proxy counsel Ms. Monika Aggarwal was present for Shri K.C. Mittal, Advocate. Since the pleadings in this case are complete, so the matter is disposed of finally.

3. While the applicant joined as LDC on 3.10.1979 in the Ministry of Steel, in the office of Regional Development Commissioner, Iron & Steel, and at that time his pay was fixed at Rs.296/- p.m. The letter dated 12.8.1985 (Annexure-III), goes to show that the pay of the applicant was fixed w.e.f. 3.10.1979 by the office order dated 15.3.1983 in the scale of Rs.260-400 and was verified at Rs.382/- p.m. in the pay scale of Rs.260-400 + a personal pay of Rs.7/- p.m. w.e.f. 8.2.1983. This order appears to have been passed in terms of Govt. of India decision No.10 under Article 510 (b)(e) of the CSR read with Ministry of Defence OM dated 6.2.83 and based on option exercised by the applicant as required under the Ministry of Defence OM and the seniority of the applicant was also ordered to be counted w.e.f. 6.2.1983. However, it appears that subsequently by the office order Part-II No.1 dated 25.1.1989 issued by the office of the Development Commissioner, Iron & Steel, the pay of the applicant was refixed under the OM of Ministry of Defence dated 8.2.1983 for which the applicant

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had exercise option to come under the Ministry of Defence order. The fixation of pay is as follows:-

Date	Pay fixation in scale of Rs.260-400	Pay Re-fixed
<u>(1)</u>	<u>(2)</u>	<u>(3)</u>
8.2.1983	Rs.382 + 7/-	Rs.260/-
1.2.1984 (Increment)	Rs.390/-	Rs.266/-
18.5.1984 (Promoted to the post of UDC in the pay scale of Rs. 330-560)	Rs.404/-	Rs.330/- (Minimum of the scale under FR-22C)
1.5.1985 (Increment)	Rs.416/-	Rs.340/-
1.1.1986 (Revised scale of Rs.1200-2040)	Rs.1380/-	Rs.1200/- (Minimum of the scale)
1.5.1986 (Increment)	Rs.1410/-	Rs.1230/-
1.5.1987 (Increment)	Rs.1440/-	Rs.1260/-
1.5.1988 (Increment)	Rs.1470/-	Rs.1290/-

The Office Order Part-II No.60 dated 12.8.1985 stands cancelled accordingly.

4. Thus, the earlier order dated 12.8.1985 was cancelled. The applicant made representation and was informed by the Memo dated 19.4.1990 regarding the refixation of his pay and also recovery of over payment, made in respect of pay and allowances from 8.2.1983 to 31.1.1989. The said order is detailed below:-

"Sh. Amarjit Singh was re-employed in this Office as LDC with effect from 8.2.83 on being retired from the Military Service under Ministry of Defence. He was enjoying the pensionery

benefit under Ministry of Defence. His pay was fixed at Rs.382/- + 7/- per month on the basis of option exercised by him to come under Ministry of Defence Order. The pay of Sh.A.Singh, on his promotion as UDC was fixed accordingly. As some anomalies in respect of fixation of this pay was cropped up, his case was referred to Deptt. of Personnel & Administrative Reforms for their opinion. They have opined that his pay fixation was not done in accordance with rule and it should be at the minimum of the scale of LDC i.e. Rs.260/-p.m. As a result, this office has refixed his pay as LDC at Rs.260/- p.m. w.e.f. 8.2.83 and thereafter in subsequent grade i.e. in UDC also.

Due to refixation of this pay on 25.1.89 with retrospective effect a sum of Rs.18,112/- (Rupees Eighteen Thousand One hundred and Twelve only) has been paid to him as over payment. (A copy of the refixation order is enclosed). The above amount is required to be recovered from the salary of Sh. Singh. It has been decided by this office that it should be deducted on monthly instalment basis @ Rs.170/-p.m. w.e.f. the month of April, 1990. You are, therefore, requested to effect the recovery accordingly under intimation to this office."

Accordingly Sh. Amarjit Singh is hereby informed that recovery of Rs.170/- per month will be effected from his pay w.e.f. April, 1990 onwards.

5. The fixation of the pay of the applicant has been done under the OM dated 8.2.1983 which is also reproduced below:-

Subject: Fixation of pay of re-employed pensioners - Central Policy thereof - Question of ignoring Rs.250/- in the case of persons retiring before attaining the age of 55.

The undersigned is directed to refer to this Ministry's OM No.2(7)/78/6664/D(Civ-I), dated 30.8.1978 and to say that the question of raising the limit of the present ceiling of pension which has to be ignored in fixing of pay on re-employment of ex-servicemen, who retire before attaining the age of 55, has been under the consideration of the Government of sometime. The President is pleased to decide 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 Service 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. This issues with the concurrence of the Ministry of Finance (Department of Expenditure conveyed vide Secretary's (expenditure) Dy. No.286-SE/83 dated 4.2.1983.

Sd/-
RAMA KRISHNA
Deputy Secretary to the Govt. of India.

6. The respondents contested the application and stated that the applicant exercised option in terms of Ministry of Defence OM dated 8.2.1983 (quoted above). The said OM provides that 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. The fixation of pay under order dated 12.8.1985 was done through mistake. The matter was taken up with the DPT who opined that in terms of said OM dated 8.2.1983, the pay of the applicant should be fixed at the minimum of pay scale of LDC. The applicant has exercised option in terms of the OM dated 8.2.1983 and referring Article 510 CSR.

In this connection, it is not acceptable and the Decision No.10 & Clause (b) & (c) are not applicable to the applicant in view of the acceptance of option by him. In reply to para 5(e) of the application, the respondents have stated that the case brought out in para-7 of the FR 27 which provides for fixation of pay of Ex-combatant Clerk is not acceptable in terms of Ministry of Defence OM dated 8.2.1983. It is clearly mentioned therein that in case of persons who are already on re-employment, the pay may be fixed 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. As such, the applicant should have no grievances for refixation of his pay on the minimum stage of pay scale of LDC. Further, the applicant was advised to withdraw his option if the same was not beneficial to him. The applicant has denied to withdraw his option. The intention of the OM of 1983 was never to allow advance increments by ignoring pension and comparing the last of pay drawn with minimum/scale to determine hardship. Hardship to a person has to be assessed objectively and when minimum of the scale + full pension far exceeds last pay drawn, it can never be considered objectively as a case of hardship. Also once pension is fully

ignored, ex-servicemen are at par with other direct recruits.

7. The applicant filed rejoinder and reiterated various contentions raised in the application.

8. Since the applicant did not appear so the arguments of the respondents were heard. It is evident from the record that the applicant has accepted the option to be governed by OM of Ministry of Defence dated 8.2.1983 (quoted above). It clearly lays down that the existing limits of military pension to be ignored in fixing the pay of re-employed pensioners. 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. It is a fact that the applicant has to refund certain amount on account of refixation but the Memo dated 19.4.1990 has given out the details that his pay was fixed at Rs.382/- + 7/- p.m. on the basis of option exercised by him to come under Ministry of Defence order. It was the Department of Personnel and Administrative Reforms who gave the opinion that his pay fixation was not done in accordance with the rules and it should be at the minimum scale of LDC i.e. Rs.260/- p.m.

9. In view of the above facts and the facts clearly stated in the counter, I do not find that the applicant has made out a case to show that the fixation of pay has been wrongly done. The application is, therefore, devoid of merit and is dismissed though ex-parte leaving the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA) S.S.32
MEMBER (J)