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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2863/2004

New Delhi, this the 20th day of May, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

1. Shri K.N.Sinha
Retired Director Military Land and Contonments
(Later designation Director General, Defence Estates)
240, Vasant Enclave.
New Delhi – 110 057.
2. Shri J.S.Manavalan
Retired Director Military Land and Contonments
(Later designation Director General, Defence Estates)
New No.9, Venkataratnam Nagar,
Adayar, Chennai – 600 020.
3. Shri R.K.Chaturvedi
Retired Director General, Defence Lands & Cantonments
(Later designation Director General, Defence Estates)
2-D-4, Dadabari Housing Board Colony
Kota, Rajasthan – 324 009.
4. Shri K.Raghunathan
Retired Director Military Land and Contonments
(Later designation Director General, Defence Estates)
No.3 Luz Avenue
Chennai – 600 004.
(Now) C/o Shri R.Nand Kumar
191, Falcor's Crest, Tata Colony
G-D, Ambedkar Road
Parel, Mumbai – 400 012.
5. Shri K.M.Sebastian
Retired Director General, Defence Estates
132, Hill Gardents
Kuttanellur
Trichur, Kerala-680 014.
6. Shri P.K.Kumaran
Retired Director General
Defence Estates
115, Munirka Enclave
New Delhi – 110 067. Applicants

(By Advocate: Sh. G.S.Lobana)

Versus

Union of India through:

1. Secretary, Ministry of Defence
South Block, New Delhi – 110 001.
2. Secretary to the Govt. of India
Ministry of Personnel, Public Grievances
and Pensions,
Department of Pension & Pensioner's Welfare
Lok Nayak Bhawan
Khan Market
New Delhi – 110 003.
3. Secretary to the Government of India
Ministry of Finance
Department of Expenditure
North Block
New Delhi – 110 001.
4. Principal Controller of Defence Accounts (Pensions)
Darupadi Ghat
Allahabad – 211 014.
5. Controller General of Defence Accounts
Ministry of Defence
West Block – V, Sector-I, R.K.Puram
New Delhi – 110 066.
6. Director General, Defence Estates
Ministry of Defence
West Block – IV, Sector-I
R.K.Puram
New Delhi – 110 066.
7. Branch Manager
Syndicate Bank
Tamil Sangam Building
R.K.Puram (Sector-V)
New Delhi – 110 022.
[(concerning Pension Account-S.B. Account No.45360 of
Applicant No.(1) and S.B. Account No.47954 of Applicant
No.(6)]
8. Branch Manager
Indian Overseas Bank, Adayar
Chennai – 600 002.
[(concerning Pension Account-S.B. Account No.3954 of
Applicant No.(2)]

9. Branch Manager
Punjab National Bank
Dadabari
Kota, Rajasthan
[(concerning Pension Account-S.B. Account No.0356665
of Applicant No.(3)]
10. Branch Manager
Punjab National Bank, Teynampet
Chennai.
[(concerning Pension Account-S.B. Account No.4652 of
Applicant No.(4)]
11. Branch Manager
Syndicate Bank
Palace Road
Trichur – 680 020
KERALA
[(concerning Pension Account-S.B.
Account No.203/4110
of Applicant No.(5)]. Respondents

(By Advocate: Sh. H.K.Gangwani)

O R D E R

By Mr. Justice V.S.Agarwal:

Applicants were appointed to the Military Lands and Cantonments Service. In 1985, it was made as the Indian Defence Estates Service with Director General Defence Estates as the Head of Service. The applicants retired between the years 1976 and 1994 and they were granted pension as applicable from time to time. After the Fifth Central Pay Commission's report, the pay of Director General was notified as Rs.26000/- (Fixed) from 1.1.1996. Thereafter, as per the revised pension regulations, issued on 17.12.1998, Respondent No.4 re-fixed the pension of the applicants at Rs.13000/- if they had at least 33 years of service or a pro-rata amount if the pensionable service was less.



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2. The grievance of the applicants is that without any reference, Respondent No.4 reduced the pension of the applicants to Rs.11200/- or to a proportionately lesser amount where pensionable service was less than 33 years. This was made effective from 1.1.1996. It was given retrospective effect.

3. By virtue of the present application, the applicants seek quashing of the impugned Office Memorandum and to direct respondents to reckon Rs.26000/- as fixed the minimum notional revised pay from 1.1.1996 for calculating their pension and not to issue any downward revision pertaining to the pension.

4. The application is being contested.

5. During the course of the submissions, our attention was drawn to the fact that a similar controversy has already been adjudicated by the Delhi High Court in Civil Writ No.678 of 2003, decided on 9.12.2003 in the case of **S.C.PARASHER v. UNION OF INDIA & ORS.**, 109 (2004) Delhi Law Times 86 (DB). The Delhi High Court held:

“6. A perusal of the clarificatory Memorandum clearly indicates that it has gone well beyond the terms of the original Memorandum. The Memorandum dated 17th December 1998 fixed the pension on the basis of the scale of pay of the post last held by the pensioner, while the clarificatory Memorandum dated 11th May, 2001 fixes the pension on the basis of the scale of pay last held by the pensioner or deceased Government servant, regardless of his post. Clearly, therefore, the clarificatory Memorandum inserted into the original Memorandum something that was neither intended nor postulated. The Tribunal rightly held (in paragraph 5 of the impugned order) that on a literal interpretation of the



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Memorandum dated 17th December 1998, the Petitioner's pension should have been fixed at Rs.9,200 since the post of Deputy Director General was assigned the pay scale of Rs.18,400-22,400.

7. However, the Tribunal fell into error in restricting its consideration only to the question whether the clarificatory Memorandum was issued by the Respondents after obtaining appropriate administrative approvals. Even if the clarificatory Memorandum was issued by following the requisite administrative procedures, the question that still remained to be answered was whether the clarificatory Memorandum could override the express terms of the original Memorandum which required pension to be fixed on the basis of the scale of pay of the post last held by the pensioner and not the scale of pay last held (irrespective of the post). Unfortunately, this question was not adverted to by the Tribunal.

8. We are of the view that the clarificatory Memorandum could not override the original Memorandum, for more than one reason. First of all, under the guise of a clarification, the Respondents could not have taken away the rights which had accrued to pensioners under the original Memorandum dated 17th December, 1998. [See Director General of Posts v. B. Ravindran, (1997) 1 SCC 641].

9. More importantly, the clarificatory Memorandum creates an artificial distinction between two categories of beneficiaries of the original Memorandum dated 17th December 1998. It may be recalled that the benefits of Memorandum dated 17th December 1998 have been conferred not only on pensioners but also on those entitled to family pension. Insofar as pensioners are concerned, their rights are sought to be limited in as much as they have been made entitled to pension of 50% of the minimum scale of pay last drawn by them; but insofar as those entitled to family pension are concerned, their pension has been fixed at 30% of the minimum revised scale of pay applicable to the post last held by the deceased Government servant. In other words, the expression "post last held" has been clarified

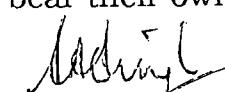
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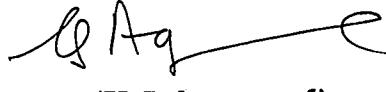
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(and restricted) only with respect to pensioners and not with respect to those entitled to family pension. This is made further clear from the last line of the clarificatory Memorandum which states that the other provisions contained in the O.M. of 17th December 1998 will remain unchanged. If the clarification is hold good, it must be so for the entire range of pensioners (including those entitled to family pension) and not only to a limited class. Quite clearly, the so-called clarification is not really a clarification but an amendment of the Memorandum dated 17th December 1998, if they were so empowered in law to do but they could not attend the said Memorandum under the guise of issuing a clarification."

6. Since this matter has already been adjudicated and is applicable in the facts of the present case, indeed, the impugned orders cannot be sustained.

7. Resultantly, we allow the present application and quash the impugned orders whereby the pension of the applicants was reduced from Rs.13000/- per month. The respondents are directed to restore the pension of the applicants. Parties left to bear their own costs.


(S.A.Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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