

Central Administrative Tribunal
Principal Bench, New Delhi.

21

O.A.No.1948/92

New Delhi this the 23rd Day of February, 1996.

Hon'ble Sh. B.K. Singh, Member(A)

Shri K.S. Bhandari,
S/o late B.S. Bhandari,
Daftari,
AG/CW Coordination Section,
Room No.206 B, South Block,
Army Headquarters, New Delhi-11.
R/o L-611, Seva Nagar, New Delhi. Applicant

(through Sh. N. Ranganathaswamy, advocate)

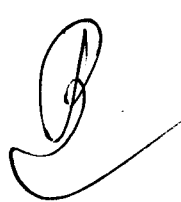
versus

1. The Ministry of Defence,
Government of India,
Office of the JS9 Adm)CAO
New Delhi.
2. CAO/A-5(Pay)
Army Hqrs. Ministry of Defence,
New Delhi. Respondents

(through Sh. M.Setu Ramalingam, Sr.Administrative
Officer)

ORDER

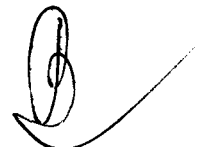
This O.A.No.1948/92 is directed against Annexure A-1 wherein the request of the applicant for fixation of his pay in accordance with the policy outlined in the Ministry of Finance (Department of Expenditure) O.M.No.8(34)/Estt.III/57 dated 25.11.1958 according to which the initial pay of the ex-serviceman in the re-employed Civil post has to be fixed by allowing increments for completed years of service in the Army and that fixing the applicant at the minimum of the pay scale has caused him undue hardship.



The material averments are these. The applicant who was serving as Naik in the Army was re-employed as a peon in A.F.H.O with effect from 7.3.1980 in the scale of Rs. 196-232. He served the Army from 28.10.1963 to 31.10.1978. According to the applicant he was entitled to 15 increments and, therefore, he should not have been fixed at the minimum of the pay scale which was done in the case of the applicant. It is further mentioned that he has been discriminated viz. viz. 6 persons whose names have been mentioned at page-4 of the O.A.

The reliefs prayed for are:-

- "(i) To allow the application with costs;
- (ii) to quash the impugned order No.A/21493/CAO/A-5 dated 22.11.91 and 27.2.1992 (A-1) passed by the CAO/A-5(Pay), Office of the Chief Administrative Officer, AG/ORG 4 CIV rejecting the request of the applicant for fixation of his pay in accordance with the policy outlined in the Ministry of Finance (Department of Expenditure) Office Memorandum No.8(4)/Estt.III/57 dt. 25.11.1958; and
- (iii) to direct the respondents to fix the pay of the applicant in accordance with the instructions issued by the Ministry of Finance O.M.No.8(34)-Estt.III/57 dt. 25.11.1958 read with Ministry of Defence O.M.No.2(7)78/6664/D(Civ.I) dated 30 Aug.1978, in the re-employed Civil post after allowing 15 increments for the fifteen completed year of service in the Army at Rs.232 with effect from 7.3.1980 with consequential benefits such as arrear of pay etc. accruing therefrom.



On notice the respondents filed the reply contesting the application and grant of reliefs prayed for.

Heard the learned counsel Sh. N. Ranganathaswamy for the applicant and Sh. M. Setu Ramalingam, Sr. Administrative Officer for the respondents.

The learned counsel for the applicant vehemently argued that the rules for fixing up the pay is that the pension which the applicant was drawing of Rs.105 was less than Rs.125/- and, therefore, should have been ignored for purposes of fixation of pay and that he should have been allowed 15 increments minus one year spent on training and that this was not done in the case of the applicant. He stated that the applicant joined in 1980 and, therefore, the respondents i.e. C.D.A. was not right in rejecting the claim based on the O.M. issued by Department of Personnel & Training for fixation of the pay of the re-employed army personnel after the liberalised Pension Scheme of Rs.375/- came into being. He produced the Swamy's Compilation before the Tribunal which refers to the various categories of re-employed pensioners of the Army and there are different O.Ms issued by D.O.P.T. Chapter-1 and Chapter-2 are relevant in this connection. Chapter-1 refers to facilities to ex-servicemen. Chapter-2 refers to Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986. The Rule-4 of the fixation of pay of re-employed pensioners states that:-



24

(4)

(a) The pensioners shall be allowed to draw pay only in the prescribed scales of pay for the posts in which they are re-employed. No protection of the scales of pay of the posts held by them prior to retirement shall be given.

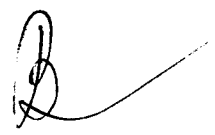
(b)(i) In all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the re-employed post.

In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial pay on re-employment shall be fixed at the same stage as the last pay drawn before retirement. If there is no such stage in the re-employed post, the pay shall be fixed at the stage below that pay. If the maximum of the pay scale in which a pensioner is re-employed is less than the last pay drawn by him before retirement, his initial pay shall be fixed at the maximum of the scale of pay of the re-employed post. Similarly, if the minimum of the scale of pay in which a pensioner is re-employed is more than the last pay drawn by him before retirement his initial pay shall be fixed at the minimum of the scale of pay of the re-employed post. However, in all these cases, the non-ignorable part of the pension shall be reduced from the pay so fixed.

(c) The re-employed pensioner will in addition to pay as fixed under para (b) above shall be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefits.

(d) In the case of persons retiring before attaining the age of 55 years and who are re-employed, pension (including pension equivalent of gratuity and other forms of retirement benefits) shall be ignored for initial pay fixation to the following extent:-

(i) in the case of ex-servicemen who held posts below commissioned officer rank in the Defence Forces and in the case of civilians who held posts below Group 'A' posts at the time of their retirement, the



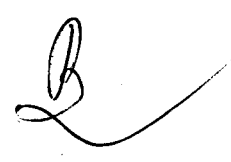
(5)

entire pension and pension equivalent of retirement benefits shall be ignored.

(ii) In the case of service officers belonging to the Defence Forces and Civilian pensioners who held Group 'A' posts at the time of their retirement, the first Rs.500 of the pension and pension equivalent of retirement benefits shall be ignored.

The learned counsel further argued that the applicant's pay fixation cannot be regulated on the basis of the O.M. issued to regulated the pay fixation on 1.1.1986. He admitted that the applicant was drawing pension of Rs.105/- from 1.11.1978 to 31.12.1985 and that he has been drawing Rs.375/- w.e.f. 1.1.1986 and he also received the gratuity amount of Rs.2868.35. He argued that the entire pension and the gratuity amount received by the applicant from 1.11.78 to 31.12.1985 has to be ignored while fixing the pay scale of the applicant. According to him the amount drawn as pension and as gratuity have to be totally ignored and that the applicant should be fixed at Rs.232/- which he was drawing at the time of his retirement from Army.

The departmental representative argued that the various O.Ms. issued by Government of India in 1958, 1964, 1978, 1983 and 1986 are rooted in the O.M. issued in 1958 and that the various O.Ms. have to be read together in order to understand the meaning and spirit of the various O.Ms. issued in this regard. He read out the G.I.M.F. Memo No.F.28(18)-EV/56 dated 1.11.1956 in which it has been mentioned that instances have come to the notice in which the pay of re-employed Government servants had

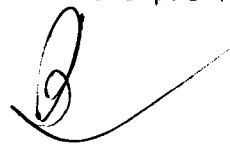


26

(6)

been fixed without taking into account the death-cum-retirement gratuity admissible under the Liberalised Pension Rules and or the commuted portion of pension, either due to the instructions issued in this behalf being overlooked or because of failure to follow the said instruction in particular cases. It has been laid down that the pension equivalent of the death-cum-retirement gratuity which an officer may become entitled to on retirement under the Liberalised Pension Rules, and any portion of the pension which may have been got commuted, are to be taken into account in fixing the pay during re-employment. This decision was communicated to all the concerned offices that pay fixation should be issued only after taking all the benefits pensionary, gratuity or any other allowance, bonus etc. admissible to ex-army person. It further lays down in para-3 of G.I.M.F. letter No.7(125)E.V/58, dated 19.11.1958 which has been sent to the address of Accountant General, Assam who was then regulating the pay scale of the ex-servicemen employed in the civil jobs. It lays down that the pay of the re-employed officer will be fixed at the minimum of the prescribed scale and it says that the pension and other benefits drawn by him will be taken into consideration. The pay will be fixed taking into consideration the gross amount of pension/pension equivalent to any other retirement benefit and that the total should not exceed the pre-retirement pay.

This is the basic instruction issued and this instruction even goes to the extent of reducing the pay and bringing it on a par to the pre-retirement



(7)

pay if the pension, gratuity or any other equivalent amount exceeds the amount drawn as pre-retirement pay. These orders were subsequently superseded and it was mentioned in the circular issued in G.I.M.F. Memo No.8/(34)/Est.III/57 dated 25.11.1958 wherein it was mentioned :-


- (a) Re-employed pensioners should be allowed only the prescribed scales of pay, that is, no protected time scales such as those available to pre-1931 entrants should be extended to them.
- (b) The initial pay, on re-employment, should be fixed at the minimum stage of the scale of pay prescribed for the post in which an individual is re-employed.

The regulation of pay, however, in all such cases has been prescribed under Regulation 510 which lays down that a person who was formerly in the civil or military employment of any Government in India obtains re-employment, whether temporarily or permanently, in Government service or in the service of a local Fund, it shall be incumbent on him to declare to the appointing authority the amount of gratuity, bonus or pension granted to him in respect of previous employment. The authority re-appointing him shall specifically state in the order of re-appointment whether any deduction is to be made from pension or salary as required by the rules of this Chapter and shall communicate a copy of the order to the Audit Officer. Article 521 says that the authority competent to fix the pay and allowances of the post in which the pensioner is re-employed shall determine whether the pension shall be held wholly or



partly in abeyance. If pension is drawn wholly or in part, such authority shall take the fact into account in fixing the pay to be allowed to him.

Provided that in the case of any such person who retires before attaining the age of fiftyfive and is re-employed on or after 16th January, 1964, the amount of pension drawn by him if it is less than fifty rupees, or the first fifty rupees, shall not be taken into account in fixing his pay on re-employment. Article 526(a) says that where a pensioner formerly in military service obtains employment in Civil Department after having been granted a military pension, and continues to draw his military pension the authority competent to fix the pay and allowances in which he is re-employed shall in fixing his pay and allowances in the post in which he is re-employed, take into account the amount of pension, including such portion of it as may have been commuted. 526(b) says where a military officer, departmental officer, warrant or non-commissioned officer or soldiers who is granted a pension under military rules while he is in civil employ, draws such pension while he is in civil employment, the authority competent to fix the pay and allowances of the post in civil employment, may, with effect from the date from which the pension is granted reduce such pay and allowances, with reference to such officer or soldier by any amount not exceeding amount of such pension. **526(c)** says that in the case of service personnel who retire from the Forces before attaining the age of 55

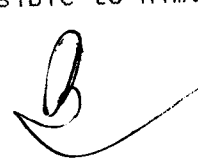


and are re-employed in civil posts on or after 16th January 1964 the pension shown below shall be ignored in fixing their pay on re-employment:-

- (i) in the case of pension not exceeding Rs.50 per mensem, the actual pension;
- (ii) in other cases the first Rs.50 of the pension.

The circular G.I.M.F. O.M.No. F.5(14)-E.III(B)/77 dated 19.7.1978 clearly lays down that the pension for purpose of these orders include pension equivalent of gratuity and other forms of retirement benefits.

The basic question that arises is how the pay should be fixed. The previous rules were that if the gross emoluments plus minimum pay exceeds the last pay drawn then the pay should be reduced to that extent to bring at par with the last pay drawn. The Liberalised Scheme is only to the extent that there should be no reduction in the pay and that a person should be compensated by giving advance increments only when taking his pensionary benefits, gratuity, commuted value of pension and bonus etc., the minimum pay falls short of the last pay drawn. Only in such cases advance increments are admissible and it will be treated as a case of undue hardship. If the gross emoluments i.e. pensionary benefits, gratuity, commuted value of pension and bonus etc. are added to the minimum pay scale admissible and this is equivalent to the last pay drawn, it will not be treated as a case of hardship at all and no advance increments would be admissible to him. The circular



(10)

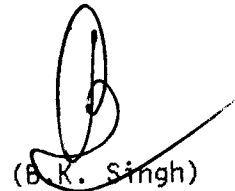
issued by D.O.P.T. annexed with the counter-affidavit by the respondents as Annexure-R1 defines what hardship means. This order has been issued by Government of India and is effective from 1.1.1986. This is regarding regulation of pay during re-employment. It lays down in para (11) that Pay in the re-employed post is to be refixed on account of revision of pension from 1.1.1986. In para (12) Criterion for hardship to grant advance increments in the re-employed post is given. The orders were also issued to the Heads of Circles with the request to review all such previous cases where the pay of re-employed pensioner has been otherwise fixed under the O.M.No.2(1)/83/D(Civ.I) dated 8.2.1983. This review should cover all cases where the ex-servicemen were re-employed before 1.7.1986. Since the applicant was re-employed before 1.7.1986, therefore, the clarificatory O.M. issued by the Ministry of Personnel, Public Grievances and Pensions makes it abundantly clear that a person can be given increment only when it is a case of undue hardship and in case of undue hardship is one where after taking into consideration the pensionary benefits, gratuity equivalent of pension+other retirement benefits added to the basic pay falls short of the last pay drawn by the applicant. If the basic pay +gross amount drawn in the form of pension, gratuity, bonus etc. brings the whole at par with the last pay drawn then no advance increment is admissible and it will not be treated as a case of hardship. This being so, the applicant is entitled to only the last pay drawn by him after taking into consideration the minimum pay of



31

(11)

the post+full pension+pension equivalent of gratuity (whether ignorable or not) and if it is less than the last pay drawn by him at the time of retirement from the Army, he is entitled to advance increments and it will be treated as a case of hardship and if the pay so fixed does not fall short of the pre-retirement stage, it will not be a case of undue hardship and he is not entitled to any advance increment. In view of the foregoing discussion, the application fails and is dismissed, leaving the parties to bear their own costs.



Member(A)

/vv/