

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
P.R.N.C.T.P.A.T. BENCH, NEW DELHI.
OA.No.2815 of 1992
New Delhi, dated this the 3rd February 1994.

Shri C.J. ROY, Hon. Member(J)

Amar Chand,
S/o Shri Sheojoji Ram,
Working as MT-Driver GD-I,
Office of GE (East) MES,
Delhi Cantt.

Applicant

By Advocate Shri V.P. Sharma.

Versus

Union of India through,

1. The Secretary,
Ministry of Defence,
Government of India,
New Delhi.
2. The Chief Engineer,
Western Command, M.E.S.
Chandi Mandir.
3. The C:E. (East),
M.E.S. Delhi Cantt.

Respondents

By Advocate Mrs. Raj Kumari Chopra.

ORDER
(delivered by Hon. Member(J) Shri C.J. ROY)

This application is filed claiming the relief that the OA may be allowed with costs of the litigation and also praying for declaring the Annexure A-8 and A-1 orders dated 10.12.90 and 14.5.92 respectively as illegal and liable to be corrected to the extent of not making any deduction of pension amount like other similarly situated persons and to restrain the respondents from making recovery of back wages.

2. The brief facts of the case are that the applicant is an Ex-serviceman discharged from Army on 25.6.71 as Naik and claims that he is entitled for all the service benefits which are admissible to the

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Ex-serviceman. In the year 1971, the respondents wanted to fill up the post of Drivers from the category of Ex-serviceman and the applicant alongwith some other Ex-servicemen were re-employed as MT Drivers on 28.10.1971. He also cites the name of four persons who were reemployed along with him vis-a-vis S/Shri Janki Pd, Bhim Singh, Kundan Singh, Bhagirath Singh. The applicant was promoted w.e.f. 30.5.86 vide order dated 28.4.86 and hence his pay has to be fixed under Revised Pay Rules 1986 which was not done due to omission on the part of the respondents. He refers to the Government of India notifications dated 16.1.64, 19.7.78 and 24.10.83 which are reproduced at page 51 to 53 of Swamy's Compilation on Reemployment of Pensioner, the pension amount of the petitioners while fixing their pay on reemployment, as follows:

(a) Upto Rs.50/- Vide Ministry of finance OM No.7(34)- Estt-III/62, dated 16.1.64.

(b) Upto 125/- Vide Ministry of Finance OM F-5 (14) - E-III (E)/77 dated 19.6.78.

(c) full pension in the case of below commissioner officers rank vide Ministry of Defence OM No.2(1)/83/D(Civ-I) dated 8.2.83 and corrtd. dated 24.10.83.

3. The Annexure A-7 letter dated 10.8.90 is a communication to the AAO (Pay) Delhi, which is as follows:

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"In this connection it is intimated that the pay fixed at Rs.1275/- p.m. w.e.f. 1.1.1986 less Rs.2.30 vide your letter under reference is not correct. The pay is required to be fixed at Rs.1250/- less Rs.330/- w.e.f. 1.1.1986 as per pay fixation proforma attached. In this connection you are again required to go through the contents of our letter No.32746/REDL/85/81 PF dated 16.6.90 in which clear position has already been explained. (9)

3. In the view of the above/ Book in three parts, pension Book, pay fixation proforma received by your No. under reference is returned here with for your re-consideration. You are again requested to approve the correct pay to avoid unnecessary correspondence on the subject matter".

4. He further claims that according to the notifications issued on 8.2.83 (Annexure A-9), 3.6.88 (Annexure A-10), 11.9.87 (Annexure A-11), 29.5.91 (Annexure A-12), 28.8.87 (Annexure A-13), his pay should be fixed in accordance with law. It was also clarified vide letter dated 29.7.92 issued by the respondents that the applicant's pay should be fixed at Rs.1250/- on 1.1.1986 and it has also been done to the similarly situated persons. The applicant avers that he made further representation on 20.5.92 in vain and deductions were effected to his distress denying the benefits of the fixation of pay and ignoring the pension amount by which his pension amount of Rs.330/- was made less. On representation, the Headquarters also mentioned that his pay has been correctly fixed.

5. The respondents have filed the counter in which they have stated that this application is not maintainable in law for the following reasons:

(a) On re-employment as MT Dvr Gde II in Central Vehicle Depot Delhi Cantt on 28.10.71 the pay of the applicant was fixed at Rs.110/- less Rs.2.30 in the pay scale of Rs.110-3-131-4-139. He was allowed to draw pension Rs.45/- per month in addition which he never objected.

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(b) Under RPR-1973, the pay of the applicant was fixed at Rs.272/- less Rs.2.30 in the pay scale of Rs.260-350 in addition to pension without adhoc increase in pension with DNI 28.10.73 while serving in Garrison Engineer 5234 which he never objected.

(c) Under RPR-1986, the pay of the applicant was got fixed at Rs.1250/- less Rs.330/- allowing him to draw pension Rs.45/- per month. while serving with the answering respondent which is in order as per rules in force notified vide Govt of India, Department of Training OM No.3/9/87-Estt(Pay-II) dt 11.9.87 as annexed at A/11 with the application of the applicant.

6. As regards the contention of the applicant that he was reemployed on 28.10.71 after discharge from the Army are correct. The applicant was not reemployed by the respondents as stated nor serving with the respondent No.3 since his reemployment. He was reemployed in Central Vehicle Depot Delhi Cantt and posted to the MES (Respondent No.2) during the year 1972 and had served with various formations. He is serving in the office of the respondent No.3 w.e.f. 28.5.79. The pay of the applicant has been fixed correctly at every stage under various revised pay rules. The Government notifications referred in the application, do not permit him to get any relief as claimed since he has not made any option to come under these orders which he did not do as required under RPR-1973 and RPR 1986. The contents of the Government notifications are submitted precisely as under:-

(a) Notification dated 8.2.83 states that those individuals who opt for fixation of pay under these provisions, their pay may be fixed at the minimum of the pay scale of the post on exercising option in writing by the employees. Since the applicant did not opt for fixation of his pay at the minimum of the scale considering that these orders may not be beneficial.

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(b) Notification dated 3.6.88 states that in cases where the entire pension and pensionary benefits are not ignored for pay fixation, the non-ignorable part of pension and pension equivalent of retirement benefits can be reduced from the pay fixed as per the orders. Therefore, the non-ignorable part viz. Rs.2.30 has been reduced from the pay so fixed as on 28.10.71 and 1.1.73.

(c) Notification dated 11.9.87 has held that where the pension has been refixed wef 1.1.86, the pay to be re-fixed after taking into consideration of pension so revised. Since the pension of the applicant for his Army Service has been revised to Rs.375/- PM> the element of pension in excess of Rs.45/- has been taken into consideration and his pay was re-fixed at Rs.1250/- less Rs.330/- per month wef. 1.1.86.

(d) Notification dated 29.5.91 relates to acceptance of belated option for pay fixation of re-employed pensioners unders Min of Defence OM dated 8.2.83 in respect of Shri M.D. Tiwari. Therefore, referring this notification has no relevance in this case.

(e) Notification dated 28.8.87 has held to exercise belated option by Ex combatant Storeman re-employed in Civil post as Storeman/Storekeeper. The applicant belongs to the different category and has no relevance.

7. I have heard the learned counsel for both parties and perused the documents on record. The learned counsel for the applicant relied upon the judgement of the Chandigarh Bench of the Central Administrative Tribunal as a covered case along with the rejoinder filed by him. It is a combined judgement of four OAs- vis-a-vis OA.No.1282-PB 1990 (Harnaik Singh versus Union of India and others) OA.No.1290-PB of 1990 (Gurdev Singh Versus Union of India and others), OA.No.443-PB of 1991(Ranjit Singh versus Union of India and others) and OA.No.630-PB of 1991(R.L. Sharma versus Union of India and others) in which the respondents were directed to refix the pay of the applicants in the revised pay scale with effect from 1.1.1986 by ignoring the total military pension drawn by them even after the revision thereof and that

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if the respondents have recovered or withheld any amount on account of incorrect fixation of applicants pay by adjustment of military pension, the same shall be refunded to the applicants.

8. The learned counsel for the applicant states that this judgement has been Stayed by the Hon. Supreme Court in SLP No.0657-58/92 dated 3.3.92 (Annexure R-I). Therefore, the applicant is not entitled to the benefits of the same judgement.

9. Coming to the merit of the case, the applicant more or less depends on the notifications at Annexure A-9 to A-13.

10. Annexure-9 is the OM dated 8.2.83 issued by the Ministry of Defence in regard to the fixation of pay of Re-employment pensioners General Policy thereof - Question of ignoring Rs.250/- in the case of Ex-serviceman retiring before attaining the age of 55 has been decided as follows:

"The undersigned is directed to refer to this Ministry's O.M. No.2(7)/78/6664/D(Civ-1) dated 30.8.1978 and to say that the question of raising the limit of the present Ceiling of pension which has too be ignored in fixing of pay on re-employment, of ex-serviceman, who retire before attaining the age of 55, has been under the consideration of the Government, for some time. The President is pleased to decided that in the case of those ex-servicemen retiring before attaining the agae of 55, the pension as indicated below maybe ignored in fixing their pay on re-employment:-

- (i) In the case of Service Officers, the first 250/- of pension;
- (ii) In the case of personnel below Commissioned Officer rank the entire pension

Note: The pension for the pass 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 pension to be ignored in fixing pay of re-employment pensioners, will, therefore, case to be applicable to cases of such pensioners as are re-employed on and after that date. In this case of the persons who are already on reemployment, the pay may be fixed on the basis of these orders with immediate effect provided they opt to come under these order. If so, opt, their terms would be 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 optioners exercise shall be final.

This issues with the concurrence of the Ministry of Finance (Department of Expenditure) conveyed vide Secretary (Expenditure Dy. No. 286-SE/83 dated 4.2.1983)."

11. The Annexure A-10 notification issued by the Ministry of Defence in regard to the fixation of pay of re-employed pensioners reads as follows:-

"The undersigned is directed to refer to the Central Civil Services (Fixation of pay of Re-employed Pensioners) Orders, 1986, on the above subject, and to say that in paragraph 4(b) (ii) of the orders it has been provided that in cases where the entire pension and pensionary benefits are not ignored for pay fixation, the non-pensionary part of pension and pension equivalent of retirement benefits shall be reduced from the pay fixed as per the orders.

2. The question whether the pension equivalent of gratuity could be ignored in fixing the pay on re-employment has been considered. The President is now pleased to decided that in fixing the initial pay of re-employed pensioners, the pension equivalent of gratuity may not be deducted from the pay so fixed.

3. In so far as the persons serving in the Indian Audit & Accounts Department are concerned, these orders are being issued in consultation with Comptroller & Auditor General of India.

4. These orders shall have effect from the 1st of the month of issue of this Office Memorandum."

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12. The Annexure A-11 order in regard to Acceptance of belated option for pay fixation of re-employed pensioners under Ministry of Defence OM No.2(1)83/D(Civ.I) dated 8.2.83, states that:

"The undersigned is directed to invite attention to this Department OM of even number dated the 9th December, 1986, whereby persons re-employed in civil posts under the Government after retirement and who were in re-employment as on 1.1.86 were allowed to draw pay in the revised scales under CCS (RP) Rules, 1986. A point has arised as to whether consequent on the revision of the pension of the employees w.e.f. 1.1.86, 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 decided that pay of pensioners who were in re-employment on 1.1.86 and whose pay was fixed in accordance with the provisions of this Department OM dated 9.12.86 may be refixed w.e.f. 1.1.86 by taking into account the revised pension. Like wise increase in the pension of ex-servicemen under separate orders of Ministry of Defence may also be adjusted by re-fixation of their pay in terms of provisions of this Department OM dated 9.12.86. Over-payments 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 w.e.f. 1.1.86 for the purpose of re-fixation of their pay after taking into account their revised pension.

3. In so far as the application of these orders to the persons serving in the Indian Audit and Accounts department is concerned, these orders are issued in consultation with the Comptroller and Auditor General."

13. The Annexure A-12 order in regard to acceptance of belated option for pay fixation of re-employed pensioners under Ministry of Defence OM No.2(1)83/D(CIV.I) dated 8.2.1983, clarifies as follows:-

"This is a proposal for acceptance of belated option for pay fixation under O.M. dated 8.2.83 in respect of Shri M.D. Tiwari who was re-employed as Family Welfare Extension Educator at Air Force Station Hyderabad w.e.f. 14.8.81 in scale of Rs.425-700. It has been stated that his pay was fixed by adjusting Rs.142 from minimum of scale as the pay plus residual pension and PEG of Rs.42/- (after ignoring Rs.125/-) exceeded last pay drawn of Rs.325 by Rs.142.

The proposal has been recommended as the consideration that the option under OM dated 8.2.83 was indeed very beneficial to officer at that time but he could not submit necessary option due to ignorance/oversight.

We have already taken a decision in consultation with Ministry of Finance for not accepting any belated option for pay fixation in terms of OM dated 8.2.83, whatever the grounds for condonation of delay may be, as at this stage we are contesting a demand of staff side in National Council (JCM) regarding OM dated 11.9.87/fresh option under C.M. dated w.e.f. 25.1.83. As such it will not be possible to agree to this proposal of Ministry of Defence in favour of Shri Tiwari. However, it is pertinent to mention that in the case of Shri Tiwari, the deduction of residual pension.... is to be made directly from pay at minimum of scale as the pay drawn is less than the minimum of the scale of re-employed post. In this regard para 1(e) of Ministry of Finance OM dated 25.11.58 refers. Thus Shri Tiwari is entitled to a pay of Rs.425/- less Rs.42.22 (and not less Rs.142) on the date of his reemployment."

14. The relevant portion of Annexure A-13 order in regard to Fixation of pay and regularisation of late submission of option certificate exercised by ex-servicemen on their re-employment in civil posts is reproduced below:

".....

(b) Orders of Ministry of Defence OM No.2(5)/58/5801/D (Civ-I) dated 15 Jul 60 as amended from time to time are beneficial to those reemployed pensioners who pension plus PEG is more than Rs.15. Limit of ignorable pension under the said orders is as under:-

- (i) Under the order - Limit of ignorable dated 15 Jul 60 pension is upto Rs.150/-
- (ii) Under Govt order- Limit of ignorable dated 30 Jan 78 pension is upto Rs.50/-
- (iii) Under Govt order- Limit of ignorable dated 30 Aug 78 pension is upto Rs.125/-

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(iv) Under the order - Entire pension is to be dated 8 Feb 83 ignored.

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15. The learned counsel for the respondents contest that the applicant did not raise any objection when his basic pay was fixed at Rs.110-3-131-4-139 on his reemployment as MT Driver Grade-II with the respondents. They deny that the applicant was not reemployed by the respondents as stated and he has not served under Respondent No.3 since his reemployment. He was reemployed only in the Central Vehicle Depot Delhi Cantt and posted to the MES (Respondent No.2) during the year 1972 and had served with various formations. He is serving in the office of the respondent No.3 w.e.f. 28 May 79. The pay of the applicant has been fixed correctly at every stage under various revised pay rules. The Government notifications as referred to by the applicant do not permit him to get any relief.

16. It could be seen that the combined judgement of four OAs decided in the Chandigarh Bench of the Central Administrative Tribunal, viz-OA 1282-PB of 1990 (Harnaik Singh versus Union of India and others), OA.1290-PB of 1990 (Gurdev Singh Versus Union of India and others), OA.443-PB of 1991 (Ranjit Singh versus Union of India and others) and OA 630-PB of 1991(R.L. Sharma versus Union of India and others), which the learned counsel for the applicant allege that it is a covered case have been stayed by the Hon. Supreme Court in SLP 0657-58/92 dated 3.3.92, according to the annexure R-1 of the counter. Therefore, in view of the doctrine of precedents, I think, it would be

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better for the applicant to wait for the Hon. Supreme Court's final decision in the SLP. In the circumstances, I am not inclined to interfere in this OA as the Hon. Supreme Court is seized of the matter and dispose of this OA as not presently maintainable. No costs.

W. Roy
(C.J. ROY)

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MEMBER (J)