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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No.1149/93.

New Delhi, this the 19th day of January, 1994.

SHRI J.P.SHARMA, MEMBER(J).

Shri S.R.Rao,
son of late Shri S. Venkat Rao,
resident of E-8/2, M.S.Flats, R.K.Puram,
New Delhi,
Joint Director,
ARC Headquarters,
New Delhi.Applicant

(By advocate: Shri N. Ranganathasamy)

VERSUS

1. Union of India, through
The Cabinet Secretary,
Cabinet Secretariat,
Govt. of India, R.K.Puram,
East Block, New Delhi.
2. Director General of Security,
Cabinet Secretariat,
East Block-V, R.K.Puram,
New Delhi-110066.
3. Director, ARC,
Directorate General of Security,
Cabinet Secretariat,
East Block-V, R.K.Puram,
New Delhi-110066.
4. The Director of Accounts,
Cabinet Secretariat,
East Block-V, R.K.Puram,
New Delhi-110066.
5. The Secretary,
Ministry of Personnel, Training & Pensions,
North Block,
New Delhi.Respondents

(By advocates: Shri P.H.Ramchandani,
Sr. Counsel with Shri
(Dr.) J.C. Madan.)

O R D E R (ORAL)

The applicant is an exserviceman and was initially appointed as Pilot Officer in the Indian Air Force. He came on deputation to A.R.C. in the Cabinet Secretariat on 15-1-1970 on the post of Assistant

Director (Photo). He got his due promotion in the Air Force service as Squadron Leader and thereafter as Wing Commander. He completed 20 years and so of service on 21-7-1979 and he retired from the service of air force on 31-7-1979 and was fixed in the pension of Rs.830 per month. He was re-employed as a pensioner in the A.R.C. on the same post w.e.f. 1-8-79 in the scale of Rs.1100-1600.

2. The grievance of the applicant starts after he joined as re-employed pensioner in ARC w.e.f. 1-8-79 as Assistant Director in the grade of Rs.1100-1600. The promotional posts are of Joint Deputy Director (Rs.1500-2000); Deputy Director (Rs.2000-2250) and Joint Director (Rs.5900-6700) and these are the revised scales of pay. The applicant in this application has the grievance against the order of 16-2-93 where his representation regarding action on the part of the respondents in deducting enhanced pension from the salary of the applicant and the Cabinet Secretariat considering the matter rejected the same.

3. He has prayed for the grant of the relief that the respondents to pay the amount of enhanced pension deducted from the salary of the applicant for the period from 1-1-86 onwards and amount of interest @ 12 per cent per annum. Here it may be referred that the Fourth Pay Commission's recommendations came into force w.e.f. 1-1-86 whereby the pay scales were revised and also the pensionary benefits were also revised and according to this, the applicant's pension was increased from Rs.830 to Rs.1,584. It is because of this deduction from the salary getting from the Civil

Defence Estimates that the applicant had made a representation and ultimately assailed the same for judicial review in this application.

4. The respondents, on notice, filed the reply opposing the grant of the relief prayed for. The contention of the respondents has been that while fixing the pay of the applicant as re-employed pensioner, the element of pension was taken into account and in para 4.5 of the reply, they have given the calculation according to which the pension has been fixed. According to the respondents, the last pay drawn by the applicant as Wing Commander was Rs.1,950 and from 1-8-79 he was allowed a pension of Rs.830 per month and has also been paid the gratuity as per rules. As re-employed pensioner, he was fixed in the scale of Rs.1100-1600 on the post of Assistant Director (Photo), A.R.C., and while fixing his pay Rs.125 of the pension was ignored and element of Rs.705 along with pension equivalent of gratuity amounting to Rs.122.65 p. was taken into account. While adding all these amounts, the total emoluments comes to Rs.1,927.65 p. The applicant was, however, paid dearness allowance on the pay at the maximum of the scale, i.e., at Rs.1600. Thus, when the applicant was promoted to the post of Joint Deputy Director, his pay was fixed in the scale of Rs.1500-2000 and from 13-8-81, he was getting Rs.1500 but the dearness allowance he was getting on the maximum of the scale, i.e., Rs.2000. Similarly, on promotion to the post of Deputy Director in the scale of Rs.2000-2250, his pay was fixed at Rs.1,680 ^{/plus pension Rs.705 plus PEG Rs.122.65} and dearness allowance was paid

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on the maximum of the scale of Rs.2250. His pay as Joint Director has also been fixed at Rs.6300 minus ^{/increase in pension} Rs.754 7 w.e.f. 1-1-86. Thus, the applicant is not entitled to the grant of any relief.

5. I heard the learned counsel for the applicant at considerable length. The learned counsel has basically placed his arguments on the fact that while initial pay as Assistant Director in the scale of Rs.1100-1600 was fixed on 1-08-79, the element of pension was not taken into account. Government of India, Ministry of Finance O.M. No.5(12)-121(B)/7 dated 19-7-78 says that pension not exceeding Rs.125 has to be ignored and in case the pension exceeds Rs.125, Rs.125 has to be ignored. It is evident from the chart of fixation of pay in para 4.5 of the counter that Rs.125 of the pension was ignored and though the applicant was getting Rs.830 while re-fixing the pay, only Rs.705 were taken into account. The element of pension was, therefore, deductible as his pre-retirement pay. The respondents have filed a memo of Cabinet Secretariat on the fixation of pay (Annexure R-4) where DP&T clarified two points. The same is reproduced below :

" Point of doubt

Clarification

i) Those whose pay has been fixed after taking into account their military pension (or part thereof)

Refixation with respect to the enhanced pension does not involve fixation of pay afresh with respect to pre-retirement pay but that only the increased amount of pension is required to be deducted from the pay already fixed.

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ii) Those whose pay has been fixed by ignoring the entire pension in terms of Min. of Defence OM dt. 8.2.83.

The pay of the Officers of this category is not to be re-fixed as their existing pay was then refixed by ignoring full pension and that the increased in their revised pension stand automatically ignored. "

Thus, it is evident that the element of pension was taken into account while fixing the original pay of the applicant in the Rs.1100-1600. The learned counsel for the applicant wants to draw an inference on the initial fixation of pay on the minimum of the scale of Assistant Director on the basis of observation made in Chapter 3 in Swamy's Compilation at page 42, Second Edition, where it is laid down that initial pay on re-employment should be fixed at the minimum scale of pay prescribed for the post in which an individual is employed. However, some relief can be given in the case of re-employed, i.e., at the minimum of the prescribed pay of undue hardship is caused to him. It is also laid down that while fixing this pay, the incumbent may also be allowed to withdraw permissible pension sanctioned to him and to retain any other benefit but the total amount of the basic pay fixed plus the pension should not exceed the last emoluments drawn by the incumbent as the basic pay. If this point is considered as argued by the learned counsel, then the applicant was drawing on 31-7-79 Rs.1,950. It cannot be the basis that same functions and duties were being performed by him ^{and cannot} be reverted to a lesser pay of Rs.1100 for the post of Assistant Director in A.R.C. Logically, the maximum which can be inferred from the arguments of the learned counsel, then the applicant

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should have been fixed at the maximum scale of Rs.1600 and not at the minimum scale of pay. But, this cannot be the case here, as in that case, he will be drawing much more than the last pay he drew as Wing Commander in Air Force notionally though on deputation to ARC as Assistant Director. His last pay was Rs.1950. If he is fixed at Rs.1600, then total emoluments after giving benefit of ignorable portion of the pension would be Rs.1600+705+122.65 = Rs.2427.65. It is undisputed that the applicant was getting only one element of D.A. on the maximum scale for the re-employed post of Assistant Director in A.R.C. at Rs.1600. This reasoning is sufficient to repel the argument of the learned counsel for the applicant that ~~one~~ element of pension was not considered while fixing the pay of the applicant on 1-8-79.

6. The learned counsel has conceded that if element of pension has been considered, then the act of the respondents in deducting the enhanced portion of the pension from his pay by virtue of recommendation of the Fourth Pay Commission cannot be disputed.

7. In view of these facts and circumstances, the application is totally devoid of merit and is dismissed. No costs.

J. P. Sharma

(J.P.SHARMA)
MEMBER(J)

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