

6

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 2007/93

New Delhi this the 24th Day of March, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)
Shri B.S. Hegde, Member (J)

Chatter Singh son of
Shri Bhola Singh,
Shri Bhola Singh,
R/o Village & Post Office
Kundal Distt. Sonepat-124402.
(Haryana)

...Applicant

(By Advocate Shri Sant Lal)

Versus

1. The Union of India through the Secretary, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Haryana Circle, Ambala Cantt.
3. The Post Master Sonepat, H.O.
4. The Supdt. of Post Offices, Sonepat.

...Respondents

(By Advocate Shri K.C. Mittal)

ORDER(ORAL)

Mr. N.V. Krishnan:

The applicant is working as an Extra Departmental Delivery Agent in Kundal Branch Post Office under the Sonepat Division under third and fourth respondents. He was being paid the allowances of Rs.420/- from the date he joined as Extra Departmental Delivery Agent (E.D. Agent for short) on 15.2.80. He is a retired military pensioner having retired on 19.10.79. At the time of his re-employment he was in receipt of military pension. With effect from 1.7.1986 the Government decided to grant dearness allowances on the allowances payable to the E.D. Agents. That decision is referred to in para 4 of Section 5 of Swamy's Compilation of Service Rules for extra departmental staff (5th Edition). It would appear that this was sanctioned by the letter dated 15.7.87 of the Director General of Posts.

2. The applicant was, however, surprised that all of a sudden with effect from December, 1991 the allowance payable to him as E.D. Agent was stopped and that allowance has still not been revived.

3. The representations in this behalf made by the applicant have been turned down by the impugned letters dated 28.8.92 of the Superintendent of Post Offices (Annexure A-1), the letter dated 30.12.92 (Annexure A-2) of the same authority, conveying the decision of the Director, Postal Services, Ambala and letter dated 14.6.93 (Annexure A-3) of the D.G. Posts. It is stated in those letters that the applicant was not entitled to both dearness relief on pension and dearness allowance on the E.D. Agent's allowance simultaneously. It is the view of the department that the applicant is entitled to receive either the dearness relief on pension or the dearness allowance on the E.D. allowance but not both, in addition to the military pension. Therefore, the department has communicated to all concerned by the letter dated 9.12.88 (Annexure A-4) that in the case of pensioners working as E.D. Agents an option to draw either relief on pension or dearness relief on E.D. allowance has to be obtained.

4. Upto November, 1991 an over payment of Rs.8,046/- has been worked out on this account and this is being recovered by withholding the E.D. Agent allowance due to him from December, 1991 onwards. A recovery of Rs.5,295/- has already

been made from December, 1991 to November, 1991, as is evident from the Annexure A-1. Thereafter, recovery at the rate of Rs.100/- per mensum is being made, which is still continuing.

5. It is in these circumstances that this O.A. has been filed for setting aside the impugned orders and to direct the respondents to release the payment of dearness allowance on the E.D. allowance which has been stopped illegally and to refund the amount already recovered from the E.D. allowance payable to the applicant.

6. It is pointed out that the correct legal position in this behalf has been clarified in the Full Bench decision of this Tribunal in P.G. Laxman Panikar & Others Vs. Secretary, Govt. of India & Others - CAT Full Bench Judgements Vol.II page 107. It was decided therein that where pension is ignored, either in part or in full, for considering the fixation of pay of retired military pensioners on re-employment before attaining the age of 55 years, the relief, including the ad hoc relief, payable on that part of the pension which has been ignored for fixation of pay, cannot be denied and this is payable in addition to the dearness allowance payable on the pay of the post on which the pensioner is re-employed. It is stated in the application that the E.D. allowance payable has no connection, whatsoever, with the military pension drawn by the applicant. In other words, the military pension did not, in any way, enter into the fixation of the E.D. allowance on re-employment. The same amount

U

of E.D. allowance would have been paid to another person appointed as E.D. Agent, who may not be a military pensioner. In other words, the military pension is ignored fully and, therefore, in terms of the Full Bench judgement referred to above, the applicant is entitled to get dearness relief on the pension as well as dearness allowance on the E.D. allowance.

7. It is also pointed out in the application that the respondents had with a view to over-coming the decision of the Full Bench, amended the Central Civil Service Pension Rules, 1972 by inserting rule 55-A, which reads as follows:-

"55 A. DEARNESS RELIEF ON PENSION/FAMILY PENSION

i) Relief against price rise may be granted to the pensioners and family pensioners in the form of dearness relief at such rates and subject to such conditions as the Central Government may specify from time to time.

ii) If a pensioner is re-employed under the Central or State Government of a corporation/company/body/ bank under them in India, or abroad including permanent absorption in such corporation/company/body/bank, he shall not be eligible to draw dearness relief on pension/family pension during the period of such re-employment.

iii) The Central Government employees who get permanently absorbed in terms of rule 37 and opt for lump-sum payment in lieu of pro-rata montly pension in terms of rule 37, shall not be eligible for dearness relief."

It is stated in para 5.5 of the OA that the Madras Bench of this Tribunal in Meena Subramaniam (Mrs.) and Others Vs. Union of India & Others - 1992 (2) ATR CAT 75 held as follows in respect of the amended rule:-

.....Sub-clause (ii) of Rule 55A of the Pension Rules which denies dearness relief on Pension to a category of pensioners, namely the re-employed, is an unreasonable discrimination since the price rise is the

same for all pensioners. So sub-clause (ii) of Rule 55A is violative of Article 14 of the Constitution of India and hence not enforceable."

This decision has been reiterated by the same Bench in Mrs. Mahilini Thomas Vs. The Collector of Customs, Madras & Others reported in 1994 (1) ATJ 109.

8. The respondents have filed a reply contesting these claims. It is pointed out that the dearness allowance on the E.D. allowance would not be payable so long as the E.D. Agent also is in receipt of the pension, on which he is drawing the dearness relief. In this connection they rely upon the instructions dated 9.12.88 (Annexure A-4 of the O.A) which is impugned in this O.A. It is stated that when the over payment on this account came to light, recovery was ordered and as the applicant did not furnish any option in terms of the Annexure A-4 letter, the recovery is continuing. In the circumstances, he will not be entitled to get dearness allowance on the E.D. allowance payable to him.

9. We have heard the learned counsel for the parties. It is clear that the E.D. Agents are a special category of Government employees. They were being paid only a fixed allowance and it is only from 1.7.86 that the dearness allowance was attached to this E.D. allowance. The amount of E.D. allowance fixed in respect of a particular post is determined on various considerations relating to the duties attached to the post, the number of hours for which a person might be required to work but, in fixing the allowance, the question

whether the appointee is a pensioner or not is not one of the considerations. In other words, pension does not enter into the determination of the allowance. Therefore, it is totally ignored for this purpose. If that be so, the rule laid down by the Full Bench would come into operation viz. that to the extent pension is not taken into account in determining the pay on re-employment, the dearness relief on that portion of the pension is liable to be paid, in addition to the dearness allowance on the pay drawn on re-employment.

10. We also notice that the attempt of the respondents to nullify the effect of this judgement by introducing Rule 55-A in the CCS Pension Rules has not fructified. For, in two decisions of the Tribunal it has been held that rule 55-A offends Article 14 and is unreasonable discrimination and that, therefore, it is not enforceable. In view of this declaration there is nothing which stands in the way of the applicant to get reliefs.

11. In the circumstances, we allow this O.A. with the following directions:-

i) The impugned orders at Annexures A-1, A-2 and A-3 are quashed. In so far as the Annexure A-4 letter is concerned, we declare that

notwithstanding this letter the pensioners who are re-employed would be entitled to receive dearness relief on pension as well as dearness allowance on the pay on re-employment so long as they satisfy the principles laid down in the Full Bench judgement, referred to above.

- ii) The respondents are directed to restore dearness allowance to the applicant with effect from December, 1991. They are also directed to refund the recoveries that have been made vide the Annexure A-11 as well as in subsequent monthly recoveries in respect of the alleged over payment of Rs.8,046/-.
- iii) These payments shall be made to the applicant within a period of three months from the date of receipt of this order. No costs.

B.S. Hegde
(B.S. Hegde)
Member(J)

Sanju.

N.V. Krishnan
u.3.94
(N.V. Krishnan)
Vice-Chairman