

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE**

ORIGINAL APPLICATION NO.170/1035/2019

ORDER RESERVED ON 08.03.2021

DATE OF ORDER: 21.04.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

L.Aravind
S/o Sri.Lakshminarasimha
Aged 53 years
Residing at No.26, 10th Cross
Ullal Main Road
Jnanajyothi Nagar
Bengaluru-560 056.

....Applicant

(By Advocate Shri A.R.Holla)

Vs.

1. Union of India

By Secretary
Ministry of Labour and Employment
Shram Shakthi Bhavan, Rafi Marg
New Delhi-110 001.

2. The Director General

Employees State Insurance Corporation
Panchdeep Bhavan
No.2, C.I.G.Marg
New Delhi-110 002.

3. The Additional Commissioner and Regional Director

Employees State Insurance Corporation
No.10, Binny Fields, Binnypet
Bengaluru-560 010.

...Respondents

(By Advocate Shri Vishnu Bhat)

ORDER**PER: RAKESH KUMAR GUPTA, MEMBER (A)**

1. The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:
 - i. To direct the respondents to make payment of remuneration to the applicant at Rs.45,000/- for the period he worked as Assistant Engineer (Civil) less that paid already, in pursuance of his representations dated 24.12.2018 and 11.01.2019, Annexure-A7 and Annexure-A8 respectively with interest at 12% p.a. from the date the amount due to the applicant till the date of actual payment and
 - ii. Grant such other relief deemed fit, having regard to the facts and circumstances of the case.
2. The applicant in his pleadings has averred as follows:
 - a. The applicant was working as Assistant Commandant (Works) in Border Security Force (BSF) from 1986 to 2008. He was drawing a salary in Pay Band Rs.15600-39100 + Grade Pay of Rs.5400/- at the time of leaving service under BSF. Subsequently, he was appointed as Assistant Engineer (Civil) in Regional Office of Employees State Insurance Corporation (ESIC), Bengaluru for one year on contract basis vide order dated 08.06.2009(Annexure-A1). He was paid a consolidated salary of Rs.18,000/- per month during the period.
 - b. The respondent No.2 issued a circular dated 23.01.2018 providing for contractual appointment of personnel for ESIC Medical Institutions/Hospitals/Offices as per the terms stated therein. A copy of

the said circular is enclosed as Annexure-A3. As per the terms of the circular, the appointment was required to be made on contract basis on consolidated remuneration basis. In pursuance of the same, a 'walk-in interview' was held on 23.10.2018 for engagement of retired Engineers of Central/State PWD/PSUs/Autonomous Bodies on contract basis vide notification dated 08.10.2018 as per which the prescribed salary of Rs.45,000/- (Consolidated) was provided for the post of Assistant Engineer. The applicant attended the interview for the post of Assistant Engineer (Civil).

- c. Thereafter, the applicant was selected for the post of Assistant Engineer (Civil) on contract basis and his pay was fixed at Rs.28,450/- (Consolidated) after deducting the pension from his last pay drawn vide order dated 08.11.2018. The appointment of the applicant for the post of Assistant Engineer was approved by the respondent No.3 for the period from 29.11.2018 to 28.11.2019 vide order dated 07.12.2018. However, the applicant was informed that his pay is fixed notionally at Rs.10,940/- per month, subject to the clarifications if any, received from Head Quarters.
- d. The applicant reported for duty and then made a representation to the respondent No.3 with regard to the discrepancy in fixation of his remuneration. The applicant brought to the notice of respondent No.3 that his last drawn pay is Rs.59,500/- and after deducting Rs.29,750/- the pension drawn by him, the resultant remuneration would be Rs.29,750/-.

But as per the order dated 08.11.2018, the remuneration fixed is Rs.28,450/- and as per the order dated 07.12.2018, it is Rs.10,940/-. Therefore, the applicant made a request to fix his remuneration at Rs.45,000/- as per the letter dated 08.10.2018.

- e. Despite repeated representations, there was no response from the respondents. The matter was taken up by the Superintending Engineer, Regional Office, ESIC with the Chief Engineer in Head Quarters Office recommending for fixation of remuneration of the applicant and other similarly situated engineers at Rs.45,000/- per month without deducting the pension as per the ESIC letter issued earlier vide letter dated 06.03.2019(Annexure-A9). However, there has been no response to this letter as well. The applicant resigned from the job on 16.08.2019.
- f. The applicant submits that he is entitled to the remuneration of Rs.45,000/- per month (Consolidated) without deducting the pension drawn by him as per the terms of the circular dated 23.01.2018 read with the order dated 08.10.2018. The respondents have erred in deducting the pension from the remuneration payable and fixing his remuneration at Rs.10,940/- per month vide order dated 07.12.2018. Though the said order states that the remuneration fixed is subject to the clarification received from Head Quarters office of ESIC, no clarification has been obtained in the matter.

g. There is no justification to fix the remuneration of the applicant at Rs.28,450/- as per the order dated 08.11.2018 or at Rs.10,940/- as per the order dated 07.12.2018. The applicant is entitled to the remuneration of Rs.45,000/- (Consolidated) per month as per the terms of Annexure-A3. The applicant was paid Rs.18,000/- during his appointment as Assistant Engineer (Civil) for one year from 01.06.2009 on contract basis. The applicant's pension was not considered for fixation of his remuneration then. It is unfair to reduce the remuneration after 10 years for the same post.

3. The respondents in their reply statement, have averred as follows:

- a. The respondent ESI Corporation had issued a notification on 08.10.2018 (Annexure-A4) calling from eligible candidates for walk-in interview for engagement of retired Engineers on contract basis which includes the post of Assistant Engineer.
- b. As per the above said notification, the remuneration payable for the selected candidates was notified as under:

“A consolidated amount equivalent to last pay drawn minus pension drawn by them. They are entitled to TA/DA for tours undertaken for official work. No other perks/benefits such as HRA/CCA/TA Medical reimbursement is payable. For retired employees from non pensionable Govt/Semi-Govt like Autonomous Bodies/PSU etc., the consolidated monthly remuneration would be admissible.”

*For Jr.Engineer – Rs. 33,630/- For Assistant Engineer: Rs. 45,000/-
For Exe. Engineer: Rs.55,000/-*

- c. It is clear from the above conditions relating to remuneration that retired employees who were drawing pension are entitled to consolidated

amount equivalent to last pay drawn minus pension drawn by them. The applicant had retired from Border Security Force as Assistant Commandant w.e.f. 01.11.2008 and was drawing the pension of Rs.10,940/- as per Pension Payment Order No.29-45436 dated 24.04.2009. As such the last pay drawn by the applicant was calculated as Rs.21,880/- i.e., twice the amount of pension drawn at the time of his retirement. Accordingly, the pay was fixed as under:

Last Pay Drawn	= Rs. 21,880/-
Less: Pension Drawn	= Rs.10,940/-
Consolidated Remuneration paid	= Rs.10,940/-

- d. Upon his selection, the respondent ESI Corporation had issued a letter dated 08.11.2018 which is annexed as Annexure-A5 intimating that his consolidated pay would be Rs.28,450/- provisionally presuming that his pay as per 7th Pay Commission would be as below:

Last Pension Drawn	= Rs. 10,940/-
Last Pay drawn	= Rs.21,880/- (Rs.10940x2)
2.57 factor on Rs.21,880/-	= Rs.56,231
Equivalent Pay in the 7 th CPC Pay Matrix in Level 6 for Grade Pay of Rs.4200/-	= Rs.56,900/-
Last Pension drawn i.e., 50% of Rs.56,900/-	= Rs.28,450/-

- e. However, the respondents have later realized that only last pay drawn by the applicant at the time of retirement should be taken into consideration for calculation of consolidated remuneration and not the notional pay

- fixed as per 7th Pay Commission. Accordingly, the last pay drawn of Rs.21,880/- (twice the pension fixed at the time of retirement as per Annexure-R1) minus Rs.10,940/- (pension drawn at the time of retirement as per Annexure-R1) was fixed as his remuneration which worked out to Rs.10,940/-.
- f. The applicant was informed accordingly vide respondents letter dated 07.12.2018. It is therefore clear that in spite of intimating the consolidated remuneration of Rs.10,940/- to the applicant, he continued services in the respondent ESI Corporation till he resigned on 16.08.2019, implying that he had agreed for the remuneration paid to him.
- g. The claim of the applicant that he is eligible for remuneration of Rs.45,000/- is not correct since it is already stipulated in the notification dated 08.10.2018 that the consolidated remuneration of Rs.45,000/- is payable only to retired employees from non-pensionable Govt/Semi Govt., like autonomous bodies/PSUs etc. The applicant being a pensioner is not eligible for consolidated remuneration of Rs.45,000/-
- h. The applicant is also contending that his last pay drawn was Rs.59,500/- out of which pension of Rs.29,750/- drawn by him should be deducted and balance remuneration of Rs.29,750/- would be payable which is not correct. The amount of Rs.59,500/- was the notional pay due to implementation of 7th Pay Commission which was not actually drawn by

him and therefore the actual pay of Rs.21,880/- i.e., twice the amount of pension of Rs.10,940/- as per Annexure-R1 should be considered out of which corresponding pension of Rs.10,940/- should be deducted and as such the remuneration payable works out to Rs.10,940/-.

4. Heard the learned counsels for the parties.
5. In this case, the respondents have averred that they are taking into account the actual pay drawn by the applicant at the time of his retirement and the actual pension being drawn by him at the time of retirement for the purpose of calculation of his remuneration to be paid. It can be seen that the applicant had retired from service as Assistant Commandant (Works) in Border Security Force on 31.10.2008. He was holding the pay scale of Rs.9300-34800 with Grade Pay of Rs.4200 at the time of his retirement and as per the PPO dated 24.04.2009, the amount of pension due to him before commutation was Rs.10,940/- per month. The plea of the respondents is that this is the amount which he was being paid at the time of retirement and based on this, his remuneration has been fixed as per the order dated 07.12.2018.
6. On the other hand, if the revised PPO of the applicant (Annexure-A2) is seen, the revised basic pension of the applicant after the 7th CPC revision as on 01.01.2016 is Rs.29,750/-. As per the remuneration and other conditions mentioned in the letter dated 08.10.2018 is concerned, the retired employees engaged on contract basis are entitled to a consolidated amount equivalent to last pay drawn minus pension drawn by them. They are entitled to TA/DA for

tours undertaken for official work. No other perks/benefits such as HRA/CCA/TA/Medical reimbursement is payable. For retired employees from non pensionable govt/semi-govt like Autonomous Bodies/PSU etc, the following consolidated monthly remuneration would be admissible:

For Jr.Engineer: Rs. 33,630/-

For Assistant Engineer: Rs. 45,000/-

For Exe. Engineer: Rs.55,000/-

7. As per the revised PPO dated 01.12.2017 issued by the Central Pension Accounting Office, Govt. of India, the applicant's revised last pay drawn as per the 7th CPC is Rs.59,500/-, based on which his basic pension was revised to Rs.29,750/-.
8. The respondents have taken the actual pay drawn by the applicant at the time of his retirement in 2008, for the purpose of fixing his remuneration in 2018. The appointment of the applicant was in December 2018. It is therefore absolutely incorrect to fix the remuneration to the applicant on the basis of the pension and pay received by him at the time of retirement in 2008. What should have been taken into account is his notional revised pay, and the actual pension being drawn by him at the time of his contractual appointment in 2018. Both the notional pay and the pension due to the applicant subsequent to the pay revision in January 2016 is clearly mentioned in the revised PPO issued by the Govt. of India. Hence, for the purpose of fixation of his remuneration, on appointment in ESIC on 7.12.2008, the last pay drawn, as given in the Revised PPO (Annexure-A2), should have been taken as Rs.59,500/- and the revised basic

pension which was actually being drawn by him at Rs.29,750/- should have been taken into account.

9. The contention of the respondents that they have taken into account the actual pay and pension drawn by the applicant at the time of his retirement in 2008 deserves to be rejected since the appointment on contract has taken place in 2018 and not in 2008.
10. The contention of the applicant that he is entitled to a consolidated amount of Rs.45,000/- also cannot be accepted, since as per the terms and conditions mentioned in letter dated 08.10.2018 of ESIC, retired persons drawing pension were entitled to only the consolidated amount equivalent to last pay drawn minus pension drawn by them. The consolidated amount of Rs.45,000/- was payable to only retired employees from non pensionable govt/semi-govt like Autonomous bodies/PSU.
11. Hence, as per the conditions mentioned in the offer while requesting candidates for a walk-in interview dated 8.10.2018, the applicant is entitled to remuneration of Rs.29,750/- per month based on his revised PPO dated 01.12.2017 (Annexure-A2).
12. In view of the above, the OA is allowed to the extent mentioned above. The applicant is entitled to receive a consolidated pay of Rs. 29,750/- per month instead of Rs. 10,940/- per month. The respondents are directed to calculate the outstanding dues payable to the applicant on this basis, after adjusting the amount already paid to him, and release the balance amount payable to the

applicant within three months from the date of receipt of a certified copy of this order. In case of failure of the respondents to release the requisite amount within the stipulated period of three months, any further delay in release of the amount due to him, shall also carry interest @ 6% per annum on the amount due to the applicant.

13.However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (ADMN)

(SURESH KUMAR MONGA)
MEMBER (JUDL)

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