

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Original Application No. 479 of 1988

Chandra Deo Dube ..... Applicant

Versus

Union Of India and others ..... Respondents

Hon'ble Mr. J.S. Dhaliwal, Member-J.

Shri Chandra Deo Dubey has come to this court pleading that he retired as honorary 'lequinent' J.C. 58457 Subedar Lab Technician in 1971 with pension of Rs. 214/- per month and he was re-employed as civilian Lab. Assistant on 27.7.1971 at Military Hospital, Allahabad and was given the pay of Rs. 155/- on maximum side plus allowances totalling Rs. 318/- besides his full pension. Thereafter he was posted at Command Central Hospital, Lucknow as he was declared surplus from Military Hospital, Allahabad. On 12.11.76 he was posted as Store-keeper where he served upto 30.9.1978. His scale of Rs. 110-155 was revised to 207-430 w.e.f. 1.1.1973. He pleads that after fixing his pay at the maximum pay scale of Rs. 430/- per month, Rs. 215.95 P. were deducted illegally per month. He was earlier getting Rs. 532/- per month but after re-fixation of his pay in the revised scale, after deduction of an amount equal to his pension, he received less pay than what he was earlier getting. He pleades that under annexures 2, 3 and 4, the deductions ordered could not be deducted. He has, thus, claimed that Rs. 23,318.57 P. have been illegally deducted by the respondents.



He resigned from his post voluntarily on 30.9.1978.

He, thus, prayed for a direction to the respondents to pay this amount wrongly deducted.

2. The respondents in their reply have pleaded that the revision of the pay of the petitioner was done in the year 1973 w.e.f. 1.1.1973 on the basis of notification issued under the S.R.O.No.130 dated 1.4.1977 (Annexure C.A.-4) . The applicant had elected for C.D.S. revised pay as C.D.S. revised pay Rules 1973 applicable w.e.f. 1.1.1973 under which a constant deduction of Rs.215.94 per month was to be made, which was the pension drawn by him in addition to his pay in the scale of Rs. 260-430. Under the provisions contained in Sub-para II of Para 2 of the Ministry of Defence letter dated - 20.8.1974 (Annexures C.A.5 and 6) . Under the policy issued by the Government of India Ministry of Defence, the pensioners were at liberty to exercise their option for fixation of pay under the said Rules within a period of three months from the date of issue of letter dated 13.6.1978 issued by the Government of India (Annexure C.A.-7) . The petitioner exercised his option vide annexure C.A.-8. Since there was delay on the part of the petitioner, the Director General Ordnance Service finalised the case through letter dated 9.8.1983 where by request for condonation of delay was rejected (Annexure C.A.9). However, thereafter the statement of the case <sup>along with</sup> enclosures sent under letter dated 9.11.83



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which was received back by the Ordnance Fort, Allahabad through letter dated 7.9.1988 (Annexure-C.A.10). The matter was again referred to the Commandant for submitting pay fixation proforma through letters dated- 13.10.1988 , 24.11.1988 and 7.12.1988(Annexures C.A.-11 to C.A.-14) . The pay was re-fixed at Rs. 340/- as on 1.1.1973 and forwarded to Commandant O.D.Fort, Allahabad vide letter dated 15.12.1988(Annexure C.A.-15). A Supplementary Bill for arrears was received from CH CC Lucknow for Rs. 5542.25 under letter dated - 27.12.1988 for the period 1.1.1973 to 11.11.1976 and a cheque for the same amount was issued in P.F.Account of Commandant O.D.Fort, Allahabad, through letter dated- 27.12.1988 (Annexure C.A.16). The pay fixation of the applicant on the post of store-keeper w.e.f. 12.11.1976 in the scale of Rs. 260-400 on revision has been returned to the Commandant under letter dated 31.1.1988 for sanction of fixation of pay from the Ministry of Defence (Annexures C.A.-17 and C.A.18) . The supplementary pay bill for Rs. 1548.80 as arrears of pay fixation in grade of store-keeper as proposed by Allahabad Office for period November 12, 1976 to 30th Sept., 1978 has been admitted provisionally till the approval of the final pay fixation and a cheque has been issued in favour of S.B.I. Extention Counter, O.D.Fort, Allahabad. It is mentioned that the final fixation in the grade of Store-keeper will be approved on receipt of sanction from the competent authority.



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3. On the strength of the pleadings in the counter affidavit and the annexures filed by the respondents, the petition has been opposed on two grounds (A) that it is badly time barred (B) that on merits, it has no force. As per as objection of its being time barred is concerned, a reading of the paragraphs No. 14, 15 and 16 of the Counter affidavit shows that not only the petitioner has been repeatedly approaching the respondents but the respondents have themselves been processing the case and have been sending to the Ministry of Defence for consideration the request of the petitioner. Not only so, they have issued cheque for Rs. 5542.25 under letter dated- 27.12.1988 and another supplementary pay bill for Rs. 1548.80 after fixing the pay provisionally. It has been mentioned in para 16 of the counter affidavit that the final fixation in the grade of Store-keeper will be approved on receipt of sanction from the competent authority. The petition was filed on 2.5.88 and the proceedings conducted by the respondents, which are still not final, show that the matter is still under consideration. It has, thus, to be held that the petition is not time barred.

4. As for as the grievance of petitioner is concerned, that appears to be based on his wrong impression about the terms for revision of his pay under a letter issued by Government of India, Ministry



13/6

of defence as given in Annexure-3. His grievances were/ that before revision of his pay, he was getting more pay than what he received after its revision. A reading of his petition shows that he was granted the highest scale of Rs. 155/- plus other allowances permissible to him besides his full pension of Rs. 214/- (in fact Rs. 215.95 P). It is clear that the total amount being received by him would come to more than what he received after he opted for revision of pay under the annexure-3. Annexure-3 in fact provides that initial pay of a re-employed Government Servant, who retired with pension or any other retirement benefits or ignoring a part thereof and who elects to be governed by the revised scale w.e.f. 1.1.1973, his pay shall be fixed by calculating and taking into account the quantum of pension and /or pension equivalent of gratuity or other retirement benefits. This letter further provides for the details to be worked out, but one thing is very clear that his pension, pension equal to gratuity and other benefits had to be taken into account at the time of his revision of pay, which were not there earlier. Earlier he was getting the salary from the respondents as a re-employed ex-service man plus his pension which has now to be deducted. As for as his grievance to that extent is concerned, this is found to be without any merit.

5. A reading of counter affidavit, however, shows that the respondents committed some mistake while



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fixing his pay at Rs.216/- only and on his representation being filed, the respondents had re-fixed the same and paid to him some arrears under letter dated- 27.12.1988 w.e.f. 1.1.1973 to 11.11.1976 under annuexure C.A.16. His pay was re-fixed as Store-keeper w.e.f. 12.11.1976 to 30th Sept.,1978 and he was given a supplementary pay-bill for Rs. 1548.80 as arrears of pay on the re-fixed pay as Store-keeper. It has been clearly mentioned that the final fixation in the grade of Store-keeper shall be approved on receipt of the sanction from the competent authority. This Court is constrained to bring it on record that the petitioner left his job in Sept.,1978 and despite passage of 16 years, the respondents have not been able to make up their mind. A direction is, therefore, given that the final fixation of the pay of the petitioner in the grade of Store-keeper be done within six months from the date of this order, after arranging for the sanction from the competent authority as mentioned in para 16 of the counter affidavit and he be paid the amount, if any, found due within that period.

6. The learned counsel for the petitioner has raised another contention that the employees are entitled to fixation of their pay, in which the retirement benefits and pension equal to gratuity are not to be taken into account. For this, he has referred to a letter dated 3rd June, 1988 issued by the Government of India, which was brought on record



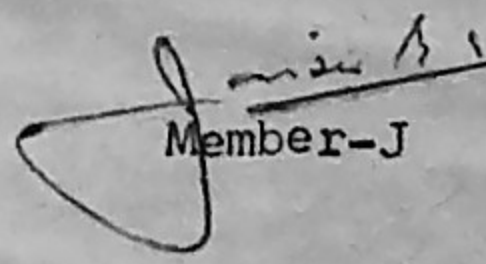
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under orders of the Court dated 2.9.1993. This letter shows that the President had issued instructions that in fixing the initial pay of the re-employed pensioners, the pension equivalent or gratuity may not be deducted from the pay so fixed. Along with this letter, another letter dated 12.10.1988 was also placed on record wherein the earlier order was clarified mentioning that the persons already re-employed prior to 1.6.1988, in whose case pension equivalent or gratuity was taken into account for initial pay fixation, would be entitled to the benefits. It was, however, mentioned in it that their pay would be required to be re-fixed w.e.f. 1.6.1988 by ignoring the elements of pension equivalent or gratuity. It is clear that these letters cannot have any application to the facts of the present case as the petitioner had left his job in September, 1978 and his pay as re-employed person could not, thus, be re-fixed w.e.f. 1.6.1988 when he no longer was in service.

7. Except for the directions given above, this petition is found without any merit and is dismissed. The directions, however, shall be carried out.

Allahabad: Dated:

Sept. 15<sup>th</sup>, 1994.

  
Member-J