

Open Court

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated: Allahabad, This The First day of August, 2000.

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

Original Application No. 1535 of 1992.

Along With

Original Application No. 1533 of 1992.

Along with

Original Application No. 1536 of 1992.

O.A. 1535/92

Om Prakash son of Sri Balak Ram
Lower Division Clerk,
Establishment Section II,
O.C.F. Shahjahanpur.

. . . . Petitioner.

Counsel for the Petitioner: Sri R.K. Gupta, Adv and
Sri K.C. Saxena, Adv.

Vs.

1. Union of India through Secretary
Ministry of Defence, New Delhi.
2. The Chief Controller of Accounts,
(Fys.) 10-A, Auckland Road,
Calcutta.
3. The General Manager,
O.C.F. Shahjahanpur.

. . . . Respondents.

Counsel for the respondents: Sri Amit Sthalekar, Adv.

O.A. 1533/92

Anant Singh son of Roop Narain Singh,
O.R.A Resident of O.C.F. Hospital, Shahjahanpur.

. . . . Applicant.

Counsel for the applicant: Sri K.C. Saxena &
Sri R.K. Gupta, Adv.

O.A. 1535/92
with
O.A. 1533/92
with
O.A. 1536/92

-2-

Versus

1. Union of India through Secretary
Ministry of Defence, New Delhi.
2. The Chief Controller of Accounts
(Fys), 10-A, Auckland Road, Calcutta.
3. The General Manager, Ordnance
Clothing Factory, Shahjahanpur.

. . . Respondents.

Counsel for the respondents: Sri Amit Sthalekar, Adv.

O.A. 1536/92

Ravindra Mohan
son of Sri Bhagat Ram,
Lower Division Clerk,
Blanket Section, O.C.F.
Shahjahanpur.

. . . Applicant.

Counsel for the applicant: Sri K.C. Saxena, Adv.
Sri R.K. Gupta, Adv.

Versus

1. Union of India through Secretary,
Ministry of Defence, New Delhi.
2. The Chief Controller of Accounts (Fys)
10-A, Auckland Road, Calcutta.
3. The General Manager, O.C.F.
Shahjahanpur.

. . . Respondents.

Counsel for the respondents: Sri Amit Sthalekar, Adv.

Order (Open Court)

(By Hon'ble Mr. S. Dayal, Member (A.)

These three O.As. were listed as connected

O:As. and have been heard together because of common issues of law and similar facts involved. The facts of each case and directions in each case are being given for each O.A. as under after mentioning detailed reasons ^{& in} ~~by~~ first O.A. i.e. O.A. 1535 of 1992.

2. The applications have been filed for setting aside Factory Order No. 2200 Part II dated 16.9.92. A prayer has also been made to restore the reduced salary to its original level as shown in the pay slip for August 1992. A prayer has also been made for setting aside recovery of salary already paid.

3. The case of the applicant is that after serving in Indian Air Force for 24 years upto 31.12.1983 the applicant retired as Junior Warrant Officer. Before attaining the age of 55 years, he joined as Lower Division Clerk in Ordnance Clothing Factory, Shahjahanpur on 14.4.1984 and his pay was fixed by the respondents at Rs.390/- per month after allowing him 19 increments for the service rendered in the Air Force in the scale of Rs.260-400. He continued to draw his increments and his pay was fixed at Rs.1350/- per month on the basis of recommendations of IV Pay Commission with effect from 1.1.86. In August 1992 he was drawing Rs.1500/- as basic pay and total including all allowances Rs.3151/- He claims that his pay was fixed under F.R.-27 in accordance with Government of India Ministry of Finance (Department of Expenditure) New Delhi O.M. No. F-6(8)-E-III/63 dated 11.4.1963. As per this O.M. his initial pay in the post of L.D.C. was fixed at higher stage in the scale above the minimum after grant of increment equaling the number of completed years of service as
A Combatent Clerk. The entire pension of the

applicant was to be ~~ex~~cluded from initial fixation of pay on the authority of O.M. dated 8.2.83 and 24.12.83. The applicant contends that the same position obtained after issuance of O.M. of Ministry of Personnel and Training dated 4.4.86 and 9.12.86. The applicant claims that the Controller and Auditor General of India by letter dated 9.1.89 read with Ministry of Finance of U.O. dated 29.11.88 and Controller Auditor General U.O. dated 26.8.88, the amount of pension was to be taken into account for the purpose of calculating dearness allowance and this was not being followed in the case of the applicant. The Ordnance Factory Board, Ministry of Defence, Government of India by letter dated 30.1.91 permitted the fixation of the pay of re-employed pensioners to be reviewed strictly in accordance with rules. The General Manager O.C.F. Shahjahanpur by order dated 6.9.90 refused the pay of the applicant at 260/- per month on 14.4.84 as initial pay on joining the Civil post as L.D.C. ^{and} Rs.990/- per month with effect from 1.1.86.

4. He filed application under section 19 before Central Administrative Tribunal and his representation was ordered to be considered and ~~the~~ recovery was stayed. The representation was considered and rejected by the respondents. The Ministry of Law Government of India U.O. dated 8.8.62 was also brought to the notice of the respondents which stipulated that once

fixation was done by competent authority in ~~exercise of discretion vested in it under F.R.27 that authority was not competent under the law to reduce the initial pay originally fixed even if it was based on incorrect data.~~

exercise of the discretion vested in it under F.R.-27 that authority could not reduce initial pay originally fixed even if it was ~~based~~^{based & found} on some data which was subsequently ~~found~~^{found} to be incorrect. Thus the case of the applicant is that his pay once fixed could not be subsequently reduced to his disadvantage.

5. The arguments of Sri K.C. Sinha for the applicant and Sri Amit Sthalekar for the respondents have been heard. The pleadings on record have been considered.

6. The learned counsel for the applicant has produced a copy of the Ministry of Finance O.M. dated 11.4.63. This lays down that service rendered as Combatent Clerk was to be treated as service as L.D.C./Junior Clerks in Civil Departments and when such persons are absorbed on the post of L.D.C./Junior Clerks in Civil Department after their release/retirement from Armed Forces their initial pay in the post of L.D.C./ Junior Clerks may be fixed at higher stage in the scale above the minimum equal to the number of completed years of service as Combatent Clerk. The pension and pension equivalent of gratuity not ~~exceeding~~[<] Rs.15/- per mensem was to be ignored. The learned counsel for the applicant has also filed a copy of O.F. Board Letter dated 30.1.91 address^{ed} to all General Managers of all factories in which attention was drawn to the provisions of Department of Personnel and Training O.M. dated 9.11.87 and it was stipulated that the provisions of the O.M. will

-6-

~~will~~^l apply to all re-employed pensioners who were on re-employment on 1.1.86 except those whose pay on re-employment was fixed at the minimum of scale at re-employed based ignoring their entire pension in accordance with the provisions of the Ministry of Defence dated 8.2.83. The affected cases were to be reviewed and action taken for fixation of pay of re-employed pensioners. By order dated 6.9.90 the pay of the applicant was refixed in supersession of earlier orders on the ground that he had opted ^{for fixation} ~~to fix~~ in terms of Ministry of Defence O.M. dated 8.2.83. The learned counsel for the applicant has stated that the applicant never opted for fixation of pay in terms of Ministry of Defence O.M. dated 8.2.83. He states that the applicant had filed O.A. 784 of 1990 challenging the order on the ground that they had exercised no ^loption. A direction was given to the respondents to decide their representation. There is no decision of the respondents on record.

7. The respondents have stated in the counter reply that they acted on the basis of directions issued by the C.C. of A(Fys), Calcutta, ^{who} had directed vide letter dated 27.5.91 that the pay of the re-employed ex-military pensioners should be fixed according to the instructions given in the letter. Therefore, a fresh pay fixation proposal of pay was submitted to C.C. of A(Fys) Calcutta who approved it by his letter dated 29.1.92 published in Factory order Part-II dated


O.A. 1535/92
with
O.A. 1533/92
with
O.A. 1536/92

-7-

16.9.92 it is stated that it was based on existing rule contained in O.M. [✓] 8.2.83.

8. Thus, issue which arises in this case is whether on the basis of O.M. dated 8.2.83 the pay of the applicant could have been refixed by C.C. of A(Fys)? The respondents have annexed a copy of order dated 13.9.84 in which the case of the applicant for fixation of pay on re-employment was examined vide C.C. of A(Fys) letter dated 13.9.84. The pay fixation granting 19 increments was approved by C.C. of A(Fys) by his letter dated 9.1.85 which is also annexed as Annexure-III to the C.A. It appears that the office of Chief Controller of Accounts (Factories) wrote to General Manager O.C.F. Shahjahanpur for re-examining the cases of those officers, and staff whose pay was not fixed at the minimum of scale and who were granted advance increments at the time of fixation of pay. The ground of re-fixation was stated to be that no hardship had been experienced by such personnel because their pension had been ignored in terms of Circular dated 8.2.83. The Chief Controller by his letter dated 27.5.91 of Accounts (Factory) reviewed the pay fixation of re-employed military pensioners and clarified that the provision of Department of Personnel and Training OM no. 3/9/7-Estt (Pay) dated 11.9.87 would not apply in the case of those re-employed pensioners who are already availing exemption of the whole of the pension on the basis of their options under OM dated 8.2.83. In such cases the pay fixed upon ~~the~~ re-employed ^{man} should

have been at the minimum of re-employed post and the entire pension is to be ignored. It was clarified that the re-employed pensioners who had ~~been~~^{and} opted in terms of 8.2.83 letter would attract the provisions of Ministry of Defence OM dated 11.9.87 and the Chief Controller of Accounts clarified that in such ~~cases~~ difference between revised pension and the old pension should be deducted from the pay revised, fixed on 1.1.86.

9. The Office Memorandum of Ministry of Defence dated 8.2.83 referred to the Ministry OM dated 30.8.73 and mentioned that the limit of the present ceiling of pension which has to be ignored in fixing of pay on re-employed of ex-servicemen who retired before attaining the age of 55 years was considered and it was decided that in case of Service Officers, the first Rs. 250/- of pension be ignored and in the case of personnel below commissioned Officer rank the entire pension was ignored. It was clarified that the pension for the purpose of these orders included pension equivalent of gratuity and other forms of retirement benefits. It was decided that these orders were to ~~be~~ taken effect from 25.1.83 and the existing limits of military pensioners to be ignored in fixing pay of re-employed pensioners will therefore, cease to be applicable to the case of such pensioners as are re-employed on or after 25.1.83. In case of the persons who were already  re-employed, the pay may be re-fixed on the basis

those orders with immediate effect provided they opt. to come under these orders. If they so opt. their terms would be determined afresh ^{for} ~~from~~ the first time from the date of those orders. Thus this ^{D.M.} ~~the~~ addresses itself to ~~the~~ ^{the} ignorable part of pension of those ex-servicemen who ^{were} retiring before the age of age of 55 years. It does not state ^{as to} ~~that~~ how the pay of re-employed pensioners would be fixed. Learned counsel for the applicant mentions that the pay of re-employed pensioners would ~~be~~ have to be fixed under Article 156 of Civil Service Regulations. Article 156 (3) reads as follows:-

"3. The provisions of this letter are not applicable to :-

- a. Those Government servants who secure re-employment after resignation, removal or dismissal from their previous posts; and
- b. Industrial employees.

(IB) In supersession of all earlier orders on the subject the Govt. of India have decided that the following procedure should be adopted in fixing the pay of the pensioners/military/pensioners including officers pensioned off or retired on Contributory Provident Fund, and from services of the State Govt.s, local bodies port Trusts, etc., administered by Govt., Railways, Defence estimates etc. on their re-employment to the Civil posts paid from Defence Services Estimates.

- a. Re-employed pensioners should be allowed only the latest prescribed scale of pay, that is, no protected time scales such as those available to pre-1931 entrants should
- h*

be extended to them.

b. The initial pay, on re-employment, should be fixed at the minimum stage of the scale of pay prescribed for the post in which an individual is re-employed.

In cases where it is felt that the fixation of initial pay of re-employed officer at the minimum of the prescribed pay scale will cause undue hardship, the pay may be fixed at a higher stage by allowing one increment for each year of service which the officer had rendered before retirement in a post not lower than that in which he is re-employed.

For the purpose of the above sub-class a military pensioner who retired as a JCO or OR will be deemed to be appointed to a comparable civilian post if the pay of the military post with the emoluments mentioned under Note 3 below sub-paragraph (c) is equal to or more than the minimum of the scale of pay applicable to the civil post.

c. In addition to (b) above, the Govt. servant may be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefit for which he is eligible e.g Government's contribution to a Contributory Provident Fund, gratuity, commuted value of pension, etc provided that the total amount of initial pay as at (b) above, plus the gross amount of pension and/or the

pension equivalent of other from of retirement benefit does not exceed.

- i. the pay he drew before his retirement/ pre-retirement pay, or
- ii. Rs. 3,000 whichever is less."

It is provided in 3 (IB) that in cases where it is felt that the fixation at the minimum of prescribed pay scale will cause undue hardship, the pay may be fixed at a higher stage by allowing one increment for each year of service which the officer had rendered before retirement in a post not lower than that in which he is reemployed.

10. Learned counsel for the applicant has also place reliance on the full bench judgment of the C.A.T. in V. Ravindaran Vs. Director General of Posts New Delhi and others (1991) 15 ATC 195. Paragraph 21 and 22 of the judgments reads as follows:-

" 21. In the light of the foregoing discussions, the questions posed to the Full Bench in OA no. 3 of 1989, OA 15 of 1989 and OA K-288 of 1998, are answered as follows:-

- a. We hold that for the purpose of granting advance increments over and above the minimum of the pay scale of the re-employed post in accordance with the 1958 instructions (Annexures IV in OA no. 3 of 1989), the whole or part of the military pension of ex-servicemen which are to be ignored for the purpose of pay fixation in accordance with the instructions issued in 1964, 1978 and 1983

(Annexures V, V-a and VI, respectively) cannot be taken into account to reckon whether the minimum of the pay scale of the re-employed post plus pension is more or less than the last military pay drawn by the re-employed ex-servicemen.

b. The orders issued by the respondents in 1985 or 1987 contrary to the administrative instructions of 1964, 1978 and 1983, cannot be given retrospective effect to adversely affect the initial pay of ex-servicemen who were re-employed prior to the issue of these instructions.

22. The questions posed to the Full Bench in OA no. K 289 of 1988 are answered as follows:-

(i) to (iv)

The provisions of the Civil Service Regulations are statutory in nature and the instructions of 1964, 1978 and 1983 have been issued by the government under the said regulations and supplement the provisions of the said regulations. The clarifications issued by the respondents on 30.12.1985 and subsequent dates, cannot override the earlier instructions issued in 1964, 1978 and 1983 retrospectively. The purported modification of the earlier instructions on the subject will have only prospective operation."

11. We find that the relief claimed by the applicant in this OA is admissible in the light of the judgement of full bench mentioned above. We, therefore, set aside the order dated 16.9.92. Salary of the applicant as fixed earlier by order dated 30.11.84 and approved by the Controller of Accounts (Factory) dated 9.1.85 will hold good. If any recovery has been effected from the applicant on the basis of order dated 16.9.92, it

shall be refunded to him. This order shall be complied within 3 months from the date of communication of this order.

12. There shall be no order as to costs.

ORDER ON OA NO. 1533 of 1992.

1. The applicant is an ex-army pensioner, who joined as Operating Room Assistant in Ordnance Clothing Factory Hospital Shahjahanpur on 6.9.83. His pay was fixed at Rs. 302/- p.m. in the pay scale of Rs. 260 - 400 which was revised to Rs. 1130/- per month w.e.f. 1.1.86. His gross emoluments was Rs. 2509/- in August 1992, as Rs. 1275/- as his basic pay. His initial pay was fixed under FR 22 read with Govt. of India, Ministry of Finance O.M. dated 11.4.63 which ~~was~~ permitted, fixation of initial pay at higher stage in the scale above the minimum equal to the number of completed years of service as combatent clerk. The provision of OM dated 8.2.83, issued by Ministry of Defence stipulate that the entire pension obtainable from the Army by the petitioner was to be excluded from the initial fixation of pay on re-employment. His initial fixation of pay was however, reviewed and the pay of the applicant was re-fixed at Rs. 260/- p.m. on 6.9.86 as his initial pay on joining the Civil post of ORA and Rs. 1010/- p.m. w.e.f. 1.1.86. It is the contention of the applicant that once the fixation was done by the Competent Authority in exercise of the ~~ex~~ discretion vested in it under FR 27, that authority was not competent under the law, to reduce initial pay

// 14 //

to reduce initial pay originally fixed. ~~on a then~~
such

2. This case is similar to the case of Shri Om Prakash which we dealt with earlier, since the basic facts and the issue are the same. For ground mentioned in the case of Sri Om. Prakash, we direct the respondents to restore the applicant to the original level as was fixed in his case by order dated 3.12.86. Factory order no. 2194 part II dated 16.9.92 is hereby set aside. It is further directed that, if any recovery ^{has been &} ~~is~~ made from the applicant on account of re-fixation, the same shall be refunded to him. This order shall be complied within a period of 3 months from the date of communication of this order.

3. The applicant has also raised the issue of his pay having fixed wrongly at the time of his appointment. This issue ~~was not being~~ ^{earlier} raised any where by him in his OA. If he has any representation to make any connection with the initial fixation of pay, he shall make it to the respondents who may decide it as per law.

4. There shall be no order as to costs.

ORDER ON OA NO. 1536 of 1992.

1. The applicant in this case has sought the setting aside order dated 17.09.92 and restoration of his salary to original level as shown in pay slip of August 1992. Any recovery, if made, has also been

sought to be set aside. There is a additional prayer that initial pay as was wrongly fixed on the date of appointment, may also be corrected.

2. The applicant served the Indian Navy as Regulating Petty Officer for 15 years from 17.3.60 to 31.8.76 and retired before attaining the age of 55 years. He joined as LDC in O.C.F. Shahjahanpur on 2.2.81 and his pay was fixed at Rs. 302/- p.m. after granting him 15 increments in the scale of Rs. 260 - 400. His pay was revised on 1.1.86 to Rs. 1175/- p.m. and the pay stood at Rs. 2748/- with basic pay of Rs. 1350/- p.m. for the month of July 1992. The pension of the applicant was excluded from the initial fixation of pay on re-employment as per OM dated 8.2.83 and corrigendum dated 24.12.83. The General Manager, OCF, Shahjahanpur vide Factory order dated 6.9.90 refixed the pay of the applicant at Rs. 260/- p.m. on 25.1.83 and Rs. 1030/- p.m. on 1.1.86. The applicant filed an OA in which direction was given to the respondents no. 3 to reconsider his decision if representation was made by the applicant. The applicant's representation was, however, rejected and his pay was reduced to Rs. 260/- p.m. w.e.f. 2.2.81 and Rs. 1050/- p.m. w.e.f. 1.1.86. It is claimed by the applicant that the applicant gave no option for revision of his pay and this has been accepted by the respondents in para 12 of their CA.

3. This case is similar to those 2 cases dealt with earlier being OA 1535 of 1992 and 1533 of 1992.

4. We, therefore, set aside the order dated 17.9.92 and restore the pay of the applicant to the original level as fixed by letter dated 9.2.84. If any recovery has been made from the applicant on account of re-fixation of pay it shall be refunded to him. Direction given shall be complied with in 3 months time from the date of communication of this order.

5. There ~~is~~ a prayer made by the applicant ^{that} his that initial fixation of pay was wrong and ^{it} should be corrected. There is no averment in the OA in this regard and only amended relief incorporates such a prayer. The applicant should raised this issue with the respondents who may pass order on any representation, if made, in accordance with law.

6. There shall be no order as to costs.