

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

This, 8th.... The Day of... November, 94

Original Application No: 1253 of 1993

Ghanshyam Singh Tomar & Ors.

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.... Applicants.

By Advocate Shri Rakesh Pandey

Versus

Union of India & Ors.

.... Respondents.

By Advocate Km. Sadhana Srivastava.

With

Original Application No: 1254 of 1993

G.P.Thaplia

.... Applicant.

By Advocate Shri Rakesh Pandey

Versus

Union of India & Ors.

.... Respondents.

By Advocate Km. Sadhana Srivastava.

Coram:

Hon'ble Mr. T.L.Verma, Member-J

Hon'ble Mr. S.Dayal, Member-A

O R D E R

By Hon'ble Mr. T.L.Verma, Member-J

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Both O.A. Nos. 1253 & 1254 of 1993 involve common question of law and fact, hence, have been heard together and are being disposed of by this common judgement.

2. Both these applications have been filed for quashing orders dated 11.4.1992 and 16.7.92 whereby the pay of the applicants has been refixed in terms of para 16 of Government of India, Ministry of Personnel & Training OM No. 3/1/86-Esstt. (Pay-II) dated 31.7.1986 and order dated 1.7.1993 whereby the representations of the applicants for remission of the amount of recovery of over payment has been rejected and for declaring the provisions of order of 1986 providing for deducting the amount of pension from the minimum of the pay scale applicable to a post in fixing the pay of Ex-Defence personnel employed in the establishment of the Opto Electronics Factory, Dehradun as violative of Articles 14, 15 & 16 of the Constitution of India read with article 39(d) and to declare pay fixation under these provisions as violative of concept of Equal Pay For Equal Work.

3. The applicants in both the LAs have retired from Defence Services as Combatant Clerks on different dates. They were appointed as Lower Divisional Clerks in the pay scale of Rs. 950-1500/- in Opto Electronics Factory Dehradun on their successfully passing the selection test held for that purpose. Their appointment letters are Annexures-1A to 1G in C.A. No. 1253/93 and Annexure-2 in D.A. No. 1254/93. After their appointment, the proposal for fixing the pay of each of the applicants was forwarded to respondent No. 6, the Chief Controller of Accounts Factory, Calcutta. The pay of the applicants was fixed at different stages in the scale of Rs. 950-1500/-. The respondents, by orders dated 11.4.1992 and 16.7.1992, Annexures-3A & 3B respectively refixed the pay of the applicants in terms of para 16 of the Government of India Ministry of Personnel, Public Grievance & Pension (Department of Personnel & Training) OM No. 3/1/86-Esstt.

(Pay-II) dated 31.7.1986. As a result of the refixation, the pay of the applicants has been substantially reduced as the same has been fixed below the basic minimum of the scale admissible to the post. It is stated that pay fixation is a quasi judicial act and the pay once fixed, cannot be legally reduced by reviewing the earlier order without notice or opportunity of hearing to the applicant. Hence, this application for the reliefs mentioned above.

4. The respondents have contested the application and stated that the applicants were originally serving in the Armed Forces. After retirement, they have been given employment under the provisions of Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules 1979. On their re-employment, the fixation of pay is required to be done by the Central Civil Services (Fixation of pay of re-employed pensioners) orders, 1986 (hereinafter referred to as orders). It has been averred that initial fixation of pay was wrongly approved and that when at a latter stage, the mistake was detected, the Chief Controller of Accounts, Calcutta advised the respondent No. 4 to resubmit the pay proposal for re-examination. The pay of the applicants was accordingly regulated and fixed at various stages after computing increments for 15 years of the applicants qualifying services rendered in the Armed Forces. The order, refixing the pay according to Rules is nothing, but, correcting administrative error in fixing the pay by earlier order.

5. We have heard the rival contentions and perused the record. The pay of Ex-Servicemen on re-employment is fixed according to order 4 of Central Civil Services (Fixation of pay of re-employed pensioners) orders 1986 which reads as follows;

Contd....4/-

FIXATION OF PAY OF RE-EMPLOYED PENSIONERS:

(a) Re-employed pensioners shall be allowed to draw pay only in the prescribed scales of pay for the posts in which they are re-employed. No protection of the scales of pay of the posts held by them prior to retirement shall be given.

(b) i. In all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the re-employed post.

ii. In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial pay on re-employment shall be fixed at the same stage as the last pay drawn before retirement. If there is no such stage in the re-employed post, the pay shall be fixed at the stage below that pay. If the maximum of the pay scale in which a pensioner is re-employed is less than the last pay drawn by him before retirement, his initial pay shall be fixed at the minimum of the scale of pay of the re-employed post. Similarly, if the minimum of the scale of pay in which a pensioner is re-employed is more than the last pay drawn by him before retirement, his initial pay shall be fixed at the minimum of the scale of pay of the re-employed post. However, in all these cases, the non-ignorable part of the pension shall be reduced from the pay so fixed.

(c) The re-employed pensioner will in addition to pay as fixed under para. (b) above shall be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefits.

(d) In the case of persons retiring before attaining the age of 55 years and who are re-employed, pension (including pension equivalent of gratuity and other forms of retirement benefits) shall be ignored for initial pay fixation to the following extent:-

(i) in the case of ex-servicemen who held posts below commissioned officer rank in the Defence Forces and in the case of civilians who held posts below Group 'A' posts at the time of their retirement, the entire pension and pension equivalent of retirement benefit shall be ignored.

(ii) In the case of service officers belonging to the Defence Forces and Civilian pensioners who held Group 'A' posts at the time of their retirement, the first Rs. 500 of the pension and pension equivalent of retirement benefits shall be ignored.

The provisions as contained in order 4 & 5 of these orders have been partially modified into the fact that the Ex-Combatant Clerks on their re-employment as L.D.C. or junior Clerks in the Civilian post and Ex-Storemen in Armed Forces on their re-employment as Storemen in Civilian Post shall have the option to get their pay fixed under orders 4 & 5 or in accordance with the procedure indicated in sub para 2 of order 16. Sub para 2 of order 16 reads as follows;

(2) Service rendered as Combatant Clerks and Storemen in Armed Forces shall be treated as equivalent to service as Lower Division Clerks/Junior Clerks and Storemen respectively in Civil posts, irrespective of the pay drawn in those posts in the Armed Forces. The initial pay in such cases shall be fixed in the time-scale of the re-employed posts at a stage equivalent to the stage that would have been reached by putting in the civil posts, the number of completed years of service rendered in the posts in the Armed Forces. The pay so fixed will not be restricted to the pre-retirement pay. The fixation of pay in these cases shall be done by invoking the provisions of Fundamental Rule 27.

Explanation:

(i) For the purpose of calculation of completed years of service rendered in the Armed Forces the non-qualifying service in the Armed Forces will not be taken into account.

(ii) Pension as defined in Order 3(1) above shall be deducted from the pay fixed under this rule after ignoring Rs 15/- thereof and only the net pay is payable.

(iii) If the resultant amount does not correspond to a stage in the scale applicable to the re-employed post, pay may be fixed at the next lower stage and the difference allowed as personal pay to be absorbed in future increases of pay.

(iv) Where the pay in such cases is fixed below the minimum of the pay scale of the re-employed post, as a result of adjustment of amount of pension drawn by him from the Army in excess of Rs 15/- per month, increases in pay may be allowed after each year of service at the rate of increment admissible as if the pay has been fixed at the minimum till the minimum of the scale is reached. Thereafter, subsequent increments may be granted in the scale of the re-employed post in the usual manner.

(3) In the case of appointment of persons during released leave / terminal leave, their pay may be fixed at the minimum of the scale of pay of the scale of pay of the civil post of Lower Division Clerks / Junior Clerks / Storemen and they will draw leave salary separately from the date of their final discharge from the Army

(4) The power to fix the pay under this order is delegated to the Administrative Ministries / Departments of the Government of India. For this purpose the Comptroller and Auditor-General of India will have the same powers as the Ministries of the Government of India. Orders fixing the pay in such cases should be issued by invoking the provisions of Fundamental Rule 27."

 The applicants were given the option regarding

fixation of their pay and they have opted for fixation of pay under order 16 of the orders 1986 vide Annexures SCA-1 in O.A. No. 1253/93 & SCA-1 in L.A. No. 1254/93. From the material on record, it is absolutely clear that the applicants were entitled for fixation of their pay as opted by them according to the provisions of para 2 of order 16 of order 1986.

6. According to the relevant provisions of the order extracted above for convenience of reference, pay of the Ex-Serviceman on their re-employment is to be fixed after working out increments of the qualifying service rendered by them in the armed forces. Thereafter, the non-ignorable portion of ~~their~~ pension has to be adjusted from the pay so fixed. A model ~~chart~~ of fixation of pay of ex-combatant has been given at Annexure CA-1. In the model, the military pensioner had retired after serving in the army as a Combatant Clerk from 1.9.1975 to 31.10.1990 and was re-employed from 1.4.1991. His pay on his re-employment as L.D.C. in the scale of Rs. 950-EB-25-1,500 was fixed in the following manner;

	L.D.C.
1. Completed years of service as Combatant clerk (1.9.75 to 31.10.90)	... 15 Years
2. Amount of pension (excluding PEG)	... Rs. 375
3. Amount of pension to be ignored	... Rs. 15
4. Balance to be taken into account while fixing pay in the re-employed post	... Rs. 360
5. Stage in the scale of pay of LDC/T.C.A./P.A./S.A. by allowing one increment from the minimum for each completed year of service as combatant clerk	... Rs. 1,275
6. Stage in the T.C./T.L. scale w.r.t. L.D.C. Scale stage (same stage and if there is no such stage next higher stage)	... Rs. ...
7. Stage after deducting the pensionary benefits of Rs. 360	... Rs. 915
8. Date of next increment	... 1.4.92
9. Pay on 1.4.92 (increment to be granted as if the pay is fixed at the minimum, if the fixation is below the minimum)	... Rs. 935

7. As required under para 1 of order 16 of the orders, the applicants have given their option for being governed by the provisions of order 16 of the orders for the purpose of fixation of their pay.

8. The respondents have given the manner in which the pay of the applicants has been refixed in para 10 of the Counter Affidavit and have also filed the fixation chart (Annexure CA-6 & CA-7) to the Counter. We have in the light of the model chart examined the refixation of pay and find that the pay has been done according to the model calculation as given in Annexure CA-1 in terms of para 2 of order 16 of the orders. It is thus, apparent that fixation of the pay of the applicants at the minimum of the scale after their appointment, was an obvious mistake. The learned counsel for the applicant have relied on the decision of the Principal Bench in C.A. No. 471/89, 472/89 and 473/89 P.K. Anil Vs. The Director General CASIR and Others reported in ATR (1991) 2 C.A.T. page 96. In this case, the Principal Bench has held that;

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That the refixation of pay by the impugned order dated 5.7.1988 in supersession of the pay fixation order dated 13.3.1987 is in flagrant violation of the principles of natural justice. Before the impugned order dated 5.7.1988 was issued, the applicants had already got their pay fixed and the right to draw pay at that stage had become vested on them. Such vested right cannot be snatched away without giving them an opportunity of showing cause against such proposed refixation of pay.

In the case relied upon by the learned counsel for the applicant, the applicants were working as Senior Technical Assistant in the CASIR Madras complex. The applicants were promoted from Grade of Junior Technical Assistant to that of Senior Technical Assistant. The

applicants of C.A. No. 471/89 & 472/89 were granted one advance increment and applicants of C.A. No. 473/89 were granted 3 advance increments. w.e.f. the dates, the revised pay scales ~~were~~ recommended to the Fourth Pay Revision Commission came into effect. The orders whereby the applicants were promoted and allowed advance increments was amended by order dated 5.7.1988 and the pay of the applicants was fixed. The order refixing the pay, however, resulted in lowering the pay received by the applicants under the original order. The facts of the case relied upon by the learned counsel for the applicant, it is apparent, are not in parimateria with the case under consideration. Hence, the ratio of the said case has no application to the facts of the case before us and as such the decision relied upon by the learned counsel for the applicant is of no assistance to the applicants.

9. It was next argued by the learned counsel for the applicant that the principle of natural justice has been violated by the respondents by taking decision to ^{al} ~~not~~ give notice to the applicants which amounts to reduction in pay scale by way of penalty and accordingly provisions of article 311 Clause II of the Constitution have been violated. We are unable to agree with this argument because this is not a case either of reversion or of reduction in the pay scale by way of punishment. It is only refixing the ~~pay~~ after correcting the administrative error committed in wrongly fixing the pay of the applicants at the minimum of the scale. In this view of the matter, the impugned orders only amounts to rectifying the administrative error by refixing the pay. In such cases, no show cause notice is required to be given for correcting the mistake and in such cases provisions of Article 311 do not apply.

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In addition to the above, it was submitted by the learned counsel for the respondents that the representatives of the association to which the applicants belong, had met the Chief Controller of Accounts, Ordnance Factory Board, Calcutta to pay scales issued on 29.6.1991 for one week on Government duty. The representatives of the association of the applicants were duly heard by the concerned official and thereafter, the overpayment was stopped since December 1991. The learned counsel for the applicant did not controvert these facts. Thus, the applicants will be deemed to have been given opportunity to represent against the refixation of the pay and the respondents will be deemed to have considered their point raised in that behalf.

10. The learned counsel for the applicant also referred to para 6 of Rule 181 of the Audit Objections And Recoveries page 70 chapter 8 and has argued that the impugned orders are without jurisdiction. Para 6 of Rule 181 provides that all cases of overpayments due to incorrect interpretation of the regulations on the part of the Defence Accounts Department for which direct responsibility attaches to the department should be submitted to the Government of India for orders. It was argued that in view of the above provisions, the matter should have been referred to Government of India for orders. This not having been done, it was submitted, the order ~~✓~~ passed by respondent No. 4. is without jurisdiction. We are unable to agree with this contention of the learned counsel for the applicant. The applicants who are retired Defence Personnels, are governed

for the purpose of fixation of pay on their re-employment by the provisions of Central Services (Fixation of Pay Of Re-employed Pensioners) orders 1986. That being so, the provisions of Audit Objections and Recoveries will not be applicable to the facts of this case. This argument, therefore, is of no consequence.

11. We now proceed to examine the argument of the learned counsel for the applicant that the provisions of Central Services (Fixation of Pay Of the Re-employed pensioners) orders 1986. are violative of the principle of equal pay for equal work and as such are ultravires of the Constitution. It was stated that the pay of the L.D.Cs appointed in the Opto Electronics Factory, Dehradun from the open market are entitled to the fixation of their pay on their appointment at the initial scale of the scale, whereas the pay of the applicants who are discharging similar functions has been fixed at a stage below the minimum of the scale. Applicants can invoke Article 14 of the Constitution only if they are able to establish that the pay of the similarly situated retired Defence Personnels re-employed in Opto Electronics Factory, Dehradun has been fixed differently without any justification for denying similar treatment to the applicant working in the same factory. The burden of establishing discrimination is on the applicants but they have not placed any material before us in proof of the alleged discrimination attracting provisions of Article 14 of the Constitution. Hence, plea of discrimination cannot be accepted. The mere fact that at one point of time the pay of the applicants was fixed at the minimum of the scale on account of adminis-

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trative error is not sufficient to justify the plea of discrimination. So far as the comparision of the applicants with others who have been appointed as L.D.C. on a regular basis is absolutely out of place, The applicants have been re-employed and their pay has been fixed after excluding the amount of pension received by them from the pay which they would have received in the scale 950-1500/- had they been in the employment of Opto Electronics Factory Dehrudan as regular employees. This is done under the relevant rules framed in that behalf. The applicants had given their option for being governed by the said rules for the purpose of fixation of their pay. We, therefore, find that no provision of the constitution has been violated either by refixing the pay of the applicants or by applying orders 16 of the relevant orders.

12. Similar questions came up for consideration before the Principal Bench in D.A. No. 737/92 decided on 20.8.92 and D.A. No. 227/94/MA No. 1470/94 decided on 10.6.1994. In both the cases, it was held that the refixation of the pay of the applicants was legal and valid and accordingly dismiss the petitions.

13. In view of the discussions made above, we find and hold that there is no merit in these applications and the same are accordingly dismissed leaving the parties to bear their own costs.

—Seth—
Member-A

8-11-1994

—Seth—
Member-B

/jw/

Prepared by. Sandeep
15-11-94