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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE ^{with} 17 DAY OF JULY, 2001

Original Application No.371 of 1993

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

Harinath Singh Kushwaha, son of
Shri K.P.Singh, L.D.C LB/T.O/B
Shift O.C.F Shahjahanpur

..... Applicant

(By Adv: Shri K.C.Saxena)

Versus

1. Union of India through Secretary

Ministry of Finance, new Delhi.

2. The Chief Controller of
Accounts(Fys) 10-A, Auckland
Road, Calcutta.

3. The General Manager O.C.F.
Shahjahanpur.

..... Respondents

(By Adv: Shri Amit Sthalekar)

O R D E R(Reserved)

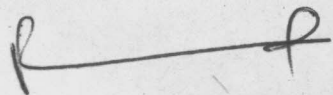
JUSTICE R.R.K.TRIVEDI,V.C.

By this OA u/s 19 of A.T.Act 1985 applicant has challenged the fixation of pay vide factory order No.122 dated 20.1.1993. By this order the pay of the applicant fixed earlier has been reduced. The applicant has also prayed that his initial pay which was wrongly fixed at the time of re-employment may also be corrected. This relief has been added by amendment under order dated 17.5.2000.

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The facts in short giving rise to the controversy are that applicant joined Airforce on 27.3.1961. He retired from Airforce on 31.3.1976 after completing 15 years service. He retired from the post of Radar Mechanic (equivalent to Hawaldar). After retirement applicant was given re-employment in Ordnance Clothing factory on 4.2.1981. He joined as Lower Division Clerk in the pay scale of Rs.260-400. His pay was fixed at Rs.326/- per month. After the IVth Pay Commission his pay was revised and fixed at Rs.1250/- per month as basic pay w.e.f. 1.1.1986. In 1.1.1993 his basic pay was fixed at Rs.1425/-. The gross emoluments payable to the applicant were Rs.3120/-. On the basis of the O.M. dated 8.2.1983 issued by Ministry of Defence the entire pension of Rs.148/- per month was to be excluded from initial fixation on re-employment. On the basis of the order dated 8.2.1993 respondents revised the fixation of pay of the applicant and it was reduced from Rs.1250/- to 1030/- as on 1.1.1986.. The respondents also directed recovery of the amount paid in excess. Aggrieved by which the applicant has approached this Tribunal.

Before entering into the merits of the claim of the applicant it is necessary to mention the effect of the orders issued from time to time for fixation of pay of the Ex-service men on being re-employed in civil servicers under the Union of India. The first order in this connection is Ministry of Finance Memo No.8/34/Estt.III/57 dated 25.11.1958. It provided that 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 fixation of initial pay of the re-employed officer at the minimum of the prescribed pay scale ~~e~~ will cause undue hardship, the pay may be fixed at higher stage by ^{allowing} ~~allowing~~ one increment for each year of service which the officer has rendered before retirement in a post not lower than that in which he is re-employed. In addition to above the government servant was permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefit provided that the total amount of initial pay plus the gross amount of pension and all the pension equivalent to other forms of retirement does not exceed;

- i) the pay drawn before his retirement
- ii) to pay Rs3000/- whichever is less

The mode of fixation of pay on re-employment of Ex-servicemen were changed from time to time vis-a-vis the pension paid to the person concerned. Under earlier orders it was ignored to the extent of Rs.50/-. The limit of ignorable pension was further enhanced to Rs.125/-. By Ministry of Defence ^{and} ~~e~~ O.M. No.2(1/83/D/civil siv-1) dated February 8, 1983, it was provided that the whole pension may be ignored while fixing the pay on re-employment. However, in respect of those ^{junior} ~~junior~~ already on re-employment, it was provided that pay may be refixed on the basis of these orders ^{with} ~~when~~ immediate effect, provided they ^{opt} ~~opt~~ to come under these orders. If they so opt their terms would be redetermined afresh as if they have been re-employed for the first time. The relevant portion of the O.M. dated February 8, 1983 is being reproduced below:-

"These orders will take effect from 25th January 1983 and the existing limits of military pensions to be ignored in fixing pay of re-employed pensioners will therefore, cease to be applicable to cases of such pensioners as are re-employed on or after the date. In the case of the persons who are already on re-employment, the pay may be refixed on the basis of these orders with immediate effect provided they opt to come under these orders. If they so opt their terms would be determined afresh as if they have been re-employed for the first time from the date of these orders.

The option should be exercised in writing within a period of six months from the date of these orders. the option exercised shall be final."

It appears that applicant had exercised the option. When his pay was reduced he filed OA No.784/90 alongwith three others. The OA was disposed of finally by order dated 4.10.1990 with the following direction.

"We have considered the submissions of the learned counsel for the applicant. As the remedies to the applicant have not been exhausted, we hereby dismiss this application with the directions to the respondents to dispose of the representation, if any, which may be filed by the applicants against the impugned order at an early date. It is further directed that the order for recovery on the basis of the impugned

order of the pay of the applicants shall be kept in abeyance until the disposal of the said representation. The applicants shall be paid as usual subject to the decision of their representation. in case, however, the applicants still feel aggrieved by the decision which will be taken on the representation of the applicants, they may, if so advised, file an application before this court."

In pursuance of the aforesaid order of the Tribunal applicant filed representations on 30.10.1990, 12.9.1991 and 11.3.1992. When the representations were not decided, he filed last representation on 30.1.1993. it has been stated in the OA that the representation was rejected and pay of the applicant was again reduced to Rs.260/- per month from 25.1.1983 and 1030/- per month w.e.f. 1.1.1986 by the impugned order No.122 dated 20.1.1993.

Counter affidavit has been filed in para 13 whereof it has been said that the refixation of the initial pay was published in Factory order dated 6.9.1990 as per Rules, but after careful consideration of representation made by the applicant the matter has been reviewed and re-examined and it has been concluded that the initial pay fixation was ^{not} done correctly, and on exercising of option by the ^{not} applicant in terms of Ministry of Defence Office Memorandum dated 8.2.1983, ^{exercise was necessary} for refixation of his pay. It has also been asserted that refixation of pay has not been done w.e.f. 25.1.1983 and hence refixation of his pay has now been done according to existing rules i.e. O.M. dated 8.2.1983 vide Factory Order No.Pt.II No.122 dated 20.1.1993. Thus, it is clear that pay of the applicant

has been reduced on the basis of the O.M. dated 8.2.1983 on the option exercised by the applicant. As already mentioned above the effect of exercising option was that the terms of employment would be determined afresh as if the applicant has been re-employed for the first time from the date of the order. The necessary consequence was that the applicant ~~was~~ lost benefit of the past services and the increments earned. The question of determination is whether the O.M. of Feb.8,1983 can be justified providing such a consequence to the pensioners who were already on re-employment.

The above controversy has been considered and resolved by the ~~Tribunal~~ by Ernakulam Bench of this Tribunal in TA No.404 of 1987 G.Vasudevan Pillai & Ors Vs. Union of India and Others (1990) 13 ATC pg-234. The Bench placed reliance on judgement of Hon'ble Supreme Court in a case of 'D.S.Nakara Vs.Union of India and Ors AIR 1983 SC 130= 1983 SCC (L&S) 145 and concluded as under:-

"From the above it is clear that the Supreme Court were keen that no discrimination should be made between the pensioners based on the date of retirement. It was also felt that notional fixation of pension on the date of retirement even though it may be anterior to the promulgation of Liberalised Pension Scheme without giving them arrears for the past period between the date of retirement and date of promulgation of scheme will not be giving retrospective effect to the Scheme and will not violate its prospective nature. In the case of revision of pay scale from a particular date even old entrants

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are allowed revision of pay scale from a particular date and the benefit of increments which they had earned during the past period is also duly accounted for. It, therefore, seems to us inequitable that the re-employed pensioners who had been re-employed prior to February, 1983 should be forced to ~~lose~~^{lose} the benefit of their past service by exercising option on a "take it or leave it basis."

The Bench further observed that we feel that for those ex-servicemen who had been re-employed prior to the issue of the O.M. their re-employment pay should be determined notionally on the date of their re-employment by applying the enhanced limit of ignorable pension and their pay as on February 8, 1983 reckoned by giving them the benefit of earning increments over and above the notional pay so fixed. Their actual pay will be revised accordingly with effect from the date of issue of the relevant O.M. without any arrears based on notional pay fixation for the past period.

This Bench also in OA No.1533/92 Anant Singh Vs. Union of India and Others granted relief to the applicant who was an Ex Army pensioner and his pay was reduced on the basis of O.M. dated 8.2.1983. We are in respectful agreement with the view expressed in the aforesaid judgements. In our opinion the applicant is entitled for relief.

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The second relief claimed by the applicant is that his initial pay fixation is incorrect as he was given only 11 increments though he had served in Airforce for 15 years. We have considered this aspect of the case. However, we are of the view that the applicant cannot questioned the initial fixation of pay now for more than one reason. Admittedly, applicant filed OA No.784/90 but this relief was not claimed. The applicant [^]only challenge the reduction of pay on the basis of the O.M. dated 8.2.1983. Even in his representation [^]~~filed on~~ ^{dated u} 30.1.1993 (Annexure 8) filed in pursuance of the direction of this bench no such question was raised. In our opinion the claim of the applicant is barred by constructive resjudicata as it was constructive resjudicata. Further the legal position was that on re-employment the initial pay was to be fixed at the minimum stage of the scale of pay prescribed for the post in which the applicant was re-employed. It was only in cases where the minimum of the prescribed pay scale would cause undue hardship the pay was required to be fixed at higher stage by allowing one increment for each year of service which the officer had [^]rendered before retirement in post not lower than that in which he is re-employed. Thus, the rule did not provide that on re-employment applicant was entitled for the increments in respect of all the years he had served in defence. He was only entitled fixation of pay at higher stage which was necessary at that time to remove undue hardship. the applicant has not mentioend anywhere in the OA about the last pay

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drawn when he retired from the Airforce. In the circumstances, it cannot be determined whether there was any undue hardship left to the applicant even after fixing his pay at Rs.320/- per month. For the reasons stated above, applicant is not found entitled for any relief in this respect.

The OA is accordingly allowed in part. The pay fixed by impugned order Factory order No.122 Part II dated 20.1.1993(Annexure A-1) is hereby quashed. The applicant shall be entitled for the pay as shown in the pay slip for January 1993(Annexure3). Any amount if recovered from the applicant shall be paid to him within three months from the date a copy of this order is filed. There will be no order as to costs.


MEMBER(A)
VICE CHAIRMAN

Dated: 17th July, 2001

Uv/