

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

~~CA NO.~~ CA/02/95 inOA/485/93, CA3/95 inOA/352/93,
~~TA NO.~~ CA/12/95 inOA/457/92, CA/13/95 inOA/466/95 and
 CA/14/95 inOA/659/93.

DATE OF DECISION 25.4.1995.

Smt. Manjulaben N. Jani ' & Ors. Petitioner

Mr. K. C. Bhatt Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent

Mr. Akil Kureshi Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. V. Radhakrishnan : Member (A)

The Hon'ble ~~Mr.~~ Dr. R. K. Saxena : Member (A)

: 2 :

1. C.A.02/95 in OA/485/93

Smt. Manjulaben N. Jani
Group 'D' Head Post Office,
Junagadh 362 001

2. C.A.03/95 in OA/452/93

Smt. Muktaben K. Rajyaguru
Stamp Vendor, Head Post Office,
JUNAGADH 362 001

3. C.A/12/95 in OA/457/93

Smt. Jayaben J. Mambudia,
Group 'D', Head Post Office,
JUNAGADH.

4. CA/13/95 in OA/466/93

Smt. Muktagauri R. Thakar.
Group 'D' Head Post Office,
JUNAGADH 362 001

5. CA/14/95 in OA/659/93

Smt. Nirmalaben P. Gondia
Group 'D' Post Office,
DUSHALA 362 215

..... Applicants

(Advocate : Mr. K.C. Bhatt)

Versus

1) Union of India, through
Shri P.P. Soni, or whoever is
holding the charge of The Supdt.
of Post Offices,
Junagadh Division,
JUNAGADH 362 001.

2) Shri K.N. Pandya, or
whoever is holding the charge of
The Postmaster, JUNAGADH 362 001.

..... Respondents

(Advocate : Mr. Akil Kureshi)

: 3 :

O R A L O R D E R

Date: 25.4.1995.

In

CA/02/95 in OA/485/93, CA/03/95 in OA/452/93,
CA/12/95 in OA/457/93, CA/13/95 in OA/466/95 and
CA/14/95 in OA/659/93

Per : Hon'ble Shri V.Radhakrishnan : Member (A)

Heard Mr.K.C.Bhatt and Mr.Akil Kureshi, learned advocates for the applicants and Respondents respectively.

Mr.Akil kureshi states that the judgment will be implemented within two weeks and the payment may be made within that time subject to any order of the Supreme Court which ^{may} be passed. In view of this, Mr.K.C.Bhatt seeks permission to withdraw the Contempt Application. Permission granted. Contempt Application stands disposed of as withdrawn. Notice discharged.

(Dr.R.K.Saxena)
Member (J)

(V.Radhakrishnan)
Member (A)

npm

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

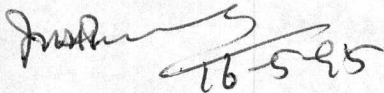
Application No. CA/14/95 in CA/659/92 of
Transfer Application No. _____ of

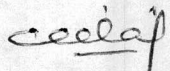
CERTIFICATE

Certified that no further action is required to be taken and
the case is fit for consignment to the Record Room (Decided).

Dated : 13.05.95

Countersign :


Section Officer


Signature of the Dealing
Assistant

AT AHMEDABAD BENCH

INDEX - SHEET

CAUSE TITLE CA/14/95 in 04/659/93

NAME OF THE PARTIES Med. N.P. Gondia

VERSUS

U. O. i. 8 000

[illegible]

CENTRAL ADMINISTRATIVE TRIBUNAL
MEDABAL BENCH, AMEDABAD

Submitted:

CAT/JUDICIAL SECTION

Original petition No. CA/14/95

of _____

Miscellaneous petition No. _____

of _____

~~Shri~~ Thirumalaben P. Arora Petitioner(s)

Versus

Union of India & Ors Respondent (s)

This application has been submitted to the Tribunal by

Shri K. L. Bhatt Advocate

Under Section 19 of the Administrative Tribunal Act, 1985. It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985, and Central Administrative Tribunals (Procedure) Rules 1985.

The application has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant advocate may be asked to rectify the same within 14 days/ draft letter is placed below for signature.

Asstt.

S.O. (J) [Signature]

D.R. (J)

16-1-85
[Signature]

*K/28/10/94

07/5/95
12-195

Filed by Mr. 12 c Brode
Landed for Parliament
Two
By Registrar C.A.T (D)
Ahmed Bench

07/5/95 By Registrar C.A.T (D)
Ahmed Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH.

CONTEMPT PETITION (CIVIL) No. 14 of 1995

in

Original Application No. 659 of 1993.

Smt. Nirmalaben P. Gondia ... Petitioner.

v/s.

Union of India and others. ... Respondents.

Subject :- Contempt petition (civil).

Sl.No. Annexure Particulars. Page No.

01 - Petition Memo. 1 to 8

02 A-01 Notice dated 3-10-94. 9 to 10

03 A-02 Judgement dated 31-3-1994. 11 to 20


Date. 4-1-95

Junagadh.

N.P. Gondia
(N.P. Gondia)

Signature of petitioner.

Identified by me;


4-1-95
(Advocate)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

CONTEMPT PETITION (CIVIL) No. ⁶⁴ of 1995.

in

Original Application No. 659 of 1993.

Smt. Nirmalaben P. Gondia

... Petitioner.

v/s.

- 1) Union of India through
Shri P.P. Soni,
or whoever is holding the charge of
The Supdt. of Post offices,
Junagadh Dn., Junagadh-362001.
- 2) Shri K.N.Pandya,
or whoever is holding the charge of
The Postmaster, Junagadh-362 001.
- 3) Particulars of the order against which petition is
made :-

Non-implementation of Judgement dated 31-3-1994

in OA/659/93 given by the Honourable C.A.T. Ahmedabad.

- 4) Jurisdiction of the Tribunal:-

The petitioner declares that the subject matter
of the order against which she wants redressal is
within the jurisdiction of the Tribunal.

5) Limitation:-

The petitioner declares that the Petition is within the limitation.

6) Facts of the case :-

I state on solemn affirmation as under :-

That the Petitioner was granted pension + Dearness relief from 24-6-90 as a widow of late Shri P.M. Gondia Postman Junagadh who expired on 23-6-90.

She was appointed on compassionate ground as Group 'D' in the Department w.e.f. 9-12-1991.

She was paid dearness relief on family pension for the period from 24-6-90 to 8-12-91 and dearness relief on family pension is discontinued to be paid w.e.f. 9-12-1991.

Being aggrieved by and feeling dissatisfied with the aforesaid action, the petitioner had preferred application under Sec.19 under OA/659/93.

The Hon'ble Tribunal by its Judgement dated 31-3-1994 given in original Application No.659/93 as under.

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O R D E R

The application is allowed.

The orders issued by Postmaster Junagadh dated 14-5-1993 Ann.A-2 and Supdt. of Post offices Junagadh dated 21-5-1993 Ann.A-4 are quashed and set aside.

The respondents are directed to draw dearness relief on family pension payable to the applicant from the current month onwards as per rules.

However, as the applicant has approached the Tribunal ~~only~~ only on 22-10-93 the error of dearness relief will be payable to the applicant only from 22-10-92 i.e. from the year prior to the date of application.

This shall be done within a period of eight weeks from the date of receipt of this order.

Application is disposed of with no order as to costs.

7) Details of remedies exhausted :-

The petitioner had approached before the respondent authority immediately on receipt of a copy of the Judgement and also notice of contempt of Court

was issued by Regd. A.D. on 3-10-94.

8) Matter not pending with any other Court etc.:-

The Petitioner further declares that the matter regarding which the petition has been made is not pending before any Court of Law.

9) Relief(s) sought:-

In the circumstances as narrated hereinabove, the petitioner prays for the following relief:-

- 1) The respondents be directed to implement the Judgement dated 31-3-1994 in OA/659/93 given by the Honourable C.A.T. Ahmedabad, immediately.
- ii) The respondent authority be directed to pay the interest at the rate of 12 per cent from the date, payable becomes due as per judgement till the date of actual payment.
- iii) The respondent authority be punished as

:5:

the action regarding non-implementation of the judgement, by willful action and showed disobedient for non-implementation of the Hon'ble Tribunal's judgement.

iv) The respondent authority be directed to pay the cost of this petition.

v) Any other suitable relief may please be granted.

Date.

Junagadh.

જનલભેન પ. ગોંડિયા
(N.P. Gondia)

Signature of petitioner.

Identified by me;

Deem
h-1-95

(Advocate)

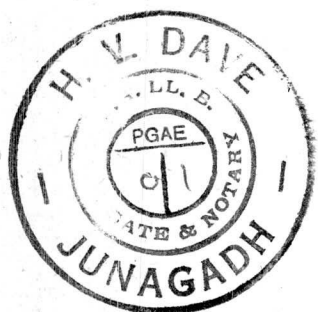
A F F I D A V I T

I, Nirmalaben P. Gondia, Group-D, Junagadh

Head Post office, resident of Junagadh, age adult,

do hereby state on oath and solemn affirmation

that what is stated herein above is true to my personal



Deem
h-1-95

Serial No. 2184

Page No. 75

Book No. 01

Receipt No 2184

:6:

knowledge, information and belief and I believe
the same to be true and correct.

Solemnly affirmed at Junagadh on the
day of *4th* January, 1995

જોડિયા ન. પ. ગોંડિયા
(N.P. Gondia)

Identified by me;

Signature of petitioner.

[Signature]
h-1.95

(Advocate)

Solemnly affirmed before me
by Mr. *Nimmale P. Gondia*
identified by Mr. *me*
whom I personally know.

[Signature]
h-1.95

(H. V. DAVE)
Advocate & Notary
Junagadh District



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DRAFT CHARGES.

1) Judgement dated 31-3-1994 ~~in~~ in OA/659/93 as

under :-

O R D E R

The application is allowed.

The orders issued by Postmaster Junagadh dated 14-5-1993 Ann. A-2 and Supdt. of Post offices Junagadh dated 21-5-1993 Ann.A-4 are quashed and set aside.

The respondents are directed to draw dearness relief on family pension payable to the applicant ~~in~~ from the current month onwards as per rules.

However, as the applicant has approached the Tribunal only on 22-10-93, the ^{arrear} ~~error~~ of dearness relief will be payable to the applicant only from 22-10-92 i.e. from ~~one~~ year prior to the date of application.

This shall be done within a period of eight weeks from the date of receipt of this order.

Application is disposed of with no order

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as to costs.

(2) The respondents have not implemented the
above judgement till today.

It is willful action of the respondents
and thereby causing heavy loss.

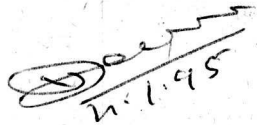
Date. 4-1-95

Junagadh.

સાચીબ (N.P. Gondia)

Signature of petitioner.

Identified by me;

 11.1.95

(Advocate)

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Charge.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH.

We,

Members constituting the Bench of the Ahmedabad Central

Administrative Tribunal hereby charge you Shri

as under.

That you Shri *P. P. Soori and Shri K. R. Pandya*

have failed to implement the judgement dated 31-3-94 given

by this Tribunal in OA 659/93 and thereby

committed the contempt of this Tribunal punishable under

section 21 of the contempt of Courts Act, 1971 within our

cognizance.

Signature of the Honourable Members.

The charge was read over and explained to the alleged
contemner and he was asked as under.

1) Do you plead guilty to the charge ?

Answer.

2) Do you have anything else to say ?

Answer.

Signature of the
alleged contemner.

Drafted By

K. C. BHATT

K. C. BHATT
B.A. LL.B. ADVOCATE

Signature of the Hon'ble
Members Presiding over
the Bench.

A-5 9

From: Smt Nirmalaben.P.Gondia
Group 'D'
Lushala Post Office

3-10-94

To: (1) Shri K.N.Pandya
Postmaster Junagadh H.O.
(2) Shri R.J.Parmar
Supdt of Post Offices
Junagadh Division
Junagadh 362 001

Subject:- Notice for contempt of Court Act-1971

.-.-.

Respected Sir,

I, Smt Nirmalaben.P.Gondia Group 'D' Lushala Post Office hereby give you first and foremost final notice as under.

2. I had filed application under section 19 of the Administrative Tribunal Act, 1985 which was registered as O.A. 659 of 1993 regarding non drawal of Dearness relief alongwith my family pension, on account of appointment on compassionate ground as Group 'D' in the department.

3. After hearing the parties and going through the facts of the case and considering the arguments made at the time of final hearing by the learned counsel appearing for both sides, Honourable Tribunal had given Judgement on 31-3-94.

4. The important and operative part of the judgement is produced herebelow.

O R D E R

The application is allowed. The orders issued by the Postmaster Junagadh dated 14-5-93, Annexure A-2 and Supdt of Post Offices Junagadh dated 21-5-93 Annexure A-4 are quashed and set aside. However as the applicant. The respondents are directed to draw dearness relief on family pension payable to the applicant from the current month onwards as per rules. However as the applicant has approached the Tribunal only on 22-10-93 the arrears of dearness relief will be payable to the applicant only from 22/10/92 i.e., from one year prior to the date of application. This shall be done within a period of eight weeks from the date

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date of receipt of this order. Application is disposed of with no order as to costs.

5.

The judgement was pronounced in the open court

6.

As per the Hon'ble Tribunal's above referred direction, you are required to draw and pay me the dearness relief on my family pension from the month of May 1994 and arrears of dearness relief were to be paid latest on 1-8-1994 i.e. within the time limit given by the Honourable Tribunal in the above referred order dated 31-3-94.

7.

I submit that I had approached before your honour, but you have not taken any action to implement the judgement dated 31-3-94 referred to above.

8.

Therefore, I ultimately give you final notice and inform you that if you will fail to make suitable action to draw and pay me the dearness relief from the month of November 1994 on my family pension payable on 31/10/94 and to pay the arrears from 22-10-92 within 10 days from the date of receipt of this notice. I shall be compelled to bring you before the Hon'ble Tribunal for wilful and disobedient and non implementation of the Tribunal's direction at your own risk and responsibility. I shall pray before the Hon'ble Tribunal to punish you and held personally liable under the contempt of courts Act, for wilful and disobedient of Tribunal's direction.

TRUE COPY
K. C. BHATT
B.A. LL.B. ADVOCATE

Yours Faithfully

(N.P.GONDIA)

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11 CAT/3/13

CENTRAL ADMINISTRATIVE TRIBUNAL

~~PRINCIPAL BENCH DELHI~~

AHMEDABAD BENCH

O.A No. 659 OF 1993 ~~108~~
~~To And Na~~

DATE OF DECISION 31-3-1994

Smt. Nirmalaben P. Gondia, Petitioner

Mr. K.C. Bhatt, Advocate for the Petitioner (s)

Versus

The Union of India & Ors. Respondent s

Mr. Variava for Mr. Akil Kureshi, Advocate for the Respondent(s)

CORAM .

The Hon'ble Mr. V. Radhakrishnan, Admn. Member.

The Hon'ble Mr.

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Smt. Nirmalaben P. ...
Group 'D' Post Office,
Lushala - 362 215.

.... Applicant.

(Advocate: Mr. K.C. Bhatt)

Versus.

1. The Union of India, through
The Director General
Department of Posts
Ministry of Communication
New Delhi 110 001
2. The Postmaster General
Rajkot Region,
Rajkot 360 001
3. The Supdt of Post Offices
Junagaḥ Division,
Junagaḥ 362 001
4. The Postmaster
Junagaḥ 362 001

..... Respondents.

(Advocate: Mr. Variava for
Mr. Akil Kureshi)

JUDGMENT

D.A.No. 659 OF 1993

Date: 31-3-1994.

Per: Hon'ble Mr. V. Kachakrishnan, Admn. Member.

Heard Mr. K.C. Bhatt, learned advocate for the
applicant and Mr. Variava for Mr. Akil Kureshi, learned
advocate for the respondents.

2. The applicant is the widow of late Shri P.M.
Gondia, Postman Junagaḥ Head Post Office, who expired
on 23-6-1990. She was granted family pension and was
drawing family pension along with dearness relief from
24.6.90 to 8.12.91. She was appointed on compassionate
ground as Group 'D' staff in Post office. She joined

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the department with effect from 9-12-91. The dearness relief was discontinued thereafter. The applicant represented to the Postmaster Junagadh on 7-4-1993 against her stoppage of dearness relief. She received a reply from him dated 14.5.1993, Annexure A-2, that re-employed pensioners are not eligible to get dearness relief on pension/family pension. She preferred an appeal against this order to Supdt. of Post Offices, Junagadh, who rejected the appeal vide his letter dated 21-5-1993, Annexure A-4. Hence she has approached the Tribunal with this J.A and has asked for the following reliefs:

"(i) The impugned order No.A2/Family-Pension/93 dated 14-5-93 issued by the Postmaster Junagadh be quashed and set aside (Annexure A-2).

(ii) The impugned order No. C2/Misc/93-94 dated 21-5-93 issued by the Supdt of Post Offices Junagadh be quashed and set aside (Annexure A-4).

(iii) The respondent authority be directed to draw dearness relief on family pension with immediate effect and be paid to the applicant, and be directed to calculate the dearness relief on family pension payable at the rate from time to time for the period for which dearness relief is not paid to the applicant and all arrears to be paid within one month from the date of receipt of communication by the respondent authority, declaring sub clause (ii) of Rule 55(A) as illegal, unsustainable and violative of Article 14 of the Constitution of India.

(iv) Any other suitable relief may please be granted.

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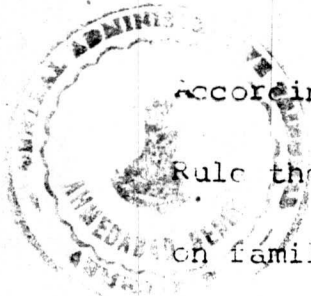
The respondents have filed reply. They have taken shelter under provision of Rule 55-A of CCS (Pension) Rules, 1972 which is reproduced below:

"RULE 55-A DEARNESS RELIEF ON PENSION/FAMILY PENSION :

(i) Relief against price rise may be granted to the pensioners and family pensioners in the form of dearness relief at such rates and subject to such conditions as the Central Govt. may specify from time to time.

(ii) If a pensioner is re-employed under the Central or State Government or a corporation/Company/Body/Bank under them in India or abroad including permanent absorption in such Corporation/Company/Body/Bank, he shall not be eligible to draw dearness relief on pension/family pension during the period of such re-employment.

(iii) The Central Government employees who get permanently absorbed in terms of Rule 37 and opt for lump sum payment in lieu of pro rata monthly pension in terms of rule 37 shall not be eligible for dearness relief."



Accordingly it is their contention that as per the above Rule the applicant is not entitled to dearness relief on family pension. Further they have taken the objection that the application is barred by limitation and the delay in approaching the Tribunal is without any justification. They also state that Rule 55-A of said rules draws a reasonable classification as those family pensioners who were employed from a distinct and separate class from those who are not employed on compassionate ground on account of death of spouse in

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harness. Therefore, contended that the discontinuation of dearness relief on family pension is just and proper and legal. They have denied that discontinuation of dearness relief is arbitrary or illegal.

4. Mr. K.C. Bhatt, learned counsel for the applicant has supported his arguments with the decision of C.A.T. Ernakulam Bench, decided on 25.11.91, All India Service Law Journal, 1992(1)(CAT) page 589, and C.A.T. Madras Bench, decided on 13.1.1992 (1992) 20 AIC page 584). In the former case, the applicant was a widow of employee of the Southern Railway and she was working as clerk in the State Government of Kerala. After her husband died she was drawing family pension along with dearness relief. After more than 8 years after the death of her husband, the authorities had stopped payment of relief on pension. Representations were turned down and she approached the CAT Bench Ernakulam. The Bench came to the conclusion that the family pension would be payable to the family of deceased Government servant as per provisions of Rule 54 of CCS(Pension) Rules. As per provisions of this rules the quantum of family pension is dependent on the basic pay of the Government servant and the length of his service. It has absolutely no relation

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to number of dependent members of family the financial position of the family. Since there is nothing in the CCS (Pension) Rules which would suggest that, if a recipient of a family pension is employed there should be a reduction in the pension or in the relief on pension. The family pension payable to the family of a deceased Government servant has absolutely no bearing on the question whether the recipient for the family pension is employed or unemployed. Family pension is granted in consideration of service rendered by Government servant during the period while he was in service. It is therefore, the property earned by the recipient and deprivation of such property without observing the due process of law has to be struck down as unreasonable and unjust. It is well settled by now that relief on pension is an adjunct of pension, the fact that the recipient of the family pension is an employee under the Government receiving a regular salary can not be considered as a ground to deprive him of a portion of pension or the pension relief. In a case where one or more member's of the family in receipt of family pension is employed in private sector undertaking or in business and are earning substantial income the relief on pension is not suspended on account of they being so employed, but even if one member of the family who is a recipient of the family pension is

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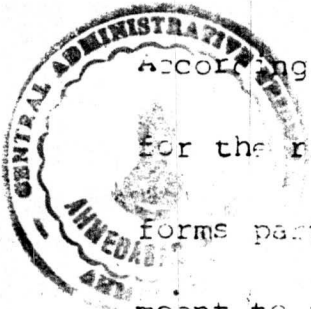
Central Government Company even though in the lowest post the relief on family pension is to be suspended during the period with the recipient of the family pension is thus employed. Hence the Bench came to the conclusion that this discrimination is highly arbitrary and unreasonable. It also held the administrative instructions can not be abridge the statutory benefit confined by Rule 54 of CCS(Pension) Rules and therefore, the administrative instructions are unsustainable, hence the Bench directed the respondents not to suspend the relief on family pension with pension relief. In the another case decided by C.A.T Madras Bench, the applicants were widows of persons who were employed in Geological Survey on compassionate grounds. They were getting family pension along with dearness relief, but because of audit objection the dearness relief on pension was stopped all of a sudden. They contested the stopping of dearness relief on pension on the ground the dearness relief has part of the pension and family pension was paid in consideration of service rendered by their husbands and their subsequent employment in Govt. cannot be a cause for the denial of dearness relief on their family pension. The respondents in that case had relied on sub clause (ii) of New Rule 55-A incorporated in the CCA(Pension) Rules, 1972, by way of amendment of Rule in 1991. That sub-clause reads as follows:

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"If a pensioner is re-employed under the Central or State Government or a corporation/ company/body/bank under them in India or abroad including permanent absorption in such corporation/company/body/bank, he shall not be eligible to draw dearness relief on pension/family pension during the period of such re-employment."

The Bench held that pension is a kind of compensation for the service rendered by a Government servant and is a valuable right, vesting in the Govt. servant. Regarding dearness relief on pension, the Bench referred to sub-clause(i) of Rule 55-A of the CCS (Pension) Rules, clause (ii), which reads as under:

"Relief against price rise may be granted to the pensioners and family pensioners in the form of dearness relief at such rates and subject to such conditions as the Central Govt. may specify from time to time."



Accordingly the dearness relief is meant to compensate for the rise of the cost of living. Dearness relief forms part and parcel of the pension. Dearness relief is meant to restore the pension to its original value. It is not a bounty, but a right on par with pension of which it forms an inseparable part. So sub-clause (ii) of Rule 55-A is not sustainable since it is in contradiction with sub-clause (i) which defines the nature of the dearness relief. The Bench hence came to the conclusion that when pension is allowed to be drawn, dearness relief should be paid along with it, otherwise, there will be only a part payment of pension in real terms. Dearness

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relief on pension is to restore the pension to its original value, when it is eroded by the rise of the cost of living. If the dearness relief is not paid, the persons concerned will get a diminished pension in terms of real value and pension being a right cannot be diminished indirectly. Accordingly it held that sub-clause (i) of Rule 55-A which denies dearness relief on pension to a category of pensioners, namely, the re-employed is an unreasonable discrimination since the price rise is the same for all pensioners. So sub-clause (ii) of Rule 55-A is in violation of Article 14 of the Constitution and hence not enforceable. In the result, the respondents were directed to continue to pay the dearness relief on pension to the applicants. Mr. Akil Kureshi, learned advocate for the respondents stated that the Government of India has gone on a pital against the above two decisions, but no stay has been granted.

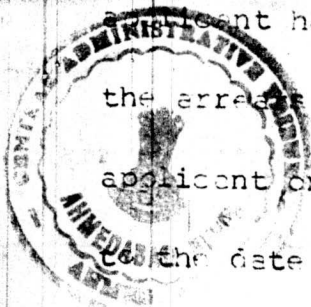
5. The present case is on all fours with the above mentioned case decided by the Madras Bench, I am in respectful agreement with the judgment of the Madras Bench which would fully apply in this case also. Accordingly the applicant is entitled to draw dearness relief on family pension. In so far as the question of limitation raised by the learned advocate for the respondents is concerned, the cause of action viz.,

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drawal of pension being a recurring right, it can not be sustained. Accordingly I pass the following order:

ORDER

The application is allowed. The orders issued by Postmaster Junagadh dated 14.5.1993, Ann.A-2 and Superintendent of Post Offices, Junagadh dated 21.5.1993, Ann. A-4 are quashed and set aside. The respondents are directed to draw dearness relief on family pension payable to the applicant from the current month onwards as per rules. However, as the applicant has approached the Tribunal only on 22-10-93 the arrears of dearness relief will be payable to the applicant only from 22-10-92 i.e., from one year prior to the date of application. This shall be done within a period of eight weeks from the date of receipt of this order. Application is disposed of with no order as to costs.



TRUE COPY
K. C. BHATT
BA. LL.B. ADVOCATE

vtc.

Prepared by :
Compared by :

Sd/-
(V. Radhakrishnan)
Member (A)

TRUE COPY

CBhajan

Joint Order (A)
Central Administrative Tribunal
Ahmedabad Bench

application are not correct. The respondents always hold this Hon'ble Tribunal in highest regard and have not violated any writ, order or direction. I further say and submit that the respondents have not committed any contempt as alleged by the applicant. I say that the respondents have not flouted any writ order or direction issued by this Hon'ble Tribunal* and that the contempt application being devoid of merits deserves to be dismissed and the notice is required to be discharged.

4. I say that this Hon'ble Tribunal by its judgment dated 31/3/1994 passed in O.A.659 of 1993 was pleased to allow the application by quashing the impugned orders. The Tribunal was further pleased to direct the respondents to draw dearness relief on family pension payable to the applicant as per the rules. The effect of the judgment however was confined to one year prior to filing of the original application in so far as the arrears of dearness relief is concerned.

5. The original application involved the question whether a re-employed family pensioner can continue to get dearness relief on the pension even after being employed in the Central Government, State Government etc. The rule 55A of CCS(Pension) Rules 1972 provides that if a pensioner is re-employed under the Central or State Government etc., he shall not be eligible to draw dearness relief on pension/family pension during the period of such re-employment. The Hon'ble Tribunal in the abovementioned judgment, relying upon the decisions of C.A.T. Benches of Ernakulam and Madras Bench and especially the decision of Madras Bench of C.A.T. reported in

(1992) 20 ATC page 584 in which the Hon'ble Tribunal was pleased to declare sub-clause(ii) of Rule 55-A of CCS(Pension) Rules 1972 ultra virus Art. 14 of Constitution of India was pleased to allow the original application as mentioned above. It is submitted that the department has filed S.L.P. before the Hon'ble Supreme Court of India and the said S.L.P. is admitted and pending before the Hon'ble Supreme Court and the Hon'ble Supreme Court has also stayed the decision of the Tribunal and in number of other matters of similar nature decided by various Tribunals, also been appealed against and in many matters S.L.P.'s are admitted and stay is granted. Enclosed herewith at Annexure-R1 are copies of the stay orders granted by the Hon'ble Supreme Court. It is submitted that in the present matter also the department has filed S.L.P. on 10/6/1994 and the same is numbered as S.L.P. (C)/94-CC-27103/94. In view of the fact that the Hon'ble Supreme Court has admitted similar appeals and granted stay orders in several cases and also in view of the fact that the department has already filed appeal against the decision in question the contempt application is required to be dismissed.

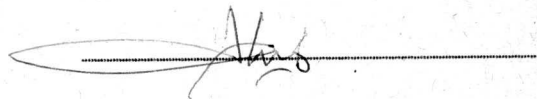
6. It is submitted that recently the Hon'ble Supreme Court of India has decided this issue finally and the appeal filed by the U.O.I. has been allowed and the decisions of various Courts have been set aside. The Supreme Court in the decision of U.O.I. Vs. G.Vasudevan Pillay and ors. reported in Supreme Court Services Law Judgments 1995 (1) page 211 wherein identical issue was involved has ruled that denial

of dearness relief on family pension on employment of dependence like widows of the ex-servicemen is justified and that the same can justly be denied. A copy of said judgment is produced at Annexure-R2.

7. In view of what has been stated above, I say and submit that the contempt application is totally misconceived, untenable and requires to be rejected.

Ahmedabad,

Dt:9/3/1995.

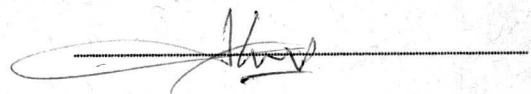


Affidavit

I, Pratichandra P. Soni

do hereby state on solemn affirmation that what is stated above is true to my knowledge, information and belief and I believe the same to be true.

Solemnly affirmed at Ahmedabad on this 8th day of March, 1995.



IDENTIFIED BY ME

Forieteria
ADVOCATE



S. NO 1795/1995
SOLEMNLY AFFIRMED
BEFORE ME
V. J. Desai
NOTARY
D/ 9-3-1995



SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Annexed
(Collected)

23

Petition(s) for Special Leave to Appeal (Civil/Or) No. (s)...../94 CC 25106

(From the judgment and order dated 12.5.93 of the High Court of Administrative Tribunal in C.A. Nos. 1521-23/92)

Secy. Ministry of Finance & Aur.

Petitioner (s)

Versus

A. Sakunthala & Ors.

Respondent (s)

(with I.A. Nos. 1-3 (appln. for c/d in filing SLP))

Date: 29.4.94

This/these petition (s) was/were called on for hearing today.

CORAM:

Hon'ble Mr. Justice
Hon'ble Mr. Justice
Hon'ble Mr. Justice

A. A. Ahmed
Yogeshwar Dayal

For the petitioner (s)

Ms. Indira Sawhney, Adv.
Ms. Anil Katiyar, Adv.

For the respondent (s)

UPON hearing counsel the Court made the following
ORDER

Delay condoned.

Special leave granted.

To be tagged along with Civil Appeal arising out
of Special leave petition No. 6290 of 1988.

Pending appeal there will be stay of the order of
Administrative Tribunal.

(S. Thapar)

PS to Registrar

Prem Lata Sharma
(Prem Lata Sharma)
Court Master

SK
26/5/94

1591-Panjam
26/5

025/4
3/4

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

24

Petition(s) for Special Leave to Appeal (Civil) No(s)/94 CC 25211

(from the judgment and order dated 7.10.1993 of the High Court of
CAT at Bangalore in O.A.No. 240 & 206-297/93)

Chief General Manager (Posts) & Ors.

Petitioner (s)

Versus

As. Bhuvaneswari & Ors.

Respondent (s)

(with I.A.No. 1-13 (appln. for c/delay in filing SLP))

Date: 9.5.1994

This/these petition (s) was/were called on for hearing today

CORAM:

Hon'ble Mr. Justice
Hon'ble Mr. Justice
Hon'ble Mr. Justice

A.M. Ahmadi
Yogeshwar Dayal

For the petitioner (s)

Ms. Indira Sawhney, Adv.
Ms. Anil Katiyar, Adv.

For the respondent (s)

UPON hearing counsel the Court made the following
ORDER

Delay condoned.

Special Leave granted.

Issue notice on the application for stay. Pending
notice there will be stay of the order of the Administrative
Tribunal. Tag on with Civil Appeal @ out of SLP(C) No. 6290/94

(S. Thapar)
PS to Registrar

(Prem Lata Sharma)
Court Master

1691-Pen/94
2/6

ITEM No.

COURT No.

SECTION

24

25

XII

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition (s) for Special Leave to Appeal (Civil) No. (s)/94 CC 26162

(From the judgment and order dated
in OA No. 1449/92)

24.9.93

CAT
of the High Court of Madras.

U.O.I. & Ors.

Petitioner (s)

Versus

M.L. Arunachalam

(With IA No.1 (Appln. for c/d in filing SLP)

Respondent (s)

Date: 1.8.94 This/these petition (s) was/were called on for hearing today.

CORAM:

Hon'ble Mr. Justice B.P. Jeevan Reddy
Hon'ble Mr. Justice S.P. Sen
Hon'ble Mr. Justice

For the petitioner (s) Mr. VC Mahajan, Sr. Adv.
Mrs. Anil Katiyar, adv.

For the respondent (s)

UPON hearing counsel the Court made the following
ORDER

Delay condoned.

Issue notice. Tag with C.A. 200/90 arising out of
SLP(C) No. 1171/90 entitled U.O.I. vs. P.C. Chatterjee.

Pending further orders there shall be stay of the
payment to the respondent herein by the petitioner in pursuant to
impugned
the order but no recovery shall be made of the amount already paid.

3194-Pen/94
26/10

(D.D. Jintal)
Court Master

6/8 8.12.94

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

26

Petition (s) for Special Leave to Appeal (Civil/CR No. (s)/94 CC 26565

(From the judgment and order dated 10.2.94 of the ~~Madras~~ Central Administrative Tribunal, Madras Bench in O.A.No.1092/93)

U.O.I. & Anr.

Versus

Petitioner (s)

M. Anthony

With L.A.No.1 (Appln(s) for c/delay in filing SLP)

Respondent (s)

Date 22.6.94

This/these petition (s) was/were called on for hearing today.

CORAM:

Hon'ble Mr. Justice
Hon'ble Mr. Justice
Hon'ble Mr. Justice

B.C. Agrawal
N.K. Mukherjee

For the petitioner (s) Mrs. Anil Katiyar, Mr. A. Wasim Quadri, Adv.

For the respondent (s)

UPON hearing counsel the Court made the following
ORDER

RKJ
24/10
Issue notice on the Special Leave Petition, application for condonation of delay and stay application.

Tag this S.L.P. with S.L.P(C) Nos. 6290/88, 12975-77/1564/89, 15777/89, 1758/90, 1235/90 and 5264/90.

Interim stay in the meanwhile.

Kusum

(S.E. Sharma)
Court Master

3195-Pew/94
26/10

02-1880
24/8

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

27

Petition (s) for Special Leave to Appeal (Civil/Cat No. (s) 10927/94

(From the judgment and order dated 21.2.94

of the ~~High Court~~ CAT,

Hyderabad in CA No.177/94)

UOI and ors.

Petitioner (s)

Versus

M. Sarada

Respondent (s)

Date: 25.7.94

This/these petition (s) was/were called on for hearing today.

CORAM:

Hon'ble Mr. Justice J.S. Verma
Hon'ble Mr. Justice K.S. Paripoornan
Hon'ble Mr. Justice

For the petitioner (s)

Ms. Kitty Kumarmangalak, Adv.
Ms. Anil Katiyer, Adv.

For the respondent (s)

UPON hearing counsel the Court made the following
ORDER

Issue notice and list this matter after the
decision in S.L.P.(C)No.6290/89 and other connected
matters. Meanwhile, there shall be stay of the
operation of the impugned judgment.

(Madhu Arora)
Court Master.

(F.S. Chauhan)
Assistant Registrar

RKJ
24/7/94

3193-Punjab
26/10

0-26/78
27

1995(1) Union of India & Ors. v. G. Vasudevan Pillay & Ors. 211

I.A. No. 8/95- Dismissed as withdrawn.

6. All other applications for interventions are dismissed.

SUPREME COURT OF INDIA
Civil Appeal Nos. 3543-46 of 1990

C.A. Nos.	WITH SLP Nos.	C.C. Nos.
3734, 6225/90, 2211-17, 4372, 4442/91, 2926/92, 350/93, 9580/94 9579/94, 9575/94, 9213/94 9576/94, 9578/94, 3083/91, 9569, 9622-23/94 9625, 9503, 9220/94, 9572/94 5145/90, 9557/94, 9221/94, 3547/90, 69/93 208, 142-44/90, 9750/94, 9589-90, 9661-21/94, 9321, 9568, 9604-10/94, 9591-9603, 9611-17/94, 1809-10/93, 9567/94, 9235-39/94, 3949/93, 4366-77/93, 4402, 4403/93, 9224/94, 4227/93, 9212/94, 9222/94, 4641, 5060/93, 9495/94, 7461/93, 9541-55/94, 9501/94, 9504, 9223, 9556/94, 9502, 9495/94, 9494, 9500, 9499/94, 9497, 2428, 2430/94, 4708-9, 9565/94, 9498, 4945, 9574/94, 9581, 9573, 9562/94, 9567, 9564/94,	15777/91 19992, 20074/91 10912/92 9511/93, 8657-58/92 2272, 2750/94 10520/93, 3157/90 17702/93, 2025/93 4308-9/92, 13176-79/92 8519, 12270/93, 14348-54/92, 14039-51, 14052-58/92, 15447/93, 14653-57/93, 18382/93, 20902/93, 22849, 1585-99/94, 2594/94, 2270/90, 21761/93, 1925/94 1791/94, 6076, 6872/94, 7511/94, 23538/94 11544/94, 2995/94, 12456/91 11580/91, 12454, 12455/91 18694, 11432/91	19390/93 16598/92 22844/93, 23392/94, 23737/94 24226/94, 25594

I.A. Nos. 16, 30-46 in SLP(C) No. 1585-95/94.
(With C.A. Nos. 3734/90, 6225/90, 2211-16/91, 2217/91, 4372/91, 4442/91, 2926/92,
350/93, SLP(C) Nos. 15777/89, 16185-93/91, 19992/91, 20074/91, 10912/92,
1794/93, C.C. No. 19390/93, C.A. No. 3083/91, SLP(C) Nos. 9511/93, 8657-58/92,
C.C. Nos. 16598/92, 20044/93, SLP(C) No. C.C. Nos. 23273/93, SLP(C) Nos.
2272/94, 2752/94, 10520/93, C.A. No. 145/90, SLP(C) Nos. 3157/90, 17702/93,
C.A. Nos. 3547/90, 69/93, 208/90, 142-44/90, SLP(C) Nos. 2025/93, 4308-09/92,
13176-79/92, 8519/93, 12270/93, 14348-54/92, 14039-51/92, 14052-58/92, C.A.
Nos. 1809/93, 1810/93, SLP(C) Nos. 15447/93, 14653-57/93, C.A. Nos. 3949/93,

4366/93, to 4377 of 1993. 4402/93, 4403/93, SLP(C) No.18382/93, C.A. No.4227/93, SLP(C) No.20902/93, C.C. No.22844/93, C.A. Nos.4641/93, 5060/93, C.C. No.23392/94, C.A. No.7461/93, SLP(C) Nos. 1585-99/94, 2594/94, 2270/94, 21761/93, 1925/94, 1791/94, C.C. No.23737/94, SLP(C) No.2861/94, C.C.No.24226/94, SLP(C) No.6076/94, 6872/94, 7511/94, CA Nos.2428/94, 2430/94, C.C.No.23538/94, SLP(C) Nos. 8455-56/94, 11393/94, C.A. No.4708-09/94, SLP(C) No. 11544/94, C.C. No.25594/94 SLP(C) No. 2995/94, C.A. No. 4945/94, SLP(C) Nos. 12456/91, 11580/91, 5493/90, 12972/91, 12454/91, 12455/91, 18694/91, 4281/92, 11432/91, 6297/91) I.A. Nos.16,30-46 in SLP(C) No.1585-95/94.

Decided on 08-12-1994

Union of India & Ors.

Appellants

Versus

G. Vasudevan Pillay & Ors. etc. etc.

Respondents

PRESENT

The Hon'ble Mr. Justice Kuldip Singh
The Hon'ble Mr. Justice B.L. Hansaria

(A) Dearness Relief on Pension--Pension--Re-employment--Denial of dearness relief on pension to the ex-servicemen on their re-employment in a civil post--Denial held justified.

(B) Dearness Relief on Pension--Pension--Re-employment--Denial of dearness relief on pension on employment of dependents of pensioner/ex-servicemen--Denial held justified.

(C) Constitution of India, Articles 14 and 16--Dearness Relief on pension--Re-employment--Reduction of pay equivalent to enhance pension of those ex-servicemen who were holding civil post on 1-1-1986 following their re-employment not permissible as such a decision in this regard is violative of Articles 14 and 16 of the constitution.

JUDGMENT

Hansaria, J.:- This conglomeration of appeals (some of which arise because of leave already granted and some come into existence because of leave being granted) require us to decide three questions:

- (1) Whether the decision of the Union of India not to allow Dearness Relief (D.R.) on pension to the ex-serviceman on their re-employment in a civil post is in accordance with law or not;
 - (2) whether denial of D.R. on family pension on employment of dependents like widows of the ex-servicemen is justified or not; and
 - (3) reduction of pay equivalent to enhanced pension of those ex-servicemen who were holding civil posts on 01-01-86, following their re-employment, is permissible or not.
2. We would examine these question seriatim.
- Disallowing of D.R. on pension on reemployment.*

3. To answer the above question involved in some of the appeals, the background leading to the aforesaid decision may be briefly noted. To start with there was no provision for payment of D.R. to the pensioners. Various representations were made to the Third Pay Commission seeking some recommendations in this regard for protecting the pension of the Government employees from erosion on account of possible increases in the cost of living in future. The Commission considered this matter and also the question regarding the manner

in which some relief could be provided to the future pensioners. After having noted the various suggestions which the Commission received in reply to its questionnaire, it recommended that all future pensioners, irrespective of the amount of pension drawn by them should be given relief @ 5% of their pension subject to a minimum of Rs. 5/- per mensem and maximum of Rs. 25/-. The Commission further recommended that the relief should be given as and when there is a 16 point rise in the 12 monthly average of the All India Working Class Consumer Price Index. This recommendation of the commission was accepted by the Central Government vide its Office Memorandum of even no. dated 6th April, 1974, making the relief available to those employees belonging to Class II, III and IV, who retired from Services prior to 01-01-73, as well as those who retired afterwards.

4. A decision was, however, taken subsequently not to pay D.R. to re-employed pensioners. This was made applicable to those ex-servicemen who had come to be re-employed in civil posts. Various writ Petitions and Original Applications were filed in different legal fora of the country, which came to be decided either by upholding the validity of the decision or by taking a contrary view. The parties who lost have preferred these appeals.

5. The learned Additional Solicitor general appearing for the Union of India submits that the decision merits our acceptance because of what has been stated in clause (ii) of Rule 55-A of Central Civil Services (Pension) Rules, 1972, as amended in 1991. We are, however, of the view that the decision cannot be so supported for the reason that the aforesaid Rules have application to the persons who were members of Central Civil Services. The ex-serviceman having apparently not been members of such Services, what has been provided in Rule 55-A(ii) cannot be invoked to deny D.R. on pension, family pension to the ex-serviceman on their re-employment.

6. Had the aforesaid been the only provision pressed into service to deny the D.R. to the ex-serviceman, we would have had no difficulty in striking down the decision inasmuch as the ex-servicemen having been allowed pension and D.R. on it in accordance with the conditions of service governing defence personnel, the provision contained in the aforesaid rule governing service condition of all together different class of servicemen could not have impinged on their right to get D.R. on the pension. Learned Additional Solicitor General, however, advances an alternative submission and the same is that there are even army instructions which, read with Office Memorandum of Ministry of Finance, will show that Dearness Relief of pension cannot be paid even to ex-servicemen on their re-employment. As this point could not be brought home to us well when the cases were heard, as relevant army instructions had not been brought on record, we, while reserving the judgment after close of hearing allowed filing of written submissions, which were done subsequently alongwith which large number of documents were filed to establish the point urged in the Court.

7. A perusal of the documents shows that the Office Memorandum dated 1-8-1975 of the Ministry of Finance, Department of Expenditure, which stated that a re-employed Central Government pensioner is not eligible to draw any relief during the period of re-employment, was made applicable by the Ministry of Defence vide letter of even number dated 28-10-1975 to Armed Forces pensioners also. These documents are pages 17 and 18 of the written submission, in which it has also been stated with formation of the Department of Pension and

Pensioners' Welfare under Ministry of Personnel, Public Grievances and Pension, all orders issued by the Ministry of Finance were made applicable to Armed Forces Pensioners as well. A reference has then been made to Office Memorandum dated 22-4-1987 on the subject of grant of Dearness Relief to pensioners on the recommendations of the Fourth Central Commission, sub-para-v of Annexure-1 to which states that Dearness Relief will be suspended when the Central Government pensioner is re-employed in the department/office of the Central Government.

8. The aforesaid shows that de hors what has been laid down in clause (ii) of Rule 55-A of the aforesaid Pension Rules, there are materials on records to show that any person, including ex-serviceman, would not be entitled to Dearness Relief on pension on his re-employment to any department/office of the Central Government.

9. It has, however, been strenuously contended by learned counsel appearing for the re-employed ex-servicemen that pension being a right (and not a bounty) available to a retired employee as held in Nakara, AIR 1983 SC 130, and DR being a part of pension, right to receive the same could not have been infringed merely because the incumbent sought re-employment to take care of the hardship which he might have otherwise faced after retirement. To sustain the submission, strength is sought to be derived from the decision of the Kerala High Court in Narayanan v. Union of India, 1994 (1) KLT 897, in which a view has been taken that the DR became an integral part of pension, because of which it could not have been discontinued on re-employment. As against this, the view of the Delhi High Court in Civil Writ No. 1699 of 1992 (disposed of on 23-2-1993) is that the DR is different from pension. For the disposal of the present cases it is not necessary to express any opinion on this aspect of the matter inasmuch as, according to us, even if Dearness Relief be an integral part of pension, we do not find any legal inhibition in disallowing the same in cases of those pensioners who get themselves re-employed after retirement. In our view this category of pensioners can rightfully be treated differently from those who do not get re-employed; and in the case of the re-employed pensioners it would be permissible in law to deny D.R. on pension inasmuch as the salary to be paid to them on re-employment takes care of erosion in the value of the money because of rise in prices, which lay at the back of grant of D.R., as they get Dearness Allowance on their pay which allowance is not available to those who do not get re-employed.

10. We, therefore, hold that the ex-servicemen were rightly debarred from Dearness Relief on their pensions after they got themselves re-employed to any civil post under the Government of India.

Denial of DR on family pension.

11. In some of the cases, we are concerned with the denial of Dearness Relief on family pension on employment of dependents like widows of the ex-servicemen. This decision has to be sustained in view of what has been stated above regarding denial of D.R. on pension on re-employment inasmuch as the official documents referred on that point also mention about denial of D.R. on family pension on employment. The rationale of this decision is getting of Dearness Allowance by the dependents on their pay, which is drawn following employment, because of which Dearness Relief on family pension can justly be denied, as has been done.

Reduction of enhanced pension from pay of those ex-servicemen who were

holding civil posts on 01-01-86 following their re-employment.

12. The aforesaid reduction, which is the subject matter of some appeals, is the fall out of Office Memorandum dated 11-9-87 according to which the pay of the ex-servicemen who were in employment in a civil post as on 01-01-86 following their re-employment, is required to be reduced by an amount equivalent to the enhanced pension made available pursuant to the report of the Fourth Pay Commission.

13. The ground of attack is that the aforesaid decision violates Articles 14 and 16 of the constitution inasmuch as there is no rational basis for classifying the employees for the aforesaid purpose on the basis of their being in employment on 01-01-86. This submission has been advanced because the reduction of the aforesaid nature has not been made in respect of those who have been in employment since 01-01-86. The additional affidavit filed on behalf of respondent no.1 in SLP(C) No. 17456/91 on 25-8-94 contains some names of those who were re-employed after 01-01-86 and are being paid both the revised pay and revised pension. This factual position has been admitted in the aforesaid written submission filed on behalf of the Union of India inasmuch as it has been stated in page 9 that the pensioners who are re-employed after 01-01-86 get the benefit of revised pay and also revised pension w.e.f. 01-01-86.

14. Reliance has been placed in support of aforesaid submission on a two Judge Bench decision of this Court, to which one of us (Kuldip Singh, J.) was a party. That decision was in the case of T.S. Thiruvengadam v. Secretary to Government of India, 1993(2) SCC 174.

The facts of that case are however, different inasmuch as there the Memorandum dated June 16, 1997 stating that revised pensionary benefits would be made available only to those Central Government servants who have been absorbed in public sector undertakings after that date was not found to be constitutional because the very object of bringing to the existence the revised terms and conditions by the Memorandum was to protect the pensionary benefits which the Central Government servants had earned before their absorption into the public sector undertakings. It was, therefore, held that restricting the applicability of the revised Memorandum only to those who are absorbed after coming into force of the same would not only defeat the very object and purpose of the Memorandum but would be contrary to fair play and justice also.

15. Despite the aforesaid decision being of no aid in the present cases, we find no logic and basis for classifying the re-employment persons on the basis of their being on employment on 01-01-86. Indeed, no justification has been canvassed before us. The decision which held the field before the impugned Memorandum in not taking note of pension while fixing pay of the ex-servicemen on re-employment, which was based on good reasons, had no good reason for its reversal, as enhanced pension was not confined to those who were in employment on 01-01-86. The impugned decision is, therefore, arbitrary and is hit by Articles 14 & 16 of the constitution. We, therefore, declare the same as void.

16. Our conclusions on the three questions noted in the opening paragraph are that denial of Dearness Relief on pension/family pension in cases of those ex-servicemen who got re-employment or whose dependents got employment is legal and just. The decision to reduce the enhanced pension from pay of those ex-servicemen only who were holding civil posts on 01-01-86 following their re-employment is, however, unconstitutional.

17. The appeals are disposed of accordingly. I.A. Nos. 16, 30-46 in appeals (arising out of S.L.P. (C) Nos. 1585-95/94) stand disposed of. No. order as to cost.
