

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH.

Original Application No.351 of 1988

Date of decision May 17,1989.

1. Prasanna Kumar Mohanty, aged about 40 years
S/o Satyabrata Mohanty, Telecom-District
Engineer, Bhubaneswar, Cuttack Road,
P.O.Bhubaneswar-6, District Puri.

..... Applicant

-Versus-

1. Union of India Represented by Directorate General
Tele-Communication, New Delhi.
2. General Manager Tele-com-Orissa, Circle,
Bhubaneswar-1.
3. Tele-com-District Engineer, Bhubaneswar
Cuttack Road, P.O.Jharpada,
Bhubaneswar-6, Dist.Puri.

... Respondents

For the Applicant. ... M/s.B.S.Misra-1, A.K.Nayak
R.Mohanty-2, B.B.Mohanty
& P.K.Sahu, Advocates

For the Respondents: Mr.A.B.Misra, Senior Standing
Counsel (Central)

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN
A N D

THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be
allowed to see the judgment ? Yes
 2. To be referred to the Reporters or not ? No
 3. Whether Their Lordships wish to see the fair
copy of the Judgment ? Yes
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: - J U D G M E N T : -

B.R.PATEL, VICE-CHAIRMAN

The applicant was serving in the Air Force as Sergeant under the Ministry of Defence. After completion of engagement he retired from the Air Force on 30th November, 1980 and was re-employed as Telecom Office Assistant under Telecom District Engineer, Bhubaneswar (Respondent no.3) with effect from 21.3.83 in the scale of Rs.260-Rs.480/-. He has prayed that on re-employment his pay should be fixed at Rs.384/- in the scale of Rs.260-Rs.480/- and Rs.7/- be given as Personal pay from the date of his appointment and he should be given revised pay from 1.1.86 as per the recommendation of the 4th Pay Commission. He has moved the Tribunal after his representation was rejected by the Departmental Authority.

2. The Respondents have maintained in their Counter affidavit that the applicant was given pay and allowances as admissible under the Rules from time to time from 21.3.83 in addition to the pension and pension equivalent of gratuity for his service in the Air Force. His pay has been fixed according to the Rules both before and after recommendation of the 4th Pay Commission and as such the application is devoid of merit and should be rejected.

3. We have heard Mr.B.S.Misra-1, learned Counsel for the applicant and Mr.A.B.Misra, learned Senior Standing Counsel (Central) and perused the relevant papers on record.



4. Mr.B.S.Misra-1 has drawn our attention to the copy of the statement of fixation of pay drawn up by the Accounts Officer O/O D.E.Telecum, Bhubaneswar as at Annexure-2 and the copy of letter No.2(1)/83/D(CIV)-1 dated 8.2.83 from Govt.of India Ministry of Defence, New Delhi at Annexure-1 and has argued that as has been calculated by the Accounts Officer, the applicant's pay should be fixed at Rs.391/- under CSR 526 to 528 and Govt.of India decision below this Rule.While doing so Mr.B.S.Misra-1 has maintained that the entire pension of the applicant which he earned because of his Military Service should be excluded.In other words he maintained that his pre-retirement pay should be protected.Admittedly, the applicant was getting Rs.391/- which included badge pay of Rs.15/-.According to him this should be done by allowing a few increments to the applicants in the scale of pay of Rs.260 to Rs.480 for the re-employment post.To substantiate his point,he drew our attention to the calculation made under 191 Fixation of pay of re-employment pensioners (Swamy's F.R.and S.R.Part-I) page-286 of Swamy's Hand Book-1986.This calculation does not protect the pre-retirement pay,it only allows 4 increments because the Military pensioner had rendered service in the Army in a post not lower than the re-employed Civil post for 4 complete years.There is no such information available in the present case.Mr.A.B.Misra,learned Senior Standing Counsel(Central)has drawn our attention to the copy of

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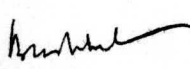
D.Telecom letter No.45/29/86 PAT dated 10.8.87 at Annexure-R-5.This letter deals with fixation of pay of re-employment Pensioners (Ex-Service man), Paragraphs 1 and 2 of this letter which are relevant for the case are quoted below:

"Sub: Fixation of pay of re-employment Pensioners (Ex-Service man)

Sir,

I am directed to refer to Director General of the Posts and Telegraphs letter no.1-3/83-PAP dated 2.9.83 forwarding a copy of the Ministry of Defence office Memorandum No.2 (1)/83/D(CIV) 1 dated 8.2.83 on the subject mentioned above and to say that the Department of Personnel and Training after consulting the Ministry of Finance have given the following decision about the mode of pay fixation of re-employed, pensioner (Ex-Service man) while implementing the above office memorandum. The same is as detailed below.

2. When a re-employed pensioner asks for re-fixation of pay under the 1983 orders, his pay has to be fixed at the minimum of the scale. The question of granting him advance increments will arise only if there is any hardship. Hardship is seen from the point whether minimum pay of re-employed post plus full pension plus pension equivalent of gratuity (whether ignorable or not) is less than the last pay drawn at the time of retirement. If there is no hardship no advance increments can be granted" (Under lining done for emphasis)



Admittedly, the applicant gets Rs.172/- towards pension and 19.68 as pension equivalent of gratuity. Initial pay of the re-employed Civil post is Rs.260/-. Thus he gets (Rs.260+172+19.68)Rs.451.68 which is more than Rs.391/- which was his pre-retirement pay inclusive of badge pay. So according to Mr. A.B. Misra, there being no hardship involved no further relief by way of advance increment is warranted. He has also drawn our attention to copy of office memorandum No.3/1/85 Esst.P(II) dated 31.7.86 from the Ministry of Personnel PIG & Pensions Department of Personnel and Training, New-Delhi) as at Annexure-6 and the calculation given for fixation of pay of Military pensioners in a re-employed post as given at page 272 of Swamy's Hand Book, 1989. Both the office Memorandum and the calculation however referred to cases after 1st July, 1986 and will not apply to the present case as the applicant was re-employed on 21.3.83. Mr. A.B. Misra, has also drawn our attention to Chapter 3 of Swamy's Compilation on re-employment of Pensioners (Civil and Ex-service men) which deal with regulation of pay during re-employment and is applicable in respect of re-employment prior to 1st July, 1986. Basic order 1(b) in this Chapter reads as follows:-

"In cases where it is felt that the fixation of initial pay of the 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 has rendered before retirement in a post not lower than that in which

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he is re-employed". As has been mentioned above there was no un-due hard-ship in the present case and according to Mr. A.B. Misra there was no decision for giving any advance increment. Chapter 3 of Swamy's Compilation deals with initial fixation of pay of both Civil and Military Pensioners re-employed in Civil Posts prior to 1st July, 1986 as has been mentioned in the note of Chapter 2. The illustration in Swamy's Hand Book of 1986 referred to by Mr. B.S. Misra-1 can be appreciated only in the context of hardship mentioned in Chapter-3 of Swamy's Compilation referred to above.

5. Admittedly, the applicant was a non-commissioned officer in the Air Force and his case is governed fully by letter of the Govt. of India Ministry of Defence dated 8.2.83, a copy of which is at Annexure-1. Mr. B.S. Misra-1 has therefore finally submitted that the pay of the applicant should be re-fixed in the scale of pay of the re-employed post keeping in view the aforesaid order of the Ministry of Defence.

6. Article 526 of the Civil Service Regulations in Chaudri's Compilation Corrected up to April, 1986 takes into account the earlier decision of the Govt. to ignore the entire pension for the purpose of fixation of pay in the re-employed post, if the pension does not exceed Rs. 50/- per month. It further provides that in other cases the first Rs. 50/- of pension should be ignored. The position has since changed by the issue of the



Govt.order dated 8.2.83 reference to which has been made in the preceeding paragraph.We have not come across any Govt.decision below this Article which justifies fixation of pay in the way it has been done at Annexure-2.Articles 527,528 and 528(a) have been cancelled.Article 528(b) refer to pension of the heir of Indian Military Officer or non-commissioned officer or Soldiers and is not applicable to the present case.In our opinion Article 526 of the Civil Service Regulations,therefore, does not sanction the calculation at Annexure-2.

7. Having heard the Counsel for the parties at length, we direct that the pay of the applicant should be fixed in the re-employed post of Telecom office Assistant keeping in view the post he held in the Air Force and the instructions of the Ministry of Defence dated 8.2.83 and after having done that his pay should be revised according to the recommendation of the 4th Pay Commission which has been accepted by the Central Government within four months from the date of receipt of a copy of the Judgment.

The application is accordingly disposed of leaving the parties to bear their own costs.

K.P.ACHARYA, MEMBER (JUDICIAL)

Central Administrative Tribunal
Cuttack Bench, Cuttack

May 17, 1989/Mohapatra



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VICE-CHAIRMAN

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17.5.89
MEMBER (JUDICIAL)