

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No.242 of 1990.

Date of decision: February 25, 1991.

Wg.Cdr. A.N.Rao(Retd) ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s.Ashok Mohanty,  
S.S.Sahu, Pravat Dash,  
Advocates.

For the respondents ... Mr.A.B.Mishra,  
Sr.Standing Counsel (Central)  
Mr.Tahali Dalai,  
Addl. Standing Counsel (Central)

C O R A M:

THE HONOURABLE MR. B.R.PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. N.SENGUPTA, MEMBER (JUDICIAL)

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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, This is a case of fixation of pay on re-employment of an ex-Defence Officer. Briefly stated, the facts are that the applicant retired from regular commissioned service in Indian Air Force as Wing Commander, Flying Branch (Navigation) on 30.4.1987. In response to an advertisement issued by the Union Public Service Commission for the post of Senior Administrative Officer, Grade I in the Defence Research & Development Organisation, Ministry of Defence, the applicant applied for the post of Senior Administrative

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Officer Grade I in Defence Research & Development Organisation under Ministry of Defence. Having been selected he was appointed as Senior Administrative Officer, Grade I in the Interim Test Range, Chandipur in the District of Balasore. The grievance of the applicant is that though vide order dated 16.9.1988 issued by the Ministry of Defence (Department of Defence Research & Development Organisation, (D.R.D.O.)) his pay was to be fixed 'according to rules' or <sup>at</sup> ~~was~~ Rs.3300/- per month whichever is higher, in the scale of pay of Rs.3000-100-3500-125-4500/-, The Director, Interim Test Range, Chandipur has been asked by the Accounts Officer (R&D) to fix the applicant's pay initially at Rs.2545/- per month in addition to his pension of Rs.2455/- per month granted to him on account of his military service. A copy of the letter of the Accounts Officer dated 28.8.1989 addressed to the Director, Interim Test Range, Chandipur is at Annexure-7. <sup>The applicant</sup> ~~He~~ has approached the Tribunal to quash the orders at Annexures-7 & 8 and to direct the respondents to fix his pay at Rs.4250/- per month taking into consideration his last pay drawn before his retirement. Annexure-8 is a copy of the letter dated 16.10.1989 of the Accounts Officer (R & D) addressed to the Director, I.T.R., Chandipur for recovery of the excess amount drawn due to wrong fixation of pay.

2. The respondents have maintained in their counter affidavit that the Accounts Officer has fixed the pay of the applicant according to rules and there is no case for allowing him pay of Rs.3300/- or more.

3. We have heard Mr. Prabhat Das, learned counsel for the applicant and Mr. A.B. Mishra, learned Senior Standing Counsel (Central) for the respondents and perused the papers. Mr. Das has vehemently contended that since the appointment order itself has indicated the amount of Rs. 3300/- per month is to be fixed as initial pay there is no escape from allowing the applicant this initial pay. He has further argued that the initial pay on reemployment should be fixed taking into account the last pay drawn and the last pay drawn according to him comes to Rs. 5,200/- (Pay of the rank (basic pay) .. Rs. 4,200/-, Rank pay.. Rs. 800/-, Flying pay.. Rs. 1,200/-). He has drawn our attention to paragraph 6 of Annexure-5 which is a letter issued by the Deputy Director, Interim Test Range, dated 10.2.1989. According to this letter the initial pay to be fixed for the applicant is Rs. 4,250/-, after deducting Rs. 1955/- from the last pay drawn i.e. Rs. 6200/-. Mr. A.B. Mishra has on the other hand drawn our attention to Office Memorandum No. 3/1/85-Estt. (P-II), dated 31st July, 1986, copy of which is at Annexure-9. He has drawn our attention to paragraph 4(a) of the said Office Memorandum which reads as follows:

" 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. ",

and has argued that the initial pay of the applicant cannot exceed the maximum of the pay scale prescribed for the post in which he has been reemployed. This paragraph further says;

" No protection of the scales of pay of the posts held by them prior to retirement shall be given. "

Mr. Mishra has therefore argued that the last pay drawn by the applicant is immaterial for the purpose of fixing his pay in the scale prescribed for the post of Senior Administrative Officer. He has also drawn our attention to paragraph 4(d)(ii) of the aforesaid Office memorandum which reads as follows:

" 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. "

Therefore, according to Mr. Misra, the letter of the Accounts Officer, copy of which is at Annexure-7 contains the proper calculation and according to this, the initial of the pay has to be fixed at Rs.2545/- and any amount drawn in excess of this will have to be recovered from the applicant. Having heard the counsel for the parties and perusing the rules, particularly the ones quoted above, we are of the view that the initial pay of the applicant should be fixed in the scale of Rs.3300-4500/- as has been indicated by the Accounts Officer, <sup>in</sup> ~~as per~~ Annexure-7.

~~Neither Annexure-7 nor Annexure-9 would override the orders issued by the President as at Annexure-91.~~

4. This application is accordingly disposed of.  
No costs.

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Member (Judicial)

Central Administrative Tribunal,  
Cuttack Bench, Cuttack.  
February 25, 1991/SARANGI



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Vice-Chairman

*B. Mishra*  
25.2.91