

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

Date of order : 28th August, 1998.

O.A.NO. 339/1997.

1. Raghbir Datt S/o Shri Hari Datt, aged about 50 years R/o 4E-300 Jai Narain Vyas Colony, Bikaner, at present employed on the post of Supdt. B/R Gd.II in the office of Garrison Engineer (P) No.1, Bikaner.
2. Major Singh S/o Late Chet Singh Aged about 54 years R/o P-44/4, MES Colony, Bikaner Cantt. at present employed on the post of Supdt. B/R Gd.II in the office of Garrison Engineer (P), No. 1, Bikaner.
3. Gurdev Singh S/o Shri Mal Singh aged about 51 years, R/o C/o Shri Major Singh P44/4 MES Colony, Bikaner Cantt. at present employed on the post of Supdt. E/M-II in the office of Garrison Engineer (P), No. 1, Bikaner.

..... Applicants.

VERSUS

1. Union of India through Secretary to Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Central Defence Account, Western Command, Chandigarh.
3. Garrison Engineer (P), No. 1, Bikaner.

..... Respondents

CORAM :

HONOURABLE MR. A.K.MISRA, JUDICIAL MEMBER

PRESENT :

Mr. J.K.Kaushik, counsel for the Applicant.

Mr. Vineet Mathur, counsel for the Respondents.

O R D E R

BY THE COURT :

The applicants have filed this O.A. with the prayer that the respondents be directed not to make any unauthorised

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deduction or recovery from their salaries and to refund the amount already recovered from their salaries alongwith interest at the market rate. As an interim relief, the applicants have prayed that respondents be restrained from making recovery/deduction from their salaries till finalisation of the O.A.

2. Notice of the O.A. was given to the respondents who have filed their reply to which no rejoinder was filed.

3. The respondents have submitted in their reply that the applicants have filed the O.A. without exhausting the departmental remedies by filing their representations to the competent authority for their consideration. The O.A. is premature and is liable to be dismissed on this ground alone. The respondents have also stated in their reply that the applicants are reemployed Ex.Servicemen and have drawn dearness relief alongwith their pension and at the same time have drawn D.A. alongwith their pay whereas as per the rules and the circulars the applicants cannot draw dearness relief and dearness pay at both the ends. They can at the most draw the D.A. from the employer where they have been re-employed. The applicants had not disclosed the fact to the employer on re-employment that they are drawing dearness relief alongwith pension, therefore, the applicants were paid dearness allowance by the employer. On the discovery of double drawal of dearness relief/allowance, the payment of dearness allowance has been stopped by the employer and recovery was initiated in respect of over drawal of dearness allowance in the shape of dearness relief. The recovery is perfectly legal. The O.A. is devoid of merits and is liable to be dismissed.

4. I have heard the learned counsel for the parties and gone through the pleadings.

5. I have considered the preliminary objection of the respondents. Initiation of recovery from the pay of the applicants and stoppage of payment of dearness ~~allowance~~ to the applicants is in my opinion a matter of urgency and departmental representation would not have provided the desired relief to the applicants promptly. In view of this, the present application of the applicants cannot be termed as pre-mature only on the ground that the applicants have not preferred to ~~sought~~ departmental redress on the point of recovery and short payment etc. In the matters of urgency where the employee is visited with immediate civil consequences the pre condition of departmental redressal can be done away with or ignored. This has been done in the instant case. The argument of the learned counsel for the respondents is rejected.

6. In the instant case the facts are almost admitted and the only point to be decided is at what point i.e. whether alongwith pension dearness relief would be payable to the applicants or on re-employment dearness allowance would be payable by the employer re-employing the applicants taking into consideration the amount of pension.

7. There is no dispute that all the three applicants are retired Ex-Servicemen on completion of their term. All the three applicants were re-employed with the respondent No.3 and all the three applicants have drawn dearness relief along with their pension and on discovery of this fact deductions/recovery of over payment of dearness relief/allowance is being effected by the respondent No.2.

8. The controversy in hand can be well settled by reproduction

of the relevant rules and Government of India decisions. Rule 55A of Central Civil Services (Pension) Rules reads as follows :-

"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 Government 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) x x x ."

Appendix 6 of the Rules relates to Grant of Dearness Relief to Pensioners and to those in Receipt of Family Pension. The Government of India has taken decisions from time to time in respect of regulation of payment of relief on pension during the period of re-employment etc. It would be useful to quote decisions taken by the Government of India and circulated for general information by their O.Ms from time to time. The Government of India, Ministry of Finance, O.M. 22(8)-E (V) (A)/75 dated 13.2.1976 printed at page No. 315 in Swamy's Pension Compilation, 13th Edition Reprint 1995, reads as follows :-

"(3). Payment of relief on pension/family pension shall be suspended during the period of employment/re-employment- The payment of relief in pension shall be suspended when a Central Government pensioner is -

- (i) re-employed in Department/Office of the Central Government or a State Government,
- (ii) xxx ."

9. The Government of India vide OM No. 23013/152/79/MF/CGA VI (PT) 1118 dated 26th March, 1994 have laid down procedure for suspending payment of relief in pension during the period of employment/re-employment which clearly lays down that the pensioner

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shall not get dearness relief from the pension disbursing authority if he has been re-employed in Government department or autonomous bodies. It also lays down in detail the various steps which would be taken by the pension disbursing authority <sup>and</sup> by the employer who has re-employed the pensioner. These steps included declaration by the pensioner in respect of his re-employment, seeking information by the pension disbursing authority from the pensioner and seeking information by the employer from the re-employed pensioner and communication of such information to the pension disbursing authority.

10. The Government of India vide its O.M. No. M-23013/152/8/90/MF-CGA (PEN)/792 dated 5th December, 1990 relates to furnishing of particulars of pensioners re-employed to pension disbursing authority which is required to be quoted in full for purposes of deciding the controversy in hand, so that the concerned authorities may regulate their action accordingly.

"(6)Furnishing of particulars of pension re-employed to Pension Disbursing Authority.-

(1) According to Decision(3)above,dearness relief is not payable with pension to Central Government pensioners who are re-employed in Central/State Government Departments/Offices,Public Undertakings, Autonomous Bodies, etc. In so far as Defence Pensioners are concerned these provisions have been extended to them vide Ministry of Defence, Letter No. F.4(3)/84/1872/C/D' Pension/Services, dated 1-8-1984.

(2) A pensioner is required to intimate the fact of his/her taking up/having taken up employment/re-employment to the Pension Disbursing Authority immediately on doing so. The pensioners are also required to submit to the Pension Disbursing Authority a declaration every year regarding his/her re-employment/employment for the purpose of regulating the payment of dearness relief.

(3) The ex-servicemen constitute a sizeable majority of re-employed pensioners as they retire early from Defence Services. It has been reported by the Controller-General of Defence Accounts that many of these military pensioners may not have revealed the fact of their re-employment to the Pension

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Disbursing Authority, and huge amounts would get admitted as dearness relief to which they are not otherwise entitled as per the above orders. Pension Disbursing Authorities are also not getting intimations regarding the re-employment of pensioners from the re-employing authorities as enjoined in the OM, dated 26.3.1984 (Decision (5) above). In case this information is received by the Pension Disbursing Authorities from the re-employing authorities, the irregular drawal of dearness relief by such re-employed pensioners can be detected and further payment stopped.

(4). xxx."

From the above Rules and OM's it would be clear that the Pension Disbursing Authority is required to seek declaration from the pensioner in respect of his re-employment so that payment of dearness relief can be regulated accordingly. Likewise, the employer on re-employing a pensioner is required to seek declaration in respect of non-drawal of dearness relief by the pensioner from the Pension Disbursing Authority. Such declarations are required to be taken from their pensioner from time to time in order to keep check in respect of total drawal of the dearness relief/dearness allowance but this is very certain that on re-employment dearness allowance is required to be paid to the re-employed person by the employer who has provided re-employment. Therefore, the employer cannot refuse to pay dearness allowance to reemployed person on the ground that such person has drawn dearness relief alongwith pension. The only course open to such employer is to intimate to the Pension Disbursing Authority that such person is drawing full dearness allowance from the employer where he has been reemployed and on receipt of such information, the Pension Disbursing Authority shall regulate the payment of dearness relief to the pensioner and in case over payment is discovered the same can be recovered by the Pension Disbursing Authority from the pension of such reemployed pensioner. In case the Pension Disbursing Authority is faced with some problem in respect of recovery then under intimation of such Pension Disbursing Authority such amount can be recovered from the reemployed pensioner for

being transmitted to the Pension Disbursing Authority. But it appears that in the instant case the concerned employer has by its own, started recovering the amount of over payment of dearness relief from the reemployed pensioner on discovering the same which according to me is not a right course, therefore, in my opinion, the impugned order Annex.A/1 dated 9th October, 1997 recovering the dearness allowance from the re-employed pensioner is contrary to the Government Circulars and is against the Law and deserves to be set aside. The Pension Disbursing Authority is, however, free to recover over-paid dearness relief from the pension of the reemployed pensioners as per rules.

11. The O.A. is, therefore, accepted. The Order Annex.A/1 dated 9th October, 1997 is, therefore, hereby quashed. The respondent No. 3 is directed not to recover from the pay of the applicants, the amount of over-payment of Dearness Relief and if any amount was recovered the same should be refunded to the applicants but in the circumstances without interest.

12. This is also made clear that Pension Disbursing Authority shall however be free to recover as per Rules from the pension of the applicants i.e. re-employed pensioners, any amount of Dearness Relief which has been wrongly paid to such persons. The parties are left to bear their own costs.

3/10/98  
(A.K.MISRA)  
Judicial Member

MEHTA

R/Camp Riffen  
V.L. Nichols, Adm. 8/31/58

R/Copy  
on 7/9/98

Part II and III destroyed  
in my presence on 26.3.06  
under the supervision of  
section officer (1) as per  
order dated 26.12.05

Section officer (Record)

re Greid  
Kofzocpter  
2/3/98