

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.456/2003

Wednesday, this the 27th day of October, 2004.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

A.Adhikaranathaiar,
Sr.Accountant(Retired),
O/o Accountant General(A&E),
Kerala, Thiruvananthapuram,
Residing at: Lavanya,
KRRR-276, Thrivikramangalam,
Thiruvananthapuram-695 012. - Applicant

By Advocate Ms S.Lathika Devi

Vs

1. Union of India represented by
Secretary,
Department of personnel,
Public Grievances & Pensions,
New Delhi.
2. Comptroller & Auditor General of India,
No.10, Bahadur Shah Safar Marg,
Indraprastha Road,
New Delhi.
3. The Accountant General(A&E),
Kerala, Thiruvananthapuram.
4. S.Dickson,
Assistant Accounts Officer(AAO),
Administration Group,
O/o the Accountant General(A&E),
Kerala, Thiruvananthapuram. - Respondents

By Advocate Mr C.Rajendran, SCGSC(for R.1 to 3)

The application having been heard on 16.9.2004, the Tribunal
on 27.10.2004 delivered the following:

O R D E R

HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

The applicant, a retired Senior Accountant of the
office of the Accountant General, Kerala, joined the office of

H. P. Das

the Accountant General, as a military pensioner on re-employment in the post of Auditor in the scale of Rs.330-560 on 23.11.1976 and retired on 31.5.2001. By A-1 order dated 28.3.2003 as modified by A-2 order dated 9.5.2003, the respondents are seeking to recover Rs.2,405/- being the amount of excess drawal of pay with effect from 1.1.1986 to 31.5.2001 from the applicant, failing which from dearness relief on his pension. The applicant, in this application is challenging A-1 and A-2 orders on the ground that pay once fixed and pension calculated on the basis of drawals made on the basis of that fixation cannot be varied later to the disadvantage of the pensioner and further that the A-1 and A-2 order are not in keeping with the rules of fixation applicable. He is also seeking payment of allowances on the Unignored Pension (UIP) of Rs.13/- which he was entitled to but which was not paid to him.

2. We have gone through extensive pleadings in the matter by the applicant's counsel and have perused all the documents produced by the respondents in support of their contention that the applicant was not entitled to the reliefs sought. In regard to the first point relating to the correctness of the calculation contained in A-1 and A-2 orders, we find that the applicant's pay was required to be fixed on 1.7.1984, by reducing the pay to such an extent that pay and unignored portion of pension taken together would not exceed Rs.560/-(maximum of the scale). So, pay was to be reckoned as Rs.517.80, and unignored pension was to be kept unchanged at Rs.42.20. When added (pay + UIP), it works out to Rs.560/-,

12.6.20

i.e. the maximum of the scale (Rs.330-560). But the respondents had committed an error in allowing the applicant Rs.530.80 as pay on 1.7.1984 by granting an increment on the pay of Rs.515.80 drawn by him on 1.7.1983 without realising that Rs.530.80 when added by Rs.42.20 of UIP would work out to Rs.573/- which would exceed the maximum of the scale by Rs.13/-. When the correct fixation was communicated by the office of the Comptroller & Auditor General by R-1 order dated 4.1.2003, the third respondent sought to rectify the error and nullify its resultant impact by issuing the A-1 and A-2 orders. We find nothing wrong in fixing the pay of the applicant at Rs.517.80 + UIP of Rs.42.20 on 1.7.1984 as the rule position is quite clear that pay and UIP should not exceed the maximum of the scale. This fixation as on 1.7.1984 being correct the resultant fixation would follow as per rules. Thus Rs.13/per month allowed in excess of entitlement as on 1.7.1984 and the impact it had on subsequent fixations leading to excess drawal over a period of time until retirement has been recalculated by A-1 order. The applicant's contention that his pay having been reduced once at the time of initial fixation on reemployment, no further limitation would apply, is not correct. The respondents have argued that the limitation with reference to last pay drawn in Army service at the time of initial fixation on reemployment is different from the limitation imposed by the maximum of the scale when that stage is reached later. The basic postulate is that a pensioner on reemployment would not get less than what he got as his last pay in the previous employment and would not get more than what he is entitled to by the maximum

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of the scale of reemployment. The applicant's claim for DA on Rs.13/- of UIP from 1.1.1986 is based on his calculation that his pay on 1.1.1986 is Rs.1650.80 and UIP is Rs.42.20. By refixation on 1.1.1986 his entitled pay would be Rs.1637.80 and UIP would remain Rs.42.20 and he would draw DA on Rs.1680. If this contention is accepted then his pay and UIP would work out to a total of Rs.1693/- whereas it has to be limited to Rs.1680/- by varying the pay, but leaving the UIP untouched. Hence, there, will be actually no reduction in UIP. He will get Rs.42.80 as UIP, while pay will be set at Rs.1637.80 instead of Rs.1650.80 as done earlier, incorrectly. Thus there would be no uncovered UIP for entitlement of DA.

3. In regard to the impact of such refixation on the pension of the applicant, the respondents have stated in their reply statement that as the pensionary benefits have been correctly calculated, there would be no change in the applicant's pension. They would only recover the excess payment of Rs.2405/- from the applicant's dearness relief on pension. But considering the fact that the overpayment originated from an incorrect fixation done by the respondents while fixing the applicant's pay on 1.7.1984 and he continued to draw the excess in good faith for so long, it would not be fair to enforce recovery from his pensionary dues now.

4. In the light of the discussion above, we dispose of the application holding that while the applicant has no arguable basis for questioning recovery of over payment on account of wrong fixation or for claiming DA on the uncovered

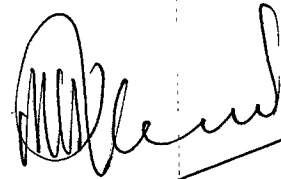
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Rs.13/- of the unignored pension, the very fact that he drew the excess amount in good faith until his retirement, should weigh in favour of a waiver of the recovery, and accordingly we direct the respondents not to recover Rs.2405/- from the dearness relief on his pension now, more than three years after retirement. No order as to costs.

Dated, the 27th October, 2004.

H.P.DAS

ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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