

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
ERNAKULAM

DATE OF DECISION ..

13TH MARCH, 1990

PRESENT

HON'BLE SHRI S.P. MUKERJI, VICE CHAIRMAN

AND

HON'BLE SHRI A.V. HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO. 515 OF 1989

P. Gopinathan Nair ..

Applicant

Vs.

1. Union of India represented by
Secretary to Government,
Ministry of Finance,
New Delhi

2. Collector of Central Excise,
Cochin-31 ..

Respondents

M/s. M.R. Rajendran Nair ..
and P.V. Asha

Counsel for the
applicant

Mr. C. Kochunni Nair, ACGSC ..

Counsel for the
respondents

O R D E R

(Hon'ble Shri S.P. Mukerji, Vice Chairman)

In this application dated 24.8.1989 filed under Section 19 of the Administrative Tribunals Act, the applicant, who was an ex-serviceman and had been reemployed under the Collector of Central Excise, Cochin and thereafter retired as Cipher Assistant, has prayed that the impugned orders dated 22.5.89 and 11.9.87 regarding refixation of his reemployment pay with effect from 1.1.86 on the basis of the revised military pension and recovery of overpayment from his gratuity should

be set aside. He has also prayed that the respondents be directed to rectify the mistakes in the initial fixation of his pay and in subsequent refixation with increments and to disburse his gratuity without any reduction along with 18 per cent rate of interest.

The applicant retired from the Army on 23.9.1973 after in more than 23 years of service. At the time of his retirement from the Army, he was drawing a sum of Rs.494/- as a Cipher Junior Commissioned Officer. On 25.3.75, he was reemployed in the Central Excise Department as Cipher Assistant in the scale of Rs.425-800. Since he was drawing a military pension of Rs.248/- and the pension equivalent of his gratuity was Rs.30/-, out of a total of Rs.278/-, Rs.50/- was ignored for the purpose of fixation of reemployment pay and his reemployment pay was fixed at Rs.266/- which together with his unignored military pension and pension equivalent of gratuity of Rs.228/- was equal to Rs.494/- which was the last pay drawn by him before retirement from the Army. With effect from 1.1.86, the pay scale of the post of Cipher Assistant which he was holding was revised to Rs.1400-2600. His grievance is that his pay in the revised scale should have been fixed at Rs.1,950/- and after reducing an amount of Rs.228/- of military pension and pension equivalent of gratuity, he should have been attached to the pay of paid Rs.1722/- as basic pay along with allowances $\frac{1}{R}$ Rs.1950/-

As against this, he was granted a basic pay of Rs.1,541/-. His further contention is that since he was not reemployed in the same Department from which he had retired from the Army, his reemployment pay in the Central Excise Department cannot be reduced by any amount of his military pension. He has contended that the OM dated 25.11.58 on the basis of which his reemployment pay has been reduced, applies only where reemployment is in the same Department from where one retires. According to him even assuming that he is governed by the OM of 25.11.58, he is entitled to get Rs.125/- of his military pension ignored and on the basis of the Memorandum dated 8.2.83 his entire military pension had to be ignored as in the Army he was an officer below the rank of Commissioned Officers. He has also challenged the order dated 11.9.87 at Annexure IV by which pay of pensioners are to be reduced by the revised pension effective from 1.1.86. He is aggrieved by the application of this order dated 11.9.87 by which the overpayment has been calculated and directed to be recovered by the order dated 22.5.89 at Annexure I. He has also challenged the recovery being made from his gratuity, which according to him is unattachable under the Code of Civil Procedure. He has further argued that recovery and adjustment of the pension and gratuity cannot be made by the respondents without any notice to him.

He has also referred to the Supreme Court's ruling in Nakara's case to urge that on the basis of the O.M dated 8.2.83, the entire pension of all reemployed pensioners has to be ignored and any classification based on the date of reemployment for purpose of fixation of reemployment pay would be discriminatory and violative of Articles 14 and 16 of the Constitution.

2. The respondents have stated that the reemployment pay of the applicant was determined by applying the OM dated 25.11.1958. By the subsequent OM dated 16.1.64, Rs.50/- of the military pension was to be ignored and this limit was enhanced to Rs.125/- in accordance with the OM of 19.7.78.

They have further stated that in accordance with Ministry of Finance OM dated 8.2.1983, those ex-servicemen who are re-employed after 25.1.83, the entire military pension would be ignored. Thus, ex-servicemen who were reemployed before the crucial date, their total military pension will be ignored if they opt to come under the new scheme and in such cases they will be treated as if they have been reemployed for the first time from 25.1.83. Since from 1.1.86 both the pay scales as well as scales of pension were revised, the Government of India issued the impugned order dated 9.11.87 (Annexure IV) directing that in case of pensioners who were in reemployment on 1.1.86 and whose pay and pension were revised with effect from 1.1.86, their reemployment pay will be refixed with effect from 1.1.86 by taking into account their revised pension. The

The overpayments already made were directed to be recovered/adjusted. They have argued that the benefit of revised pay will go with the deduction of revised pension also with effect from 1.1.86. They have argued that his reemployment pay after reducing the military pension was fixed at Rs.266/- by taking his notional pay in the scale of Rs.425-800 as Rs.425/-. On 31.12.85, his basic pay in that scale was Rs.580/- and after adjusting the pension, he was paid Rs.421/-. Corresponding to Rs.580/-, his basic pay in the revised scale of 1.1.86 was fixed at Rs.1700/- and after adjusting unrevised pension, his net pay was fixed at Rs.1541/-. His pension was revised with effect from 1.1.86 ^{from Rs. 248/-} to Rs.802/- ₆ and the difference being Rs.554/-per month, the overpayment in his case came to Rs.23,268/- till his superannuation on 30.6.89. This amount was directed to be adjusted against his Death-cum-Retirement Gratuity. They have argued that in accordance with Rule 71(1) of Central Civil Service Pension Rules, the overpayment can be adjusted against the DCRG.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We are satisfied that the OM dated 25.11.58 regulating the pay of re-employed pensioners applies to reemployment under Government and is not limited to reemployment under the same Department from which the reemployed pensioner had retired. The applicant has not produced any evidence to show that the OM is confined

to reemployment under the same Department. The applicant's contention that his initial pay on reemployment should be at Rs.485/- and Rs.425/- not the minimum of the payscale below the preretirement pay of Rs. Rs.494- has been disowned by him in para 7 of the application wherein he has conceded that his basic pay on his appointment as Cipher Assistant should have been fixed at Rs.425/-. The respondents, however, have not met the contention of the applicant in para 8 of the application that by virtue of OM dated 19.7.78, the ignorable part of the pension should have been increased from Rs.50/- to Rs.125/- nor have they rebutted his contention in para 9 of the application that on the basis of the Memorandum dated 8.2.83 pension of officers below Commissioned Officers is to be fully ignored. In para 2 of the Counter Affidavit, the respondents have conceded that the OM's of 19.7.78 and of 8.2.83 do increase the limits of ignorable pension to Rs.125/- and the entire pension with effect from 19.7.78 and 25.1.83 respectively. The point is how far the applicant is entitled to get the benefits of these concessions. The applicant admittedly retired as a Junior Commissioned Officer. The applicant's pension on reemployment admittedly was ignored to the extent of Rs.50/- by the OM dated 16.1.64 and accordingly he would be entitled to the enhanced limit of Rs.125/- and getting this much of his military pension ignored by virtue of the OM dated 19.7.78. Since as a Junior Commissioned Officer he was below the

rank of a Commissioned Officer, he would be entitled to the benefit of getting his total pension ignored in accordance with the OM of 8.2.83 issued by the Ministry of Defence. The relevant extracts from this OM read as follows:

"The President is pleased to decide that in the case of those ex-servicemen retiring before attaining the age of 55, the pension as indicated below may be ignored in fixing their pay on reemployment:-

- (i) In the case of service Officers the first Rs.250/- of pension
- (ii) In the case of personnel below Commissioned Officer rank, the entire pension,

Note: The pension for the purpose of these orders includes pension equivalent of , gratuity and other forms of retirement benefits"

4. In the case of ex-servicemen who had been reemployed before 25.1.1983, from which date the aforesaid order takes effect, the provision made in the aforesaid OM is as follows.

"In the case as the persons who are already on reemployment the pay may be refixed on the basis of these orders with immediate effect provided they opt to come under these order. If they opt, their terms would be determined afresh as if they have been reemployed for the first time from the date of these orders. The option should be exercised in writing within the period of six months from the date of these orders. The option once exercised shall be final."

5. The question whether the concession of getting the entire pension ignored is applicable to those who had been reemployed before 25.1.83, even if they have not opted for the OM and whether the concession should be made available as if they were reemployed for the first time with effect from 25.1.1983 by ignoring their

previous period of reemployment when they had earned increments was considered by this Bench in OAK 507 of 1988. In the judgment dated 18.12.89 (in that case) to which both of us were a party, it was held that no discrimination can be made between reemployed ex-servicemen who were reemployed before the issue of the OM and after the issue of the OM. Relying upon the earlier judgment of this Tribunal in TAK 404 of 1987 which was based on the analogy and the ruling of the Supreme Court in Nakara's case, the following observations were made:

"Since the entire military pension of the applicant has to be ignored after 24th October, 1983, the increased military pension of Rs.375/- with effect from 1.1.86 has to be ignored for the purposes of pay fixation with effect from 1.1.86. The respondents' contention that the applicant cannot be given the benefit of ignoring the entire amount of pension for purposes of pay fixation as provided for in the OM of 8.2.83 as he did not opt for the same, cannot be accepted. The OM of 8.2.83 indicated that if the reemployed pensioners opt for this OM and they had been in reemployment from a prior date, they will lose the benefit of their previous reemployment for the purposes of increments etc. This Tribunal in TAK 404/87 and other cases had an occasion to deal with the question of application of the OM of 1983 for such ex-servicemen who were in reemployment from a prior date. In the judgment dated 31.10.89 to which one of us was a party it was felt that such ex-servicemen should not be denied the benefit of the OM from the date of their reemployment, but they should not be given the arrears of pay. Relying on the judgment of the Supreme Court in Nakara's case the Tribunal in TAK 404/87 observed as follows:

"9. The Supreme Court in Nakara's case compared the position of pensioners vis-a-vis the Liberalised Pension Scheme with the position of serving Government servants vis-a-vis the scheme of revised pay

scales. The following further extracts from the same judgment will be relevant:-

" Revised pay scales are introduced from a certain date. All existing employees are brought on to the revised scales by adopting a theory of fitments and increments for past service. In other words, benefit of revised scale is not limited to those who enter service subsequent to the date fixed for introducing revised scales but the benefit is extended to all those in service prior to that date. This is just and fair. Now if pension as we view it, is some kind of retirement wages for past service, revised retirement benefits being available to future retirees only. Therefore, there is no substance in the contention that the Court by its approach would be making the scheme retroactive, because it is implicit in theory of wages" (Emphasis added).

② / can it be denied to those who retired earlier,

"From the above it is clear that the Supreme Court were keen that no discrimination should be made between the pensioners based on the date of retirement. ~~It was also felt that notional fixation of pension on the date of retirement.~~ It was also felt that notional fixation of pension on the date of retirement even though it may be anterior to the promulgation of Liberalised Pension Scheme without giving them arrears for the past period (between the date of retirement and date of promulgation of scheme) will not be giving retrospective effect to the Scheme and will not violate its prospective nature. In the case of revision of pay scale from a particular date even old entrants are allowed revision of pay scale from a particular date and the benefit of increments which they had earned during the past period is also duly accounted for. It, therefore, seems to us in-4quitable that the reemployed pensioners who had been reemployed prior to February, 1983 should be forced to lose the benefit of their past service by exercising option on a "take it or leave it basis".

"10. We feel that for those ex-servicemen who had been reemployed prior to the issue of the O.M their reemployment pay should be determined notionally on the date of their reemployment by applying the enhanced limit of ignorable pension and their pay as on 8th February 1983 reckoned by giving them the benefit of earning increments over and above the notional pay so fixed. Their actual pay will be revised accordingly with effect from the date of issue of the relevant O.M without any arrears based on notional pay fixation for the past period."

" It is directed that those petitioners who had not opted for the O.M should be given an opportunity to opt and if they do so, their actual pay from the date of issue of the O.M should be determined on the basis of the O.M. The applicant before us indicated that he did not

opt for the O.M of 1983 as the difference between the ignorable part of the military pension of Rs.50/- and the total military pension of Rs.66/- was only Rs.16/- and he did not bother much about the same. When the total military pension was increased to Rs.375/- from 1.1.86 the difference between Rs.50/- and the total pension which was to be deducted from his reemployment salary became so pronounced that he invoked the O.M of 1983 for ignoring the total pension. Since the option itself was not found by the Tribunal to be equitable as it was conditional upon the applicant losing the benefit of his entire previous service, we do not see much justification in the respondents' taking the technical plea of the applicant not exercising the option in 1983, for denying him the benefit of total exemption of enhanced pension for purposes of pay fixation. In any case atleast from 1.1.1986 if not earlier, the applicant should be given exemption of the total pension of Rs.375/- of military pension for pay fixation."

6. Thus, in the present case, we see no reason why the applicant should not get his total revised pension ignored if as an ex-Junior Commissioned Officer his total pension has to be ignored on his reemployment. if he had been reemployed after 25.1.83. In the facts and circumstances, we allow this application to the extent and on the lines indicated below.

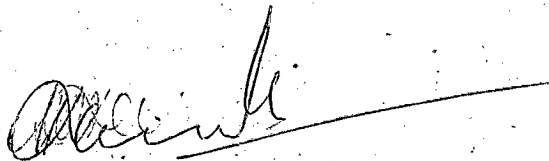
(a) The applicant's military pension as also the pension equivalent of gratuity should be ignored to the extent of Rs.50/- upto 19th July, 1978 whereafter to the extent of Rs.125/- till 24th October, 1983, after which date, his entire military pension and pension equivalent of gratuity should be ignored for the purpose of fixing his basic pay on respective

dates. His total pension should be continued to be ignored even after 1.1.86 and his revised pay determined accordingly. While applying the aforesaid OMs his previous reemployment service in the Central Excise Department should also be taken into account for purposes of increments for fixing his pay on the dates of respective OMs as if he had opted for these OMs without loss of increments.

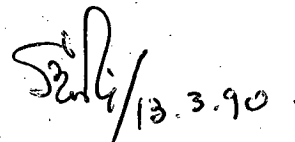
(b) The excess amount repayable to the applicant on the above basis, including the recovery if any made from the Death-cum-Retirement Gratuity should be refunded to the applicant within a period of three months from the date of communication of this order.

(c) Since there has not been any deliberate delay or malafide deduction from the DCRG, no interest on the amount to be refunded need be paid. This will be, however, without prejudice to the claim of the applicant regarding interest on the delayed payment if any of the undisputed amount of pension and other retiral benefits.

7. There will be no order as to costs.



(A.V.HARIDASAN)
JUDICIAL MEMBER



(S.P.MUKERJI)
VICE CHAIRMAN

13.3.90

NRM

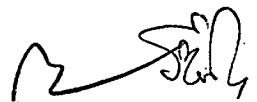
25-7-90

CCP-33/90 in OA-515/89

SPM & AVH

Mr MR Rajendran Nair for applicant
Mr C Kochunni Nair, ACGSC for respondents

At the request of the learned counsel for the respondents, who wishes to file a statement, list for further direction on 9.8.90.



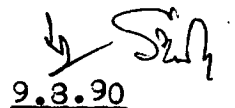
25-7-90

9.8.90

SPM & ND

Mr. MR Rajendran Nair
Mr. C. Kochunni Nair, ASC.

At the request of the learned counsel for the respondents, list for further directions on the CCP on 20.8.90.

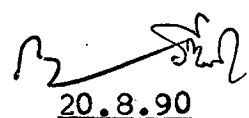

9.8.90

20.8.90

SPM & AVH

Miss. Rajeswari-for applicant.
Mr. Kochunni Nair-for respondents.

At the request of the learned counsel for the respondents, list for further directions on CCP on 31.8.90.


20.8.90

Reply filed on
29.8.90

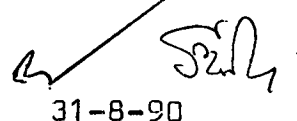
31-8-90

SPM & AVH

Mr MR Rajendran Nair for petitioner
Mr C Kochunni Nair for respondents

The learned counsel for the respondents who has submitted a reply to the CCP has states^{at} the Bar that an SLP has been filed before Supreme Court which has not yet been admitted and the same has been listed for admission and stay order on 10.9.90.

Accordingly, list for further directions on 17.9.90.


31-8-90

17.9.90

(22)

-2-

CCP 33/90

NVK & ND

Mr MR Rajendran Nair for the applicant.

Mr C Kochunni Nair, ASC for the respondents.

We have heard the parties. In view of the submissions made, we direct that the respondents should comply with the order within a period of two weeks from to-day failing which interest will be directed to be paid without prejudice to the other action, unless the implementation of the order is stayed by the Supreme Court in the meanwhile.

Call on 3.10.90



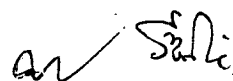
17.9.90

3-10-90

SPM & AVH

Mr MR Rajendran Nair for petitioner
Mr NN Sugunapalan for respondents(proxy)

At the request on behalf of the learned counsel for the respondents, list for further direction on 11.10.90. We make it clear that we shall be constrained to take action under Contempt of Courts Act, in case the final order of this Tribunal dated 13.3.1990 read with the order dated 17.9.1990 are not complied with.



3-10-90

11-10-90

SPM & AVH

Mr MR Rajendran Nair for petitioner
Mr C Kochunni Nair, ACGSC for respondents

O_R_D_E_R

The learned counsel for the respondents has produced a document which indicates that a demand draft for Rs.13,775/- has been sent to the original applicant. The learned counsel for the respondents confirms this fact.

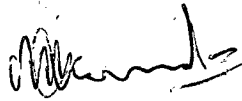
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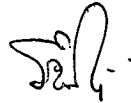
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nicated to the parties.
by
adv

On the basis of this averment, the learned counsel for the applicant does not wish to press the CCP any further.

The CCP is therefore closed and ^{we} discharge the notice.



(AV HARIDASAN)
JUDICIAL MEMBER



(SP MUKERJI)
VICE CHAIRMAN

11-10-1990

9-1-91

CCP-3/91 in OA-515/89

SPM & AVH

Mr MR Rajendran Nair for petitioner
Mr Shefik for respondents(proxy)

The learned counsel for the original respondents seeks 2 weeks time to reply to the CCP. He may do so with a copy to the petitioner.

List for further direction on 24.1.91.

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9-1-91

SPM & ND

Mr. M R Rajendran Nair for the petitioner
Mr. C. Kochunni Nair for the respondents

Heard learned counsel for both parties on the CCP in which the petitioner has indicated that the payment of Rs. 13,775/- paid to him and referred^{to} in the order of the Tribunal dated 11.10.90 by which CCP 33/90 was allowed to be withdrawn, was^{later found to be} only partially implementation of the judgment. His plea is that this amount does not include the arrears of pay due to him on the basis of the revised pay as directed in the judgment of the Tribunal. The learned counsel further argued that the mere fact that he had indicated his willingness to withdraw the earlier CCP on 11.10.90 on receipt of the demand draft cannot absolve the respondents from the compliance with the judgment of the Tribunal in full. The learned counsel for the respondents seeks some more time to reply on the CCP No. 3/91. List for further direction on 11.2.91.

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24.1.91

11.2.91
(20)

NVK & ND

Mr MR Rajendran Nair for applicant.
Mr C Kochunni Nair, ACGSC for respondents.

It is seen from the records of the original application No. OA 515/89 that in a civil appeal No.15/91 an order has been passed by the Supreme Court on 7.1.91 staying further payments to the respondents therein in pursuance of the judgment and order dated 13.3.90 of this Bench.

In view of this, the CCP is dismissed.

11.2.91

For 11-2-91
Tribunal's judgment dated 13/3/90 in OA-515/89 has been stayed by the Supreme Court vide its order dated 7/1/91 in Civil Appeal No. 15/91 at Para A in main file of JA 515/89