

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Thursday, the thirty first day of December, One
Thousand Nine Hundred and Eighty Seven.

O.A. No.90/87

A. AD

PRESENT

Hon'ble Justice Shri G. Ramanujam, Vice Chairman

A. Adhikara Nathaiar .. Applicant
and

1. Secretary to Govt. of India,
Ministry of Finance,
New Delhi.

2. Comptroller and Auditor
General of India,
Bahadur Shah Zafar Marg,
New Delhi-110 002

3. Accountant General (A&E)
Kerala,
Trivandrum .. Respondents

Mr. M. Rajagopalan .. Counsel for Applicant

Mr. P.V. Madhavan Nambiar .. Counsel for Respondent

Order of the Tribunal pronounced
by Hon'ble Justice Shri G. Ramanujam, Vice Chairman

The applicant herein is an Ex-serviceman.

On his passing the selection test for appointment
to the post of Auditors in the Indian Audit and
Accounts Department he was appointed as Auditor
on 23.11.1976 in the Office of the Accountant
General, Kerala at Trivandrum in the Scale of pay
of Rs.330-560. His initial pay in the post of
Auditor as on 23.11.76 was fixed at Rs.452/- by
granting 11 advance increments taking into account

the 11 completed years of military service.

Thereafter he earned increments from time

to time starting from the stage of Rs.452/-.

The fixation of his pay at the stage of Rs.452/-

in the scale of Rs.330-560 was under the formula

contained in the Government of India, Ministry

of Finance O.M. No.8(34)Estt/III/57 dt. 25.11.58

and FR 27. By a communication dated 19.5.86, the

Accountant General, Kerala refixed his pay at

Rs.340/- with effect from 23.11.76 with Date of

Next Increment on 1.11.1977 and at Rs.416/- with

effect from 19.7.1978 with Date of Next Increment

on 1.7.1979 in the scale of pay of Rs.330-560

in terms of GOI, Ministry of Finance O.M. No.

8(34)/Estt/III/57 dated 25.11.1958 read with

O.M. No.F5(14)/E/III(B)/79 dated 19.7.1978.

Consequent on the said refixation of pay a sum

of Rs.1932.90 was found to be the excess payment

till 30.4.1986 and the said amount was directed

to be recovered from the applicant's salary

in instalments of Rs.50 per month from the salary

due for the month of May, 1986. The said order

dated 19.5.86 re-fixing his pay and directing recovery of the excess salary paid has been challenged in this application filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 on various grounds. / The main grounds raised in this application are:

1. The refixation of pay in the circumstances of this case is arbitrary and clearly violative of Article 14 of the Constitution.
2. Once a fixation was done by the Competent Authority in exercise of the discretion vested in it under FR 27 the same authority was not competent under the law to reduce the initial pay originally fixed even when such pay was based on some data which subsequently turned to be incorrect even as per the Ministry of Law (Department of Legal Affairs) letter no. 22057/62 Adv.(P) dt. 8.8.62. Having fixed his pay by giving 11 advance increments in the Scale of Pay 330-560 as envisaged by the Govt. of India

O.M. dated 25.11.58 taking into account the undue hardship it is not open to the respondents to withdraw the benefits already given.

3. His pay having been fixed at a definite stage of Rs.452 and having allowed him to earn increments starting from that stage it is unjust and inequitable to re-fix his pay resorting to the next below stage instead of the next higher stage.

4. The benefit of the fixation of pay giving 11 advance increments taking into account the completed years of service in the military and taking into ^{account} the hardship it is not now open to the respondents and snatch away the benefit without justification.

The application is being resisted by the

respondents by filing the following counter affidavit:

— Consequent on his reemployment as Auditor his pay was fixed in the scale of Rs.330-560 at

Rs.347.80 from 23.11.76 and at Rs.422.80 from 19.7.78 based on the Government of India OM dated 25.11.58 and 19.7.78. Subsequently, fixation of his pay was found to be erroneous as the pay fixed was not at a definite stage in the reemployed scale. Therefore, his pay was fixed in the time scale of pay of Rs.330-560 at Rs.340 and Rs.416 with effect from 23.11.76 and 19.7.78 respectively to rectify the ^{Said} mistake. Since the applicant has been overpaid to the extent of Rs.1932.90 the same was directed to be recovered from his salary in instalments of Rs.50 each commencing from the salary for the month of May, 1986 under the orders of the Accountant General dated 19.5.86. The applicant is a military pensioner and reemployed as an Auditor in the Office of the Accountant General, Kerala from 23.11.76. As per the Government of India OM No.8 dated 25.11.58 and O.M. 5 dated 19.7.78, the pay of the applicant was ^{notionally} fixed in the time scale of pay of Rs.330-10-380-EB-12-500-EB-560 at ~~Rs.347.80~~ B 1452

~~from 23.11.76 and at Rs.422.80 from 19.7.78. In~~
~~of refixation~~
~~the process/~~of his pay, his pay was first notionally
~~arrived at Rs.452/-~~ by giving 11 advance increments
in terms of OM dated 25.11.58, By grant of
annual increment from that stage his notional
pay reached the maximum scale of pay of Rs.560/-
with effect from 1.7.1984. This notional pay has
been arrived at for the purpose of DA alone. But
~~his actual pay on that date was Rs.530.80 only.~~
Since the reemployment pay fixed at Rs.347.80
~~from 23.11.76 and at Rs.422.80 from 19.7.78~~
was found to be erroneous, his pay was refixed,
at Rs.340 from 23.11.76 and Rs.416/- with effect
from 19.7.78 by way of rectification of the
mistake. Thus according to the respondents
since a mistake has crept in while fixing the
pay of the applicant, the same pay was refixed.

whether
Thus the question is ^{whether} the refixation of
the applicant's pay at Rs.340 and Rs.416 from
23.11.76 and 19.7.78 respectively by way of
rectification of the alleged mistake is correct

and could be ^{validly}sustained. O.M. No.8 dated 25.11.58

lays down the general policy and guidelines

for fixation of pay of reemployed pensioners.

As per the said policy ,

1. the Initial pay on re-employment

~~plus gross pension equivalent~~
should be fixed at the minimum stage

of the scale of pay prescribed for the
post in which the individual is employed;

2. in cases where it is felt that the

fixation of initial pay of reemployed

officer at the minimum of the prescribed

pay scale will cause undue hardship the

pay may be fixed at higher stage by

allowing one increment for each year

of service rendered before retirement

in a post not lower than in which he is

reemployed.

3. In addition a reemployed official may

be permitted to draw separately any

pension sanctioned to him and to retain

any other form of retirement benefit

for which he is eligible provided the

total amount of initial pay as fixed

under Clause (1) plus the gross amount of pension and or the pension equivalent of the other forms of retirement benefit does not exceed the pay he drew before his retirement or Rs.3000/- whichever is less.

In this case the applicant's initial pay on reemployment was fixed at the minimum stage of the scale of pay at Rs.330-560 ie. at Rs.330/- But however, having regard to the fact that the applicant was in receipt of ~~may~~ higher pay while he was in military service and the fixation of the initial pay at the minimum of the prescribed pay scale had caused him undue hardship, the applicant's pay was fixed at higher stage by allowing one increment for each year of service for the 11 years of service he has put in before retirement at Rs.452/- However, having regard to the fact that the pension and ~~the~~ emoluments received by him as a pensioner and the pay fixed on reemployment exceeded the pay which he was receiving before retirement, The actual pay payable

to the applicant was worked out by the Accountant General, Kerala in his letter No.OE/B/X/1-2/M.Fix.

dated 15.6.78, which is ~~extracted below~~ *is under*

Sectional Order No.71

"The Pay of Sri. Adhikaranathaiar, an ex-serviceman re-employed as Auditor, is fixed at Rs.347-80 with effect from 23.11.1976 in the scale of pay of Rs.330-560 in terms of Government of India, Ministry of Finance O.M. No.8(34)/Estt/III/57 dt. 25.11.58 read with CAG's circular letter No.1227-NGE I/21-74 dt. 7.5.75.

Initial Pay on re-employment	Rs.465/-
	(Pre-retirement pay)
Unignored portion of pension	Rs.117.20
Actual pay	<u>Rs.347.80</u>

(Vide CAG's sanction communicated in letter No. 1177/NGI/31-78 dt. 29.5.78)"

Subsequently on the ground that Rs.347.80 does not fit in any stage in the scale of pay of Rs.330-560, the Accountant General, Kerala had by a memo dated 19.5.86 has refixed his pay as follows:

"Shri A. Adhikara Nathaiar, Accountant is informed that his pay on re-employment is refixed at Rs. Rs.340/- with effect from 23.11.76 with DNI on 1.11.1977 and at Rs.416/- with effect from 19.7.1978 with DNI on 1.7.1979 in the scale of pay of Rs.330-560 in terms of GOI, Ministry of Finance O.M. No.8(34)/Estt/III/57 dated 25.11.1958 read with O.M. No. F 5(14)/E/III(B)/79 dated 19.7.1978.

Consequent on the refixation of pay a sum of Rs.1932.90 has been paid to him in excess till 30.4.1986. The amount will be recovered in instalments of Rs.50/- p.m. commencing from the salary for 5/86."

According to the applicant, ~~the only~~ *alone* the fixation of his initial pay should be specific ~~on~~ *at* or particular stage in the scale of Rs.330-560. But the actual pay worked out after unignored portion *adjoining the*

of the pension need not be in any particular stage.

The question is whether the calculation adopted by the respondents is correct. Taking into account the Last Pay Drawn before retirement which was Rs.465/- the applicant's actual salary was correctly fixed at Rs.347.80 as indicated below:-

Rs.452 is the initial fixation of pay giving 11 increments for each year of service before retirement adding unignored portion of the pension of Rs.117.20, it comes to Rs.569.20, deducting the last pay drawn Rs.465/- therefrom it works out to Rs.104.20. When deducting this amount of Rs.104.20 from the initial fixation of pay of Rs.452.00 the actual salary works out to Rs.347.80 as was ^{original} correctly fixed by the consequential order dated 15.6.1978. This amount of Rs.347.80 fixed on 15.6.78 was altered as Rs.340/- on the ground that Rs.347.80 does not fall under any stage in the pay scale of Rs.330-560 and therefore, it has to be fixed as Rs.340/-. A clear fallacy

lies in the respondents stand that since Rs.347.80 does not fall in any of the stages in the pay scale of Rs.330-560 it has to be reduced to Rs.340/-. The initial fixation of pay no doubt has to merge with a stage in the scale of Rs.330-560. This was done while fixing the initial pay of Rs.452. After fixing the initial pay, certain adjustments are to be made taking into account the pensionary benefit which is always retained in full. Since the total of initial pay plus pensionary benefit should not exceed the pre-retirement pay, the actual pay to be paid will have to be so adjusted that the total of actual pay plus pensionary benefit is equal to the pre-retirement pay. As already said initial pay plus pensionary benefit exceeds the pre-retirement pay by Rs.104.20. Deducting this Rs.104.20 from the initial pay of Rs.452, the actual pay comes to (Rs.452-104.20) Rs.347.80. After deducting the actual pay it need not fall under any stage of the pay scale of Rs.330-560. It is only when the initial pay is fixed(Rs.452), it has to fall in a particular stage in the scale of pay, but when that amount is reduced by the unignored portion of the pension, the difference should be treated as the actual pay and it need not fall at any stage in the scale of pay. In this view it cannot be said that there is any mistake in the fixation of the applicant's pay at Rs.347.80 with effect from 23.11.1976 and at Rs.422.80 from 19.7.78. Apart from the fact that there is no mistake warranting the refixation of the applicant's pay, the applicant relies on the letter dated 8.8.1962 from the Ministry

of Law (Legal Affairs) which says that when fixation was done by the competent authority under FR.27 the same authority was not competent under law to reduce the initial pay originally fixed, even when such pay was based on some data which subsequently turned out to be incorrect.

However, it is unnecessary to go into that question as the applicant succeeds even on merits. It is no doubt true that the pay and pension drawn by the applicant should not exceed the pay last drawn.

To satisfy that limit the actual pay should be so fixed that the actual pay and pension should not exceed the last pay drawn. It is for that reason from Rs.485/- the last pay drawn the deduction is made for the unignored portion of the pension Rs.117.20 and the actual pay is fixed at Rs.347.80.

There is no reason as to why the actual pay should fall within any particular stage in the scale of Rs.330-560. It is only for fixing the

initial pay the fixation should be made at ~~any~~ particular stage of the said scale. Once the initial pay has been fixed in a particular stage of the scale of pay of Rs.330-560 then the actual pay need not fall in any particular stage ~~of~~ in the scale of pay of Rs.330-560.

In this view of the matter it is not possible to uphold the impugned memo dated 19.5.86.

The same is therefore, quashed and the result is the applicant's pay on re-employment has to be taken to be correctly fixed at Rs.347.80 with effect from 23.11.1976 and at Rs.422.80 with effect from 19.7.78 and there is no excess payment to be recovered. The application is therefore, allowed.

93

(G. RAMANUJAM)
VICE CHAIRMAN
31.12.1987

Index: Yes/No

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