

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 145/ 1990
~~P.A. No.~~

DATE OF DECISION 20.12.90

P.Gopalakrishna Pillai & 6 others Applicant (s)

Mr. K.R.B Kaimal Advocate for the Applicant (s)

Versus

The Government of India, Ministry of
Personnel, P.G, and Pensions Respondent (s)

(Department of Personnel & Training)

represented by its Secretary, New Delhi & 2 others

Mr. A.A Abul Hassan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. A. V HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

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

In this application dated 10th February 1990 filed under Section 19 of the Administrative Tribunals Act the seven applicants who are ex-servicemen re-employed in various capacities in the office of the Accountant General, Kerala have prayed that the impugned order dated 11th September 1987 at Annexure A1 and the memo dated 31st July 1989 at Annexure A2 issued to the first applicant and similar memos issued to the other applicants calling upon them to furnish required information for refixation of their pay should be set aside as illegal and unconstitutional being violative of Articles 14, 16 and 300 A of the Constitution. The brief facts of the case are as follows.

2. The first applicant was re-employed as a Clerk/Typist in the pay scale of Rs.260-400 in the office of the third respondent with effect from 29.10.1984. His military pension at that time was Rs.100/- per month. His entire military pension was ignored for the purposes of fixation of re-employment pay which was fixed at Rs.278/- which together with the unignorable part of pension and pension equivalent of gratuity was within the pre-retirement pay of Rs.280/-. On the revision of the pay scales with effect from 1.1.86 his re-employment pay was fixed at Rs.1050/- in the revised pay scale of Rs.950-1500 and on promotion to the post of Accountant it was fixed at Rs.1200/-.

3. The second applicant was likewise re-employed in the office of Accountant General, Kerala as Auditor in the scale of pay of Rs.330-560 with effect from 16.4.1979 when his military pension was Rs.97/- which was to be totally ignored for the purposes of pay fixation. His re-employment pay was fixed at Rs.330/-. On promotion as Senior Auditor in the revised scale of Rs.1400-2600 his pay was fixed at Rs.1440/- with effect from 1.1.86.

4. The third applicant was re-employed as Auditor with effect from 5.1.78 when his military pension was Rs.113/- and Rs.14.24 being the pension equivalent of gratuity. In accordance with the extant orders Rs.50/- of his military pension was ignored for the purposes of pay fixation and on that basis his re-employment pay was fixed at Rs.347/- with actual pay of Rs.269.76 by reducing the pay by the unignorable part of the pension. With effect from 19.7.78 when the exemption limit of military pension was increased to Rs.125/- his re-employment pay was reduced by only Rs.2.24.

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On his promotion as Senior Auditor his pay was fixed at Rs.455/- less Rs.2.24 and with effect from 1.1.86 his revised pay was fixed at Rs.1480/- less Rs.2.24. Later when the entire military pension was to be ignored his pay was fixed as Section Officer in the scale of Rs.1640-2900 at Rs.1760/- with effect from 1.6.1988.

5. The 4th applicant was re-employed as Typist in the pay scale of Rs.260-400 with effect from 1.12.1982 when his military pension was Rs.150/- with Rs.17.39 as the pension equivalent of gratuity. The unignored portion of the pension was Rs.42.39 and his actual pay was fixed at Rs.265.61. In 1978 when the ignorable part of the pension was increased to Rs.125/- his re-employment pay was refixed and from 8.2.1983 when the entire military pension was to be ignored his pay was refixed at Rs.308/-. On revision of the pay scales it was fixed at Rs.1150/- with effect from 1.1.86. On promotion as Accountant it was fixed at Rs.1230/- in the scale of Rs.1200-2040.

6. The 5th applicant was re-employed as a Group 'D' employee with effect from 10.8.1971 when his military pension was Rs.50/-. His pay in the revised scale of Rs. 750-940 was fixed with effect from 1.1.86 without adjusting any part of the pension.

7. The 6th applicant was reemployed as Clerk/Typist in the scale of Rs.260-400 with effect from 12.1.1983 when his military pension was Rs.198/-. His re-employment pay was fixed after adjusting the unignorable part of the pension against the pay. With effect from 1.1.86 his pay was fixed at Rs.1200/- in the pay scale of Rs.950-1500 and on his promotion to the post of Accountant, his pay was fixed at Rs.1260/- in the pay scale of Rs.1200-2040

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with effect from 7.8.1986.

8. The 7th applicant was re-employed on 29.5.1972 in Group 'D' cadre when his military pension was Rs.28/-. His entire military pension was being ignored under extant order as it fell within the exemption limit. On revision of the pay scales with effect from 1.1.86 his re-employment pay was fixed at Rs.898/- in the scale of Rs.750-940.

9. The grievances of the applicants herein is that after their re-employment pay was revised with effect from 1.1.86 by adjusting only the unignorable part of the military pension^{bwt}, when the military pension itself was revised with a minimum of Rs.375/- per month^h. The respondents on the basis of the impugned order at Annexure-A1 proposed to refix their re-employment pay with effect from 1.1.86 in the revised scales by deducting the increase of their military pension from the revised re-employment pay without ignoring the whole or part of it which were exempted before 1.1.86^{and}, asked them to supply necessary information vide the impugned order^h at Annexure A2. The respondents have pleaded that the application is time-barred and that the Accountant General, Audit, under whom some of the applicants are working has not been impleaded as necessary party. They have interpreted the impugned order at Annexure A-1 dated 11th September, 1987 to say that when pension was also revised with effect from 1.1.86 by the O.M of 9.12.86 the revised pension has to be adjusted against the re-employment revised pay of the applicants. The re-employed pensioners cannot get the double benefit of revised re-employment pay on one hand and getting

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exemption from adjusting the revised pension against the re-employment pay on the other. The increase in pension between the unrevised and revised levels has to be accounted for by reducing the re-employment pay to that extent. They have also argued that there would not be any drop in the existing emoluments of the applicants as on 1.1.86 and if there is any, the same will be avoided by grant of personal pay.

10. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The preliminary objection about limitation cannot be accepted as the grievances of the applicants is a recurring one. Since the Union of India has been impleaded as one of the respondents, non-impleadment of Head of the Audit Wing is not fatal to the case. The principal question involved in this case is whether the ex-servicemen who had been discharged from the Armed Forces before attaining 55 years of age and accordingly whose part or whole of military pension was to be ignored for the purposes of fixation of civilian pay on re-employment would continue to enjoy this facility of ignoring part or whole of their military pension even after the pay of the re-employment post as also their military pension were revised with effect from 1.1.86. Normally, in accordance with Article 526 of the Civil Service Regulations and the Government of

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India's instructions notably the Ministry of Finance's O.M of 25.11.1958 reemployed pensioners will get their initial pay on reemployment fixed at the minimum stage of the scale of pay prescribed for the post in which he is reemployed. In cases where it is felt that the fixation of initial pay at the minimum of the prescribed pay scale will cause undue hardship (i.e. where pay plus pension is less than the pre-retirement pay), the pay may be fixed at a higher stage by allowing one increment for each year of service which the officer had rendered before retirement in a post not lower than that in which he is reemployed. In addition to the pay so fixed the reemployed pensioner is permitted to draw separately any pension sanctioned to him provided that the total amount of initial pay as fixed above plus the gross amount of pension or pension equivalent of other forms of retirement gratuity does not exceed the last pay drawn by him before retirement. In case this limit is exceeded the re-employment pay is reduced by the amount of excess. Simply stated it only means that the reemployment pay is adjusted so and pension that the adjusted pay plus pension⁶ equivalent of gratuity does not exceed the last pay drawn before retirement. As stated earlier in case of ex-servicemen who retired before attaining the age of 55 years part or full of their military pension is ignored for fixing their reemployment pay, i.e. the ignorable part of the pension is not added to the re-employment pay to compare the total with the last pay drawn before retirement. The ignorable part of the pension was at one time Rs.50/- which was increased to Rs.125/- by the Ministry of Finance's

O.M of 19th July 1978. By a further O.M of the Ministry of Defence dated 8th February 1983 for the aforesaid category of re-employed ex-servicemen who retired below Commissioned Officer's rank the entire pension has to be ignored for the purposes of their pay fixation on reemployment. Thus, in their cases, there would be no adjustment by deduction/ ^{from} their initial pay of any amount of the military pension because their entire military pension was to be ignored as if it did not exist. As is well known, on the recommendation of the Fourth Pay Commission, the pay scales of the Central Govt. servants were revised from 1.1.86 and ^{later} the pension was also revised with effect from the same date. Initially the pay scales of the reemployed pensioners were not revised, but by the Department of Personnel and Training's O.M of 9th December , 1986 the revised pay scales were made applicable to reemployed pensioners also, but it was laid down that the reduction of the reemployment pay by adjustment of pension will continue as before under the pre-revised retirement benefits. When, however, the pension was also revised with effect from 1.1.86, in order to avoid the double benefit of revised pay scales and revised pension, by the Department of Personnel and Training's further impugned O.M dated 11th September 1987, it was laid down that "pay of pensioners who were in re-employment on 1.1.1986 and whose pay was fixed in accordance with the provisions of this Department O.M dated 9.12.1986 may be refixed with effect from 1.1. 1986 by taking into account the revised pension". For re-employed ex-servicemen it was laid down that "likewise increase in the pension

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of ex-servicemen under separate orders of Ministry of Defence may also be adjusted by refixation of their pay in terms of provisions of this department O.M dated 9.12.1986". The respondents in this case have interpreted the O.M of 11th September, 1987 to deduce that even where the entire military pension used to be ignored for pay fixation in accordance with O.M of February 1983, with the revision of pension by which a minimum military pension of Rs.375/- was fixed with effect from 1.1.86, the increase in pension has to be reckoned to reduce the re-employment pay which also was revised with effect from 1.1.86. This very question came up before us in O.A.K 507/88 and it was decided by us that where there is exemption of total military pension before 1.1.86, the entire amount of revised military pension should be ignored for the purposes of pay fixation with effect from 1.1.86 and the deduction made from the salary was to be refunded. For the additional reasons discussed below, our finding in the aforesaid case continues to be valid in this case also.

11. Let us start with the Department of Personnel and Training's O.M No.3/7/86-Estt.(Pay II) dated 9th December, 1986 (Annexure R3 (e)) ^{in O.A 710/89} by which the re-employed pensioners also were given the benefit of revised pay scales with effect from 1st January 1986. Para 2 of this O.M is extracted below:

"2.(i) The initial pay of a re-employed Government servant who elects or is deemed to have elected to be governed by the revised pay scale from the 1st day of January, 1986 shall be fixed in the following manner, namely:-

According to the provisions of Rule 7 of the C.C.S(R.F.) Rules, 1986, if he is

- 1) a Government servant who retired without receiving a pension gratuity or any other retirement benefit; and

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- 2) a retired government servant who received pension or any other retirement benefits but which were ignored while fixing pay on re-employment.

2.(ii) The initial pay of a re-employed Government servant who retired with a pension or any other retirement benefit and whose pay was fixed on re-employment with reference to these benefits or ignoring a part thereof, and who elects or is deemed to have elected to be governed by the revised scales from the 1st day of January, 1986 shall be fixed in accordance with the provisions contained in Rule 7 of the Central Civil Services (Revised Pay) Rules, 1986.

In addition to the pay so fixed, the re-employed government servant would continue to draw the retirement benefits as he was permitted to draw in the pre-revised scales. However, any amount which was being deducted from his pay in the pre-revised scale in accordance with the provisions of Note 1 below para 1(c) of Ministry of Finance Office Memorandum No.F8(34)Estt.111/57, dated the 25th November, 1958 shall continue to be deducted from the pay and the balance will be allowed as actual pay.

After pay in the revised scale is fixed in the manner indicated above, increments will be allowed in the manner laid down in Rule 8 of CCS (R.P) Rules 1986". (emphasis added)

From the above it is clear that vide para 2(i) above for those re-employed pensioners who did not get any retirement benefit or whose pension was totally ignored, for purposes of pay fixation on reemployment, their re-employment pay on revision will be fixed like any other Central Government servant without any deduction because of pension. In respect of the re-employed pensioners whose full or part of pension was to be taken into account for pay fixation on re-employment vide para 2(ii) above, their re-employment pay in the revised scales would continue to be subjected to adjustment by deduction on the basis of the non-ignorable part of the unrevised pension. It may be remembered that the aforesaid O.M of 9th December, 1986 was issued when it was decided to give revised pay scales to the re-employed pensioners, but when their pension had not been revised,

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Subsequently when the pension^h was revised with effect from 1.1.86, the impugned order dated 11th September 1987 (Annexure A1) was issued. For the facility of reference, the order is quoted in full as follows:-

" Subject : Applicability of C.C.S (RP) Rules, 1986 and C.C.S (RP) Amendment Rule 1987 to persons re-employed in Government Service after retirement, whose pay is debitable to Civil Estimates.

" The undersigned is directed to invite attention to this Department O.M of even No. dated 9th December, 1986 whereby persons re-employed in Civil posts under the Government after retirement and who were in the reemployment as on 1.1.1986 were allowed to draw pay in the revised scales under CCS (RP) Rules, 1986. A point has arisen as to whether consequent on the revision of pension of the employees with effect from 1.1.1986, the revised pension should be taken into reckoning for the purpose of fixation of pay of such re-employed persons in the revised scale.

"2. The matter has been considered. It has been held that if the revised pension is not taken into consideration, certain unintended benefits are likely to accrue to re-employed pensioners as they will draw the revised amount of pension which would invariably be higher than the earlier amount of pension, in addition to pay already fixed on the basis of the pension granted to them earlier. The President is accordingly pleased to decide that pay of pensioners who were in re-employment on 1.1.1986 and whose pay was fixed in accordance with the provisions of this department O.M dated 9.12.1986 may be refixed with effect from 1.1.1986 by taking into account the revised pension. Likewise increase in the pension of ex-servicemen under separate orders of Ministry of Defence may also be adjusted by refixation of their pay in terms of provisions of this department O.M. dated 9.12.1986. Over payments already made may be recovered/adjusted, as is deemed necessary. All re-employed pensioners would, therefore, be required to intimate to the Heads of Officers in which they are working, the amount of revised pension sanctioned to them with effect from 1.1.1986 for the purpose of refixation of their pay after taking into account their revised pension.

"3. In so far as the application of these orders to the persons serving in the Indian Accounts and Audit Department is concerned, these orders are issued in consultation with the Comptroller and Auditor General." (emphasis added)

Since the order of 11th September 1987 directs adjustment of the pension of ex-servicemen by re-fixation of their re-employment pay in terms of the O.M of 9th December 1986, the respondents cannot reintroduce through the back door, the ignorable part of the pension which continued to be ignored by the O.M of 9th December 1986. The question of deduction of pension from the re-employment revised pay arises only in respect of those re-employed ex-servicemen who fall within sub-para 2(ii) of the O.M of 9th December, 1986. Since the applicants before us had their entire amount of pension ignored by virtue of the 1983 order, which has not been superseded by the impugned order of 11th September 1987, they fall within the application of sub-para 2(i) of the O.M of 9th December 1986 wherein there is no mention of adjustment of pension by deduction from pay as has been mentioned in sub-para 2(ii) thereof. The above conclusion is supported by the Ministry of Finance's letter No. A-38015/72/88-Ad.IX dated 5th April 1989 (a copy of which is ^{placed on} ~~attached~~ in the case file) as quoted below:-

"Sub: Re-fixation of pay of re-employed military pensioners as per CCS(RP) Rules, 1986 - regarding.

I am directed to refer to your letter F.No. 250/1/Estt/Rep/89- dated 6.1.1989 on the above subject and to say that matter has been examined in consultation with departments of Personnel & Training and P&FW who have held the views that as far as the application in O.M No.3/9/87/Estt (P-II) is concerned increase in pension w.e.f 1.1.86 has to be adjusted from the pay fixed in the revised scale excepting those where pension is not at all reckonable factor e.g. those governed under O.M No.2(1)/83-D(civ.1) dated 8.2.1983 of the Ministry of Defence. Any over payments already made also required to be recovered.

2. Regarding fresh opportunity to exercise option under Clause (b) of sub-rule (i) of Rule 19 of CCS (Pension) Rules 1972, the Department of

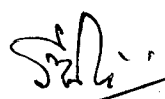
Pension & Pensioners Welfare had stated that option once exercised is final and cannot be changed. The petitioner may be informed accordingly." (emphasis added)

From the above clarificatory order it is crystal clear that where pension is to be ignored there is not to be any adjustment of re-employment pay in the revised scale. By the same logic where the part and not the whole of military pension is to be ignored for pay fixation, the same is to be ignored in the revised pension for purposes of pay fixation in the revised pay scale.

12. Even otherwise, the contention of the respondents that one should not get the double benefit of revised pension and revised pay simultaneously is not valid, when military pension as such has to be ignored in part or full as the case may be. That the ignorable part of pension is irrelevant and 'non est' for the purposes of pension relief or advance increment for re-employed pensioners, has been so held by two Larger Benches of this Tribunal in their judgment dated 28.7.1989 in TAK 732/87 etc. for pension relief and in judgment dated 13.3.90 in O.A 3/89 etc. for advance increments. Fortified in ratio by these two judgments of the Larger Benches and in letter by the Ministry of Finance's O.M of 5th April 1989, we have no hesitation in reiterating our earlier finding that re-employed military pensioners whose full or part of the pension was to be ignored before 1.1.86 will continue to have the whole or part of their revised military pension ignored for the purposes of re-fixation of their re-employment pay in the revised scales after 1.1.1986. We, however, find nothing wrong in the O.M of 11th September, 1987 which seems to have been misinterpreted and wrongly applied in the case before us.

13. In the conspectus of facts and circumstances we allow this application and set aside the impugned memo dated 31.7.1989 at Annexure A-2 issued to the first applicant and similar memos issued to the other applicants and all action taken thereunder to refix the pay of the applicants with effect from 1.1.86 and direct the respondents to refix the pay of the applicants in the revised pay scale with effect from 1.1.86 by ignoring the total amount of military pension drawn by them even after revision. Their military pension cannot be taken into account for grant of increments during the period of their re-employment. Any amount withheld or recovered on account of wrong fixation of pay by adjustment of their military pension during the period of their re-employment should be refunded to them within a period of three months from the date of communication of this order. The DCRG of the ^{5th and} 7th applicants accordingly should be released without any deduction in so far as adjustment of re-employment pay is concerned. There will be no order as to costs.


20/12/90
(A.V. HARIDASAN)
JUDICIAL MEMBER


20.12.90
(S.P. MUKERJI)
VICE CHAIRMAN