

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 172/96

WEDNESDAY, THIS THE TENTH DAY OF DECEMBER, 1997.

C O R A M:

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

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

Kuncheria Joseph S/o Joseph
Driver (T-I-3)
Central Plantation Crops Research Institute,
Regional Station, Krishnapuram,
Kayamkulam-690 533

..Applicant

By Advocate Mr. P. V. Mohanan

Vs.

1. The Director General,
Indian Council of Agricultural Research,
Krishi Bhavan, Dr. Rajendra Prasad Road,
New Delhi-110 001.

2. The Director,
Central Plantation Crops Research Institute,
Post Kudlu, Kasaragod.

..Respondents

By Advocate Mr. C.N. Radhakrishnan

The application having been heard on 18.11.97, the
Tribunal on 10.12.97 delivered the following:

O R D E R

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

The brief facts of the case can be stated as follows.

The applicant is now working as a Driver in the
Central Plantation Crops Research Institute, Regional
Station, Krishnapuram (the Institute for short) which is
under the overall administrative control of the Indian

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Council for Agricultural Research, New Delhi (the Council for short). He joined the Institute on reemployment w.e.f. 8.10.75. Earlier, he had worked as a Driver in the Motor Transport Wing of the Indian Army for 10 years, 7 months and 21 days. He had retired therefrom on 12.11.71.

2. His grievance is that on re-employment under the Institute as a Driver, his basic pay has been fixed at Rs. 260/- in the pay scale of Rs. 260-430. That pay scale admittedly is the relevant (pre-revised) pay scale for the post of Driver there. However, according to him, his basic pay at the time of joining the Institute should have been fixed at the stage above Rs. 321/- p.m. in that pay scale. The applicant has urged that as per the pay certificate issued by the Army at the time of his retirement, he was drawing a basic pay of Rs. 195/-, a classification pay of Rs. 5/-, washing & hair cutting allowance of Rs. 7/-, clothing allowance of Rs. 9/- and a ration money of Rs. 105/- per month, thus totalling a pay of Rs. 321/- per month. According to the applicant under article 510 read with article 526 of Civil Service Regulations, while fixing his pay on re-employment under the Institute, the last pay drawn by him at the time of retirement from the Army i.e. Rs. 321/- per month should have been protected by giving him increments for the



years of service already rendered by him in the Army as otherwise hardship would be caused to him in the process. His initial pay should thus have been fixed at a stage higher than Rs. 321/- per month in the relevant scale of pay of Rs. 260-430 per month for a Driver in the Institute, the applicant has contended.

3. According to the applicant, he had made several representations to set right this alleged injustice done to him. The acting Joint Director of the Institute had intimated to the applicant on 27.2.93 that the decision of the Council on the refixation of the pay of the applicant was awaited. Even thereafter, the applicant had submitted several representations in the years 1993 and 1994. Having failed to elicit any response from the respondents i.e. the Institute and the Council, the applicant had filed O.A. 1071/95 before this Bench. That O.A. was disposed of on 22.8.95 directing the respondents to pass a final order in three months. Thereafter, and in pursuance of the direction of the Tribunal⁴⁹, through the impugned order dated 4.12.95 at Annexure A2⁴⁹, the second respondent has communicated to the applicant the decision of the first respondent i.e. the Council that after having considered the case of the applicant and the fact that the applicant was drawing Rs. 195/ as the basic pay and Rs. 5/ as the classification pay, thus totalling Rs.

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200/- per month at the time of his retirement from the Army, the second respondent's action to fix the applicant's basic pay at Rs. 260/-, i.e. the minimum of the scale of pay of Rs. 260-430 is in order.

4. The applicant has finally sought the relief of quashing the impugned order at Annexure A2 and of a direction to the respondents to fix the minimum basic pay of the applicant in the scale of Rs. 260-430 (pre-revised) on re-employment under the Institute at a higher stage, extending to him the benefit of 11 annual increments for the years of service the applicant had rendered in the Army prior to his retirement therefrom, on the grounds that the impugned order is violative of articles 510 and 526 of the Civil Service Regulations and that it causes him undue hardship in failing to protect his pre-retirement pay of Rs. 321/- per month and in providing him only with Rs. 260/- per month as his basic pay on re-employment.

5. The respondents have contested the above claims of the applicant on the ground that the basic pay of the applicant at the time of retirement from Army can only comprise of the element of basic pay which was Rs. 195/- p.m. and the element of classification pay which was Rs. 5/- p.m., totalling Rs. 200/- only per month. Taking into consideration the said amount, the applicant

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was granted the minimum basic pay of Rs. 260/- per month in the pay scale of Rs. 260-430, admittedly the relevant scale of pay for a Driver in the Institute, to which post the applicant was re-employed. That minimum, i.e. Rs. 260/- as basic pay per month is admittedly much higher than the basic pay and the classification pay put together, totalling Rs. 200/- p.m. that the applicant was drawing at the time of his retirement from the Army, and thus there is no question of any hardship having been caused to the applicant, the respondents have contended. According to the respondents, the rule of fixing the basic pay of a re-employed ex-serviceman like the applicant at the post held by such an ex-serviceman on re-employment at a stage higher than the minimum of the relevant scale of pay is applicable, only if the fixation of the pay at the minimum of the scale would otherwise cause hardship to such an employee. In the present case, according to the respondents, there could be no hardship caused to the applicant, since on re-employment as a Driver in the Institute his basic pay was fixed at Rs. 260/- per month; whereas at the time of retirement from Army he was getting only Rs. 200/- per month. Thus, the respondents have contended, there is no case for fixing the applicant's pay as a Driver in the employment of Institute at any stage higher than the minimum in the pay scale of Rs. 260-430.



6. The learned counsel for the applicant has strenuously argued that the components of washing & hair cutting allowances of Rs. 7/-, clothing allowance of Rs. 9/- and ration money of Rs. 105/- per month which the applicant was drawing at the time of his retirement from the Army, admittedly certified as such, should be considered as constituting the 'deferred pay'. He has next argued that since 'deferred pay' is included in the definition of pre-retirement pay, along with the classification pay, inter alia, these three elements of allowances and ration money totalling Rs. 121/- per month should have been added as the "deferred pay" to the basic pay and the classification pay, thus totalling Rs. 321/- per month and the said total amount of Rs. 321/- per month should have been treated as the pre-retirement pay that he was drawing at that point of time and protected as such at the time of his re-employment in the Institute as a Driver.

7. The learned counsel for the applicant was given adequate opportunity to produce before us any authentic material which would substantiate his contention that the above three elements of washing & hair cutting allowance, clothing allowance and ration money should be counted for the purpose of determining what constitutes the deferred pay, either wholly or partly. Since this particular

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averment has been observed as critical for the case of the applicant, we felt it was necessary to do so in the interest of substantive justice. We also gave him similar opportunities to produce before us any dependable and valid material to establish that the allowances mentioned above do constitute Home savings and further that the portion of the pay of a non-commissioned officer or personnel ⁴⁹ of other ranks in the Army like the applicant, called Home savings, does form a part of the substantive pre-retirement pay for such a person and is to be considered as such in the event of his re-employment. We must observe in this context that the learned counsel for the applicant has again set considerable store by the fact that the Third Pay Commission dealt with this concept of Home savings constituting 20% of the pay of an employee belonging to the Armed Forces and included certain allowances like the ones mentioned above under that concept. However, the learned counsel for the applicant has failed to establish any connection between the concept of "Home Savings" and the concept of "Deferred Pay" and finally to establish that these allowances mentioned above therefore become a part of the "Deferred Pay", being a part of "Home Savings."

Q. In spite of sufficient opportunity and time being granted to him, the learned counsel for the applicant was

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unable to place before us any such material. We have noticed that the respondents, however, have not denied that 'deferred pay' should be treated as a part of the pre-retirement pay of such ex-servicemen. In fact, this provision is specifically included in the sub clause 2(ix) of the section 3 of the Central Civil Services (Fixation of Pay of Re-employed Pensioners) orders 1986 (Swamy's Compilation on Re-employment of Pensioners (Civilians & Ex-servicemen)(page 19, Second edition), the learned counsel for the applicant has pointed out.

8. Our attention has been drawn specifically to the provisions of article 510 of the Civil Service Regulations, article 526 of the same Regulations and the provisions of the order called "Central Services (Fixation of pay of Re-employed pensioners) orders 1986" which have all been referred to above. It may, therefore, be useful for us to discuss the provisions of the above mentioned Regulations and Order and examine their applicability in the present case.

9. The basic rule for the fixation of the pay of a person who was formerly in the civil or military employment of Government of India in the event of his re-employment in Govt. service or in the service of an Institute similar to the respondent Institute, is contained in article 510 of the Civil Services



Regulations read with the Government of India decisions referred to under the same article. Article 510 reads as follows:-

"When a person who has formerly in the civil or military employment of any Government of India obtains re-employment, whether temporarily or permanently, the Government in service or in the service or in the service of a local Fund, it shall be incumbent on him to declare to the appointing authority the amount of gratuity, bonus, or pension granted to him in respect of previous employment. The authority re-appointing him shall specifically state in the order of re-appointment whether any deduction is to be made from pension or salary as required by the rules of this Chapter and shall communicate a copy of the order to the Audit Officer"

(emphasis supplied).

10. At page 53 of 'Chaudri's Compilation of the Civil Service Regulations' Vol.II (Main Rules), the following decision of the Government of India under article 510 of the Regulation has also been cited:

"(10) In supersession of all earlier orders on the subject, the Government of India have decided that the following procedure should be adopted in fixing the pay of pensioners including officers pensioned off or retired on Contributory Provident Fund, and

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from services of the State Government, local bodies, Port Trust, etc. administered by Government, Railways, Defences Estimates, etc. re-employed in Central Civil Departments:

(a) Re-employed pensioners should be allowed only the prescribed scales of pay, that is, no protected time scales such as those available to pre-1931 entrants should be extended to them.

(b) The initial pay, on re-employment, should be fixed at the minimum stage of the scale of pay prescribed for the post in which an individual is re-employed.

In cases where it is felt that the fixation of initial pay of the re-employed officer at the minimum of the prescribed pay scale will cause undue hardship, the pay may be fixed at a higher stage by allowing one increment for each year of service which the officer has rendered before retirement in a post not lower than that in which he is re-employed.

(c) In addition to (b) above the Government servant 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 e.g. Government's contribution to a Contributive Provident Fund, gratuity, commuted value of pension, etc. provided that the total amount of

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initial pay as at (b) above, plus the gross amount of pension and/or the pension equivalent of other forms of retirement benefit does not exceed:

(i) the pay he drew before his retirement

(pre-retirement pay, or)

(ii) Rs. 3,000/- whichever is less.

Note.1: In all cases where either of these limits is exceeded the pension and other retirement benefits may be paid in full and the necessary adjustments made in the pay so as to ensure that the total of pay and pensionary benefits is within the prescribed limits.

Where after the pay is fixed at the minimum or any higher stage, it is reduced below the minimum as a result of the said adjustment, increase in pay may be allowed after each year of service at the rate of increments admissible, as if the pay had been fixed at the minimum or the higher stage as the case may be.

Note2: Pay last drawn before retirement will be substantive pay plus special pay, if any, drawn in an officiating appointment may be taken into account if it was drawn continuously for at least one year before retirement."

(Emphasis supplied) ²⁹

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The above decision of the Govt. of India lays down certain important principles for regulating the fixation of initial pay of a retired employee in the scale of pay prescribed for the post in which such an employee is re-employed. The principles which are relevant for the present case are:-

a) Ordinarily the initial pay on re-employment should be fixed at the minimum of the scale of pay prescribed for such a post; .

b) However, if in the process of fixation of initial pay for such a retired employee at the minimum of the prescribed pay scale, undue hardship is caused, only then his pay may be fixed at a stage higher than the minimum by allowing one increment for each year of service which the employee would have rendered before retirement;

c) the last pay drawn before retirement i.e. the pre-retirement pay will be the substantive pay plus special pay if any drawn in an officiating appointment for at least one year period to retirement.

11. Article 526 deals with the treatment of the pension drawn by a pensioner, formerly in military service, in the event of his re-employment in a Civil Department. In

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the present case, though the applicant has referred to this Regulation in the O.A., the question of the treatment of the pension has not been indicated as relevant either in the pleadings or in the arguments. On the contrary, the applicant has specifically averred that he was not granted any such pension (in the last sentence of para 2 of the present O.A.). We, therefore, do not consider it necessary to discuss the aspect of pension any further.

12. The applicant has relied very strongly on the provisions of Central Civil Services (Fixation of pay for re-employed pensioners) orders, 1996. We observe here that those orders are applicable only to the appointments made on or after 1.7.86. The applicant was, on the other hand, ¹⁹re-employed years before that date. Doubtless, under sub clause (ix) of Section 3 of that order under the heading "New Pay Code", pre-retirement pay includes deferred pay in addition to a few other elements like classification pay. But that provision cannot be considered as relevant or applicable directly, for the reason that the New Pay Code evidently refers to the position in the wake of operation of these orders w.e.f. 1.7.86. However, more significantly, even under the heading of "Old Pay Code", apart from the basic pay, 'deferred pay,' inter alia, has been shown separately



under those same provisions. We have already observed earlier that in spite of the learned counsel for the applicant having been granted adequate opportunity and time, he has been unable to produce any material before us which could corroborate his contention that the allowances which were actually being received by the applicant like hair cutting & washing allowance, clothing allowance or ration money could be considered as constituting the deferred pay, either partly or wholly. On the other hand, from a reading of the provisions of the Govt. of India decision under article 510 of the Civil Services Regulations read with sub clause (ix) of section 3 of the Central Services Fixation of pay of re-employed pensioners orders 19⁴⁹~~86~~, it becomes clear that it is only the substantive pay along with officiating pay if any, drawn for one year prior to the date of retirement, which will be considered as the pre-retirement pay and relevant for the purpose of fixation of pay in the scale of pay relating to the post to which an ex-serviceman is re-employed. Even if it can be⁴⁹ logically inferred that 'Deferred pay' constitutes a part of the pre-retirement substantive pay, the applicant has failed in establishing that the allowances for hair cutting, washing and clothing as well as the ration money would constitute a part of either the substantive pay or the deferred pay for the purpose of determining what



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would be the pre-retirement pay for an ex-serviceman in the context of fixation of his pay in a scale of pay for a post to which such an ex-serviceman is re-employed.

13. The ordinary meaning of the expression 'substantive pay' excludes special allowances like washing and hair cutting allowance, clothing allowance, ration money, etc. which are granted to employees belonging to certain special organisations like the Armed Forces, Para-Military Forces, Police Service Personnel, etc. They can hardly be considered as constituting a part of the substantive pay. Similarly, in the absence of any authentic material whether deferred pay can be said to comprise such allowances, we are not in a position to persuade ourselves that they should be so considered and that the amount of such allowances should be added on to the basic pay for the purpose of fixation of pay in the re-employed post.

14. The special requirement of appropriate turnout and upkeep of employees, and of their dress as well as of the standard of their health, in an organisation like the Armed Forces, cannot be said to apply equally rigidly in a civilian employment like the employment of the applicant as a driver in the Institute. It is, therefore, difficult for us even to apply an analogy which will be relevant in the present case, based on the need for such special allowances which may have been necessary for the



proper upkeep and turnout of the applicant when he was working as a Driver in the Army. We are, therefore, not convinced that these allowances for hair cutting & washing, clothing and ration should be included as a part of the deferred pay or the substantive pay at the time of retirement of the applicant as a driver in the Motor Transport Wing of the Army and then protected at the time of re-employment of the applicant. In any case, if depending on the nature of the post held on re-employment, such special allowances are considered necessary, the relevant provisions which are applicable are found under item No. 11 of page 23 of the same Swamy's compilation which is reproduced below:

"The drawal of various allowances and other benefits based on ^{4.9}pay shall be regulated with reference to the pay that is fixed on re-employment. Pay for these allowances and benefits will be the pay fixed before deducting the non-ignorable part of the pension and the pension equivalent of the other retirement benefits."

(Emphasis supplied)

Evidently, these provisions are not attracted in the case of the applicant here.

15. We have also looked for some authentic material on what constitutes "hardships" in this particular context.

R. J.

In Chapter 3 dealing with "Regulation of Pay during re-employment "(applicable in respect of re-employment prior to 1.7.86), which governs the case of the applicant, in Swamy's Compilation mentioned above, at page 51 the criterion for hardship, ^{permitting} grant ^{of} advance increments in the re-employed post, which the applicant has claimed as his due in the present O.A., has been dealt with. The decision of the Government of India quoted there is reproduced below:

"(12) Criterion for hardships to grant advance increments in the re-employed post- The Department of Personnel and Training after consulting the Ministry of Finance have given the following decision about the mode of pay fixation of re-employed pensioner (Ex-servicemen), while implementing the above office memorandum. The same is as detailed below:

2. When a re-employed pensioner asks for refixation of pay under the 1983 orders, his pay has to be fixed at the minimum of the scale. The question of granting him advance increments will arise only if there is any hardship. Hardship is seen from the point whether minimum pay of re-employed post plus full pension plus pension equivalent of gratuity (whether ignorable or not) is less than the last pay drawn at the time of retirement. If there is no hardship no advance increment can be granted.

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3. In the light of the above decision it has been decided in consultation with Department of Personnel and Training that the Head of Circles may be requested to review all such previous cases where the pay of re-employed pensioner has been otherwise fixed under the O.M. No.2(1)/83D(Civ.I) dated 8.2.1983. This review should cover all cases where the Ex-Servicemen were re-employed before 1.7.86. The sanctions issued by the Directorate in respect of individual cases referred to above may be treated as cancelled. A report on the action taken may be sent to the Directorate within three months.

4. For fixation of pay at the minimum and less than the minimum in the case of the re-employed pensioners, powers have already been delegated to all Heads of Circles and other Administrative Offices and all other subordinate appointing authorities of Gazetted rank in respect of which they are appointing authorities under this Directorate letter No. 2-60/60 P&A, dated 24.11.1960. After fixation/re-fixation of pay, the overpayment, if any may please be recovered in all cases." *(Emphasis supplied)* *RS*

16. It is evident from above decision that applying the criteria determining hardship as laid down there, the applicant in the present case cannot be considered as having suffered hardship in this


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special sense.


17. In the light of the detailed discussions made above, we are of the view that the impugned order at Annexure A2 dated 4.12.95 issued by the second respondent conveying the order of the first respondent does not suffer from any irregularity or illegality.

18. In the event, the Original Application is dismissed. There will be no order as to costs.

Dated the 10th December, 1997.



S. K. GHOSAL
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURE

1. Annexure A2: Proceedings No.F.No.7(28)/77-Estt. dated 4.12.1995 issued by the Assistant Administrative Officer, Central Plantation Crops Research Institute, Kasaragod.

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