

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
XXXXXX

175/ 1990

DATE OF DECISION 22.11.1990

T.Mathunny George Applicant (s)

Mr A.K Madhavan Unni Advocate for the Applicant (s)

Versus

The Income Tax Officer, Respondent (s)
Ward I Quilon, Income Tax Office,
Quilon and 3 others

Mr.K.Prabhakaran, 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?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

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

In this application the applicant who as an ex-serviceman was re-employed in the Income-tax Department and thereafter retired as an U.D.C, has filed this application dated 27.2.1990 under Section 19 of the Administrative Tribunals Act praying that the impugned order dated 13.12.1988 at Annexure-1 deducting Rs.13,566/- from his retirement gratuity on account of excess amount of dearness relief on military pension and excess payment of re-employment pay and allowances, should be set aside and that the amount deducted ^{be} refunded with 12% interest _{as} from the date of his retirement. The brief facts of the case are as follows.

2. The applicant retired from the Indian Air Force as an officer below the rank of a Commissioned Officer before attaining the age of 55 years on a military pension of Rs.50/- per month. He was re-employed in the Income-tax Department as an L.D.C on 9.11.1970 with a basic pay of Rs.135/- per month by grant of advance increments over the minimum of the pay scale of the post of L.D.C at Rs.110/- per month. While fixing his re-employment pay his entire military pension was ignored in accordance with the extant orders. He was allowed to draw the military pension and adhoc reliefs and allowances with all enhancements till his retirement on 31.10.1988 as U.D.C in the revised pay scale. He was granted Death-cum-Retirement Gratuity of Rs.14,040/- but by the impugned order dated 13th December, 1988 the following amounts were deducted :-

| | | |
|-----|---|-----------------------|
| (a) | Dearness relief drawn on military pension during the period of re-employment withheld | .. Rs.2516.00 |
| (b) | Recovery of excess payment of pay and allowances owing to wrong fixation of pay | .. <u>Rs.11050.00</u> |
| | Total deduction | .. Rs.13556.00 |

Accordingly against the amount of Rs.14,040/- he was paid only Rs.474/- as the balance gratuity. The applicant has argued that on revision of minimum amount of military pension to Rs.375/- per month with effect from 1.1.86 the respondents by the order dated 11.9.87 wrongly adjusted the revised military pension from his re-employment pay on the plea of applying the O.M of 11.9.87. According to him since his entire amount of military pension was to be ignored

in accordance with the O.M of 8.2.1983 the revised amount of military pension also should have been ignored. He has also argued that in accordance with the decision of the Supreme Court in Nakara's case the entire amount of military pension which was to be ignored in accordance with the order dated 8.2.83 (Annexure-III) for ex-servicemen who were re-employed on or after 25.1.1983, should be made applicable even to those ex-servicemen who were re-employed before 25.1.83 also. The revised military pension was intended to cover the higher cost of living and should not have been taken into account on revision of pension.

The respondents have relied upon the order dated 11.9.87 whereby, according to them, on revision of military pension the re-employed ex-servicemen who were allowed revised pay scale on the basis of the order dated 9.12.86 with effect from 1.1.86, cannot be allowed to enjoy the double benefits of increased revised pay scales and exemption from revised pension.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. As regards non-payment of relief and adhoc relief on military pension of ex-servicemen during the period of re-employment when a part or whole of military pension is to be ignored, a Larger Bench of this Tribunal (of which one of us was a party) decided that relief

62

including adhoc relief on ignorable part of the military pension cannot be taken into account for reducing the Dearness Allowance paid to the ex-servicemen during the period of re-employment. In accordance with the majority view of the Larger Bench given in the judgment dated 20.7.1989 in TAK 732/87 etc., the Larger Bench decided as follows:-

"Where pension is ignored in part or in its entirety for consideration in fixing the pay of re-employed ex-servicemen who retired from military service before attaining the age of 55 years, the relief including adhoc relief, relatable to the ignorable part of the pension cannot be suspended, withheld or recovered, so long as the dearness allowance received by such re-employed pensioner has been determined on the basis of pay which has been reckoned without consideration of the ignorable part of the pension. The impugned orders viz. O.M.No.F.22(87-EV(A)/75 dated 13.2.1976, O.M No.F.10(26)-B(TR)/76 dated 29.12.76, O.M No. F.13(8)-EV(A)/76 dated 11.2.77 and O.M No. M.23013/152/79/MF/CGA/VI(Pt)/1118 dated 26.3.1984 for suspension and recovery of relief and adhoc relief on pension will stand modified and interpreted on the above lines. The cases referred to the Larger Bench are remitted back to the Division Bench of Ernakulam for disposal in details in accordance with law and taking into account the aforesaid interpretation given by one of us (Shri S.P Mukerji, Vice Chairman)."

The learned counsel for the respondents fairly agreed that even if an SLP has been filed against the aforesaid judgment of the Larger Bench and the same has been stayed, this Tribunal continues to be bound by the aforesaid ruling so long as the same is not set aside by the Hon'ble Supreme Court. Accordingly we find that the deduction of Rs.2516/- made in the impugned order at Annexure-1 towards recovery of dearness relief

52

drawn on military pension during the period of re-employment is unwarranted.

4. The other recovery is about the alleged over-payment of salary which according to the respondents had to be adjusted against the revised minimum pension of Rs.375/- per month with effect from 1.1.86. The respondents have wrongly assumed that the total military pension of the applicant can be ignored only if he was re-employed after 25.1.83 in accordance with the O.M of 8.2.83 as clarified in the order dated 24.10.83 at Annexure R-2. The fact, however, is that the applicant was drawing a military pension of Rs.50/- per month and this whole amount of military pension was to be ignored in accordance with Clause (c) of CSR 526 which reads as follows:-

"(c) In the case of service personnel who retire from the forces before attaining the age of 55 and are re-employed in civil posts on or after 16th January, 1964, the pension shown below shall be ignored in fixing their pay on re-employment:-

- (i) in the case of pensions not exceeding Rs.50.00 per mensum, the actual pension;
- (ii) in other cases, the first Rs.50.00 of the pension.

Those who were re-employed before 16th January, 1964 and who had opted for the above orders will, however, be treated as fresh entrants from the date ."

It is on this basis that his initial pay as an L.D.C when he was re-employed for the first time on 9.11.1970 was fixed. The next question is whether on revision of the minimum military pension of Rs.375/- per month with effect from 1.1.86, the military pension can be adjusted against the revised re-employment pay in case of the applicant in accordance with the O.M of 11.9.87 at Annexure R-1 . We feel that revision of military pension which is to be totally ignored cannot be taken into account even after revision of the re-employment pay scale and the pension with effect from 1.1.86.

5. Let us start with the Department of Personnel and Training's O.M No.3/7/86-Estt. (Pay II) dated 9th December, referred to in para 2 of the counter affidavit ^{also} 1986/by which the reemployed pensioners 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.P.) Rules, 1986, if he is

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

Vide para 2(i) above

From the above it is clear that for those re-employed pensioners who did not get any retirement benefit or whose

.6.

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 un-revised 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. Subsequently when the pension was revised with effect from 1.1.86, the impugned order dated 11th September 1987 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 debitible to Civil Estimates.

The undersigned is directed to invite attention to this Department O.M of even No. dated the 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, ^{as it were,} 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 have 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

.82

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 (Annexure-2

(the judgment in which was also pronounced today in O.A 42/90 which was heard along with this case)

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 of 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 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.

6. 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 26.7.1989 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 Bench 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 refixation 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.

7. In the conspectus of facts and circumstances we allow this application, set aside Annexure-1 to the extent of directions for deduction of amount from DCRG granted to the applicant and direct that the full amount of retirement

.10.

gratuity of Rs.14,040/- without any deduction be paid to the applicant along with 12% interest per annum from the date of retirement till actual repayment within a period of three months from the date of communication of this order. There will be no order as to costs.


22/11/90
(A.V. HARIDASAN)
JUDICIAL MEMBER


22.11.90
(S.P. MUKERJI)
VICE CHAIRMAN

n.j.j