

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.18/94

Tuesday, this the 25th day of October, 1994.

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

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PK Nair (SFO Retd),
Research and Analysis Wing,
Cabinet Secretariat,
New Delhi.

....Applicant

Vs.

The Additional Secretary (Pers),
Cabinet Secretariat,
Room No.8-B, South Block,
DHQ PO, New Delhi--110 011.

....Respondent

By Shri C Kochunni Nair, Senior Central Govt Standing Counsel.

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant is an Ex-Serviceman, who was re-employed in Research and Analysis Wing of the Cabinet Secretariat on 17.12.73. He retired on superannuation on 31.7.87. His grievance is that arrears of pay due to him and his gratuity have not been calculated correctly and paid to him.

2. Applicant had earlier approached the Tribunal in OA 1052/93. The Tribunal directed that his representation be considered and disposed of. Respondent accordingly issued A-V letter and paid the applicant Rs.1545.00 as arrears of pay. Applicant's contention is that the arrears add up to Rs.27,091.00 even after taking into account this payment of Rs.1545.00.

contd.

3. On 27.7.84, applicant exercised his option under Rule 19(b) of Central Civil Services (Pension) Rules, 1972 to count service in the Navy for civil pension based on combined Naval service and civil service, on condition that he surrenders the pension received from the Navy. It is not in dispute that the pension received from the Navy, to be surrendered, is Rs..41,660.20. This amount was recovered from his pay from 17.12.73 to 31.7.87. It is the contention of the respondent that this amount was not fully recovered and that the balance due was recovered from the gratuity due to applicant on his retirement in 1987. Applicant, appearing in person, contends that the entire Naval pension had been recovered by the time he retired in 1987.

4. On his retirement in 1987, applicant became entitled to receive gratuity. It is not in dispute that this amount is Rs.46,613.00. Applicant contends that this amount was paid to him piecemeal as follows:

<u>D a t e</u>	<u>Amount Paid (Rs)</u>
16.12.87	25,268.00
08.08.88	1,000.00
05.10.90	8,245.00
24.11.92	10,744.00
08.03.93	1,000.00
	<u>46,257.00</u>

According to applicant, this leaves a balance of Rs.356.00 (i.e. 46,613 minus 46,257) still due to be paid to him.

5. In November 1991, respondent refixed the pay of applicant as a result of which, he became entitled to arrears of pay. Respondent calculated the arrears (A-XI and R2), and as summarised by the applicant in A-XII, the total arrears payable are Rs.30,173.20.

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Applicant contends that only Rs.1545.00 has been paid to him by draft dated 6.9.93, leaving a balance of Rs.28,628.20 still due to be paid to him.

6. At the outset, we must express our unhappiness at the way in which the respondent has maintained his accounts. For instance, at page 52 of the paper book, he states:

"However, the fact remained that a double recovery was made from the applicant by fixing his pay..."

At page 56, he states:

"Further, the payment of Rs.1000....appears a double payment for which he was asked to furnish payment particulars..."

(Emphasis added)

Such statements do not persuade us to place much confidence on the accounts maintained by the respondent. Respondent accuses applicant of shifting his stand by changing his claim from Rs.26,735.00 in the OA to Rs.17,095.00 in A-X. This is only a reflection of the confused state of accounts kept by respondent.

7. Applicant in his rejoinder has stated that since the arrears of pay due to him are now fixed by respondent at Rs.30,173.20 (instead of the earlier figure of Rs.28,985.36), it is this figure that should be taken as the amount repaid and set off against the Naval pension to be repaid. We are not able to accept this contention because, arrear amount also includes arrears of DA, ADA, SCA etc (see for instance statement S.5 of A-XI) which became due on his pay being refixed, and these are not amounts which could have been set off against repayment of Naval pension. Only deduction in the pay could be set off against repayment of Naval pension. Though

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it is not explicit, this probably accounts for the discrepancy pointed out by applicant in the pay arrears for the period 7.6.82 to 15.12.85 which is shown as Rs.8,245.00 in statement S.2, A-XI and as Rs.7,754.45 in R.4(ii)--the latter must be the pay deduction amount, while the former must be the arrears payable including components other than pay difference. We propose to adopt this figure of Rs.7,754.45 for the amount set off against Naval pension repayment for the period 7.6.82 to 15.12.85.

8. The issues that now appear in sharp focus are:

- (a) Was the Naval pension fully repaid by applicant and if so, was the withholding of Rs.20,345.00 from gratuity justified?
- (b) Was the gratuity fully paid to applicant?
- (c) Were the arrears of pay due to the 1991 pay fixation fully paid to applicant?

We will now proceed to discuss these issues in that order.

9. Regarding repayment of Naval pension, the difference in the positions of the applicant and the respondent can be traced to the period during which applicant was on foreign assignment, that is, 1.7.76 to 9.11.80 and 7.6.82 to 15.12.85. Applicant contends that during this period, his pay was depressed and the difference went to repay his Naval pension. He states in his rejoinder:

"When the applicant was posted to Special Assignment the last pay certificate was issued by the respondent. In the LPC the Basic Pay was shown after the deduction of pension element. Therefore, the respondent is fully aware that the pension element was deducted from the applicant during this period as well. Further...consolidated pay details were also given to the respondent on completion of each assignment. The respondent's claim that the applicant was short paid because of the deduction of pensionary benefits, but the amount actually was not deducted has no meaning..."

10. The position of the respondent on this point is indeed

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curious. He states at page 51 in his reply:

"...during the said period for security reasons his pay was fixed at Rs.425.00 per month with effect from 1.7.76 and Rs.650.00 per month with effect from 7.6.82 based on net pay (amount after deduction of pension and pension equivalent of gratuity) Rs.404.80 (600.00 minus 195.20) and Rs.614.80 (810.00 minus 195.20) instead of fixing pay based on gross pay (amount before deduction of pension and pension equivalent of gratuity) of Rs.600.00 and Rs.810.00 respectively and then deducting therefrom Rs.195.20 per month towards pension and pension equivalent of gratuity. Rule 19(1)(b) of CCS (Pension) Rules, 1972 permits to set off/adjust against recovery of commuted value of Death-cum-Retirement Gratuity that element of commuted part of pension and pension equivalent of gratuity respectively which was actually deducted from pay. But from pay of Rs.425 per month and Rs.650 per month as fixed on special assignment on 1.7.76 and 7.6.82 respectively pension and pension equivalent of gratuity was not actually deducted."

(Emphasis added)

We fail to see the logic here. When Rs.425.00 and Rs.650.00 were fixed based on net pay ^{of pension} after deduction/ and pension equivalent of gratuity, where is the question of pension and pension equivalent of gratuity not being deducted from Rs.425.00 and Rs.650.00 respectively? The respondent obviously failed to account for this deduction properly. This deduction comes to Rs.10,744.00 (Statement S.2, A-XI) for the period 1.7.76 to 9.11.80 and Rs.7,754.45 (R.4(ii)--also see our discussion in para 7 above) for the period 7.6.82 to 15.12.85, making a total of Rs.18,498.45 for the period covered by the foreign assignment. Respondent contends that this amount has been paid to the applicant instead of setting it off against the Naval pension. We fail to see how this arrear amount can be paid to the applicant even before his pay was refixed in 1991. Even if it had been prematurely paid to the applicant, the remedy

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available to the respondent is to draw the depressed pay for this period on the basis of the refixation of pay and set it off against the Naval pension, since the amount has already been paid to the applicant. This will be in the nature of a book adjustment and there will be no cash transaction.

11. We also rely on the fact that respondent ordered the balance due from applicant towards repayment of Naval pension, to be recovered in 17 instalments, 13 instalments of Rs.686.68 per month and 4 instalments of Rs.687.00 per month (A-V), from March 1986 to July 1987. This amount comes to Rs.11,674.84. Since the applicant was to retire in July 87, this is a "final recovery" order. Such an order of recovery makes sense only if the respondent had already recovered Rs.41,660.20 minus 11,674.84, or Rs.29,985.36 before March 86. Such a recovery makes sense only on the assumption that the short drawal of pay during the foreign assignment was adjusted towards repayment of Naval pension, as otherwise, the amount of recovery ordered from March 86 to July 87 would have been much more than Rs.687.00 per month. The fact that respondent, in 1986, had fixed the recovery as 13 instalments of Rs.686.68 and 4 instalments of Rs.687.00 shows that the balance due for recovery was Rs.11,674.84 only and no more. Of course, the total does not exactly tally: Rs.29,985.36 has to be compared to Rs.27,789.58. This is only a reflection of the respondent's account keeping. Thus, we reckon the total repayment of Naval pension on the date when the applicant retired was as follows:

	<u>Rupees</u>
For the period 17.12.73 to 31.8.81 excluding the period of foreign assignment	9,291.13
(As in statement S.1, A-XI)	
Recovery from pay bills from March, 1986 to July, 1987	11,674.84
(As in statement S.1, A-XI)	

	(Rs)
For the period in foreign assignment	18,498.45
(As in para 10 above)	<hr/>
Total	<u>39,464.42</u>

This leaves only Rs.2,195.78 at the time of his retirement to be recovered from applicant for repayment of Naval pension. We agree with the applicant and find that the Naval pension had been repaid by the applicant before he retired, leaving only Rs.2,195.78 to be recovered. The respondent was, therefore, not correct in withholding Rs.20,345.00 from the gratuity of applicant to be set off against repayment of Naval pension. We answer question (a) in para 8 above accordingly.

12. It follows that Rs.20,345.00 was due to be paid as gratuity to applicant. Applicant's case is that, as shown in para 3, only Rs.19,989.00 out of this has been paid, leaving Rs.356.00 still due to be paid. There is some controversy whether these payments were arrears of pay or gratuity. The sum of Rs.8,245.00 was received by applicant in 1990 before any refixation was done and before any arrears of pay was due, and applicant, therefore, contends that this is rightly to be termed gratuity and the other payments are to be similarly treated as gratuity. Respondent claims these are all payments of arrears of pay. The amounts of Rs.8,245.00 and Rs.10,744.00 do tally with the dues of arrears of pay for different periods. It does not make any difference to the final payments that will be ordered in this OA to be paid to applicant, whether we reckon these payments as gratuity, as claimed by applicant, or as arrears of pay, as claimed by respondent. For the sake of clarity, we will account these payments against arrears of pay. It would follow that the withheld amount of gratuity of Rs.20,345.00 due to applicant has not been paid so far and we answer question (b) in para 8 accordingly.

13. We now come to the arrears of pay due to refixation of pay of applicant in November, 1991. The total amount as seen in para 4 above (see A-XII) is Rs.30,173.20. Applicant has already received the sum of Rs.19,989.00 as seen in para 12 above. In addition, he has received Rs.1545.00 by draft dated 6.9.93. This leaves an amount of Rs.8,639.20 still due to applicant as arrears of pay. We answer question (c) in para 8 above accordingly.

14. To sum up:

- (a) Rs.2195.78 is due from applicant towards repayment of Naval pension.
- (b) Rs.20,345.00 is due to applicant as arrears of gratuity.
- (c) Rs.8,639.20 is due to applicant as arrears of pay. We may set off Rs.2,195.78 (item (a) above) from this and Rs.6,443.42 would be payable to applicant as arrears of pay.

15. By a different process of reasoning, we have arrived at a figure of Rs.26,788.42 as the amount due to applicant, as against Rs.27,091.00 claimed by him. This in effect is a cross-check on the claim of the applicant. We, therefore, consider that applicant's claim against respondent is well founded.

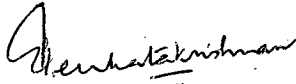
16. We accordingly allow the application to the extent stated above and direct respondent to pay applicant Rs.20,345.00 (Rupees Twenty Thousand Three Hundred and Forty Five Only) as withheld amount of gratuity with interest at 12% per annum calculated from 08.8.1988. This amount shall be paid within two months from today, failing which interest would be paid at 18% from a date starting two months from today till this amount is paid. We also direct respondent to pay applicant Rs.6,443.42 (Rupees Six Thousand Four

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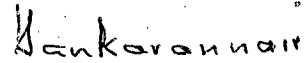
Hundred Forty Three and Paise Forty Two Only) as arrears of pay, within two months from today, failing which interest will be payable at 12% from a date two months from today till the amount is paid.

17. The application is allowed with costs. Costs of Rs.500.00 (Rupees Five Hundred Only) as prayed for by applicant are allowed. Government will be free to recover this amount from the officers responsible for the delay in payment of dues to the applicant.

Dated the 25th October, 1994.



PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A V: Memo No.SW/GE/2 (b)/990/1461-62 dated 7.9.93 to the petitioner.
2. Annexure A IX: Memo No.SW/GE/2(b)/990/1861-62 dated 13 OCT 93 addressed to the Petitioner.
3. Annexure A X: Representation dated 25.10.93 addressed to the Director of Accounts.
4. Annexure A XI: True copy of Details of amount recovered towards Naval Pensionary benefits issued by Asst.Dir. of Accounts.
5. Annexure A XII: Summary of the statement at Annexure AXI
6. Annexure R2: A true copy of Memorandum No.SW/GE/2(6)/990/348-49 dated 13.05.93 issued by the Department of Personnel and Training.

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