

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Date of decision ... 7.12.1990

PRESENT

Hon'ble Shri N.V.Krishnan, Administrative Member

And

Hon'ble Shri N.Dharmadan, Judicial Member

ORIGINAL APPLICATION NO. 176/90

N.Natarajan ... Applicant

Vs.

The Income-tax Officer,
Ward I, Quilon & 4 others. .. Respondents

Mr. A.K.Madhavan Unni ... Counsel for the applicant

Mr.N.N. Sugunapalan, SCGSC .. Counsel for respondents

ORDER

(Shri N.V.Krishnan, Admve. Member)

The applicant is aggrieved by the Annexure-I order dated 7th August 1989 of the Assistant Commissioner of Income-tax, Circle I, Quilon, the 3rd respondent, whereunder an amount of Rs. 2467, being the Dearness Allowance on the military pension drawn during the period of re-employment and a sum of Rs. 13325, being the over-payment due to wrong fixation of pay, have been recovered from his retirement gratuity of Rs. 17160 and a direction is given that the balance of Rs. 1368 alone be paid to the applicant.

2. The circumstances leading to this application can be briefly stated. After retirement from military service, the applicant joined the Income Tax Department on 24.2.1970 as a Lower Division Clerk and retired on superannuation on 31.5.1989. On such retirement, admittedly, he was entitled to a gratuity amount of Rs. 17,160. On retirement from military service he was drawing a military pension of Rs. 46/-. This was ignored for fixing his pay on re-employment as L.D.C. as required under the Rules in force. However, he was allowed to draw this military pension with all ad hoc reliefs and periodical enhancements thereto.

3. The respondents have contended that the grant of ad hoc reliefs on pension and periodical enhancements thereto was a mistake and hence there has been an over payment of Rs. 2467 on this account which has been deducted from the gratuity.

4. On the recommendation of the Fourth Pay Commission, revised pay scales were introduced from 1.1.1986. These were also made applicable to re-employed pensioners by the O.M. dated 9.12.86, not produced in this case. Similarly, the amount of pensions were also revised with effect from 1.1.86 and the applicant became entitled to draw a pension of Rs. 375.

(L)

5. It is stated that, by a subsequent memorandum (An II), dated 11.9.87 of the Government of India, instructions were issued that the pay of re-employed pensioners which has been re-fixed in the revised pay scale with effect from 1.1.86 should further be revised by adjusting the enhanced pension which has since been granted to them from 1.1.86. It is in pursuance of this order that an amount of Rs. 325 representing the difference between the and revised pension of Rs. 375 ~~and~~ the maximum amount of pension to be ignored in the case of the applicant, i.e. Rs. 50, is held to have been over paid to the applicant every month from January 1986. The sum of Rs. 13325 recovered from the gratuity by the impugned order represents the recovery of this alleged over payment. The applicant's contention is that these recoveries of over payments are not authorised by law.

6. The respondents have filed a reply denying these allegations and contending that the deductions have been made in accordance with the provisions of the instructions issued by the Government of India.

7. When the case came up for final hearing on 4.12.90, the counsel for the applicant submitted that a similar matter has already been disposed of recently in OA 175/90. The counsel for the respondents also agreed that the decision rendered in that application will be

ll

applicable to the facts of the present case, though he reserved the liberty to the respondents to challenge that order in OA 175/90.

8. Insofar as the alleged over payment of Rs. 2467 attributable to Dearness Relief drawn on that portion of the military pension not taken into account in the fixation of pay is concerned, there is already a judgement of the Larger Bench in a batch of cases including, TAK 732/87, declaring that the military pensioners were entitled during the period of re-employment to Dearness Relief on that portion of the military pension which has not been taken into account for the fixation of pay. The applicant's military pension being only Rs. 46 is ignorable from the date of his re-employment itself. Therefore, there is no justification, whatsoever, to order the recovery of Rs. 2467 in the Ann.I order.

9. The judgement in OA 175/90 is relevant insofar as the second item of recovery is concerned. The issue has been considered in detail in that judgement. For our purpose, it is sufficient to ^{note} know that the Annexure-II letter No.3/9/97. Estt. (Pay.II) dated 11.9.87, no doubt directs that the pay of pensioners who were in re-employment on 1.1.86 and whose pay was fixed in the revised pay scales in accordance with the provisions of the O.M. dated 9.12.86 should be re-fixed with effect from 1.1.86 by taking into account the revised pension. Likewise

(b)

increase in the pension of ex-servicemen under separate orders of the Ministry of Defence may be adjusted by re-fixation of their pay in terms of the O.M. dated 9.12.86. However, it is pointed out in the aforesaid judgement that subsequently, a clarification ~~is~~ ^{was} issued in the Ministry of Finance's letter No.A-38015/72/88-Ad.IX dated 5th April 1989. That letter is reproduced 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 6.1.89 on the above subject and to say that matter has been examined in consultation with departments of Personnel & Training and P&PW 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) Rules1972, 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)

It is seen from the underlined portion that where the pension is not at all a reckonable factor in the fixation of pay, no adjustment is needed, even according to the instructions of the Government of India. It is this provision that applies to the present case because, as mentioned above, the applicant was drawing a military pension of, Rs. 50, which was

not at all to be taken into account in the fixation of pay on re-employment. Therefore, we are of the view that even in accordance with the Annexure-II letter dated 11.9.87 as interpreted by the letter dated 5.4.89 of the Ministry of Finance, no recovery was to be made.

10. For the foregoing reasons, we come to the conclusion that the recoveries of Rs. 2467 and Rs. 13325 made in the impugned Ann.I letter are unauthorised. We, therefore, quash the Annexure-I proceedings of the third respondent insofar as they effect recoveries of the amount of Rs. 2467 and Rs. 13325 and direct the third respondent to pay to the applicant the entire amount of retirement gratuity, less the sum already authorised earlier, within a period of two months from the date of receipt of this order.

The

11. Application is disposed of with the above directions.

There will be no order as to cost.



(N. Dharmadan) 7.12.90
Judicial Member



(N. V. Krishna)
Admve. Member

7.12.1990

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? ✗

Central Administrative Tribunal
Ernakulam Bench

•••

Date of decision ... 18.1.1991

Review Application No.6/1991
in OA 176/90

Present

Hon'ble Shri N.V.Krishnan, Administrative Member
And

Hon'ble Shri N.Dharmadan, Judicial Member

N.Natarajan Applicant

Mr.Madhavan Unni ... Counsel for the applicant

Vs.

Income-tax Officer,
Ward-I, QLN. & 4 others .. Respondents

Mr.N.N.Sugunapalan, SCGSC.. Counsel for Respondents

O R D E R

N.V.Krishnan, AM

The RA can be dealt with by circulation.

Interest has not been referred to in the order
as it was not considerable to grant interest in the
circumstances of the case. There is no error apparent
on the face of the record.

RA has to be dismissed. *Order Accordingly*


18.1.91
(N.Dharmadan)
Judicial Member


18.1.91
(N.V.Krishnan)
Administrative Member

18.1.1991