

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 198/2000

Monday, this the 6th day of January, 2003.

CORAM :

HON'BLE SHRI G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE SHRI K.V. SACHIDANANDAN, JUDICIAL MEMBER

V.P. Ayyappan,
S/o Ayyaru Pullen,
Electrical Engineer,
Central Institute of
Fisheries Nautical and
Engineering Training(CIFNET),
Kochi-16, residing at Valsure,
St. James Chapel Road,
Vyttila, Kochi-19.

... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Vs

1. Union of India rep. by
Secretary to the Government of India,
Ministry of Defence,
New Delhi.
2. Secretary to the Government of India,
Ministry of Personnel,
Public Grievances and Pensions,
Department of Pension and
Pensioners Welfare,
New Delhi.
3. Chief Controller of Defence Accounts
(Pension), Allahabad.
4. Defence Pension Disbursing Officer,
Ernakulam.

... Respondents

(By Mr. K. Kesavankutty, ACGSC)

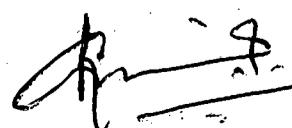
The application having been heard on 6.1.2003, the Tribunal on the same day delivered the following :

ORDER

HON'BLE SHRI G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant aggrieved by Annexure A1 order dated 2.7.1999 issued by the Office of the the 2nd respondent has filed this Original Application seeking the following reliefs :-

(a) Declare that Annexure A1 to the extent it denies the benefit of relief on Defence pension to those for whom, the pay in the re-employed post is fixed at a stage above



the minimum of the scale, after ignoring the pension, is arbitrary, discriminatory, contrary to law and unconstitutional.

(b) Call for the records leading to the issue of Annexure A1 and quash the same to extent it denies the benefit of relief on pension to those, for whom the pay in the re-employed post is fixed at a stage above the minimum of the scale of the re-employed post.

(c) Declare that any recovery of pension already paid pending a final decision on the same by the 1st respondent is arbitrary, discriminatory and unconstitutional.

(d) Award costs of and incidental to this application.

(e) Pass such other orders or direction as deemed just, fit and necessary in the facts and circumstances of the case.

2. Subsequently on 21.2.2002, the learned counsel for the applicant, keeping in view the further developments, submitted that the reliefs under (a) and (b) above were not being pressed by the applicant. Thus, surviving reliefs in this Original Application are only as shown under Para (c), (d) and (e) above.

3. According to the averment in the OA, the applicant an Ex-serviceman and a Defence pensioner was re-employed in the Central Institute of Fisheries Nautical and Engineering Training and on re-employment respondents 3 and 4 suspended the applicant's relief on Defence Pension. He filed OA No.756/89 in this Tribunal for a declaration that he was entitled to be granted relief on the ignorable part of the Military Pension throughout the period of his re-employment. The said OA was allowed by the Tribunal following the Full Bench decision of the Tribunal. The matter was taken up before the Hon'ble Supreme Court in SLP(C) No.10216 of 1990 which was allowed by the Hon'ble Supreme Court following Vasudevan Pillay' case. The Review Application filed in Vasudevan Pillay's case was disposed of by the Hon'ble Supreme Court with a desire that the Central Government would sympathetically consider the question of non-realisation of amount already disbursed to the re-employed Ex-servicemen. Upon representations from the applicant and



others, it was informed that the question regarding grant of relief on pension/recovery of relief already paid was under the consideration of the Government. Applicant submitted that notwithstanding the above, respondents 3 and 4 started to withhold a substantial amount from the applicant's monthly basic pension to be adjusted against the amount of relief already paid. Applicant and 3 others filed OA 1539/97 praying for a direction to the respondents not to recover the relief already paid. While so, the Ministry of Personnel, Public Grievances and Pensioners Welfare by Annexure A1 O.M. dated 2.7.1999 communicated its decision on the recommendations of the Vth Central Pay Commission, according to which the relief on pension would be paid effective from 18.7.1997. It was also informed that pursuant to the said direction, the Ministry of Defence had already issued an O.M. In the light of the above developments, OA No.1539/97 was disposed of by the Tribunal by Annexure A2 order dated 8.12.1999. The applicant understanding that the Ministry of Defence had not passed any orders in the light of the Annexure A1 nor the Government has taken any decision and alleging that without notice and without quantifying the amount already paid to him, respondents proposed to withhold a substantial part of the pension, he filed this Original Application for the above reliefs which was subsequently modified by the learned counsel for the applicant as stated earlier.

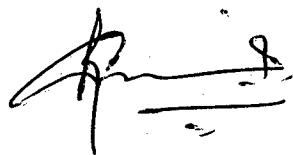
4. Respondents filed reply statement resisting the claim of the applicant. According to them, the Central Government had considered the direction issued by the Hon'ble Supreme Court of India as per the judgement dated 9.9.1996 and issued instructions for payment of Dearness Relief as per Annexure A1 and allowed Dearness Relief to the re-employed pensioners w.e.f. 18.7.1997. According to them the Government decision was not to allow any Dearness Relief to pensioners prior to 18.7.1997 and any amount

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paid prior to 18.7.1997 was not covered under Government Policy. It was submitted that respondents 3 and 4 being subordinates to the Government of India were bound to carry out the Policy decisions of the Government of India. In the additional reply statement filed on behalf of respondents, it was further submitted that the question of non-realisation of amounts of Dearness Relief already paid to re-employed Ex-servicemen was considered by the Ministry of Defence and Annexure R3(C) orders dated 30.11.2000 were issued in which it was stipulated that recovery could be written off only in the cases of pensioners and family pensioners who are no longer alive and in respect of all other re-employed Defence pensioners/employed family pensioners, the amount of Dearness Relief already paid was to be recovered.

5. Heard the learned counsel for the parties.

6. The learned counsel for the applicant submitted that in the light of the developments and as only third relief was being pressed, this Original Application could be disposed of in line with the orders of the Tribunal in OA 843/2000 dated 15.12.2000 as in R-3(c) there is no indication that the same was an order passed pursuant to the directions of the Hon'ble Supreme Court in its judgement dated 9.9.1996. The learned counsel for the respondents submitted that keeping in view the recommendations made by the Hon'ble Supreme Court and the recommendations of the 5th Pay Commission, Government of India issued orders for grant of Dearness Relief to re-employed pensioners and employed family pensioners w.e.f. 18.7.1997 by Ministry of Personnel O.M. dated 2.7.1999 as mentioned in R3(b) letter dated 6.10.1999 and the question of non-realisation of Dearness Relief already paid to re-employed Ex-servicemen was considered by the Government and the decision was communicated by R3(c) dated 30.11.2000.

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7. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have perused the documents placed on record.

8. We do not find any merit in the learned counsel for the applicant's submission that this OA could be disposed of on similar lines as with the order in OA No.843/2000 for the reason that when the order in the above OA was passed, the order of Ministry of Defence contained in the letter dated 30.11.2000 addressed to the 3rd respondent was not before this Tribunal(R-3c). This letter which has been brought to our notice through the additional reply statement reads as follows :-

No.7(1)/95/D(Pen/Sers)
Government of India
Ministry of Defence
New Delhi, dated 30th Nov. 2000

To

The Controller General of Defence Accounts,
New Delhi - 110066.

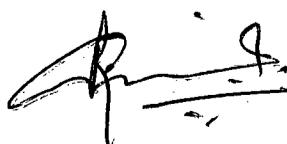
Subject :- Recovery of over-payment of Dearness Relief from re-employed Ex-servicemen/family pensioners.

Sir,

I am directed to refer to the Office of the CGDA U.O. No.5137/AT-P dated 17.4.2000 regarding grant of Dearness Relief to Ex-servicemen - Vacation of Stay Orders. The issue of non-realisation of amount of Dearness Relief already paid to re-employed ex-servicemen has been examined in consultation with I.A(Def) and DP&PW. It has been decided that Dearness Relief already paid in cases where the pensioner or the family pensioner is no longer alive may be written off but in respect of all others recovery is inescapable as otherwise it would tantamount to discrimination amongst pensioners and may not be legally tenable.

2. It is requested that necessary instruction may be issued initiating the recovery of over-payment of Dearness Relief from re-employed Defence pensioners expeditiously. Wherever Court/CAT Stay exists against the recovery of over-payment of Dearness Relief, Govt. Counsel and other concerned authorities may be advised to take necessary action to get the stay vacated before resorting to recovery.

Sd/-
(I.K. Haldar)
Under Secretary to the Govt. of India



9. We find from the above that the Government of India has taken a decision not to realise the amount of Dearness Relief already paid to the re-employed pensioners and employed family pensioners who are no longer alive and that in all other cases has decided that recovery has to be made for the reason that otherwise it would tantamount to discrimination amongst pensioners. We do not find any infirmity in this reasoning and hence with the decision taken by the Government. Government has taken a final decision in the matter by the letter dated 30.11.2000. By annexure A1 O.M. dated 2.7.1999, Government has decided to allow Dearness Relief to Pensioners/Family Pensioners whose pay was fixed at the minimum of pay scale of the re-employed post w.e.f. 18.7.1997. We find that the Government has taken a final decision in the matter. In any case, Annexure A1 as well as R3(b) are not challenged in this OA.

10. Keeping the above in view, we hold that the applicant is not entitled for a declaration as sought for through this Original Application and this Original application is only to be dismissed.

11. Accordingly, we dismiss this Original Application with no order as to costs.

Dated the 6th January, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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A P P E N D I X

Applicant's Annexures:

1. A-1: A true copy of the Office Memorandum bearing No.45/73/97-P&PW (G) dated, 2.7.1999 issued from the office of the 2nd respondent.
2. A-2: A true copy of the Judgement in O.A.No.1539/97 dated, 8.12.99 passed by this Hon'ble Tribunal.

Respondents' Annexures:

1. R-3a: True copy of Office Memorandum No.7(1) 95 (10) (Pens/sers), Ministry of Defence, New Delhi dated 13.10.1995.
2. R-3b: True copy of letter No.7(1)/95/D (Penson)/ Services)/99, Govt. of India, Ministry of Defence dated 6.10.1999.
3. R-3c: True copy of the order vide letter No.7(1)/95/D/Pens/Sers Govt. of India/ Ministry of Defence, New Delhi, dated 30.11.2000.

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15.1.03