

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. ~~XXXXXX~~ 209 of 1992

DATE OF DECISION 29.5.92

V.A. Hussain

Applicant (s)

Mr.M.R.Rajendran Nair

Advocate for the Applicant (s)

Versus

Union of India rep.by

Respondent (s)

Secretary, Ministry of Finance
New Delhi and others

Mr.George Joseph, 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? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

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

In this application dated 3.2.92 filed under Section 19 of the Administrative Tribunals Act the applicant an Ex-serviceman who had been reemployed as IDC in the Income-Tax Department and retired from that department on invalid pension on 31.5.91 has challenged the impugned order at Annexure-I in so far as it directs recovery of pension relief and also enhanced military pension drawn during his reemployment and has prayed that the respondents be directed to disburse the gratuity amount along with interest.

2. The brief facts of the Case are as follows. The applicant retired after 11 years of military service with

a military pension of Rs.50/- per month and was reemployed in the Income-Tax department as an IDC on 22.2.73. His pay was fixed at the minimum of the pay scale of the ^{post of} ~~ILC~~ and was granted increments. He was promoted as UDC on 25.10.85 and took retirement on medical grounds on 31.5.1991. He was granted an invalid pension of Rs.387/- and according to him he was entitled to get a gratuity of Rs.12,961/-. which has not so far been paid to him. The adjustment directed at Annexure-I according to him is unwarranted. According to him relief on military pension cannot be denied to him during the period of his re-employment nor can the respondents deny the enhanced military pension.

3. According to the respondents the applicant had not revealed that he was a military pensioner and on subsequent enquiry it was discovered that he was drawing military pension during the period of his re-employment. It was found that he was drawing dearness relief on his military pension and the over-payment on this score came to Rs.2,201. When it was found that he was drawing military pension also the military pension in excess of the ignorable pension of Rs.50/- was to be recovered from him and this came to Rs.23,929/-. Since the applicant is heavily indebted to other persons and attachment notices have been received by the Income-tax department for the purpose of recovery of those debts, in order to safeguard the interest of the Government the gratuity amount has been withheld as a measure on abundant caution. They have conceded that if the over-payment is found to be lesser than the amount ^{was} worked out, the balance will be paid to the parties who have sent recovery notices to the department.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. So far as the relief on military pension is concerned a Full Bench of this Tribunal by a majority decision dated 20.7.89 in T.A.K.732/87 and a bunch of other cases 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(3)-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)."

Thus so far as the applicant is concerned, we declare that the relief including adhoc relief relatable to the ignorable part of the military pension cannot be recovered from him even during the period of his reemployment. The ignorable part of the military pension which was Rs.50/- for certain categories of Ex-servicemen was increased to Rs.125/- in accordance with the Ministry of Finance's O.M. of 19.7.78 and the entire military pension for the same category of ex-servicemen was allowed to be ignored by the Ministry of Finance's O.M. of 24.10.83 for non-commissioned officers.

5. Though in the judgment of this Tribunal dated 31.10.89 to which one of us (S.P.Mukerji, Vice Chairman) was a party in T.A.K.404/87 and a bunch of three other

cases it was directed that those who had not opted to come over to the O.M. of 19.7.78 and 8.2.83 for getting the benefit of enhanced ignorable pension should be given an opportunity to opt for these O.Ms, in another order by this very Bench dated 18.12.89 deciding O.A.K.507/88 it was held that since the option was conditional upon the optees losing the benefit of ^{their} ~~his~~ entire previous reemployment service, the offer of such option is inequitable. It was also held that if the total military pension was to be ignored prior to 1.1.86 for certain categories of ex-servicemen when the same military pension was enhanced to Rs.375/- as the minimum from 1.1.86 the same should continue to be ignored for the purpose of pay fixation. In that case the directions given were as follows:

- "1. Grant of relief on the ignorable pension of Rs.50/- upto 19th July, 1973 and thereafter relief on the total pension should be allowed to the applicant and any deduction made from the DCRG on that score should be refunded to him within a period of one month from the date of communication of this order.
2. The entire amount of military pension of Rs.375/- should be ignored for the purposes of pay fixation of the applicant with effect from 1.1.86 as if the applicant had opted for the O.M. of 8.2.83. The over deductions made from the DCRG by deducting Rs.325/- from his salary should be refunded to the applicant within the same period as laid down in (1) above."

The detailed ratio for ignoring the enhanced military pension after 1.1.86 was given by this very Bench of the Tribunal in its judgment dated 20.12.90 in O.A.144/90. The relevant extracts are as follows:

"Let us start with the Department of Personnel and Training's O.M.No.3/7/86-Estt(Pay-II) dated 9th December, 1986 (Annexure R.3(e) in O.A. 710/89) by which the re-employed pensioners also 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 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 there, 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.III/57 dated the 15th 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 C.C.S(R.P) Rules, 1986." (emphasis added)

From the above it is clear that vide para 2(i) above for these re-employed pensioners who did not get any retirement benefit or whose pension was totally ignored for purposes of pay fixation on re-employment, 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 unrevised 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 also was revised with effect from 1.1.86, the impugned order dated 11th September 1987 (Annexure.A1) was issued. For the facility of reference, the order is quoted in full as follows:

"Subject: Applicability of CCS(RP) Rules, 1986 and CCS(RP) Amendment Rule 1987 to persons re-employed in Government service after retirement, whose pay is debitable to Civil Estimates.

"The undersigned is directed to invite attention to this Department O.M. of even No. dated 9th December, 1986 whereby persons re-employed in Civil posts under the Government after retirement and who were in the reemployment as on 1.1.86 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 reemployment on 1.1.1986 and whose pay was fixed in accordance with the provisions of this department O.M. dated 9.12.86 may be re-fixed 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 re-fixation 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 1.1.86 for the purpose of re-fixation of their pay after taking into account their revised pension.

"3. In so far as the application for 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 re-introduce through the backdoor, 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 had 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 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 (a copy of which is placed on the case file) as quoted below:-

"Sub:- Re-fixation of pay of re-employed military pensioners as per CCS(RP)Rules, 1936-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 in 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.s(1)/83-D(Civ.1) dated 8.2.1983 of the Ministry of Defence. Any overpayments already made also required to be recovered.

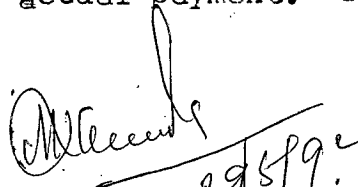
2. Regarding fresh opportunity to exercise option under Clause (b) of sub-rule (i) of Rule 19 of CCS(Pension)Rules, 1972, the Department of Pension & Pension Welfare had stated that option once exercised is final and cannot be changed. The petitioner may be informed accordingly." (emphasis added).

From the above clarificatory order it is crystal clear that where pension is to be ignored there is not 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.

5. 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 28.7.1989 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 judgements of the Larger Benches 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 re-fixation 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."

6. In the facts and circumstances we allow the application, set aside the impugned order dated 17.1.92 at Annexure-I in so far as it makes the applicant liable to pay pension relief and ^{refund} enhanced military pension and direct that the Death-cum-R_e ^a _tirement Gratuity to which the applicant is entitled should be paid to him without adjusting the over-payment of pension relief and enhanced military pension. Interest on the balance amount payable to the applicant at 12 per cent rate be also allowed from the date of his retirement on invalid pension till the date of actual payment. There will be no order as to costs.


(A.V. HARIHARAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

29-05-1992

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