

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
T.A. No. 239/91

199

DATE OF DECISION 29.5.92

V.P.Alexander _____ Applicant (s)

Shri M.R.Rajendran Nair _____ Advocate for the Applicant (s)

Versus

~~Union of India, represented by Secretary
to Government, Ministry of Finance,~~ Respondent (s)
NEW DELHI and four others.

Mr.Mathews J.Nedumpara(R1-3)
Mr.Joseph J.Thayamkeri(R4) _____ 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 an ex-serviceman who was re-employed in the Central Excise and retired with effect from 1.6.88 has prayed that the impugned order dated 17.2.89 directing the District Treasury Officer, Alleppey and the State Bank of India to recover Rs.9947/- as overpayment due to wrong fixation of his pay with effect from 1.1.1986 from the relief on pension by ~~striking~~ ^{stopping} the relief entirely be set aside and the applicant declared to be entitled to get revised pay and pension with effect from 1.1.1986. The brief facts of the case are as follows.

2. The applicant was re-employed in the Department of Central Excise in 1975 as Senior Store Keeper and retired from that department in 1988. When relief on pension was proposed to be denied to him during the period of his re-employment, he moved the High Court of Kerala in a writ petition which was transferred to this Tribunal as T.A. 420/87 and was disposed of on 19.7.88 with the declaration that the applicant was entitled to adhoc and regular relief on the ignorable part of the

pension during the period of his re-employment . He was also allowed to give option to avail of the enhanced limits of ignorable pension for the purpose of fixation of re-employment pay. Accordingly the applicant submitted a representation to the Pay and Accounts Officer, Central Excise on 23.1.1990 praying for being exempted from recovery of the overpayment.

3. The respondents have quoted the office memoranda of 3.9.87 and 11.9.87 directing that the adjustment of increased military pension from the revised pay from 1.1.86 is applicable to all re-employed pensioners except those who have opted for the O.M of 8.2.83 by which for retired Non-Commissioned Ex-servicemen, the entire military pension was to be ignored. According to the respondents unless the option for order of 8.2.83 for ignoring the full pension is accepted, recovery of difference in pension from 1.1.86 has to be made. The applicant was informed of the above on his representation.

4. According to the applicant since he has opted to come under the O.M of 8.2.83 he is entitled to get the revised pay and pension in full with effect from 1.1.86. Since the death-cum-retirement gratuity had already been paid to the applicant, the excess amount was recovered from the relief on pension.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The first question to be decided is whether the applicant is entitled to the benefit of enhanced ignorable pension by the O.Ms of 19.7.78 and 8.2.83. By the former O.M. the ignorable part of pension was raised to Rs.125/- and by the O.M. of 8.2.83 the entire amount of military pension for Non-Commissioned Ex-servicemen was to be ignored. The applicant, in his Transferred Application No.420/87, *inter alia* obtained the following order of the Tribunal so far as the enhanced ignorable pension is concerned:-

"(b) If the petitioner have opted for the O.M. of 19.7.78 and/or 8.2.83 indicating enhanced limits of ignorable pension, their re-employment pay on the date of their re-employment should be notionally fixed on the basis of the enhanced limits and their revised re-employment pay with effect from the date of issue of the O.M. will be determined by giving them the benefits of notional increments over and above the notional pay so fixed on the date of their re-employment. No arrears of pay on the basis of notional pay fixation would be given for the period prior to the date of issue of the O.M. The petitioners,if any,

who have not opted for these O.Ms, should be given an opportunity to opt for the same and if they do so, their actual pay from the date of issue of the O.M., should be determined on the above lines."

The applicant's case is that after obtaining the above orders from the Tribunal, he exercised the option but he was not given the benefit. Even if for the sake of argument it is presumed that he had not exercised the option, this very Bench of the Tribunal in its judgment dated 18.12.89 in O.A.K 507/88 ruled that exercise of option in regard to those who were re-employed before 19.7.78 or 8.2.83 was not necessary as the option was inequitous. Those who were to exercise the option, were to lose their entire re-employment service for the purpose of increments in the re-employed post. Referring to the common judgment in TAK 404 and TAK 420/87 in which the applicant before us was also a party, in our judgment dated 18.12.89 in O.A.K 507/88 we observed as follows:-

" It was directed that those petitioners who had not opted for the O.M. should be given an opportunity to opt and if they do so, their actual pay from the date of issue of the O.M. should be determined on the basis of the O.M. The applicant before us indicated that he did not opt for the O.M. of 1983 as the difference between the ignorable part of the military pension of Rs.50/- and the total military pension of Rs.66/- was only Rs.16/- and he did not bother much about the same. When the total military pension was increased to Rs.375/- from 1.1.1986 the difference between Rs.50/- and the total pension which was to be deducted from his re-employment salary became so pronounced that he invoked the O.M. of 1983 for ignoring the total pension. Since the option itself was not found by the Tribunal to be equitable as it was conditional upon the applicant losing the benefit of his entire previous service, we do not see much justification in the respondents' taking the technical plea of the applicant not exercising the option in 1983, for denying him the benefit of total exemption of enhanced pension for purposes of pay fixation. In any case at least from 1.1.1986, if not earlier, the applicant should be given exemption of the total pension of Rs.375/- of military pension for pay fixation. In the facts and circumstances we allow the application with the following directions:-

1. Grant of relief on the ignorable pension of Rs.50/- upto 19th July, 1978 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.

ii. 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 (i) above."

In the above light, the applicant who had been re-employed in 1975 has to be given the benefit of total exemption of his military pension on the basis of the O.M. of 8.2.83.

6. The second issue is whether on the revision of the pay scales on the recommendations of the 4th Pay Commission and the revision of military pension with a minimum of Rs.375/-, the respondents can adjust the enhanced pension from the revised pay even when the applicant's entire military pension prior to 1.1.86 had to be ignored. The applicant has relied upon the O.M. of 11th September 1987 for this purpose. This question was gone into threadbare by this very Bench of the Tribunal in our judgment dated 20.12.90. in O.A. 144/90. The following extracts from that judgment will be relevant:-

" 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 R3(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 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 C.C.S(R.P) Rules, 1986."

(emphasis added)

From the above it is clear that vide para 2(i) above for those 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 the 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 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 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 re-employment 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 Offices 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 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 reintroduce through the back door, 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, 1986- regarding.

I am directed to refer to your letter F.No.250/1/Estatt/Rep/89- dated 6.1.1989 on the above subject and to say that matter has been examined in consultation with Department of Personnel and Training and P&FW who have held the views that as far as the application of O.M No.3/9/87/Estatt.(P-II) is concerned, increase in pension w.e.f. 1.1.86 has to be adjusted from the

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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.I) 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."

From the above clarificatory order it is crystal 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.

"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 judgments 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."

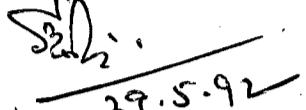
(emphasis added)

7. In the facts and circumstances we allow the application, set aside the impugned order at Annexure -I and declare that the applicant is entitled to the revised pay with effect from 1.1.86 without any adjustment because of the enhanced military pension with effect from 1.1.1986 as the military pension was to be completely ignored by virtue of the O.M. dated 8.2.83 irrespective of whether the applicant had or had not exercised the option.

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Any amount of overpayment of salary of Rs.9,947/- mentioned in the impugned order, if recovered, should be refunded to the applicant. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN

n.j.j