

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

DATE OF DECISION : 18.12.1989

P R E S E N T

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

ORIGINAL APPLICATION NO. 243/89

Radhakrishnan Nair S. .. Applicant

v.

1. The Director,  
Central Institute of Fisheries  
Technology, Matsyapuri PO,  
Willingdon Island,  
Cochin-682029.
2. The Director General,  
Indian Council of Agrl. Research (ICAR)  
Krishi Bhawan, New Delhi-110001. .. Respondents

Shri P.V Mohanan .. Counsel for the  
applicant

Mr P.V.M Nambiar, SCGSC .. Counsel for the  
respondents

O R D E R

Shri S.P Mukerji, Vice-Chairman

In this application dated 18.4.1989 filed under  
Section 19 of the Administrative Tribunals Act, the  
applicant who is an ex-serviceman and reemployed as a  
Junior Clerk in the Central Institute of Fisheries  
Technology (CIFT) Cochin under the Indian Council of  
Agricultural Research has prayed that his pay as Junior  
Clerk in CIFT should be refixed by reckoning fourteen  
increments for his service in the Indian Army at Rs.350/-

(Rs.260/- + Rs.90/-) in the scale of Rs.260-400/- The

brief facts of the case are as follows.

2. After putting in military service from 29.10.1963  
to 21.12.1982 as Combatant Clerk he retired from the Army  
on 21.12.1982 with a military pension of Rs.222/- per month.

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He was reemployed as a Junior Clerk in the CIIFT on 21.4.1984 in the scale of Rs.260-400/- and his pay was initially fixed at Rs.260/-. He represented that his pay should be fixed as Junior Clerk taking into consideration the pay drawn by him in the Army and in accordance with the O.M of 8.2.1983, his entire military pension (Rs.222/-) which was less than Rs.250/- should be ignored as he was a Non-Commissioned official in the Army. He also opted for his pay being refixed under the O.M of 1983. He has now prayed that in accordance with the O.M of 16.1.1964 he should get one increment for each year of military service of 19 years 1 month and 23 days, i.e., Rs.90/- over and above the minimum of the pay scale of Rs.260/-. The Director of the CIIFT also recommended his case for fixing his pay at Rs.350/- per month on the above lines in the letter dated 21st August, 1986, a copy of which has been produced by the respondents themselves in Ext R 1A. In the statement enclosed with that letter it was indicated that the applicant's pay was fixed at Rs.350/- with effect from 21.4.84, Rs.358/- with effect from 1.4.1985 and Rs.366/- with effect from 1.4.1986. However the ICAR did not respond to this communication in spite of repeated representations in 1987 and 1988. The ICAR sought some clarification on 14.10.1988(Ext R 1B) from the CIIFT which was given by the Director, CIIFT on 10.11.1988 (Ext R IC). On 6th January, 1989(Ext R 1D) the ICAR indicated to the Director, CIIFT that the applicant's pay

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on 21.4.1984 was to be fixed at the minimum of the pay scale of the Junior Clerk, but because of his option he "will be entitled to the benefit of fixation of pay by taking into account his service as combatant clerk on completed year basis". But his pension and the pension equivalent of gratuity in excess of Rs.15/- per month will be deducted from his pay so fixed every month in accordance with the Ministry of Finance's O.M of 25.11.58. The Director, CIIFT in his letter dated 30th January, 1989 (Ext R IE) wrote back to say that fixing the pay of the applicant at the minimum of the scale will cause undue hardship to him and that the deduction of military pension in excess of Rs.15/- from the pay was not correct. In his further letter dated 10.8.1989 (Ext R 1G) the Director, CIIFT indicated to the ICAR that in accordance with the letter of Ministry of Communication dated 10.8.87 increments for military service cannot be given to the applicant as there is no hardship because the minimum of the pay scale plus the military pension and the pension equivalent of gratuity was not less than the last pay drawn by the applicant in the Army. The applicant has argued that one Shri C.C.Sivan, an employee of the CIIFT was allowed fifteen increments for his military service on his reemployment in O.A.K 74/87 decided by the Tribunal in the judgment dated 9.3.88 (Annexure-IV). Since his case is also similar to Shri Sivan, he should also be given increments for his Army service. He has also referred to the O.M of Ministry of Finance's dated

25.11.58 which enjoins that in case of hardship of reemployed pensioners, instead of fixing their reemployment pay at the minimum of the pay scale they may be allowed "one increment for each year of service which the officer has rendered before retirement in a post not lower than that in which he is reemployed". In the counter affidavit the respondents have stated that the <sup>pay</sup> of Shri Nair was originally fixed at the minimum of the pay scale of Rs.260-400/- and in his exercising the option to come over to the provisions of O.M of 8.2.1983, his pay was refixed at Rs.350/- in the scale of Rs.260-400 in accordance with the O.M of 16.1.1964 and the case was referred to the ICAR for their approval. It was fixed at Rs.350/- as it was felt that there is hardship in his case. However the Department of Personnel and Training clarified that where the minimum of the pay plus the military pension and the pension equivalent of gratuity, whether ignorable or not, is less than the last pay drawn by the reemployed pensioner, only then there would be a case of hardship and the benefit of increments for military service can be given. In the case of the applicant his military pension of Rs.239/- plus the minimum pay in the reemployed post (Rs.260/-) is more than the last pay drawn by him in the Army before retirement of Rs.356.50 and therefore there was no case of hardship. As regards the case of Shri Sivan, they have argued that his case was considered before the order regarding the criterion for hardship had been received.

for both the parties and gone through the documents carefully.

The applicant was reemployed admittedly on 21.4.1984 as Junior Clerk. In accordance with the O.M of the Ministry of Defence dated 8th February, 1983 (Annexure-III) the military pension of ex-servicemen below the rank of a Commissioned Officer is to be ignored upto the extent of Rs.250/- per month. Since admittedly the military pension and the pension equivalent of gratuity of the applicant was Rs.239/- per month, the applicant's entire military pension has to be ignored for the purposes of fixing his reemployment pay. The O.M of 1983 clearly states that "these orders will take effect from 25th January, 1983 and the existing limits of military pensions to be ignored in fixing pay of re-employed pensioners will, therefore, cease to be applicable to cases of such pensioners as are re-employed on or after that date". Since the applicant was re-employed <sup>long</sup> ~~after~~ <sup>25 January</sup> ~~8th February~~, 1983 the question of his exercising any option for coming over to the provisions of this O.M does not arise and his entire military pension has to be ignored for the purposes of fixing his pay.

4. The other point to be decided is whether the applicant is entitled to be given increments in the re-employment pay scale of Rs.260-400 for his 19 years of military service. The relevant provisions of the O.M of 25.11.1958 quoted by the applicant in his application reads as follows:-

"(b) The initial pay, on re-employment should be fixed at the minimum stage of the scales of pay prescribed for the post in which an individual

is re-employed.

In case where it is felt that the fixation of initial pay of the re-employed officers at the minimum of the prescribed pay scale will cause undue hardship, the pay may be fixed at a higher stage by allowing one increment for each year of service which the officer has rendered before retirement in a post not lower than that in which he is re-employed".

The Director, CIFT initially thought that there is hardship if the applicant's pay is fixed at the minimum of the pay scale and allowed him to draw provisionally advance increments totalling to Rs.90/- over and above the minimum of the pay scale. This was withdrawn because of the clarification given by the Department of Personnel and Training in 1987 at Ext R 1E. In accordance with this clarification where the minimum of the pay scale and the military pension and the pension equivalent of gratuity including the ignorable part of pension exceeds the last pay drawn, no hardship can be presumed.

5. The above clarification suffers from a basic flaw. It indicates that even where the pension is to be ignored for the purposes of fixation of re-employment pay, it has to be considered for assessing the hardship caused. This appears to be self contradictory. If the pension is to be ignored for the purposes of pay fixation on re-employment, it has to be ignored even for purposes of granting increments in the pay scale of the post where the ex-serviceman is re-employed. Granting increments at the time of re-employment is nothing but a process of pay fixation on re-employment and if military pension

has to be ignored for pay fixation on re-employment it cannot be taken into account for deciding whether there is a case for advance increments or not. Since the applicant's military pension was less than Rs.250/- in accordance with the O.M of 8.2.83 the military pension was 'non est' for the purposes of pay fixation and cannot be resurrected for deciding about the stage at which his initial pay on re-employment should be fixed above the minimum of the pay scale. Further, the clarification which was issued in 1987 cannot be given retrospective effect to the applicant who was re-employed on 21.4.84. Even statutory rules cannot be given retrospective effect <sup>for</sup> to the withdrawal of vested rights (P.W. Agarwal and others v. State of U.P. and others, ATR 1987(2) SC 128). The question of administrative instructions and that too a clarification, cannot be given retrospective effect to deprive the applicant of his legitimate dues.

6. In the facts and circumstances I allow the application and direct that the entire military pension and the pension equivalent of gratuity of the applicant has to be ignored for the purposes of pay fixation and that he should be given the benefit of his military service in equivalent grade for purposes of earning increments in the scale of Junior Clerk as already indicated in the Director, CIFT's letter dated 21st August, 1986 at Ext R 1A. There will be no order as to costs.

  
(S.P. MUKERJI)  
VICE CHAIRMAN