

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.148/2000 & O.A No. 394/2000

Monday, this the 13th day of August, 2002.

C O R A M :

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

(i) O.A.No.148/2000

1. M.P. Varghese, Weapon Fitter HS II,
Naval Ship Repair Yard,
Naval Base, Cochin-4.
(T.S.No.3622/EKM, P.P.O.No.SC/2408/80).
2. P.A. Lonappan, Weapon Fitter HS II,
Naval Ship Repair Yard,
Naval Base, Cochin-4.
(T.S.No.10261/EKM, P.P.O.No.SC/7444/82).
3. Thambi John, Weapon Fitter HS I,
Naval Ship Repair Yard,
Naval Base, Cochin-4.
(T.S.No.4980/EKM, P.P.O.No.SC/7686/81).
4. V.M. Markose, Weapon Fitter HS II,
Naval Ship Repair Yard,
Naval Base, Cochin-4.
(T.S.No.3640/EKM, P.P.O.No.SC/196/81).
5. P.R. Gopinathan Nair,
Electrical Fitter HS I,
Naval Ship Repair Yard,
Naval Base, Cochin-4.
(T.S.No.18077/MAV.P.P.No.SC/16060/81).
6. K.V. Kurian, Weapon Fitter HS II,
Naval Ship Repair Yard,
Naval Base, Cochin-4.
(T.S.No.21113/KTM.P.P.O.No.Af/C/6180/83).
7. S. Sebastian, Weapon Fitter HS II,
Naval Ship Repair Yard,
Naval Base, Cochin-4.
(T.S.No.6094/Alleppey, P.P.O.No.Sr/78742/80).
8. D. Gopalakrishna Pillai, Weapon Fitter HS II,
Naval Ship Repair Yard,
Naval Base, Cochin-4.
(T.S.No.25726/EKM,P.P.O.No.S/CORP/155546/81).
9. K.V. Cherian, Radio Mechanic HS II,
Naval Ship Repair Yard,
Naval Base, Cochin-4.
(T.S.No.5359/EKM/P.P.O.No.32991/82).
10. A.M. Joseph, Fitter Electric HS I,
Naval Ship Repair Yard,
Naval Base, Cochin-4.
(T.S.No.18543/KTM/P.P.No.3599/81).

By Advocate Mr M. Paul Varghese]

Applicants



Versus

1. Union of India
Represented by its Secretary,
Ministry of Defence, New Delhi.
2. Controller of Defence Accounts (Pension),
Allahabad.
3. Defence Pension Disbursing Officer,
Ernakulam, Cochin-15.
4. Defence Pension Disbursing Officer,
Kottayam.

Respondents

[By Advocate Mr T. A. Unnikrishnan, ACGSC]

(ii) O.A.394/2000

1. V.S. Sasidharan Pillai,
I C E Fitter, Crane HS I,
YUC, Naval Ship Repair Yard,
Naval Base, Kochi-4.
(T.S.No.5337/MVP:P.P.O.No.AF/S/C 7547/82).
2. E.M. Paulose,
Retd. Sheet Metal Worker,
NSRY, Cochin-4,
Residing at Menacherry House,
Opposite to SBT, Nayarambalam,
Pin-682 509, Ernakulam District.
(T.S.No.8586/EKM: P.P.O.No.1166/85)

Applicants

[By Advocate Mr M. Paul Varghese]

Versus

1. Union of India,
Represented by its Secretary,
Ministry of Defence, New Delhi.
2. Controller of Defence Accounts (Pension),
Allahabad.
3. Defence Pension Disbursing Officer,
Ernakulam, Cochin-15.

Respondents

[By Advocate Mr T.A. Unnikrishnan, ACGSC]

The applications having been heard on 25.6.2002, the Tribunal delivered the following order on 13.8.2002.

O R D E R

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

The facts, grounds and the issues involved in both these applications are similar and one and the same, these were heard together and are being disposed of by this common order.



2. The applicants in both these cases are re-employed ex-servicemen under the 1st respondent at the Southern Naval Command, Cochin and all were holding ranks below the rank of officers.

3. In O.A.148/2000, all the applicants are drawing military pension from the office of the 2nd respondent, through the respective defence pension disbursing officers. Thus, the applicants 5,6,8 & 10 are drawing their pension through the 4th respondent and all others through the 3rd respondent.

4. In O.A.394/2000, both the applicants are drawing military pension from the office of the 2nd respondent, through the the 3rd respondent.

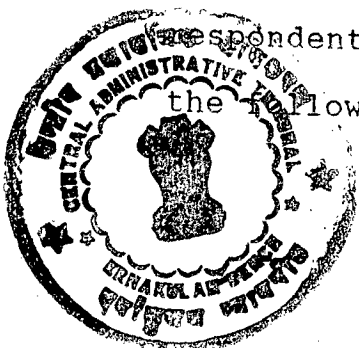
5. The relief on military pension, for which the applicants were entitled, was stopped by the respondents on re-employment on the basis of the orders of the Ministry of Finance. Against this, the applicants approached this Bench of the Tribunal by filing TAK No.732/87 and other connected cases and this Tribunal upon decided the question in favour of the applicants and directed the respondents to pay the same to the applicants therein so that they could draw the relief on pension afterwards. Meanwhile, the respondents filed appeals before the Hon'ble Supreme Court against the decision of this Tribunal. The appeals were allowed by the Hon'ble Supreme Court and payment of the pension relief was stopped by the respondents but there was no mention about the recovery of the amounts already paid. The respondents ordered to recover the amount already paid to the applicants from their pension. In



the circumstance, a review petition No.1002/95 in Civil Appeal No.1809/93) was filed before the Hon'ble Supreme Court and the Hon'ble Supreme Court dismissed the same.

6. On the basis of the observations of the Hon'ble Supreme Court, while the 1st respondent was considering the question of payment of the pension relief, the 2nd respondent initiated steps for recovering the pension relief paid already. Thus, the applicants were again forced to approach this Bench of the Tribunal and this Tribunal stayed the recovery of pension relief paid to them earlier.

7. The first respondent has now passed orders allowing the pensioners and family pensioners to draw dearness relief based on the O.M.No.45/73/97-P & PW(G) dated 2.7.99 (Annexure A-1) issued by the Government of India, Ministry of Personnel, Public Grievances and Pensioners' Welfare. It was also clarified therein that the said order will take effect from 19.7.97 only. Hence, this Tribunal disposed of the original applications filed by the applicants and similarly situated others by order dated 8.12.99 in the light of Annexure A-1 order observing 'this O.A. is closed with liberty to agitate, if the applicants are aggrieved by the orders issued by the Ministry of Defence and by the implementation of those orders.' The applicants in O.A.148/2000 approached the 3rd and 4th respondents, and the applicants in O.A.394/2000 approached the 3rd respondents requesting for the relief on their military pension. Instead, the respondents are now taking speedy steps to recover the said amount from their pension and the consequent recovery of the relief paid earlier are arbitrary and unreasonable and having aggrieved over the action of the respondents, the applicants has filed these two O.As seeking the following identical reliefs:



- "(a) Call for the records leading to Annexure A-1 and quash clause 3(a) of Annexure A-1 to the extent of denying the dearness relief on the pension to those whose pay was not fixed at the minimum of the pay scale on re-employment, as being arbitrary and unreasonable.
- (b) Declare that the applicants are entitled to get the relief on the defence pension irrespective of the initial pay on re-employment.
- (c) Direct the respondents to pay the Dearness relief on the defence pension of the applicants with all consequential benefits.
- (d) Grant cost of these Original Applications."

8. Respondents in O.A.148/2000 have filed a reply statement contenting that the relief (a) sought for in this application has no support of any provision of the law. It is further contended that the claims against recoveries are made on the basis of the judgment of the Hon'ble Supreme Court in R.P.No.1002/95 in C.A.1809/93 and that the Hon'ble Supreme Court has never prevented the respondents from recovering dearness relief already paid. Similarly cause 3 (a) of Annexure A-1 is also valid and there is nothing arbitrary or unjust and it is based on sound principles. It is further submitted that the question of non-realisation of dearness relief already paid to re-employed ex-servicemen was also considered by the Government of India, Ministry of Defence and issued orders as per letter No.7/(1)/95/D (Pers) (Sers) dated 30.11.2000 stipulating 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 will be recovered. The O.A. is meritless and hence to be dismissed.

9. Respondents in O.A. 394/2000 have not filed reply statement despite giving sufficient opportunities.



10. We have heard the learned counsel on either side and perused the materials produced on record carefully and meticulously.

11. Learned counsel for the applicants submitted that this is a pensionary benefit concerning re-employed ex-servicemen entitled for reckoning the military service for calculating pensions and any attempt on the part of the respondents to stop the same, which has already been granted, is violative of Article 14 and 16 of the Constitution against natural justice. He has brought to our notice the antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will and grace of the employer not claimable as a right, has been swept under the carpet by the decision of the Apex Court in various decisions including the decision reported in Subrata Sen and others Vs. Union of India and others [2002 (1) SLJ 110), and also by relying D.S. Nakara's case, he submitted that the concept of granting pension should receive liberal consideration.

12. Learned counsel for the respondents argued that they have no quarrel with the above basic proposition of law laid down by the Hon'ble Supreme Court and submitted that the facts of the case is different and this was subject to the scrutiny /finding of the Hon'ble Supreme Court in Civil Appeal No.1809/93. Admittedly, the applicants who were re-employed pensioners appointed after 1983 and no option given as contemplated under Section 19 of the CCS (Pension) Rules, 1972. Therefore, it is clear that Section 19(1) of the CCS (Pension) Rules is not applicable in this case. Moreover, the applicants approached this Bench of the Tribunal in TAK 732/87 and other connected cases and obtained a decision in their favour. This



Tribunal directed the respondents to pay the pensionary benefits to the applicants and the applicants could draw the relief on pension afterwards. The respondents had taken up the matter before the Hon'ble Supreme Court against the said decision in Civil Appeal No.1809/93 and the Hon'ble Supreme Court allowed the appeal and in consequence the pension relief was stopped by the respondents. Thereafter, the applicants have taken up the matter before the Hon'ble Supreme Court in Review Petition No.1002/95 on denial of the benefit to the applicants therein. The contentions and the grounds raised in these O.As have been closely scrutinised and we are of the considered opinion that these are all matters which has been set at rest in the order passed in OAK 732/87 and subsequently the Hon'ble Supreme Court in Review Petition No.1002/95 in Civil Appeal No.1809/93. The decision of the Hon'ble Supreme Court is the law of the land as envisaged in Article 141 of the Constitution of India. Therefore, it is binding to all parties therein. Subsequent to the pronouncement of the Supreme Court rulings as above, the respondents has issued O.M.No.45/73/97-P & PW (G) dated 2.7.99 and Clause 3(a) of the said O.M. is reproduced below which is under challenge:

"3. These recommendations have been considered and accepted by the Government. The President is accordingly pleased to decide as follows:

- (a) In so far as re-employed pensioners are concerned, the entire pension admissible is to be ignored at present only in the case of those civilian pensioners who held posts below Group 'A' and those Ex-servicemen who held posts below the ranks of Commissioned Officers at the time of their retirement. Their pay, on re-employment, is to be fixed at the minimum of the pay scale of the post in which they are re-employed. Such civilian pensioners will consequently be entitled to Dearness Relief on their pension in terms of the recommendations of the Fifth Central Pay Commission at the rates applicable from time to time."



13. The applicants are assailing para 3(a) of Annexure A-1 impugned order to the extend the same denies Dearness Relief on the Pension to those whose pay was not fixed at the minimum of the pay scale on reemployment, on the ground that the said para was making a classification among the reemployed pensioners on the basis of pay fixation on reemployment and since the applicants did not have a say on the fixation of pay on reemployment the said classification contained in para 3(a) was irrational. Though this ground had been advanced by the applicants according to them reemployment of ex-servicemen were given pay fixation by the order Memo No. 8(34)Est-III/57 dated 25.11.1958 which was further modified by enhancing the ignorable portion of the pension to Rs. 50/-, Rs. 125/- and entire pension with effect from 25.1.83. It was submitted that fixation based on these orders were given to the reemployed pensioners automatically and not by the option exercised by them and that being so the denial of the Dearness Relief on pension on the ground that one group of the same category had got the benefit of pay fixation earlier was unreasonable and unjust. Though this ground had been advanced by the applicants they had not produced the letter by which the entire pension was ignored with effect from 25.1.1983 to show whether they were given any option or not.

14. We have come across this letter of Government of India decision No. 3 appearing in Chapter II Fixation of pay of Re-employed Pensioners of page 29 of Swamy's Compilation on Re-employment of Pensioners (Civilians and and Ex-servicemen) Second Edition. The said Government of India decision NO. 3 reads as under:

(3) Quantum of pension to be ignored in fixing pay of military pensioner on re-employment further raised:-(a) Military Pensioner.-- The question of raising the limit



of the present ceiling of pension which has to be ignored in fixing the pay on re-employment of ex-servicemen retiring before attaining the age of 55, has been under the consideration of the Government for some time. It has been decided that in the case of those ex-servicemen retiring before attaining the age of 55, the pension as indicated below may be ignored in fixing their pay on re-employment in civil posts:-

(i) in the case of serving officers, the first Rs. 250/- on pension

(ii) in the case of persons below Commissioned Officers' rank, the entire pension.

Note:- The pension for the purpose of these orders include pension equivalent of gratuity and other forms of retirement benefits.

2. 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 in cases of such pensioners as are re-employed on or after that date. In the case of the persons who are already on re-employment the pay may be re-fixed on the basis of these orders with immediate effect provided they opt to come under these orders. If they so opt, their terms would be determined afresh as if they have been re-employed for the first time from the date of these orders. The option should be exercised in writing within a period of six months from the date of these orders. The option once exercised shall be final.

3. These orders will apply to ex-servicemen re-employed in civil Ministries/Departments also.

4. The persons already employed in civil Ministries/Departments and I.A. and A.D., are allowed fresh option which shall be exercised within a period of six months from the date of issue of the corrigendum, i.e. 24th October, 1983

(Ministry of defence OM NO. 2(1)/83/D/(Civ.1), dated the 8th February, 1983 and Corrigendum, dated the 24th October, 1983).

It is evident from the above that the full pension was to be ignored in the matter of fixation of pay of the pensioners who were already on re-employment only if they so opt. They were given option to be covered by the above Government of India decision. In the light of the above, we do not find any force in their submission that the fixation based on the above order



were given to the re-employed automatically and not by option exercised by them. In the light of the above, we find force in respondents' submission that clause 3(a) of impugned Annexure A-1 order was based on sound principles.

15. Admittedly, the dispute as to the initial fixation and application of Section 19(1) of the CCS (Pension) Rules, and the earlier rules and regulations therein which have been taken into consideration by the Hon'ble Supreme Court and has declared that:

"We would however desire the Union of India to apply its mind to the question whether ex-servicemen could be treated differently from others in so far as the matter at hand is concerned, in view of their service conditions said to be not attractive. We would also desire the Central Government to sympathetically consider the question of non-realisation of amount already disbursed to re-employed ex-servicemen on the aforesaid account."

16. As per the orders of the Hon'ble Supreme Court, the ball was put in the respondents' court with an observation that "the Central Government to sympathetically consider the question of non-realisation of the amount already disbursed to the re-employed ex-servicemen on the aforesaid account". The respondents contention that, had the Hon'ble Supreme Court had an idea to give the relief, the Hon'ble Supreme Court would have given a positive finding in favour of the applicant, has some force. In Annexure A-1 it is seen that due consideration and application of mind was revolved and finally decided that steps are being taken to recover the amount already disbursed to re-employed ex-servicemen. On perusal of Clause 3(a) of Annexure A-1, it is clear that there is no illegality, irrationality or denial of natural justice. This O.M is only a policy decision taken by the Government/Administration in furtherance of the directions of the Civil Appeal by the Hon'ble Supreme Court, which cannot be said to be faulted.



This Tribunal will not be justified in interfering with a policy decision of the Government in pensionary matters. There is no violation of Articles 14 and 16 of the Constitution of India. Moreover, the scope of judicial review is restricted only to "the decision making process and not the merit of the decision itself" as this Court does not sit as an Appellate Authority. Therefore, A-1 clause 3(a) cannot be said to be faulted and does not merit any interference. It is also pertinent to note that the Hon'ble Supreme Court had stipulated that recovery could be written off only in case of pensioners and family pensioners who are no longer alive and the Ministry of Defence has issued orders as per letter No. 7/(1)/95/D (Pers)(Sers) dated 30.11.2000 to this effect. This is in strict conformity with the order of the Hon'ble Supreme Court and therefore, we cannot hold that the recovery measure is faulted.

17. In this view of the matter, we hold there is no merit in both these Original Applications and only to be dismissed. Accordingly, we do so with no order as to costs.

Dated the 13th of August, 2002.

Sd/-
K.V.SACHIDANANDAN
JUDICIAL MEMBER

Sd/-
G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

P.

APPENDIX

Applicant's annexure in O.A. 148/2000.

2 of order No. O.M. No. 45/73/97-P & PW (G) dated 2.9.98 issued by the 1st respondent.



Applicant's annexure in O. A.394/2000.

A-1 Copy of order No.O.M. No.45/73/97-P & PW (G) dated 2.7.99 issued by the 1st respondent.

CERTIFIED TRUE COPY

Date ... 27.08.04 ...

Section Officer (Judl.)

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