IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 397/ 1990

DATE OF DECISION 22.11.1990

G.Prabhakaran Nair & 4 Others Applicant (s)

Mr K.R.B Kaimal Advocate for the Applicant (s)

Versus

The Government of India, Ministry of Personnel PG and Pensions (Department of Personnel and Training) represented by its Secretary, New Delhi & 3 others Respondent (s)

Mr.C.Kochunni Nair, 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? Yes
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 24.4.1990 filed under Section 19 of the Administrative Tribunals Act, the five applicants who are ex-servicemen re-employed in various capacities in the Office of the Accountant General, Kerala, Trivandrum, have prayed that the impugned order dated 11th September 1987 at Annexure A1 directing refixation of the re-employment revised pay with effect from 1.1.86 by taking into account the revised pension, the memos dated 31.7.89 at Annex. A2 and dated 21.8.89 at Annexure A3 and similar memos issued to the applicants calling upon them to furnish information for re-fixation of their re-employment pay should be set aside and the respondents directed not to recover any amount from the pay of the applicants on the ground of revision of pension with effect from 1.1.86. The brief facts of the case are as follows.

2. Having retired from the Army the applicants were re-employed in AG's Office on different dates between 1970 and 1984. As on 31.12.85 they were drawing a military pension ranging from Rs.80/-

to Rs.170/-. On their re-employment their re-employment pay was to be fixed with or without increments, as the case may be, so that the re-remplyment pay plus pension did not exceed the last pay drawn in the military. For ex-servicemen like the applicants who retired from the military before attaining the age of 55 years, an amount of Rs.50/- of the military pension was to be ignored for the purposes of pay fixation by the aforesaid formula. The ignorable part of the military pension was increased to Rs.125/- in 1978 and by a further order issued in 1983, the entire military pension was to be ignored for those who retired from the military below the rank of a Commissioned Officer. Thus as on 31.12.85 their entire military pension was ignored. With effect from 1.1.86 when their re-employment pay scale was revised and by a further order a minimum military pension of Rs.375/- was fixed with effect from 1.1.86, by a subsequent order, the impugned order dated 11.9.1987 was passed at Annexure A1. According to this order, to avoid giving unintended double benefits of revised pay and exemption of revised pension, it was laid down that on revision of pay scale with effect from 1.1.86, the re-employment pay of ex-servicemen should be re-fixed after adjusting the revised pension. The respondents interpreted this order to mean that even where the entire amount of military pension was being ignored before 1.1.86, on revision of the military pension, the increase in pension has to be adjusted against the re-employment revised pay. Steps were initiated to re-fix the re-employment pay with effect from 1.1.86 and recover alleged excess payments by the issue of the impugned memos like Annex.A2/A3. The applicants' case is that when the military pension is to be ignored for fixation of re-employment pay, the revised version of the military pension will also have to be ignored. The respondents have conceded that by the various orders culminating in the order dated 8.2.83, the military pension of the applicants was to be ignored in its entirety as they retired below Commissioned Officer's rank. On revision of the pay scales from 1.1.86 and increase in military pension, the applicants could not be given both the benefits simultaneously as indicated in the order dated 11.9.87 at Annex.A1. Thus the action taken in pursuance of Annex.A1 order is neither illegal, discriminatory nor violative of Articles 14 and 16 of the Constitution. They have also indicated that in accordance with the order of the Madras Bench of the Tribunal dt. 31.10.89 in O.A 369/88, the impugned order dated 11.9.1987 is legal and valid.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The only question involved in this case is whether the ex-servicemen who had been discharged from the Armed Forces before 55 years of age and accordingly part or whole of whose military pension was to be ignored for the purposes of fixation of civilian pay on reemployment, would continue to enjoy this facility of ignoring part or whole of their military pension even after the pay of the reemployment post as also their military pension were revised with effect from 1.1.86. Normally in accordance with Article 526 of the Civil Service Regulations and the Government of India's instructions notably the Ministry of Finance's O.M of 25.11.1958 reemployed pensioners will get their initial pay on reemployment fixed at the minimum stage of the scale of pay prescribed for the post in which he is reemployed. In cases where it is felt that the fixation of initial pay at the minimum of the prescribed pay scale will cause undue hardship (i.e. ~~whose~~ whose pay plus pension is less than the pre-retirement pay), the pay may be fixed at a higher stage by allowing one increment for each year of service which the officer had rendered before retirement

in a post not lower than that in which he is reemployed. In addition to the pay as fixed the reemployed pensioner is permitted to draw separately any pension sanctioned to him provided that the total amount of initial pay as fixed above plus the gross amount of pension or pension equivalent of other forms of retirement gratuity does not exceed the last pay drawn by him before retirement. In case this limit is exceeded the reemployment pay is reduced by the amount of the excess. Simply stated it only means that the reemployment pay is adjusted so that the adjusted pay plus pension and pension equivalent of gratuity does not exceed the last pay drawn before retirement. As stated earlier in case of ex-servicemen who retired before attaining the age of 55 years part or full of their military pension is ignored for fixing their reemployment pay, i.e, the ignorable part of the pension is not added to the reemployment pay to compare the total with the last pay drawn before retirement. The ignorable part of the pension was at one time Rs.50/- which was increased to Rs.125/- by the Ministry of Finance's O.M of 19th July 1978. By a further O.M of the Ministry of Defence dated 8th February 1983 for the aforesaid category of reemployed ex-servicemen who retired below

Commissioned Officer's rank the entire pension has to be ignored for the purposes of their pay fixation on reemployment. Thus, in their cases, there would be no adjustment by deduction of their initial pay by any amount of the military pension because their entire military pension was to be ignored as if it did not exist. As is well known, on the recommendation of the Fourth Pay Commission, the pay scales of the Central Govt. servants were revised from 1.1.86 and the pension was also revised with effect from the same date. Initially the pay scales of the reemployed pensioners were not revised, but by the Department of Personnel and Training's O.M of 9th December, 1986 the revised pay scales were made applicable to reemployed pensioners also, but it was laid down that the reduction of the reemployment pay by adjustment of pension will continue as before under the pre-revised retirment benefits. When, however, the pension was also revised with effect from 1.1.86, in order to avoid the double benefit of revised pay scales and revised pension, by the Department of Personnel and Training's further impugned O.M dated 11th September 1987 , it was laid down 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". For re-employed ex-servicemen it was laid down that "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". The respondents in this case have interpreted the O.M of 11th September, 1987 to deduce that even where the entire military pension used to be ignored for pay fixation in accordance with O.M of February 1983, with the revision of pension by which a minimum military pension of Rs.375/- was fixed with effect from 1.1.86, the increase in pension has to be reckoned to reduce the re-employment pay which also was revised with effect from 1.1.86. This very question came up before us in O.A.K 507/88 and it was decided by us that where there is exemption of total military pension before 1.1.86, the entire amount of revised military pension should be ignored for the purposes of pay fixation with effect from 1.1.86 and the deduction made from the salary was to be refunded. For the additional reasons discussed below, our finding in the aforesaid case continues to be valid in this case

4. Let us start with the Department of Personnel and Training's O.M No.3/7/86-Estt.(Pay II) dated 9th December, 1986 (Ann. A4) by which the reemployed 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:-
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> 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.
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> 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.
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> 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.
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> 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 CCS(R.P)Rules, 1986." (emphasis added)

From the above it is clear that for those re-employed (vide para 2(i) above) pensioners who did not get any retirement benefit or whose

pension was totally ignored for purposes of pay fixation on reemployment, 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, 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 un-revised 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 was revised with effect from 1.1.86, the impugned order dated 11th September 1987 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 the 9th December, 1986 whereby persons re-employed in Civil posts under the Government after retirement and who were in the reemployment as on 1.1.1986 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 Officers 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.
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> 3. In so far as the application of 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 adjust-ment 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 have 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 (Annexxure-2 in O.A 42/90 which was heard along with this case) as quoted below:-

> " Sub: Re-fixation of pay of re-employed military pensioners as per CCS(RP) Rules, 1986 - regarding
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> 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 of 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.2(1)/83-D(civ-1) dated 8.2.1983 of the Ministry of Defence. Any over payments already made also required to be recovered.
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> 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." (emphasis added)

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 20.7.1989 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 refixation 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 conspectus of facts and circumstances we allow this application, set aside the impugned orders at Annexure A2 and dated 31.7.89 and 21.8.89 at Annexure A3 dated 21.8.89 and similar orders passed in respect of the other applicants and all action taken thereunder to refix their pay with effect from

1.1.86 and direct the respondents to refix the pay of the applicants in the revised pay scale with effect from 1.1.86 by ignoring the total amount of military pension drawn by them even after the revision. The amount, if any, recovered due to wrong refixation of their pay in consideration of revised pension should be refunded to the applicants within a period of three months from the date of communication of this order. There will be no order as to costs.

22/11/90

(A.V HARIDASAN)
JUDICIAL MEMBER

22.11.90

(S.P MUKERJI)
VICE CHAIRMAN

n.j.j