

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

15

O.A. NO: 111/87 & 114/87 199

T.A. NO: --

DATE OF DECISION 31-1-1992

Hanmant Shanker Lele

Applicant in O.A.111/87

Krishnarao Vadudeo Gaikwad

Petitioner in O.A. 114/87

Mr.V.N.Kanitkar

Advocate for the Petitioners

Versus

DG(Telecommunication)N.Delhi &ann Respondent

Mr.V.S.Masurkar

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. M.Y.Priolkar, Member(A)

The Hon'ble Mr.

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. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

MD

M.Y. Priolkar
(M.Y.PRIOLKAR)

mbm*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.111/87 & O.A.114/87

1. Hanmant Shankar Lele,
488, Gaon Baug,
Sangli,
Maharashtra.
 2. Krishnarao Vasudeo Gaikwad,
896, Gaon Baug, Sangli,
Maharashtra.
- .. Applicants

vs.

1. Director General
(Telecommunications),
Telephone Bhavan,
New Delhi.
 2. General Manager,
(Telecommunications)
Maharashtra Circle,
Bombay - 400 001.
 3. Divisional Engineer,
Telegraphs,
Sangli.
- .. Respondents

Coram: Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Mr.V.N.Kanitkar,
Advocate for the
Applicant.
2. Mr.V.S.Masurkar
Counsel for the
Respondents.

JUDGMENT:
¶Per M.Y.Priolkar, Member(A)¶

Date: 31-1-1992

The applicants in both these cases (O.A.111/87 and O.A.114/87) are ex-servicemen, presently re-employed as Telephone Operators in the Telephone Exchange at Sangli, Maharashtra, after their retirement from the Army service. Their grievance is that the pay fixation on their re-employment has not been done correctly. As the grounds urged and the reliefs prayed for in both these applications are essentially the same, both these applications were heard together and are



being disposed of by this common judgment.

2. The respondents have annexed to their written reply in both these cases a calculation sheet showing in detail the pay fixed initially on re-employment in accordance with the provisions of the Ministry of Finance O.M. dated 25-11-1958 read with O.M. dated 16-1-1964, as also the pay re-fixed on 19-7-1978 under O.M. dated 19-7-1978 and that re-fixed with effect from 1-4-1979 under Ministry of Finance O.M. dated 28-6-1984.

3. Under the Ministry of Finance instructions on the subject a Government servant may be permitted to draw separately any pension and pension equivalent of gratuity etc. subject to the condition that the initial pay fixed on re-employment plus the gross amount of pension and the pension equivalent of gratuity does not exceed the pay of the applicant which he drew before retirement. In all cases, where this limit is exceeded, the pension and the other retirement benefits are ~~exceeded, the pension and the other retirement benefits are~~ to be paid in full and the necessary adjustments made in the pay so as to ensure that total pay and pensionary benefits are within the prescribed limit. The Government of India, in course of time, have decided to exempt certain portion of the pension for the purpose of fixation of pay to the extent detailed below :-

As per order from	16-1-1964	Rs.50.00
- do -	19-7-1978	Rs.125.00
- do -	25-1-1983	Rs.250.00

4. The respondents have fixed the pay of the applicants from time to time taking into account the above instructions. The learned counsel for the applicants argued that since the applicants were re-employed in specified pay scales and the appointment orders did not indicate that any deductions would be made from the pay towards pension and pension equivalent of gratuity, the respondents had no authority to deduct any amount from their pay and, in any case, the applicants were entitled to be paid the minimum of the pay scale of the post in which they were re-employed. It is difficult for me to accept this contention of the applicant. It is not possible to incorporate in the appointment order the rules regarding pay fixation. It is also seen from the relevant appointment orders shown to me by the applicants' counsel that para 7 of the conditions governing the appointment is to the effect that "other conditions of service will be governed by the relevant rules and orders in force from time to time." Since the Government orders existing since long, even before the appointment of the applicants, did provide for such deduction towards pension and pension equivalent of pensionary benefits, the contention of the applicants that they were entitled to pay without any ~~and~~ deduction towards pension etc. has to be rejected.

5. The learned counsel for the applicant then contended that the Government of India orders dated 8-2-1983 by which pension upto Rs.250/- was to be ignored for the purpose of pay fixation should have been made applicable retrospectively from 1-1-1973 and not from 1983 as done by the respondents. It was his contention that this liberalisation was ordered by Government in pursuance of the Third Pay

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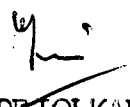
Commission's recommendation and should have been made effective from 1-1-1973 as most of the other recommendations of the Third Pay Commission had been made effective from 1-1-1973. It is difficult to accept this contention when the order of 8-2-1983 itself states specifically that it will take effect from 25-1-1983, and this date applies uniformly to all employees who are covered by that order.

6. Another contention of the applicant is that while re-fixing his pay from 19-7-1978, increments should have been granted for his service from 6-5-1974 to 19-7-1978. The orders dated 19-7-1978, however, state clearly that these orders take effect from that date only, and further, that in case of persons who are already on re-employment their terms would be determined afresh on the basis of those orders as if they have been re-employed for the first time from the date of these orders. In terms of these orders, the question of granting increments for the length of the service after re-employment will not arise while re-fixing the pay.

7. The applicant has also contended that the pay fixation rules on re-employment of military pensioners are much more liberal in some states like Maharashtra and Karnataka. Different state Governments may, however, frame different rules for pay fixation of their employees depending on their financial resources or on their own perceptions of what terms of remuneration are reasonable for re-employment of military pensioners. No arguments have been advanced before me why it is necessary or desirable for Central Government and State Governments to follow

a uniform policy in this regard. It is well settled that such policy decisions of Government are not open to judicial review unless they are malafide, arbitrary or bereft of any discernible principle.

8. On the basis of the foregoing discussion, I do not see any merit in these applications, which are accordingly dismissed, with no order as to costs.


(M.Y. PRIOLKAR)
Member(A)

MD