

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

TRANSFERRED APPLICATION NO.337/86

Mr.Sitendu Ranjan Das
94 M.G.Road,
Pune 411 001.

Applicant
(Original Plaintiff)

V/s

1. The Union of India
through the Secretary,
Ministry of Tourism & Civil
Aviation, New Delhi
Central Secretariat
NEW DELHI
2. The Director,
India Meteorological Department,
Shivaji Nagar,
Pune - 411 005.

Respondents
(Original Defendants)

Coram: Hon'ble Member(A) S P Mukerji
Hon'ble Member(J) M B Mujumdar

Appearance:

1. Applicant
in person.
2. Mr.J.D.Desai (for Mr.M.I.Sethna)
Advocate for the Respondents.

ORAL JUDGMENT

Dated: 6.10.1987

(PER: S.P.Mukerji; Member(A))

The original regular Civil Suit No.294/84 on the file of the 5th Joint Civil Judge, Senior Division Pune, has been transferred to this Tribunal under section 29 of the Administrative Tribunal's Act 1985. The plaintiff in that suit has challenged the manner in which his pay on reemployment in the office of the Agricultural Meteorology Division of the India Meteorological Department, Pune, had been fixed. He claims that his pay on reemployment after retirement from the Army service on 13.3.1969 as L.D.C.should have been fixed at Rs.180 per month, ignoring Rs.50/- of his Army Service Pension of Rs.51/- drawn by him. The brief relevant facts of the case are as follows: The plaintiff was discharged from the Army after rendering 23 years and

83 days of service. The last pay drawn by him was Rs.146 and the Army Pension granted to him was Rs.51 per month. The plaintiff was re-employed as Lower Division Clerk (LDC) in the scale of ~~pay~~ of Rs.110-180 with effect from 13.3.1969. Originally his pay as an LDC was fixed by counting his Army Service for purpose of increment in the LDC scale and reducing the same by the amount of Army Pension of Rs.51/-. In this manner his pay in the LDC scale came to Rs.180 reduced by the amount pension of Rs.51/-. He was thus given a pay of Rs.129/-. Subsequent to his representations his pay was fixed as Rs.145/- per month without any reduction because of the Army Pension drawn by him. According to the Plaintiff his pay in the LDC scale having been determined by counting his Army Service for the purpose of increment, at the stage of Rs.180/-, there should not have been any reduction because of Army Pension of Rs.51/-. He has argued that in accordance with the Finance Ministry's O.M. ~~368~~ 16 January 1964 (Annexure-VI) the first Rs.50 of the pension have to be ignored in his case. According to the respondents the OM of 1964 is applicable only when the reemployment pay is fixed on the basis of the last pay drawn in the Army. Since the last pay drawn in the Army by the Plaintiff was Rs.146 this has to be reduced by Rs.1 by which his Army Pension exceeded Rs.50/-. According to the respondents, if the Plaintiff wanted to have the benefit of counting Army Service for the purpose of increments in the LDC grade he will be governed in so far as his pension is concerned by the OM of 11 April 1963 (Annexure IV) in accordance with which such re-employment pay will have to be reduced either by the total amount of pension or by the pension in excess of Rs.15/= as the competent authority may decide. Accordingly his re-employment pay of Rs.180/- had to be reduced

by Rs.51 which came to Rs.129/-. Between the two alternatives the plaintiff has been given the first alternative of getting his pay fixed on the basis of the last pay drawn reduced by the amount of pension above Rs.50/-.

2. We have heard the arguments of the applicant and the Learned Counsel for the respondents and gone through the documents carefully. It appears that the Ministry of Finance had issued an order dated 16th March 1966 (Appendix VIII to the application filed by the respondents on 4th June 1987) indicating how the pay of the Ex-Combatant Clerks retired/ released from Service in the Armed Forces should be fixed on re-employment and LDC/Jr.Clerks. Para 1 of this OM can be quoted with benefit as follows:

" The undersigned is directed to refer to this Ministry's Office Memorandum No.F.6(8)-E.III(A)/63 dated 11.4.63 as amended by this Ministry's Office Memorandum of even number dated 19.1.1965 on the above subject. These orders have been issued as a purely ad hoc measure and were intended to allow, as a special case, the service rendered as a Combatant Clerk (Sepoy and above and equivalent ranks in Navy and Air-force) to be treated as equivalent to service as LDCs/Junior Clerk in Civil Departments. The President has been pleased to decide that these benefits should not be allowed concurrently with those allowed under this Ministry's Office Memorandum No.7(34)-E.III/62 dated 16th January, 1964. Ex-Combatant Clerks re-employed as LDC/Junior Clerks will however, have the option to get their pay fixed under either of the above two sets of orders viz., this Ministry's order of 11.4.63 as amended by the orders of 19.1.1965 or the orders of 16.1.64. In the latter case, the pay on re-employment will be fixed in accordance with this Ministry's Office Memorandum No.8(34)-E.III/57 dated 25.11.58. The option should be exercised within three months of the date of re-employment in the Civil Department, and once exercised it will be final (emphasis added)

3. Reading the above para with the Office Memorandum^a referred to ^{therein} ~~above~~, the mode of pay fixation can be on the basis of either of the following two alternatives:

Alternative 1: Count the entire service in the Army for increments as LDC and reduce the pay so fixed by the full amount of Army Pension.

Alternative 2: Fix the pay as LDC on the basis of the last pay drawn in the Army reduced by the amount by which the Army Pension exceeds Rs.50/-.

If we follow alternative-1, the Plaintiff's re-employment pay would be Rs.180 reduced by Rs.51 = Rs.129. If, however, we follow Alternative-2, the Plaintiff's reemployment pay will be Rs.146 reduced by Rs.1/- by which his Army Pension exceeded Rs.50/- i.e. Rs.145/-.

4. Since the second alternative was more beneficial the respondents have given the benefit of second alternative to the plaintiff when he failed to exercise his option.

5. The Plaintiff's contention is that whereas his entire Army Service should be counted for increments he should additionally get the benefit of the order of 16.1.1964 that is his pay should be reduced not by the entire amount of Army pension but by that amount of Pension which exceeds Rs.50/-.

Since in accordance with the order of 16.3.1966 the benefit of the order of 16.1.64 is available only when the pay is fixed on the basis of the last pay drawn, the Plaintiff's contention cannot be accepted. It appears that the Plaintiff wants the best of both the worlds by counting his Army Service for the purpose of increments for pay and also practically the whole amount of pension. This will be contrary to the OM of 16.3.66 and the general principle that on reemployment the pay has to be reduced by the pension. In the instant case the Plaintiff has got the pay of Rs.145/- as L.D.C. in addition to the pension of Rs.51 yielding total emoluments of Rs.196 on the date of his reemployment, whereas the last pay drawn by him was only Rs.146/-. We do not see any injustice having been perpetrated against the Plaintiff. He is supposed to have joined service on reemployment with his eyes and ears open when the OM of 16.3.1966 had already been issued. We are not

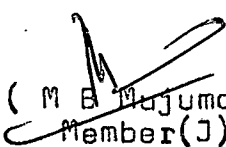
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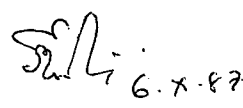
impressed by the precedent case of S hri G C Pande cited by the Plaintiff. According to the Plaintiff in case of Shri Pande who was similarly reemployed, after release from the Army, his pay was fixed at Rs.180/- per month, the maximum of LDC scale, in addition to his pension. In that connection the Plaintiff has shown us an attested copy of the order issued by the Ministry of Defence dated 25.5.1966 in Shri Pande's favour. This order does not indicate how his pay as LDC in the scale of Rs.110-180 had been fixed at Rs.180 per month. It could as well be on the basis of the last pay drawn by him. In any case without detailed particulars it will not be possible for us to accept Shri Pande's case as a valid precedent to entitle the plaintiff to the claim that he has made in violation of the O.M. of 16.3.1966.

ORDER

In the facts and circumstances we do not see any merit in the suit and dismiss the same.

Parties will bear their own costs.


(M B Majumdar)
Member(J)


(S P Mukerji)
Member(A)