

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO: 740/89

199

~~Ex-AxxNxx~~

DATE OF DECISION 20.1.1992

S.S. Rathore

Petitioner

Mr. M.A. Mahalle

Advocate for the Petitioners

Versus

Union of India & Ors.

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 ? *Ys*
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*

mbm*

(M.Y. Priolkar)
M(A)

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
* * * * *

Original Application No. 740/89

S.S.Rathore, V.S.M.,
C/o. Mr. M.A.Mahalle, Advocate,
8A Ameya, Bombay 400 028. ... Applicant

V/s

1. Union of India, through
Secretary, Ministry of Defence,
New Delhi.

2. Controller General of Defence
Accounts, West Block V,
R.K.Puram, New Delhi.

3. Controller of Defence Accounts
(Navy), 1 Cooperage Road,
Bombay 400 039.

4. Admiral Supdt., Naval Dockyard,
Bombay 400 023. ... Respondents

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

Appearances:

Mr. M.A.Mahalle, Advocate
for the applicant and
Mr. V.S.Masurkar, Counsel
for the respondents.

ORAL JUDGMENT:

Dated : 20.1.1992

(Per. M.Y.Priolkar, Member (A))

The applicant who retired as a Commander from the Indian Navy on 31.10.83 was appointed as Civilian Dredging Master in Indian Navy with effect from 5.11.1986. At the time of his retirement his basic pay was Rs.1900/- per month with total emoluments including DA, ADA and interim relief amounting to Rs.3,479/-. In terms of the appointment offer dated 3rd November 1986 his pay was to be fixed in the pay scale of Rs.1200-1800 (under revision) as per rules for re-employed pensioners. The applicant's grievance that is still subsisting now is that his pay on re-employment has not been correctly

fixed under the rules applicable for such pay fixation.

2. There is no dispute that the relevant rule applicable in this case is para 4(b)(ii) of Government of India letter dated 31st July 1986 regarding fixation of pay of re-employed pensioners effect ^{ive} from 1st July 1986, an extract of this rule is reproduced below:-

"4(b)(ii) In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial pay on reemployment shall be fixed at the same stage as the last pay drawn before retirement. If there is no such stage in the reemployed post, the pay shall be fixed at the stage below that pay. If the maximum of the pay scale in which a pensioner is reemployed is less than the last pay drawn by him before retirement, his initial pay shall be fixed at the maximum of the scale of pay of the reemployed post. Similarly, if the minimum of the scale of pay in which a pensioner is reemployed is more than the last pay drawn by him before retirement his initial pay shall be fixed at the minimum of the scale of pay of the reemployed post. However, in all these cases, the non-ignorable part of the pension and pension equivalent of retirement benefits shall be reduced from the pay so fixed."

Since, as already stated above, the applicant was drawing substantive salary of Rs.1900/- p.m. at the time of his ^{and} retirement, the pre-revised pay scale of the post of Civilian Dredging Master in which he was re-employed was Rs.1200-1800 at the time of his re-employment, the applicant claims that his initial pay has to be first fixed at the maximum of the scale of pay of the re-employed post i.e. Rs.1,800/- since the pay he was drawing at the time of his retirement was more than the maximum of the pre-revised scale of pay of the re-employed post. According to the

applicant, this will have to be again revised in accordance with the revised pay scale with effect from 5.11.1986 and his pay is to be fixed at the corresponding stage of Rs.4,125/- in the revised pay scale of Rs.3000-4500. The respondents, however, contend that since the pre-retirement pay was less than the minimum of the revised scale of pay, his pay has to be fixed at the minimum i.e. Rs.3,000/- with effect from 5.11.1986 in the scale of pay Rs.3000-4500 with the usual deduction towards non-ignorable part of pensionary benefits, since he was not in the existing scale as such on 5.11.1986 when the applicant was re-employed.

3. Evidently, as seen from the appoint offer dated 3.11.1986 there was an existing pay scale of Rs.1200-1800 for the post of Civilian Dredging Master in which the applicant was re-employed, although it was made clear in the appointment offer that this pay scale was under revision. Under para 4(b)(ii) of rules relating to the fixation of pay of re-employed pensioners which were in force on 5.11.1986, if the maximum of the pay scale in which a pensioner is re-employed is less than the last pay drawn by him before retirement, his initial pay shall be fixed at the maximum of the scale of pay of the re-employed post. This pay scale was Rs.1200-1800 at the time of re-employment of the applicant, viz. 5.11.1986. It is also admitted in the respondents letter dated 28.10.1988, at page 22 of the application, that the applicant's pay was initially fixed at the minimum of the pre-revised scale of pay i.e. Rs.1200/- provisionally for want of pay and pension particulars. It is clear, therefore, that if such particulars of pay and pension

had been available at the time of re-employment of the applicant, his pay would have been fixed under the rules at Rs.1800/- as it was the maximum of the pre-revised scale on 5.11.1986 and his retirement pay was Rs.1900/-. Even looking at this case from the equity angle, it is seen that under the pay as fixed by the respondents the applicant gets a benefit on his re-employment of only Rs.1632/- p.m. while working in a post carrying the scale of pay of Rs.3000-4500 whereas if his pay is initially fixed as claimed by the applicant at Rs.1800/-, his net salary on re-employment would be Rs.2508/- which appears to be more reasonable for carrying out the duties of a post with the pay scale of Rs.3000-4500.

4. The pay fixation rules dated 31.7.86 do not explicitly cover cases of pay fixation on re-employment after 1.1.1986, but before the revised pay scales were notified. In this particular case, however, the terms of the appointment offer dated 3.11.1986 did indicate that the pay was to be initially fixed taking into account the pre-revised pay scale of Rs.1200-1800. The respondents have admitted that this could not be done for want of relevant record at that time. The applicant should not be penalised for absence of record with the respondents. In my view, therefore, initially pay fixation had to be done on the basis of the pre-revised scale, and subsequent pay fixation was to be done after the Fourth Pay Commission's recommendations with retrospective effect, in accordance with the pay fixation rules dated 31.7.1986 applicable to re-employed pensioners.

5. In the facts and circumstances of this case, I would, therefore, direct the respondents to fix the

(12)

salary of the applicant on 5.11.1986 at Rs.1,800/- with the admissible allowances and usual deductions and subsequently, after the revised pay scale came into force, to revise the salary to Rs.4,125/- with effect from 5.11.1986 with the usual deductions towards non-ignorable part of the pension and pension equivalent of retirement benefits, as detailed in Controller of Defence Accounts letter dated 28.10.1988. Respondents are directed to make the necessary payments of any arrears of pay and allowances found due to the applicant on the basis of such pay fixation within a period of three months from the date of communication of this order. No doubt, the respondents would be free to recover also from the applicant any amount if found due from the applicant consequent upon this order.

6. The learned counsel for the applicant also prays for a direction to the respondents to pay interest on the Provident Fund dues of the applicant which are stated to have been withheld in order to compel the applicant to agree to the adjustment of alleged overpayment of salary from his retirement dues. According to the applicant, interest is due on the amount of Rs.30,146/- for a period of about six months. Respondents are directed to verify this position and to pay such amount of interest to the applicant in accordance with the rules, as may be found due and admissible.

7. No order as to costs.

4/4
(M.Y. Priolkar)
Member (A)