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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

REVIEW PETITION NO. 45/97 IN

Original Application No. : 484/96.

XXXXXXXXXXXXXXXXXXXX

Date of Decision

26-08-97

B. S. S. Yadhav,

Review Petitioner/s

Shri R. C. Kotiankar,

Advocate for
the Petitioner

Versus

Union Of India & Others,

Respondent/s

Shri B. Ranganathan for
Shri J. B. Deodhar,

Advocate for
the Respondent

Coram :

HON'BLE SHRI. M. R. KOLHATKAR, MEMBER (A).

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- (1) To be referred to the Reporter or not ? X
- (2) Whether it needs to be circulated to other X
Benches of the Tribunal ?

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A).

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

REVIEW PETITION NO.: 45/97 IN O.A. NO.: 484/96.

Dated this Pronounced, the 26th day of Aug, 1997.

CORAM : HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

B.S.S. Yadhav,
Watchman, GSO-II,
Bhabha Atomic Research Centre,
Tarapur,
MAHARASHTRA.
(By Advocate Shri R.C. Kotiankar)

... Applicant

VERSUS

1. Union Of India
(Through: Secretary to
Government Of India),
Deptt. Of Atomic Energy,
Anushakti Bhavan,
C.S.M. Marg,
Bombay - 400 039.
 2. Director,
Bhabha Atomic Research Centre,
Central Complex,
Trombay,
Bombay - 400 085.
 3. Controller,
Bhabha Atomic Research Centre,
Central Complex, Trombay,
Bombay - 400 085.
 4. Head, Personnel Division,
Bhabha Atomic Research Centre,
Central Complex,
Trombay,
Bombay - 400 085.
- (By Advocate Shri B. Ranganathan
for Shri J. B. Deodhar).

... Respondents.

: ORDER :

¶ PER.: SHRI M.R. KOLHATKAR, MEMBER (A) ¶

In this Review Petition, the Review Petitioner/
Original Applicant has sought review of my judgement dated
06.03.1997 which dealt with various aspects of pay fixation
of re-employed Military Pensioner, on the ground that the
order contains errors and omissions apparent on the face
of the record. It is further contended that the Tribunal's
judgement does not take into account the ratio of the
Full Bench judgement on the subject contained in

B. Ravindran & Others V/s. Director General Of Posts & Others, vide page 240 of the Full Bench Judgement, C.A.T. Volume-II, which was upheld by the Hon'ble Supreme Court in Director General Of Posts & Others V/s.

B. Ravindran & Another (1997 SCC (L&S) 455) (S.L.P. decided on 08.11.1996). It is contended by the Review Petitioner that B. Ravindran's judgement could not be brought to the Tribunal's notice as the same was not within the applicant's knowledge and therefore, could not be produced at the time when the subject order was made.

2. I have considered the various contentions of the Review Petitioner and it appears to me that the contention of the applicant in regard to grant of advance increment and the observations of the Full Bench upheld by the Supreme Court, which were not noted by the Tribunal, have involved the Tribunal in an error of interpretation. It may also be observed that the applicant has now brought on record the Ministry of Finance O.M. dated 28.06.1984 on the subject of - 'Criterion for hardship to grant advance increments in the re-employed post', which was ^{also} not brought to my notice by the Review Petitioner earlier.

3. In my view, my judgement as such, does not require a review but a part of it, dealing with the fixation of pay, by taking account of advance increments does require review. For facility of reference, para 4 of my judgement is reproduced :

"4. The next contention of the applicant is that, he had been denied the benefit of the government orders regarding pay fixation which are reproduced at Chapter 3 of Swamy's Compilation on Re-employment of Pensioners Page 46 para 1(b) of which reads as below :-

"(b) The initial pay, on re-employment, should be fixed at the minimum stage of the scale of pay prescribed for the post in which an individual is re-employed.

In cases where it is felt that the fixation of initial pay of the re-employed officer at the minimum of the prescribed pay scale will cause undue hardship, the pay may be fixed at the higher stage by allowing one increment for each year of service which the officer has rendered before retirement in a post not lower than that in which he is re-employed.

The applicant would contend that the order dated 17.01.1997 fixing the pay of the applicant at this stage of Rs. 334/- on 01.01.1986 ought to have been read as the stage of Rs. 912/- because the fixation of the initial pay of the applicant at the minimum of the prescribed pay scale ought to have been made after allowing one increment in terms of the orders referred to above. In my view, the question regarding the grant of advance increments is to be decided at the time of re-employment of any government employee and it has to be decided on an assessment by the Competent Authority as to factum of undue hardship. The Rules as I read, do not clothe any claim of the applicant for advance increment in the garb of a right and this prayer is not sustainable."

On this point, it appears to me that I can do no better than to re-produce para 14 of the Supreme Court judgement referred to above :

"It is not in dispute that the original order for fixation of pay of re-employed pensioners was contained in O.M. dated 25.11.1958. In the matter of fixation of pay of such re-employed pensioners the first step required to be taken was to fix his initial pay at the minimum stage of scale of pay prescribed for the post on which he was re-employed. The next step to be taken was to find out whether his pay thus fixed plus pension (including other pensionary benefits) exceeded the pay which he drew before his retirement or Rs. 3000. If it exceeded either of those limits then necessary adjustment was to be made in the pay by reducing it below the minimum stage so as to ensure that the total pay including pension was within the prescribed

limits. If the initial pay plus the pension was found to be less, then it was to be regarded as a case of undue hardship and his pay was required to be fixed at higher stage by allowing one increment for each year of service which the officer had rendered before retirement in a post not lower than in which he was re-employed. However, when it was noticed that this formula was not fair and just in cases of pensioners who retired at an early age that is before 55 years, the Government in relaxation of the policy contained in the 1958 order decided to grant some benefits to such re-employed pensioners and issued an order directing that civil pension upto Rs. 10 per month and military pension upto Rs. 15/- per month should be ignored in fixing pay on re-employment. Thus, while totalling up the initial pay and the pension for the purpose of finding out whether the pensioner on re-employment was likely to get more or less than what he was getting earlier, Rs. 10/- in case of Civil Pensioners and Rs. 15/- in case of military pensioners, were to be ignored. In other words, the amount of pension to be added to the initial pay was to be reduced to that extent. Thereafter, his pay was to be adjusted depending upon whether the pensioner would thus get more or less on his re-employment. This relaxation was obviously in the nature of a modification of the earlier policy. As narrated above the said limits to be ignored were increased from time to time and by the O.M. dated 08.02.1983 in case of ex-Servicemen, the limit was raised to Rs. 250/- in case of service officers and in case of personnel belonging to (sic below) Commissioned Officer ranks the entire pensionary benefits were to be ignored. Though in the beginning, according to the original policy contained in the 1958 order, the entire pension was to be added to the initial pay to find out whether it gave unintended advantage or caused undue hardship to the re-employed pensioner, the position did not remain the same after the passing of the orders in 1963 and 1964 and thereafter. The modifications thus made by the 1963 and 1964 orders were given legal status by amending Articles 521 and 526 of the Civil Service Regulations accordingly. "

4. In my view, the ends of justice would be met in the present case if the respondents are directed to consider the case of pay fixation of the applicant by taking into account para 14 of the Supreme Court judgement^{quoted above.} I, therefore, direct as follows :-

- (i) The judgement in O.A. should be read as supplemented by the present order in Review Petition.
- (ii) Respondents may take action in this regard within three months from the date of communication of this order in Review Petition.

5. The Review Petition, therefore, is partly allowed in terms of the above observations with no order as to costs.

M.R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

OS*

Order/Judgement despatched
to Applicant/Respondent (s)
on 4/9/97
⑧
8/9/97