

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH.

Original Application No.484 / 1996.

Date of Decision : 6.3.1997.

B.S.S.Yadhav.

... Applicant/Petitioner/s

Shri R.C.Kotiankar

... Advocate for the
Petitioner/s

V/s.

Union of India & Ors.

... Respondent/s

Shri B.Ranganathan.

... Advocate for the
Respondent/s.

Coram:

Hon'ble Shri M.R.Kolhatkar, Member (A).

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 484 OF 1996.

Thursday, this the 6th day of March, 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

B.S.S.Yadav,
Watchman, GSO II,
BARC, Tarapur,
Maharashtra.

... Applicant.

(By Advocate Shri R.C.Kotiankar)

V/s.

1. Union of India through
Secretary to Government of
India Department of Atomic
Energy - Anushakti Bhavan,
C.S.Marg,
Bombay - 400 039.

2. Director,
BARC, Central Complex,
Trombay,
Bombay - 400 085.

3. Controller,
BARC, Central Complex,
Trombay,
Bombay - 400 085.

4. Head, Personnel Division,
BARC, Central Complex,
Trombay,
Bombay - 400 085.

... Respondents.

(By Advocate Shri B.Ranganathan)

O R D E R (ORAL)

(Per Shri M.R.Kolhatkar, Member(A))

The applicant is a re-employed Military Pensioner who was discharged on 9.4.1974 and re-employed with the Respondents w.e.f. 3.5.1976 and confirmed on 25.7.1980.

The grievance of the applicant is relating to pay fixation. The first aspect relates to excess reduction. His military pension was fixed at Rs.130/- comprising Rs.113/- pension + Rs.17/- relief and after taking account of ignorable portion viz. Rs.50/- an amount of Rs.80/- was deducted from his emoluments instead of Rs.67/- (Rs.113-50= 67) on re-employment during the period 1.7.1978 to 13.7.1978. The correction

in this regard was made by the order dt. 4.10.1996 and applicant does not dispute that an amount of Rs.441/- has been paid to him. The first relief claimed by the applicant is therefore to pay interest on this amount. The O.A. was filed on 14.3.1996 and the amendment of the order in regard to pay fixation on this account was made only in October, 1996 and the payment has been made only thereafter. There is no doubt that the amount is very negligible but the Government has used the same for a long time and has paid the same only after the filing of the O.A. and the applicant is entitled to interest at the rate of 12% on this amount from 18.7.1978 up to October, 1996 when the payment was actually made.

2. The second relief claimed by the applicant is in respect of failure of the respondents to take account of ignorable portion of the pension which came to be enhanced from time to time. The limit of ignorable portion was enhanced from Rs.50/- to Rs.125/- vide orders dt. 19.7.1978, thereafter, it was increased to Rs.250/- by order dt. 19.4.1983 and it was further increased to Rs.500/- w.e.f. 1.4.1986. According to the applicant he has not been given the benefit of the orders relating to ignorable pension because his pension being Rs.113/- w.e.f. 19.7.1978 when the ignorable portion was Rs.125/- it was below the limit and therefore the whole of the pension ought to have been ignored while fixing the pay. The contention of the Respondents, however, is that the applicant could not be given the benefit of the orders because he was required to exercise the option within six months from the date of issue of the orders, but the applicant exercised the option only on 21.7.1979 i.e. after 8 months and therefore the benefit could not be given to the

applicant. However, the respondents had taken up the question of accepting the option of the applicant though exercised belatedly and the orders of the Personnel Department in this regard were received only under letter dt. 24.12.1996. Thereafter, the amount of Rs.14,575/- has been drawn on the basis of permission given by the nodal department to accept belated option and the payment made on 27.1.1997. This amount pertains to reduction of Rs.80/- p.m. for the period from 19.7.1978 to 24.1.1983. The applicant would urge that he should be paid interest on this amount. The third claim of the applicant is regarding the payment of interest on the amount of Rs.4098/- which was paid to him on 29.7.1988. This was on account of the fact that when the ceiling of ignorable pension was enhanced from Rs.125/- to Rs.250/- from 25.1.1983, no amount could have been left for deduction towards Military Pension, but inadvertently the Respondents' office continued deduction of military pension from 25.1.1983 to 30.4.1987 but the excess recovery was refunded to the applicant as mentioned above on 29.7.1988.

3. I have therefore to consider the claim of the applicant for interest on these two counts viz. Rs.14,575/- and Rs.4,098/- (paid on 27.1.1997 and 29.7.1988 respectively). The claim for interest on the amount paid on 29.7.1988 has become time barred and I therefore do not allow the claim of interest on the same. So far as the interest on the amount of Rs.14,575/- paid to the applicant in January, 1997 on the basis of due and drawn statement after obtaining the sanction of the nodal department for acceptance of the belated option is concerned, the respondents have opposed the same on the ground that the applicant had suppressed the fact that exercise of the option

was one of the pre-conditions for ignoring the portion for fixation of the pay and secondly that in respect of the applicant the respondents had taken a sympathetic view on the belatedly filed application and had taken up the matter with the appropriate department and had condoned the delay in the exercise of the option. In my view, the title of the applicant to receive the payment of Rs.14,575/- flowed from the decision of the department to sanction the amount is spite of the belated option as a special case. It is clear that as soon as the sanction was received in December, 1996 the Respondents have made payment to the applicant in January, 1997. Therefore, I hold that the applicant is not entitled to payment of any interest on the amount of Rs.14,575/-.

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 a 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 dt. 17.1.1997 fixing the pay of the applicant at this stage of Rs.334/- on 1.1.1986 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.

5. The applicant would then contend that in the due and drawn statement several benefits have been taken into account, but the question of overtime allowance has not been considered. The applicant further submits that he had prayed for in situ promotion to the grade of Rs.800-1150 admissible to those stagnated at the maximum of pay scale Rs.750-940 as per rules vis-a-vis juniors, the same has not been considered. On this point the respondents have stated that as per the Department of Expenditure O.M. dt. 25.5.1992 re-employed pensioners are not eligible for in situ promotion as part of career advancement scheme. On this point they have enclosed a copy of the relevant government orders at (Ex. R-7) of the written statement. The applicant, however, contends that inspite of such orders precluding extension of in situ promotion scheme to the re-employed pensioners the respondents have issued an order on 6.10.1992 giving in situ promotion to 95 employees all of whom are re-employed pensioners. The counsel for the respondents submits that the applicant ought to have made out his grievance on this

aspect by way of a Rejoinder immediately after the written statement was filed on 19.11.1996 which he has not done.

6. I am inclined to accept the contention of the respondents on this point and I therefore dispose of the O.A. by passing the following order.

O R D E R

1. Interest at the rate of Rs.12% on the amount of Rs.441/- from 1.7.1978 to 31.10.1996.
2. No other relief except that it is open to the applicant to make a representation to the respondents on the two points kept open viz. the point relating to grant of O.T. and the point of in situ promotion within 15 days from the date of receipt of order and the respondents may reply to the representation within three months from the date of receipt of the representation in a speaking manner and if the applicant feels aggrieved of the same, he will be at liberty to file a separate O.A., if so advised, as per Rules.
3. No order as to costs.

M.R.Kolhatkar

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

B.

17/3
CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

REVIEW PETITION NO. 45/97 IN

Original Application No. : 484/96.

XXXXXX XXXXXXXX XXXXXXXX XXXX

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).

XXXXXX XXXXXXXX

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other 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 Prohance, 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),
Dept. 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.

... Respondents.

4. Head, Personnel Division,
Bhabha Atomic Research Centre,
Central Complex,
Trombay,
Bombay - 400 085.

(By Advocate Shri B. Ranganathan
for Shri J. B. Deodhar).

: 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 quoted above. Supreme Court judgement, 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*

dd 26/8/97
Order/Judgement despatched
to Applicant/Respondent(s)
on 4/9/97
S/9/97