

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THE 2ND SEPTEMBER, 1986

Present: Justice K.S. Puttaswamy, Vice-Chairman  
Sri P. Srinivasan Member

Transferred Application No. 1472/86(T)

P.P. Shirthady  
S/o Late Sri S. Vasudev Pai,  
No. 188 A,  
III Block, III Stage,  
West of Cord Road,  
Bangalore.

.... Applicant

( Shri V.A. Mohanrangam ... Advocate)

1. The Union of India  
Secretary,  
Ministry of Health,  
Arogya Bhavan, New Delhi.

2. The Director,  
Central Government Health Scheme  
Nirman Bhavan, New Delhi.

3. The Chief Medical Officer,  
Central Government Health Scheme,  
III Block West, Jayanagar,  
Bangalore.

.... Respondents

( Shri M.S. Padmarajaiah ... Advocate)

The application has come up for hearing before  
Court to-day, Member(Administrative) made the  
following:

ORDER

(Per Srinivasan, Member)

The Applicant filed Writ Petition no. 7639 of 1985 before the Karnataka High Court which, on transfer, has been taken on file as Application no. 1472/86(T) before this Tribunal.

The Applicant is working as a Pharmacist Grade I in the Central Government Health Scheme at Bangalore. He was earlier Havildar Pharmacist in the Ministry of Defence for 16 years. He was discharged from his former service on 3.5.81 and became a military pensioner at the age of 36. Under the scheme of reemployment of ex-service personnel in civilian posts, he was appointed as Pharmacist Grade I on 12.8.81 in the Central Government Health Scheme at Bangalore which post he continues to hold till date. His first grievance is that on his re-employment in civilian service from 12.8.81, his pay last drawn while in military service was not protected. When he was discharged from military service, he was drawing a pay of Rs. 380 per month. The scale of pay of Pharmacist Grade I in the Central Government Health Scheme is Rs. 330 - 560. On his appointment to the Central Government Health Scheme, his pay was fixed at Rs. 330, i.e., at the minimum of the scale. His contention is that it should have been fixed at Rs. 380 which was the pay last drawn by him in his former service. Secondly, a sum of Rs. 69.00 is being deducted from his pay every month representing Dearness Allowance attached to his pension, which he receives for his former service. He contends that this deduction should not have been made

As there were a number of cases, where the concerned employees had not exercised option in this regard, the final date was fixed as 31-3-76 for such options to be exercised.

6. The exemption limit of pension to be ignored at the time of fixation of pay on reemployment under the OM dated 25-11-58 was raised to Rs. 125/- per month in OM No. F.5(4) EIII (B)/77 dated 19-7-78 and persons who desired to have refixation of pay on 19-7-78 are required to give an option within a period of 6 months from 19.7.78 and the options once exercised being final."

On behalf of the Respondents, Shri M.S. Padmarajaiah, Learned Senior Standing Counsel for the Central Government contends that the Applicant's appointment in the Central Government Health Scheme being a fresh appointment, his pay could not be fixed at any stage beyond the minimum and that his earlier service in the Army could not be taken into account.

We find that the stand on behalf of the Respondent does not meet the Applicant's case fully. At Annexure 5 to the application, a letter addressed to the Directorate General, Central Health Scheme by the Directorate General of Resettlement has been reproduced in which the former have been directed to fix the pay of the Applicant in accordance with 2 Office Memoranda dt 25.11.58 and 8.2.83. The reply on behalf of the Respondent does not refer to any rules for fixation of pay of ex-servicement on employment in civil service.



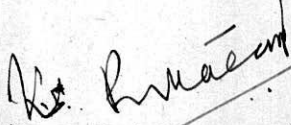
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On the other hand, it states that no decision has been taken by the Government on the representation of the Applicant. This is a vague reply which does not help us decide the issue raised in this application. It is also contrary to the text of the Office Memorandum reproduced by us earlier.

The next point is about deduction of Dearanss Allowance on pension of Rs. 69.00 from the pay of the Applicant in his present employment. The extract from the Office Memorandum given above also suggests that deduction cannot be made in respect of military pension upto a limit of Rs.125/-.

In the circumstances, we are of the view that the Applicant's grievance has not been properly dealt with by the authorities concerned.

In the result, we allow this application, and direct Respondents no. 2 and 3 to refix the pay of the Applicant in his present post in accordance with the memorandum dated 8.3.1982 reproduced earlier and other instructions on the subject. This should be done within 3 months from the date of the receipt of this order. We also direct Respondents to pay the Applicants all past dues as a result of the refixation of his pay and implementation of this order. Deductions wrongly made in the past should be repaid to him. No order as to costs.

  
(K.S. Puttaswamy)  
Vice-Chairman  
2.9.1986

  
(P. Srinivasan)  
Member (A)  
2.9.1986

from the beginning because it is illegal and impermissible.

Shri V.A.Mohanrangam, Learned Counsel for the Applicant, pleaded that there are rules framed by the Government of India by which the pay last drawn by ex-servicemen should be protected on reemployment in civil service. He cites Office Memorandum No. 3-9/79-PAT dated 8th March, 1982 which reads at para 5 and 6 as follows:-

"5. The fixation of initial pay of the defence service pensioners on their reemployment in the P&T Dept. is normally dealt with under the provisions of Govt. of India, Min. of Finance OM No. 8(34). R&EST. III/57 dated 25.11.58. The amount of pension to be ignored at the time of fixation of pay was Rs. 15/- per month till orders were issued in OM No. 7(34)-EST.III/62 dated 17.1.64 raising the limit to Rs. 50/- per month. Under these orders, the initial pay of the re-employed official could be fixed at a higher stage than the minimum of the time scale by allowing one increment for each year of service which the official had rendered before retirement in the defence services in a post not lower than that in which he is re-employed in the P&T Dept. For this purpose, only such service in the defence services wherein the pay drawn was equal to or more than the minimum of the re-employed time scale of pay was taken into account for purpose of fixation. This position was liberalised under OM No.F.

6(8)-E III/63 dated 11.4.63 in respect of ex-combatant clerks who were recruited as LDCs or time scale clerks in the P&T Dept. after their release/retirement from the armed forces by allowing the initial fixation above the minimum equal to the number of completed years of service as combatant clerk(excluding service as recruit clerk) irrespective of pay drawn in the armed forces. In these cases, only a pension of Rs. 15/- per month could be ignored and excess over the same taken into accounting fixing the pay. As such, these latter orders for ex-combatant clerks were not advantageous if pension sanctioned by the defence authorities is considerably in excess of Rs. 15/- p.m. It was, therefore, clarified in Govt. of India, Min. of Finance OM No.F.6(8)E.III/63 dated 16.3.66 that re-employed military pensioners shall exercise option within 3 months of the date of re-employment in the civil department, either for the benefits, OM dated 25-11-58 with the increased limit of pension that could be ignored (this was later enhanced to Rs. 125/- p.m. from 19-7-78) or the benefits of O.M. dated 11-4-63. The option once exercised in this way would be final. Subsequently the benefits of the OM dated 11-4-63 were extended retrospectively to persons re-employed even prior to 1-1-56, and the employees covered by the extension of these orders were required to exercise the option within 6 months from 7-8-70.