

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 19/8/87

Application No. 301 /87(F)

W.P. No. /

Applicant

Shri P.R. Radhakrishnan

v/s The Director, NAL, Bangalore & another

To

1. Shri P.R. Radhakrishnan
C-22, NAL Staff Quarters
Bangalore - 560 017

4. The Director-General
Council of Scientific and
Industrial Research
Rafi Marg
New Delhi - 110 001

2. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009

5. Shri S.S. Ramdas
Advocate
Keshava Nivas
24, Kalidas Road
Gandhinagar
Bangalore - 560 009

3. The Director
National Aeronautical Laboratory
Bangalore - 560 017

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH IN
APPLICATION NO. 301/87(F)

Please find enclosed herewith the copy of the Order/Interim Order
passed by this Tribunal in the above said Application on 5-8-87.

Encl : as above.

SECTION OFFICER
(JUDICIAL)

Balu **RECEIVED** 20/8/87

Diary No. 1029/CR/87
Date: 22/8/87

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH BANGALORE

DATED THIS THE 5TH AUGUST, 1987

Present: Hon'ble Shri P. Srinivasan

Member (A)

APPLICATION NO. 301/87(F)

Sri P.R. Radhakrishnan,
aged 55 years,
Son of Sri.P.S. Ramakrishnan,
No.C-22, NAL Staff Quarters,
BANGALORE - 560 017.

Applicant

(Dr.M.S. Nagaraja,... Advocate)
Vs.

1. The Director,
National Aeronautical Laboratory,
Bangalore- 560 017.

2. The Director-General,
Council of Scientific and
Industrial Research,
Rafi Marg,
New Delhi-110 001.

Respondents

(Shri S.S. Ramdas.... Advocate)

This application has come up for hearing before
this Tribunal to-day, Hon'ble Member (A) made the
following :

O R D E R

In this application filed under Section 19 of
the Administrative Tribunals Act, 1985, the applicant
who is a military pensioner complains against the
fixation of his pay by two office memoranda dated
20.8.1985 and 10.2.1986 (Annexure E and F to the
application) with effect from 25.3.1976 when he was
given civilian employment, again from 19.7.1978
and from 8.2.1983.



P.S. 62

2. The matter was heard first on 3.8.1987 when Dr.M.S. Nagaraja for the applicant and Shri S.S. Ramdas, learned counsel for the Respondents presented their respective cases. It was adjourned to today as some clarification was needed on a few points. When the matter was called out today learned counsel for the respondents did not appear but Dr. Nagaraja was present on behalf of the applicant. Since arguments on both sides had practically concluded on the last occasion I proceed to dispose of the application as follows:

3. The applicant retired from the Indian Air Force (IAF) on 30.11.1974. He was appointed with effect from 25.3.1976 in the National Aeronautical Laboratory in Bangalore. At the time of appointment the applicant furnished information that immediately before his retirement from the IAF he was drawing a basic pay of Rs. 400/- and a good conduct bonus pay of Rs.15/-. Since the instructions on the subject provided that on reemployment, the pay last drawn by a military pensioner before he retired from military service should be protected, the respondents fixed the pay of the applicant at Rs. 416/- The applicant also informed the respondents that he was in receipt of a military pension of Rs. 147/. The instructions at the time were that out of military pension a sum of Rs.50 should be ignored for pay fixation and only the balance of the pension should be deducted from the pay fixed on subsequent civilian employment. Therefore, the respondents determined the net pay of the applicant as on



25.3.1976 at Rs.416 - Rs.97 ie., Rs.319. Subsequently by the two impugned orders referred to above, the respondents refixed the pay of the applicant as on 25.3.1976 at Rs. 400, before deduction of pension. The respondents also ascertained that in addition to the cash pension of Rs. 147/-, pension equivalent of gratuity amounted to Rs. 28 and this had also to be taken into account for the purpose of fixation of pay. The total of pension and pension equivalent of gratuity (PEG) amounted to Rs.175/-. Ignoring Rs. 50 as per the then prevailing instructions, Rs.125 had to be deducted from the pay. Therefore, the net pay of the applicant was revised to Rs.400 - Rs. 125 = Rs.275 as against Rs. 319 fixed earlier. The dispute here is only in regard to downward revision of the initial pay from Rs.416 in the first instance ^{M to} ~~of~~ Rs.400. Shri Ramdas contended that only the basic pay of Rs.400 drawn by the applicant before his retirement from the IAF had to be protected and not the good conduct bonus pay and that is why the initial pay was revised downwards from Rs.416 to Rs.400. According to Shri Ramdas the earlier fixation was incorrect. Dr. Nagaraja contended that the good conduct bonus pay is also pay to be taken into account for protection. I have looked into the relevant instructions on the matter and I am satisfied that the good conduct bonus pay has also to be taken into account in case of JCO's who had retired from IAF for the purpose of protection of last pay drawn. I, therefore, direct the respondents to fix the pay of the applicant from 25.3.1976



at Rs.416 as was done in the first instance. The deduction of Rs.125 therefrom is in order. In other words the applicant's pay from 25.3.1976 will be Rs.416 - Rs.125 ie. Rs.291.

5. With effect from 19.7.1978 Government liberalised the provision relating to ignoring of military pension in the matter of fixation of pay of military pensioners on reemployment in civilian posts. In deducting pension from pay on such reemployment, Rs.125 out of the military pension was to be ignored instead of Rs.50 prior to 19.7.1978. While conveying this relaxation Government also stipulated that a military pensioner in civilian employment as on 19.7.1978 should exercise an option as to whether he would like to be governed by the liberalised scheme from that date or to continue to be governed by the old scheme. It was also a condition of the option that in the event of the military pensioner choosing the liberalised scheme his pay would be fixed as from 19.7.1978 as if he had been freshly appointed on that date. The applicant opted for the new scheme. Following the instructions on the subject the respondents revised the pay of the applicant from 19.7.1978 before deduction of pension at Rs.400, as if he was employed for the first time from that date. Out of the total pension and PEG of Rs.175, Rs.125 was ignored and Rs.50 was deducted from the pay so fixed. In this way the applicant's pay was fixed at Rs.400 - Rs.50 = Rs.350. Here again Dr.

Nagaraja's quarrel is only with the fixation



of the pay before deduction at Rs.400 and not against the deduction of Rs.50. He contended that if the applicant were treated as freshly reappointed, the pay last drawn by him before retirement from military had to be protected and so the pay could not be fixed at less than Rs.416. In addition, according to Dr.Nagaraja, the increments earned by the applicant between 25.3.1976 and 19.7.1978 should also have been protected.

Shri Ramdas reiterated his arguments referred to above that the pay was rightly fixed at Rs.400, being the basic pay drawn by the applicant before his retirement from the IAF. Having considered the contentions on both sides I am of the view that the pay fixation should have been at Rs.416 and not at Rs.400/- for the same reason set out in the previous paragraph.

I am unable to agree with Dr.Nagaraja that increments accrued between 25.3.1976 and 19.7.1978 should also have been protected.

The instructions on the subject are very clear viz. that where a military pensioner comes over to the new scheme from 19.7.1978, his pay should be fixed as if he was freshly appointed on that date and if that were to be so, increments drawn earlier cannot be taken into account. It is upto the respondents to consider whether the applicant's pay from 19.7.1978 could be fixed at a higher figure under FR 27, if that Rule is applicable to his case and he makes a representation in this behalf.

1.5.1982



I would direct the Respondents to refix the pay of the applicant as from 19.7.1978 at Rs.416 - Rs.50 ie Rs.366 per month,

6. With effect from 8.2.1983, Government further liberalised the scheme for military pensioners by providing that a sum of Rs.250 out of the military pension drawn by them can be ignored for the purpose of determining their pay on civilian reemployment. In other words if the pension of the military pensioner was less than Rs.250 nothing should be deducted from his civilian pay fixed on reemployment from 8.2.1983. Here also the same conditions as before were stipulated. The military pensioner had to opt for the new scheme and pay had to be fixed from 8.2.1983. as if he had been reemployed for the first time. The applicant having opted for the new scheme from 8.2.1983 the respondents fixed his pay at Rs.380 with no deduction on account of military pension because the total of pension and PEG was less than Rs.250. The same arguments as were urged in regard to pay fixation from 19.7.1978 were reiterated by both sides. For the reasons given by me in the earlier paragraphs I am of the view that here also applicant's pay should have been fixed at Rs.416 from 8.2.1983 instead of at Rs.380 as done by the respondents. In other words the applicant will be entitled to pay of Rs.416 without any deduction from 8.2.1983 onwards instead of Rs.380.

1. f. 14/6



7. After the above portion of the order was dictated, Shri P.S. Sawkar appeared in court on behalf of the respondents and contended that ~~good~~ ^H good conduct bonus pay can be taken into account for the purpose of protection of pay last drawn only if such good conduct bonus pay were drawn for three years. Secondly, he contended that as per the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986 (1986 Orders for short) in cases where pension is fully ignored the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the re-employed post. Therefore, with effect from 8.2.1983 from which date the entire pension of the applicant is ignored, his pay was rightly determined by the respondents at Rs.380/- which was the minimum of the scale of the post in which he was re-employed. I have considered these arguments carefully. I find that in Government of India, Ministry of Defence, Memorandum No. 2(54)/58/5801/D(civI) dated 15.7.60, it has been clearly laid down that in cases of JCOs and NCOs who had retired from the Air Force, good conduct pay is to be taken into account in computing pay last drawn and there is no restriction that it should be taken into account only if drawn continuously for one year before retirement. That restriction is only in regard to special pay drawn and that too by civilian pensioners. Therefore, the decision recorded above that good conduct bonus pay should be taken into account for the purpose of protection of pay last drawn in the



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case of the applicant needs no change. As for the second contention based on the 1986 Orders, the said orders are applicable to re-employed pensioners appointed in civilian employment on or after 1-7-1986. The applicant was admittedly appointed well before that date and fixation of his pay from 8.-2-1983 is governed by the Office Memorandum of that date issued by the Ministry of Defence which nowhere states that for persons in whose cases the whole pension is ignored for deduction, the pay should be fixed from that date i.e. from 8-2-1983 at the minimum of the scale to which they are appointed on re-employment. Therefore the decision in regard to the pay of the applicant with effect from 8.2.1983 taken by me above remains unchanged and Shri Sawkar's objections thereto are rejected.

To sum up, the position will be as follow :

(1) Office Memoranda dated 20.8.1985 (Annexure E) and 10.2.1986 (Annexure F) refixing the applicant's pay with effect from 25.3.1976, 19.7.1978 and 8.2.1983 are hereby quashed.

(2) The pay of the applicant on the date of his first appointment in civilian services i.e. on 25.3.1976 as fixed originally i.e. Rs.416 before deduction will continue to be valid from that date till 18.7.1978, the applicant being entitled to increments in the scale of pay of the post during this period.

(3) As on 19-7-1978, the applicant will be entitled to a pay before deduction of Rs.416 and from 19.7.1978 to 7-1-1983 he will be entitled to increments in the scale of pay of the post.

(4) As on 8-2-1983, the pay of the applicant before deduction will again be Rs. 416/-



15-1-83

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and he will be entitled to increments from that date in ^{the} scale of pay of the post he is re-employed.

(5) The deduction from the pay towards military pension drawn by the applicant will be Rs.125/- from 25.3.1976 to 18.7.1978, Rs.50/- from 19.7.1978 to 7.2.1983 and the entire pension from 8.2.1983.



8. The application is partly allowed as indicated above.

9. Parties to bear their own costs.

Sd.

MEMBER (A)

sb.

- True copy -

A. Jayaram 19/8/87
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE