

Duplicate for
Tory

(87) CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG. NO.6, PRESCOT ROAD, 4TH FLOOR.,
MUMBAI - 400 001.

ORIGINAL AFFLICATION NOS.83/91 & 354/91.

DATED THIS 30th DAY OF APRIL, 1996.

CORAM : Hon'ble Shri B.S.Hegde, Member (J).
Hon'ble Shri M.R.Kolhatkar, Member (A).

1. ORIGINAL APPLICATION NO.83/91.

Shri J.H.Rao ... Applicant
(Advocate by Shri S.Natarajan)

2. ORIGINAL APPLICATION NO.354/91.

Shri V.D.Kulkarni ... Applicant
(Advocate by Shri S.Natarajan)

v/s.

1. Union of India,
through the Secretary,
Ministry of Personnel, Public
Grievances and Pension,
Government of India,
New Delhi - 110 001.

2. Secretary,
Ministry of Finance
Department of Revenue,
Government of India,
North Block, New Delhi-110 001.

3. Collector of Customs and Central Excise,
P.M.C. Commercial Building,
Hira Baug, Tilak Road,
Pune - 411 002.

4. Secretary,
Ministry of Defence,
Government of India,
New Delhi - 110 001. ... Respondents
(Advocate by Shri Suresh Kumar
for Shri M.I.Sethna)

ORDER

[Per Shri M.R.Kolhatkar, Member (A)]
re

Applicant in O.A. 354/91 is/employed after service
(Airforce)
in Defence Services/as Inspector of Central Excise. The
applicant in O.A. No.83/91 after service in the Airforce is
re-employed as Deputy Field Officer, Telecom (Tele)
under Cabinet Secretariat.

2. The facts in these two cases are not exactly
and hence
identical but the principle involved is the same/ a
common judgement is pronounced.

The facts in O.A. 83/91 are taken as illustrative.
case of the applicant is that

3. The rules relating to fixation of pay of re-employed ex-service men were contained in the Ministry of Defence O.M. No.8(34)-Est.III/57 dated 25/11/1958 as amended from time to time.

4. Under the said Orders, the pay on reemployment was to be fixed at the minimum of the scale of pay prescribed for the post and in case of undue hardship, the pay is required to be fixed at higher stage by allowing one increment for each year of service rendered before retirement in a post not lower than that in which he is re employed. In addition a reemployed exserviceman was permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefit for which he was eligible. It is however, provided that the total amount of initial pay as fixed above plus the gross amount of pension and/or pension equivalent of other retirement benefits ^{should} ~~and~~ not exceed the pay he drew before his retirement. It is further provided that if the said limit is exceeded, the pension and other retirement benefits may be paid in full and necessary adjustment made in the pay of the individual so as to ensure that the total of the pay and pensionary benefits is within the prescribed limits.

5. By Ministry of Finance O.M. No.7(34)-Est.III/62 dated 16/1/1964, the Government of India issued Orders to the effect that consequent on the liberalisation of the pension rules and general increase in pay scales on the basis of 2nd pay commission's recommendations, ~~xxxxxx~~ ~~xxxxxxxxxxxx~~ in the case of persons retiring before attaining the age of 55, the actual pension, in case the pension was below Rs.50 or the first Rs.50/- of the pension if the pension was more than Rs.50/- was to be ignored in fixing the pay on re-employment.

6. Incorporating the amendment to give effect to

(10)

the said order, in Article 526 of the Civil Services Regulations under GOI Notification No.12(3)-E V/87 dated 27/3/1967, it was clarified that those who were re-employed before 16th January 1964 and who opted for the above orders will, however, be treated as fresh entrants from the date.

7. By Government of India M.F. O.M. No.F.5(14)-EIII/77 dated 19/7/1978 the said ignorable portion of Rs.50/- was raised to Rs.125/-. The said letter also stipulated that on option, their terms would be determined afresh as if they have been reemployed for the first time. Applicant opted to come under this Order.

8. By an Order of Ministry of Defence I.M.No.2(1) 83/D Civ.I dated 8.2.83 (effective from 25/1/83) the limit of the ceiling of ignored portion of pension was revised:

- i) In case of serving officers, the first Rs.250/- on pension (raised to Rs.500/- w.e.f. 1.7.86)
- ii) In case of persons below commissioned officers' rank, the entire pension.

These Orders provided that in the case of person who were already on re-employment, their pay was to be refixed on the basis of this orders provided they opted to come under this orders. It further provided that if they so opted, their terms would be determined afresh as if they were employed for the first time.

9. Applicant did not exercise option to come under these orders.

10. Applicant states that the result of the said Order is that the applicant had to forgo the increments drawn by him in the same scale from the year 1976 onwards.

11. The Respondents issued orders fixing the pay of the applicant for the period from 1/4/79 till

date by an Officer Order No. 226-DF0(T)/Pers-14/90 dated application
26/9/90, copy annexed to 7 and marked Exhibit A-1.
that

12. It is not disputed that this pay fixation involves recovery of over-payment from the applicant and therefore the applicant made a representation to which a negative reply was sent by letter dated 14/1/91 placed at Exhibit A-2 (page-12). It is this which the applicant has impugned. The main contention of the applicant is that the recovery is entailed on account of retrospective Viz re-fixation of pay with effect from 10/4/79. Such a recovery cannot be made after a lapse of several years in respect of pay and allowances which have been received in good faith. The applicant therefore has claimed the relief of re-fixation of pay on the basis of enhanced limit and revised reemployment pay with effect from 19/7/1978 and 25/1/1983 to be fixed giving the benefits of notional increments over and above the notional pay fixed for the period he had worked in the same post prior to such re-fixation and that there should be no recovery on account of alleged over-payment.

13. So far as applicant in O.A. No. 341/91 is concerned the facts are slightly different in the sense that he did not exercise the option even in the result of the memorandum dated 19/7/1978 because he was not intimated about the same and therefore he is claiming the additional relief of permission to exercise option immediately after the order of fixation of pay was announced.

14. The applicant relies on the judgement of Central Administrative Tribunal in TA 404/87, G. Vasudevan Pillai v/s. Union of India decided on 31/10/89. In this judgement the Tribunal relied on the ratio of Supreme Court judgement in Nakara (AIR 1983 SC 130) and the Tribunal held that the authorities cannot make a discrimination in relation to the employees who have been re-employed with reference to cut off dates with effect from 19/7/1978 and 25/1/1983, etc.

A/C 02

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authorities regarding revision of the pension which was their duty. We are not impressed by this argument. Recovery is also due to failure of the respondents to deny benefit of notional fixation of pay for past service and give effect to enhanced limit of ignorable portion of the pension.

17. In the result, we find that the relief claimed in OA's are required to be granted. The pay of the applicants should be refixed on the basis of enhanced limits as on 1/1/86 and the revised reemployment pay with effect from date of issue of the O.M.'s will be determined by giving them the benefits of notional increments over and above the notional pay so fixed on the date of their reemployment. No arrears of pay on the basis of notional pay fixation would be given for the period prior to the date of issue of the O.M. Those applicants, who had not opted for any of the O.Ms, should be given an opportunity to opt for the same and if they do so, their actual pay from the date of issue of the O.M. should be determined on the above lines. There wi

(M.R. KOLHATKAR)
MEMBER (A)

(B.S. HEGDE)
MEMBER (J)

abp.

dt-30/4/96
Order/Judgement despatched
to Applicant Respondent (s)
on 11/6/96

Original O/c filed
in 8183/91

14/6/96

The Tribunal granted relief in following terms:-

"(b) If the petitioners have opted for the O.M. of 19/7/78 and/or 8/2/83 indicating enhanced limits of ignorable pension, their re-employment pay on their date of their re-employment should be notionally fixed on the basis of the enhanced limits and their revised re-employment pay with effect from the date of issue of the O.M. will be determined by giving them the benefits of notional increments over and above the notional pay so fixed on the date of their re-employment. No arrears of pay on the basis of notional pay fixation would be given for the period prior to the date of issue of the O.M. Those petitioners, if any, who have not opted for these O.Ms, should be given an opportunity to opt for the same and if they do so, their actual pay from the date of issue of the O.M. should be determined on the above lines."

15. The Learned Counsel for the applicant pointed out that the case of G.Vasudevan Pillai was taken in SLP before Supreme Court and vide 1995(1) ATJ 311, the Supreme Court upheld the judgement of the Tribunal. So far as the relief as (b) reproduced above is concerned. In particular the Hon. Supreme Court stated in para-15 as below:-

"Indeed, no justification has been canvassed before us. The decision which held the field before the impugned Memorandum in not taking note of pension while fixing pay of the ex-servicemen on re-employment, which was based on good reasons, had no good reason for its reversal, as enhanced pension was not confined to those who were in employment on 01.01.86. The impugned decision is, therefore, arbitrary and is hit by Articles 14 & 16 of the constitution. We, therefore, declare the same as void."

16. Counsel for Respondents have opposed the OA mainly on the ground that recovery on re-fixation was mainly due to the failure of the applicants to inform