

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1020/92

Transfer Application No:

DATE OF DECISION: 22.11.1994

Lt.Cdr.Prem Nath Khanuja Petitioner

Shri M.A.Mahalle Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri V.S.Masurkar Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri

1. To be referred to the Reporter or not ? *Mo*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *No*


(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

(1)

OA.NO. 1020/92

Lt.Cdr.Prem Nath Khanuja ... Applicant

v/s.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande

Appearance

Shri M.A.Mahalle
Advocate
for the Applicant

Shri V.S.Masurkar
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 22.11.1994

(PER: M.S.Deshpande, Vice Chairman)

The only question is whether the applicant in the cadre of Civilian Dredger should have been placed in the pay scale in which he was fixed. The applicant was commissioned with the Navy on 31.3.1967 and was promoted to the rank of Lt.Commander on 1.4.1979. He retired from the Indian Navy on 30.9.1985 in the rank of Lt.Commander, his basic pay being Rs.1,800/- (Maximum of Scale) and the total emoluments were Rs.3,776/-. On 1.10.1985 he was re-employed in the Indian Navy as Lt.Commander and the basic was fixed at Rs.1,450/- and the emoluments at Rs.3,265/- (IIIrd Pay Commission Scales).

2. The applicant primarily claims fixation on the basis of Rule 4(b)(ii) of the Government of India Letter dated 31.7.1986 regarding fixation of pay of re-employed pensioners effective from 1.7.1986, that rule is as follows :-

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"4(b)(ii) In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial pay on re-employment shall be fixed at the same stage as the last pay drawn before retirement. If there is no such stage in the re-employed post, the pay shall be fixed at the stage below that pay. If the maximum of the pay scale in which a pensioner is re-employed is less than the last pay drawn by him before retirement, his initial pay shall be fixed at the maximum of the scale of pay of the re-employed post. Similarly, if the minimum of the scale of pay in which a pensioner is re-employed is more than the last pay drawn by him before retirement his initial pay shall be fixed at the minimum of the scale of pay of the re-employed post. However, in all these cases, the non-ignorable part of the pension and pension equivalent of retirement benefits shall be reduced from the pay so fixed."

In OA.NO. 740/89 S.S.Rathore vs. Union of India & Ors. decided on 20.1.1992, this rule was taken into consideration and the pay of the applicant was fixed on the basis of this rule, The direction being that upon entry the pay should be fixed upon this rule and thereafter it should be fixed at the appropriate stage in the revised scale of pay.

3. The respondents contended in their reply that the applicant's pay was fixed on the basis of his last pay drawn which was to be arrived at by adding to basic pay Rs.1800/-, DA + ADA and I.R. and it was proposed to re-fix the pay after obtaining the approval of the Controller of Defence Accounts (Navy). Additional written statement was filed by the respondents on 8.7.1994. It was stated that the applicant's total emoluments worked out to Rs.3626/- i.e. Rs.1800/- basic pay + Rs.1360/- Dearness Allowance + Rs.206/- Additional Dearness Allowance + Rs.260/- Interim relief and therefore his pay had been rightly fixed at Rs.3625/-. In the rejoinder filed to this additional reply the applicant stated that this fixation was wrong. The only

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controversy now is about the inclusion of additional interim relief of Rs.260/- in the amount Rs.3625/- so fixed. According to the respondents, the applicant would not be entitled to interim relief on the basis of Government order dated 31.1.1991. There has been ^a controversy about the admissibility of this interim relief as an addition to the pay that has to be fixed and the Bangalore Bench of this Tribunal in OA.NO. 604/91 decided on 19.4.1993 took note of the pending controversy and directed that Until the entire controversy on this point is decided by the Supreme Court in SLP No. 160208 of 1990 by which the operation of the decision of Ernakulam Bench has been stayed by the Supreme Court and regard being had to the circumstances that the matter itself is pending before the Supreme Court, a direction was made that depending on the outcome of that SLP, the Department should itself take steps to regulate the rights of the applicant in consequence and in pursuance of the Supreme Court's decision in that SLP.

4. There is no other controversy centring about the initial fixation of Rs.3625/-.

5. The only direction that need be made in the present case is that the respondents shall fix the pay of the applicant in accordance with the rules on the basis of his pay being Rs.3625/- within a period of two months from the date of communication of this order and shall make the payment of arrears to him within the same period. With regard to the controversy regarding the entitlement of interim relief, the respondents shall take steps to regulate the rights of the applicant in consequence and in pursuance of the Supreme Court's decision in SLP No. 160208/90 aforesaid according to the 4th Pay Commission's revised pay rules.



(M.S.DESHPANDE)

VICE CHAIRMAN