

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 402/95

Date of Decision 14-2-96

Harishchandra Dattaram Ghag Petitioner

Mr. S.A. Ghaisas Advocate for the Petitioner.

versus

Union of India & Ors. Respondent

Mr. R. K. Shetty Advocate for the Respondents.

Coram:

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

The Hon'ble Mr.

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)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.402/95

WEDNESDAY the 14th day of FEBRUARY 1996

CORAM: HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A.)

Harishchandra Dattaram Ghag,
Bhaveshwar Darshan,
17 Near Krishna Nursing Home,
Vidyamandir Road, Dahisar(E)
Bombay - 400 068.

(By advocate Shri S.A.Ghaisas) .. Applicant

-versus-

1. Regional Provident Fund
Commissioner,
Bhavishya Nidhi Bhavan,
341, Bandra(E),
Bombay - 400 051.
2. The Central Provident Fund
Commissioner, 9th Floor,
Mayur Bhavan, New Delhi-1.
3. Union of India
through
its Secretary in
Ministry of Labour,
Shramshakti Bhavan,
Rafi Marg,
New Delhi - 1.

(By counsel Shri R.K.Shetty) .. Respondents

O R D E R
(Per M.R.Kolhatkar, Member(A))

The applicant joined Indian Air Force,
in the year 1970 and retired on 30-4-1985. He was
re-employed as LDC in the office of Regional Provident
Fund Commissioner in the scale of Rs.260-400(Pre-revised)
w.e.f. 12-7-1985. At the time of retirement of the
applicant from Indian Air Force he was drawing the
basic pay of Rs.380/- and on retirement from Indian
Air Force his monthly pension was fixed at Rs.367/-
with effect from 1-5-85.

2. The main prayer of the applicant is that his pay fixation in the Provident Fund organisation should be done by taking into consideration his last pay drawn as an Ex-Serviceman and also ignoring the Military pension while fixing his salary after the applicant joined the respondent as LDC and to pay the applicant the difference between pay drawn by the applicant and the pay that he will be entitled to as per the prayer above. He impugns letter dt. 28-9-1993 from the respondents at Ex.'E' page 37 which states that as there is no hardship in his case the question of allowing advance increment for fixing his pay in the Lower Division Clerk cadre does not arise. This has been done in terms of basic order as to the Regulation of Pay during Re-employment which is reproduced at Annexure R-1 and the same reads as below :

"(1) Basic Order -1. In supersession of all earlier orders on the subject, the Government of India have decided that the following procedure be adopted in fixing the pay of pensioners, including officers pensioned off or retired on Contributory Provident Fund, and from services of the State Governments, Local Bodies, Port Trusts, etc. administered by Government, Railways, Defence Estimates, Universities, Autonomous Bodies, Public Undertakings etc, re-employed in Central Civil Departments :-

(a) Re-employed pensioners should be allowed only the prescribed scale of pay, that is, no protected time-scales such as those available to pre-1931 entrants should be extended to them.

R (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."

Applying this basic rule which applies to the employees re-employed prior to 1-7-86 ^{and} undisputedly the applicant was re-employed prior to 1-7-86, the contention of the respondents has given in the comments of the Internal Finance Wing is that hardship can be seen only when minimum pay of re-employed post plus pension in full plus pension equivalent to gratuity is less than the last pay drawn at the time of retirement as decided by the Govt. in consultation with Department of Personnel and Training. The present case deserves no advance increment, as his pay has been fixed at Rs.260/- when his pay plus pension was more than that of his pay last drawn in Military Service.

3. The applicant has relied on the case of a colleague of his, Shri S.K.Nair who joined the organisation as LDC w.e.f. 19-7-85 i.e. a week after the applicant joined the same organisation. The said Shri S.K.Nair was subsequently transferred to Ernakulam office of the respondents. S.K.Nair had approached the Ernakulam Bench of the CAT, and the applicant contends that his case is ~~on~~ ^{with} all fours ~~to~~ that of S.K.Nair. The judgment

is given at Ex-'B', page 34. In that judgment in O.A.754/93, S.K.Nair v. Regional Provident Fund Commissioner, Trivandrum, decided on 15-7-93 the Hon'ble C.A.T. Ernakulam Bench observed as below:

"Applicants seek appropriate directions to command respondents 1 & 2 to fix their pay, protecting the last pay drawn, and ignoring the pension received by them. Learned counsel for applicants submit that they are entitled to this relief by reason of the decisions in TAK-404/87 and O.A.-3/89. The contention is not disputed. The applications are therefore allowed and respondents 1 & 2 are directed to take appropriate action in the light of the decisions aforesaid and on the basis of the particulars furnished in Annexure A-1, positively within two months from today. No Costs."

As Ernakulam bench relied on the decision of TAK-404/87 and O.A.3/89, the counsel for the applicant invited our attention to the decision in O.A.3/89, O.A.15/89, OAK-283/88 and OAK-289/88 delivered by Full Bench of in the Tribunal at Ernakulam on 13-3-1990. It is not in dispute that this judgment also related to interpretation of the similarly matter of pay fixation of the re-employed pensioners but in the context of P&T Department. The Full Bench in the relevant portion of its judgment stated as below:

"19. In the light of the foregoing we hold that the fixation of pay of ex-servicemen on their re-employment in Government service, will have to be on the basis of the instructions in force at the relevant time before the clarifications were issued by the Department of Personnel & Training in 1985. We further hold that the clarifications issued by the Department of Personnel will have no retrospective operation so as to prejudicially affect the pay

already fixed in respect of ex-servicemen who were re-employed before the issue of such clarifications. We also are of the opinion that the respondents will not be justified in effecting any recovery from the ex-servicemen on account of the alleged over payments consequent upon the receipt of the clarifications from the Department of Personnel & Training.

20. The learned counsel for the respondents drew our attention to the Central Civil Services (Fixation of Pay of re-employed pensioners) orders, 1986, which came into force on 1st July, 1986. We do not propose to consider the same as they are not relevant to the case of the applicants before us who were re-employed prior to the said date. The administrative instructions of 1964, 1973 and 1983 which were of a beneficial nature, call for a liberal interpretation as the Government itself is committed to the task of welfare of ex-servicemen. While interpreting such a beneficial provision like the one embodied in the administrative instructions issued in 1964, 1978 and 1983, we are inclined to lean on the interpretation which is more **advantageous** to the employees concerned in respect of whom they have been issued rather than on a narrow construction of the said provisions canvassed before us by the respondents.

21. In the light of the foregoing discussions the question posed to the Full Bench in O.A.3/89 O.A.15/89 and O.A.K.288/89 are answered as follows:

- (a) We hold that for the purpose of granting advance increments over and above the minimum of the pay-scale of the re-employed post in accordance with the 1958 instructions (Annexures IV in O.A.3/89), the whole or part of the military pension of ex-servicemen which are to be ignored for the purpose of pay fixation in accordance with the instructions

issued in 1964, 1978 and 1983(Annexures V, V-a and VI respectively) cannot be taken into account to reckon whether the minimum of the pay-scale of the re-employed post plus pension is more or less than the last military pay drawn by the re-employed ex-servicemen.

(b) The orders issued by the respondents in 1985 or 1987 contrary to the administrative instructions of 1964, 1978 and 1983 cannot be given retrospective effect to adversely affect the initial pay of ex-servicemen who were re-employed prior to the issue of these instructions.

22. The questions posed to the Full Bench in OAK-289/88 are answered as follows:

(i) to (iv)

The provisions of the Civil Service Regulations are statutory in nature and the instructions of 1964, 1978 and 1983 have been issued by the Government under the said Regulations and supplement the provisions of the said Regulations.

The clarifications issued by the respondents on 30-12-1985 and subsequent dates, cannot over-ride the earlier instructions issued in 1964, 1978 and 1983 prospective. The purported modification of the earlier instructions on the subject will have only prospective operation."

4. The contention of the counsel for the applicant, therefore, is that his case is fully covered by the decision of the Full Bench which was rendered in the case of similarly situated re-employed persons.

5. Counsel for the respondents, however, opposed the O.A. on the ground that the pay of the applicant has been fixed in accordance with pay fixation rules which specifically applied to the employees re-employed prior to 1-7-86 and the applicant was re-employed on

12-7-85 and the rule squarely applies ^{to} him, that in any case the pay fixation is a policy matter beyond the jurisdiction of this Tribunal as ruled by Hon'ble Supreme Court in the case of Union of India vs. Mallikarjuna Rao, AIR 1990(SC)1251. Counsel for the applicant has pointed out that not only in the case of S.K.Nair but also in the case of Mr.M.K.Dhupkar, belonging to sub regional office Indraloke, Delhi the pay fixation was allowed and he had made a representation in this regard at Ex.F, page 38.

6. The facts relating to Shri Dhupkar are not before me but I have no doubt that the applicant is similarly situated to Shri S.K.Nair working in the same organisation. Shri S.K.Nair got the benefit on the basis of Full Bench decision which had gone into the question of retrospective operation of DOP instruction which was circulated in Department of P&T in December'85. It is not in dispute that the applicant is re-employed w.e.f. 12-7-1985 i.e. prior to the clarificatory instructions of the DOP. Therefore as held by the Full Bench in O.A.3/89 the same would not apply to the ^{applicant} pensioner re-employed prior to the issue of those instructions. I am of the view that the issue raised in the matter and prayers made by the applicant are no longer res-integra and I am bound by the decision of the Ernakulam Bench judgment in O.A.754/93 and Full Bench judgment on which it relied.

6. O.A. is, therefore, allowed with no order as to costs. Respondents are directed to make notional date

~~pay~~ fixation from the of re-employment viz. 12-7-85

and the actual payment of arrears should be made for one year prior to the date of filing of the application viz. 4-4-1994. The payment is to be made within four months from the date of receipt of a copy of this order. No order as to costs.

M.R. Kolhatkar

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(M.R. KOLHATKAR)
Member(A)