

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 687/1995

Date of Decision: 1/8/96

C.D.Sharma

Petitioner/s

Applicant in person

Advocate for the
Petitioner/s

V/s.

Ministry of Defence & Ors.

Respondent/s

Shri R.K.Shetty


Advocate for the
Respondent/s

CORAM:

Hon'ble Shri P.P.Srivastava, Member (A)

Hon'ble Shri

- (1) To be referred to the Reporter or not ? ☒
- (2) Whether it needs to be circulated to other Benches of the Tribunal ? ☒


(P.P.SRIVASTAVA)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA.NO. 687/95

THURSDAY this the 1st day of August 1996

CORAM: Hon'ble Shri P.P.Srivastava, Member (A)

C.D.Sharma
Residing at Vill,
Gorhe Budruk, PO.Donje,
Dist.Pune

Applicant in person ... Applicant
V/S.

1. The Director,
Institute of Armament Technology,
Girinagar, Pune.
2. Jt.C.D.A. (R&D) Pashan, Pune
3. The Govt. of India,
Ministry of Defence,
Dept. of Def.Res. & Dev.
New Delhi

By Advocate Shri R.K.Shetty
C.G.S.C. ... Respondents

O R D E R

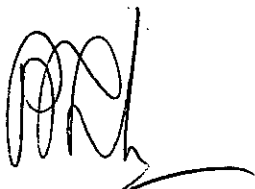
(Per: Shri P.P.Srivastava, Member (A))

The applicant is an Ex-service Man. He worked in the Indian Air Force and retired from there on 15.4.1971 and was granted pension of Rs.15/- p.m. w.e.f. 16.4.1971 which was subsequently raised to Rs.30/- p.m. with retrospective effect. The petitioner was re-employed on 7.2.1972 in Military Hospital, Fatehgarh, U.P. as Civilian Pharmacist and was later on transferred to IAT Girinagar, Pune as Civilian Security Assistant wherein he served upto 30.6.1994 when he superannuated. The applicant was paid the minimum scale of pay of the Civilian post and his pay was not fixed for a long time and it was fixed only on 13.1.1994. His pay was fixed at Rs.119/- p.m. with Rs.16/-p.m. constant deduction in the pay scale of Rs.110-3-131-4-155 w.e.f. 7.2.1972. According to the applicant, the fixation of pay has taken into account

his defence pension of Rs.15/- and the same has been deducted from his pay which is not correct in terms of the rules. According to the applicant, defence pension upto Rs.50/- is required to be ignored while fixing the pay. Thus Rs.16/- p.m. constant deduction should not be made and his pay should be fixed at Rs.119/- p.m. from 7.2.1972. The applicant has also prayed that the respondents have fixed the pay after a very long period and he has been denied his salary for such a long time and interest be paid on salary. He has also prayed that even after fixing the pay the applicant had not been paid any arrears from 7.2.1972 to 20.7.1972 when he was working at Military Hospital, Fatehgarh and had only ^{been} given notional fixation for this period.

2. Counsel for the respondents has submitted that the pay of the applicant has been fixed in terms of Article 156 (1B) of the Civil Service Regulations and in terms of these provisions the pension amount is required to be adjusted so as to ensure that the total of the pensionary benefit ^{and pay} is not more than the pay which the applicant was drawing when he retired from the defence service. Article 156 (1B) reads as under :-

"(1B) In supersession of all earlier orders on the subject the Government of India have decided that the following procedure should be adopted in fixing the pay of pensioners/military/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 etc. on their re-employment to the civil posts paid from Defence Services Estimates.



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

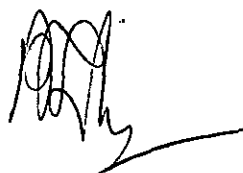
In cases where it is felt that the fixation of initial pay of re-employed officer at the minimum of the prescribed pay scale will cause undue hardship, the pay may be fixed at a higher stage by allowing one increment for each year of service which the officer had rendered before retirement in a post not lower than that in which he is re-employed.

For the purpose of the above sub-class, a military pensioner who retired as a JCO or OR will be deemed to be appointed to a comparable civilian post if the pay of the military post with the emoluments mentioned under Note 3 below sub-paragraph (c) is equal to or more than the minimum of the scale of pay applicable to the civil post.

- (c) In addition to (b) above, the Government servant may be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefit for which he is eligible e.g., Government's contribution to a Contributory Provident Fund, gratuity, commuted value of pension, etc. provided that the total amount of initial pay (as at (b) above, plus the gross amount of pension and/or the pension equivalent of other form of retirement benefit does not exceed.
 - (i) the pay he drew before his retirement/pre-retirement pay, or
 - (ii) Rs.3,000 whichever is less.

Note 1. In all cases where either of these limits is exceeded the pension and other retirement benefits may be paid in full and the necessary adjustments made in the pay so as to ensure that the total of pay and pensionary benefits is within the prescribed limits.

Where, after the pay is fixed at the minimum or any higher stage, it is reduced below the minimum as a result of the said adjustments increase in pay may be allowed after each year of service at the rate of increments admissible as if the pay had been fixed at the minimum or the higher stage as the case may be.



Note 2. In the case of civilian pensioners pay last drawn before retirement will be taken to be the substantive pay plus special pay if any pay drawn in an officiating appointment may be taken into account if it was drawn continuously for atleast one year before retirement. In the case of military pensioners pay to be taken into account will be pay of the substantive or acting rank, as the case may be, provided that in the latter case the acting rank had been held for at least one year before retirement. In the case of JCO's and other Ranks pre-retirement pay will include other emoluments as in Note 3 below."

(Notes 3 to 7 are not reproduced as they are not relevant).

In terms of the provisions (b) in the above Article, the applicant was entitled to 3 increments for his service in the Air Force and therefore his pay was fixed in the Grade at Rs.119/- in the Grade of Rs.110-3-131-4-155. Since the last pay drawn by the applicant was Rs.118/- in terms of para (c) of the above Article 156 (1B), the applicant's pay has been fixed at Rs.119/- with Rs.16/- p.m. as constant deduction.

3. The pay fixation of the Military Pensioner is governed by Articles 525 to 528 in Section III of the Civil Service Regulations. Since Articles 525 to 528 have a important bearing on this case, they are being reproduced in toto here :-



"525. Except where it is otherwise expressly provided, the rules in Section II of this Chapter do not apply to a military officer, departmental officer, warrant or non-commissioned officer or soldier who is taken into or allowed to continue in civil employ after he has been granted a pension under military rules. The claim of such an officer to salary in the Civil Department are governed by Articles 526 to 528. His pension for service in the Civil Department will not be affected by his military pension."

Government of India's decision :-
Article 525, Civil Service Regulations does not apply to the case of a Non-Commissioned Military Officer in receipt of an invalid pension under military rules; his pension cannot be affected on re-employment in Civil Department.

(Para 368 of the India Supplement to C.S.R. (5th Edition)).

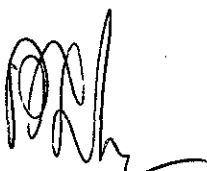
526 (a) Where a pensioner formerly in military service obtains employment in Civil Department after having been granted a military pension, and continues to draw his military pension the authority competent to fix the pay and allowances in which he is re-employed shall in fixing his pay and allowances in the post in which he is re-employed, take into account the amount of pension, including such portion of it as may have been commuted.

(b) Where a military officer, departmental officer, warrant or non-commissioned officer or soldiers who is granted a pension under military rules while he is in civil employ, draws such pension while he is in civil employ, the authority competent to fix the pay and allowances of the post in civil employ, may, with effect from the date from which the pension is granted reduce such pay and allowances, with reference to such officer or soldier by any amount not exceeding amount of such pension.

(c) In the case of service personnel who retire from the Forces before attaining the age of 55 and are re-employed in civil posts on or after 16th January 1964 the pension shown below shall be ignored in fixing their pay on re-employment :-

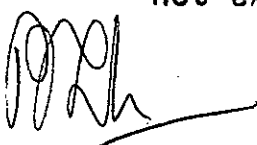
- (i) in the case of pensions not exceeding Rs.50 per mensem, the actual pension;
- (ii) in other cases the first Rs.50 of the pension.

Those who were re-employed before 16th January 1964 and who had opted for the above orders will however, be treated as fresh entrants from the date."



4. The fixation of the applicant was re-examined by the respondents in their letter dated 26.2.1996 (which is placed at Annexure-'R-7' of the written statement) wherein the administration has reiterated that the pay fixation of the applicant has been done correctly in terms of Article 156 (1B) Note 1 below (C) (ii) read in conjunction with Article 526 (b) of the Civil Service Regulations. The counsel for the respondents has argued that Article 526 (b) permits administration to reduce the pay of the applicant by an amount not exceeding the amount of pension granted under military rules. Since the applicant was drawing the pension which was granted by the Military, the application of Article 156 (1B) has been correctly made in the case of the applicant. Article 526 (c) which lays down that pension not exceeding Rs.50/- per mensem shall be ignored in fixing the pay on re-employment is to be read with provisions of Article 156 and the pension upto Rs. 50/- ~~can~~ only be ignored provided the pay + pension does not become more than the last pay drawn by the applicant as a defence employee.

5. I am not able to accept this argument of the counsel for the respondents. Article 156 (1B) ~~is~~ is required to be followed in fixing the pay of pensioners and military pensioners ~~and~~ is general provision for all the pensioners. Section (b) lays down the grant of extra increment to the defence personnel. Section (c) lays down as to how the pay is required to be adjusted with reference to the pension and it lays down that the total amount of pension in terms of para (b) above + the gross amount of pension and/or the pension equivalent should not exceed pay drawn before retirement. In my opinion



this provision of Article 156 in the case of military pension would have to take into account provisions of Section (c) of Article 526 wherein it has been laid down that pension not exceeding Rs.50 per mensem is required to be ignored in fixing the pay of the military pensioner on re-employment. The correct meaning of this provision would be that while fixing the initial pay, the fixation should not take into account the military pension upto Rs.50/- or the actual pension as the case may be.

6. The provisions of ~~Article 526~~ & ~~Art. 156~~ are to be read together. Provision at 526 (b) permits reduction in pay and allowances equal to the amount of military pension but this reduction will be subject to the provisions of Section (c) ^{of Art. 526} wherein it has been laid down that ~~the pension upto Rs.50/-~~ should be ignored while fixing their pay on re-employment. This reduction in Rs.50/- or the actual pension if it is not exceeding Rs.50/- is not subject to any provisions of Article 156. In terms of Article 156 pension even upto Rs.50/- would be adjustable in terms of para (c) ^{of Art. 156} and Note below for all those who are not military pensioners but in case of military pensioners, the provisions of Article 526 (c) would come into play for deciding the fixation of pay in terms of Article 156. Thus, the pay is required to be fixed for the military personnel in terms of Article 156 by ignoring pension upto Rs.50/- in terms of para (c) of Article 526.

7. Thus, in the case of the applicant, his pay is required to be fixed ~~without any~~ deduction ~~being~~ ☐ made for the pension of Rs.15/- which is being paid to him as a defence personnel.

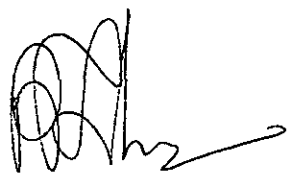
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8. In the result, the OA. succeeds and the applicant is granted relief as under :-

- (1) Pay of the applicant should be fixed without any deduction of pension from 7.2.1972.
- (2) He should be paid all the arrears including for the period from 7.2.1972 to 27.3.1973 for the period when he worked at Military Hospital, Fatehgarh.
- (3) The order of the administration dated 13.1.1994 at Annexure-'1' would stand modified to the extent as ordered above.
- (4) All the pensionary benefits which have accrued to the applicant as a result of this order as well as remaining arrears as a result of the administration's order dated 13.1.1994 should be paid to the applicant within a period of six months from the date of receipt of this order.
- (5) In case the respondents do not pay the pensionary benefits within six months, the applicant will be entitled to interest @ 16% p.a. on the amount due thereafter.

The OA. is disposed of with the above directions. In the circumstances of this case, there will be no order as to costs.


(P.P. SRIVASTAVA)
MEMBER (A)

mrj.