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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.112/93.

Date of Judgement : 15-3-94

P.M.Kumar

.. Applicant

Vs.

1. National Industrial Security Academy,
Central Industrial Security Force,
Min. of Home Affairs, Rep. by the
Dy. Director, CISF, Hakimpet,
Hyderabad-14.
2. Central Industrial Security Force,
Min. of Home Affairs, Rep. by the
Director-General,
Block No.13, CGO Complex, Lodi Road,
New Delhi-110003.
3. Govt. of India, Rep. by the
Secretary, Min. of Home Affairs,
South Block, New Delhi-110011.
4. Govt. of India, Rep. by the
Secretary, Min. of Defence,
South Block, New Delhi-110011.
5. Govt. of India, Rep. by the
Secretary, Min. of Finance,
North Block, New Delhi-110001.
6. Govt. of India, Rep. by the
Secretary, Min. of Personnel,
Public Grievances & Pensions,
Dept. of Personnel & Training,
6th Floor, Nirvachan Sadan,
New Delhi-110001.

.. Respondents

Counsel for the Applicant :: Shri G.Bikshapathi

Counsel for the Respondents :: Shri N.R.Devaraj, Sr. CGSC

C O R A M

Hon'ble Shri A.B.Gorthi : Member(A)

Hon'ble Shri T.Chandrasekhar Reddy : Member(J)

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O.A.No.112/93.

J u d g e m e n t

{ As per Hon'ble Shri A.B.Gorthi : Member(A) }

The grievance of the Applicant is that his pay was not correctly fixed and as such the Respondents directed recovery of certain amounts from his pay and allowances. His prayer is that his pay be properly fixed in accordance with the extant instructions and that the Respondents be directed not to effect any recovery from his salary.

2. The Applicant is a Military Pensioner. Having served the Indian Army for over 22 years he was released on pension in the rank of Naik Subedar (Nursing Technician) w.e.f. 23.6.76. His basic pension was Rs.188/- and the pension equivalent of gratuity (P.E.G. for short) was Rs.29.89. Though the last pay drawn by him in the Army was Rs.613.80 (Pay Rs.440/- + D.A. Rs.173.80), his pay on joining the Central Industrial Security Force (C.I.S.F. for short) as a Compounder on 25.5.77 was fixed at Rs.272.11. Ever since, his pay continued to be wrongly fixed. Initially, only Rs.50/- of his pension was to be ignored, but later the amount was increased to Rs.125/- w.e.f. 19.7.78. There were also increases in his pensionary entitlements. The Respondents, however, on each occasion, fixed his pay in such a way that his pay in C.I.S.F. plus the pension (less the ignorable pension) did not exceed the last pay of Rs.440/- drawn in the Army.

3. Govt. of India, Min. of Defence, decided that w.e.f. 25.1.83 the total pension of a Military Pensioner (below the rank of Commissioned Officer) would be ignored for the purpose of fixation of his ^{pay} on re-employment in any of the other Ministries, Departments of the Govt. of India. The Military Pensioner was required to exercise his option for refixation of pay ignoring the total pension. The Applicant was unaware of it.

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With the introduction of the IV Pay Commission recommendations w.e.f. 1.1.86, the pay of the Applicant was fixed at Rs.1380/-. However, the Respondents unilaterally decided to deduct a portion of his pension from the pay vide the impugned order dt. 24.8.92 giving it effect retrospectively from 1.1.86. Thus, the Applicant is being threatened with the recovery of a sum of Rs.28,769=25.

4. The Respondents' reply is that on each occasion the pay of the Applicant was fixed in accordance with the then applicable instructions. In case of ex-servicemen who retired before attaining the age of 55 years, part or full of their military pension is ignored while fixing their re-employment pay i.e., the ignorable part of the pension is not added to the re-employment pay to determine whether the re-employment pay plus the gross amount of pension or pension equivalent of other forms of retirement gratuity exceeded the maximum permissible limit, viz: the amount of the last pay drawn before retirement. The ignorable part was at one time Rs.50/- which was increased to Rs.125/- by M.F. O.M. of 19th July, 1978. Ultimately, by M.D. O.M. dated 8th February, the entire pension of persons who retired below Commissioned Officer's rank was declared ignorable for fixation of their re-employment pay. When the Min. of Defence decided to exempt the total pension for pay fixation w.e.f. 25.1.83, the Applicant did not opt for it. Further he never protested against any instance of pay fixation ever since he joined the C.I.S.F.

5. The Applicant in his rejoinder claimed that he was totally unaware of the option he was required to exercise in 1983 and that the Respondents neither informed him about it nor asked him to exercise his option. Had he known about it, he would have opted for ignoring his total pension as it would have been beneficial to him in the long run.

6. The Applicant's grievance regarding fixation of pay dates back to his initial appointment in 1977. There is nothing on record to even remotely suggest that he objected to his pay fixation at any time prior to the impugned order

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dt. 24.8.92, by which his pay was lowered retrospectively from 1.1.86. Any claim now made by the Applicant with regard to his pay fixation in 1977 when he was re-employed in C.I.S.F. or 1979 when his pension was increased, cannot be entertained at this belated stage. We reject the same on the ground of inexcusable delay.

7. The question that is left for our consideration is the validity of the impugned order. With the introduction of the IV Pay Commission recommendations from 1.1.86, the pay of the Applicant was fixed at Rs.1380/-. However, the Respondents seem to have come to the conclusion in 1992 that as the Applicant did not give his option for ignoring his total pension w.e.f. 1983, a sum of Rs.391=89 from the pension ought to have been deducted from the revised pay of the Applicant w.e.f. 1.1.86.

8. There is nothing on record to suggest that the Respondent did bring to the notice of the Applicant the contents of the Min. of Defence O.M.No.2(1)/83/B/(Div.I) dt. 8.2.83 and the corrigendum dt. 24.10.83. It is not that he could have known all about it from his colleagues, because they were not ^{all} ex-service men. In Civil Departments, where the number of ex-servicemen employed is not large, it is imperative for the authorities concerned to individually bring it to the notice of such ex-servicemen, whenever there is a change in their pay or pension and whenever they are required to exercise ^{any} option. It will merely be futile to contend that the employee "knew" or "ought to have known" of such option to be exercised within specified period. Extra care should be taken by the officials concerned when the employee is in a non-clerical cadre or in

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lower cadre, say Group 'C' or 'D'. In respect of such an employee the presumption should be that he is unaware of the policy change governing any of his service conditions such as pay, pension, promotion etc., until and unless it is shown by cogent evidence that the policy change has been specifically brought to the notice of the said employee. In the case of the Applicant before us, there is nothing on record to refute his contention that he was unaware of the fact that he was to exercise fresh option when his total pension was to be ignored for fixation of pay.

9. Learned Counsel for the Applicant has drawn our attention to a judgement of the Ernakulam Bench of the Tribunal in P.Gopalakrishna Pillai & 6 Ors. Vs. Govt. of India & 2 Ors. (1991) 16 ATC 619. That was a case where the Tribunal was to decide the pay fixation of military pensioners on their re-employment in the Office of the Accountant-General, Kerala. Relevant portion of the judgement is reproduced below:-

"We have no hesitation in reiterating our earlier finding that re-employed military pensioners whose full or part of their pension was to be ignored before 1.1.1986 will continue to have the whole or part of their revised military pension ignored for the purposes of re-fixation of their re-employment pay in the revised scales after 1.1.1986."

10. In view of the above, we find it unreasonable that the Respondents should have decided to revise the pay of the Applicant solely on the premise that the Applicant did not opt for the benefit of the Min. of Defence O.M. dt. 8.2.83. We, therefore, partly allow the O.A. and direct the Respondents to treat the Applicant as an optee for ignoring his total pension under the Min. of Defence O.M. dt. 8.2.83, and re-fix his pay w.e.f. 1.1.86 in the revised pay scale to which he was entitled by ignoring the total pension of the Applicant as done by the Respondents initially. Respondents shall comply

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with this direction within a period of three months from the date of communication of this order.

14. No order as to costs.

T. Chandrasekhar Reddy
(T.Chandrasekhar Reddy)
Member(J).

A.B.Gonthi
(A.B.Gonthi)
Member(A).

Dated: 5 March, 1994.

br.

Pratap 18394
Deputy Registrar(Judl.)

Copy to:-

1. Dy. Director, CISF, National Industrial Security Academy, Central Industrial Security Forces, Ministry of Home Affairs, Hakimpet, Hyderabad-14.
2. Director General, Central Industrial Security Forces, Ministry of Home Affairs, Block No.13, CGO Complex, Lodi road, New Delhi. — 110003.
3. Secretary, Ministry of Home Affairs, Govt. of India, South Block, New Delhi-011.
4. Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi-011.
5. Secretary, Min. of Finance, Govt. of India, North Block New Delhi-001.
6. Secretary, Min. of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Govt of India, 6th floor, Nirvachan Sadan, New Delhi-001.
7. One copy to Sri. G.Bikshapathy, advocate, CAT, Hyd.
8. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
9. One copy to Library, CAT, Hyd.
10. One spare copy.

Rsm/-

6th Mar 1994
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C.A. 112/93

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COMPARED BY

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER(J)

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER(A)

Dated: 15/3/1994

ORDER/JUDGMENT: _____

~~M.A./R.A./C.A.No.~~

O.A.No.

in 112/93

T.A.No.

(W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Rejected/Ordered.

No order as to costs.

