

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2509/2012
MA 731/2014
MA 1782/2016
MA 2092/2012
MA 3365/2013

Reserved on: 4.01.2017
Pronounced on: 24.01.2017

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

P.K. Chaturvedi
S/o Late Dr. D.D. Chaturvedi
Aged about 56 years
Resident of 161, DDA Flats, Sector-1, Dwarka
New Delhi-110075 ... Applicant

(Through Ms. Jyoti Singh, Senior Advocate with Shri M.S.
Ramalingam, Advocate)

Versus

1. Union of India through
The Chairman
Central Board of Trustee (EPF)
And Minister
Ministry of Labour & Employment
Shram Shakti Bhawan,
Rafi Marg, New Delhi-110001
2. Chairman Executive Committee of
Central Board of Trustees,
(EPF) & the Secretary
Ministry of Labour & Employment
Shram Shakti Bhawan,
Rafi Marg, New Delhi-110001
3. Central Provident Fund Commissioner
Employees Provident Fund Organization
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place,
New Delhi-110066
4. Union of India, through
The Secretary
Department of Personnel and Training

Ministry of Personnel, Public Grievances & Pensions
North Block, New Delhi-110001 ... Respondents

(Through Ms. Aparna Bhat and Ms. Joshita, Advocates for respondents 1-3)

ORDER

Mr. P.K. Basu, Member (A)

The applicant was working in the rank of Lt. Col. in the Indian Army. He joined Employees Provident Fund Organization (EPFO) on deputation basis as Chief Engineer with effect from 14.05.2001. The deputation period was for two years i.e. it was to expire on 13.05.2003. It was decided to permanently absorb the applicant in EPFO. He gave his consent for absorption vide letter dated 10.04.2003 and also indicated that his pay and emoluments need to be protected (Annexure A-4). Thereafter, EPFO initiated communication with Army Headquarters. In fact, the Regional Commissioner vide memo dated 9.04.2003 had also sought details about the applicant indicating that they were considering the issue of absorption of the applicant in EPFO. The EPFO wrote to Army Headquarters regarding absorption of the applicant vide letter dated 23.07.2004. We quote below this letter as much of the bone of contention arises out of the wordings of this letter and some other letters:

"Sub:- Appointment of IC - 37452 Lt. Col. P. K. Chaturvedi, Engineers in the post of Chief Engineer (Pay Scale of Rs.14300-400-18300) on deputation/re-employment in the EPFO- Regarding.

Ref:- Military Secretary's Branch, Army
Headquarters, DHQ PO, New Delhi letter
No.A/12080/37452/2003/MS-3B dated 11th
February 2004.

Sir,

I am directed to invite a reference to this office letter of even number dated 11.04.2001 conveying the approval of the appointment of Lt. Col.P.K.Chaturvedi, Engineers (IC-37452) as Chief Engineer in EPFO on deputation/re-employment basis in the pay scale of Rs.14300-400-18300.

2. In this regard it is stated that further vide this office letter of even number dated 16.04.2003, the Ministry of Defence was informed that this office is considering the appointment of Lt. Col.P.K.Chaturvedi on permanent absorption basis as per the Recruitment Rules for the post of Chief Engineer in EPFO and the Ministry of Defence was requested to convey their No Objection to his appointment on absorption. The Ministry of Defence vide their letter dated 11.02.2004 while extending the deputation tenure upto the date of commencement of study leave before 30.09.2004, have conveyed their No Objection to the permanent absorption. I am further directed to inform that Hon'ble Chairman, CBT,EPF who is the Competent Authority has approved the permanent absorption of Lt. Col. P.K.Chaturvedi as Chief Engineer in EPFO. Lt. Col. P.K.Chaturvedi has accordingly submitted his PMR papers which are forwarded herewith for processing at your end. It is requested that the necessary action may be taken to relieve the officer to enable him to join EPFO at the earliest."

2. The Army Headquarters passed order dated 24.08.2004 wherein the following had been stated:

"8. The officer has sought premature retirement from Army for his permanent absorption in Employees' Provident Fund Organization."

3. The applicant has also placed on record certificate dated 19.11.2004 (Annexure A-8) issued by EPFO, which states as follows:

"It is certified that Lt. Col. P.K. Chaturvedi joined EPFO as Chief Engineer on 14.05.2001 (FN) and permanently absorbed on re-employment from deputation w.e.f. 19.11.2004. As per the records of this office, there is no forfeiture of service or leave without pay for the period 14.05.2001 to 18.11.2004 i.e. during service in EPFO."

4. Finally, the EPFO issued office order dated 17.11.2004.

The following portion of the order is quoted below for ready reference:

"Subject: Permanent absorption of Lt. Col. P.K.Chaturvedi (IC:37452) as Chief Engineer in the scale of pay of Rs.14,300-18,300 on re-employment basis in Employees' Provident Fund Organisation.

The Chairman, Central Board of Trustees, Employees' Provident Fund has approved the permanent absorption of Lt. Col.P.K.Chaturvedi as Chief Engineer in the pay scale of Rs.14,300-400-18,300/- in Employees' Provident Fund Organisation on re-employment basis on expiry of deputation terms of employment.

2. The appointment of Lt.Col. P.K.Chaturvedi as Chief Engineer in EPFO in the scale of pay of Rs.14,300-400-18,300 on re-employment basis will be subject to the following terms and conditions:-

(i) Date of permanent absorption: The date of permanent absorption of the officer in EPFO will be 19th November 2004 (F.N) and accordingly the appointment on deputation terms will stand terminated with effect from 18th Nov.2004 (A.N). On appointment the service conditions will be governed by the EPF (Staff and conditions of service) Regulations 1962."

5. The respondents thereafter issued office order dated 24.02.2005 fixing the pay of the applicant in the post of Chief

Engineer. We quote below the pay fixation details:

"Pay last drawn as on 18.11.2004	: Rs.18300/-
Pay fixed in the post of Chief Engineer (14300-400-18300) w.e.f. 19.11.04	: Rs.18300/-
Pension granted on retirement	: Rs.13725/-
Amount of pension to be ignored	: Rs.1500/-
Pension benefits to be taken into account (Rs.13725-1500)	: Rs.12225/-
Actual Basic pay allowed (1800- 12225) w.e.f. 19.11.2004 19.11.2004"	: Rs.6075/-

6. After the 6th Central Pay Commission (CPC) report was implemented, the pension of the applicant was revised from Rs.12225/- to Rs.25700/- and the pay was fixed as follows:

"Pay fixed in the cadre of Chief Engineer as on 1.1.2006 (PB-4 37400-60000+8700 Grade Pay)	- Rs.44960+8700
Revised Pension as communicated vide MOD letter No.12682/IC-37452/T-9/MP 5(b) dated 31.1.2011	- Rs.25700/-
Pension element to be deducted after Ignoring Rs.4000/-	- Rs.21700/-
Pay in the Pay band after deduction of pension Element as on 1.1.2006	- 44960-21700=23260+8700GP
Pay as on 1.7.06	- 46570-21700=24870+8700GP
Pay as on 1.7.07	- 48230-21700=26530+8700GP
Pay as on 1.7.08	- 49940-21700=28240+8700GP
Pay as on 1.7.09	- 51700-21700=30000+8700GP
Pay as on 1.7.2010	- 53520-21700=31820+8700GP
Pay as on 1.7.2011	- 55390-21700=33690+8700GP
Date of next increment	- 1.7.2012 "

Later, vide office order dated 15.05.2012, the EPFO relieved the applicant on his getting selected for the post of Chief Engineer in Delhi Urban Shelter Improvement Board (DUSIB).

7. Vide letter dated 2.07.2012, the EPFO wrote to the DUSIB requesting to recover the outstanding amount of Rs.4,86,797/- from the salary of the officer and remit the same to the EPFO. The applicant is aggrieved by these orders dated 24.02.2005, 15.05.2012 and 2.07.2012 and has prayed for the following reliefs:

- (i) Hold, declare and direct that the applicant has been permanently absorbed in EPFO and that he was not re-employed therein.
- (ii) Hold, declare and direct that the applicant is entitled for the full pay and allowances admissible for the post held by him in the office of Respondent No.3 without any deduction on account of the pension received by the applicant for the service rendered by him in the Indian Army.
- (iii) Hold, declare and direct that the Central Civil Services (Fixation of pay of the re-employed Pensioners) Rules 1986 has no application in the case of the applicant.
- (iv) Set aside Respondent No.3 letters No.Adm(S-1)3(4)91-85805 dated 24 Feb 2005 and Letter No.ASD-1/56(1)08 6th CPC/231 dated 4 Aug 2011 to the extent that they seek to make deduction from the pay and allowances of the applicant on account of the pension received by the applicant for the service rendered in the Indian Army and direct the respondents to disburse to the applicant, full pay and allowances for the post held by him in the office of Respondent No.3 without any deduction on account of the pension received by the applicant for the service rendered by him in the Indian Army.
- (v) Set aside the orders No.ASD-1/3(S) 91/CE/2002 dated 15 May 2012 followed by letter No.ASD-IV/8(1)2011/LPC/Officers dated 2.07.2012 vide which Respondent has raised the demand of Rs.4,86,797/- and

direct the respondent not to raise any demand for recovery from the applicant.

- (vi) Refund the entire amount illegally recovered from the applicant by way of deduction from way on account of pension, with interest @ 12% per annum.
- (vii) Considering the fact that the applicant has been forced to seek the indulgence of this Tribunal for availing his lawful entitlement, award the cost of the litigation.

8. This matter had been heard at length earlier and the OA was dismissed vide order dated 16.04.2014. The applicant went to the Hon'ble High Court in Writ Petition No.4266/2014. The Hon'ble High Court set aside the order dated 16.04.2014 passed by the Tribunal. It is important to quote the order passed by the Hon'ble High Court:

"2. It is not necessary to notice detailed facts of this matter as during the course of hearing a short affidavit has been filed by DoPT, which is being represented through Union of India (respondent no.4 herein), which admittedly was not placed on record before the Tribunal.

3. Learned counsel for the petitioner submits that had the stand of DoPT been placed before the Tribunal, the result of the OA filed before the Tribunal would have been different, as the DoPT has taken a categorical stand that the case of the petitioner was not one of re-employment and, secondly, the OM, sought to be relied upon by respondents no.1 to 3, would not be applicable to the case of the petitioner.

4. We have heard counsel for the parties. Having regard to the submissions made, we say no more as it may adversely affect the rights of the parties but we deem it appropriate, with the consent of the parties, to set aside the impugned Order dated 16.4.2014 passed by the Tribunal and remand the matter back to the Tribunal.

5. As agreed, interim order, which was granted by the Tribunal and continued by this Court, shall

continue. We grant leave to the parties to place additional documents on record within two weeks. The matter would be decided by the Tribunal on the basis of additional documents filed and the existing pleadings on record.

6. It would be open for the petitioner to seek his pensionary benefits and the said request of the petitioner shall be considered by the Tribunal in accordance with law and expeditiously.”

The matter is being heard on the basis of the order passed by the Hon’ble High Court.

9. The stand of the respondents are the following:

- (i) That the Recruitment Rules (RRs) for the post of Chief Engineer in EPFO do not provide for appointment by absorption and, therefore, order dated 17.11.2004 states clearly that his appointment is on re-employment;
- (ii) Department of Personnel and Training (DoP&T) has clarified that pay fixation on re-employment is to be done in accordance with the OM i.e. Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986, according to which, on re-employment, the pension already drawn by the employee has to be deducted from his total emoluments. That is why, in both the pay fixation orders cited above, the pension has been deducted;

- (iii) In letter dated 23.07.2004 from EPFO to Army Headquarters, the subject itself states "appointment of applicant on re-employment in the EPFO." In fact, the first para of the letter also states clearly, the approval of the appointment in EPFO on re-employment basis and, therefore, the use of the words "permanent absorption" in para 2 of this letter is not to be construed as a case of appointment through absorption but appointment through re-employment. It is further stated that para 2 of the aforementioned letter also mentions that EPFO is considering appointment of the applicant on permanent absorption basis as per the RRs. The use of the words "permanent absorption" in letter dated 24.08.2004 of the Army Headquarters also has to be understood in this light;
- (iv) The certificate dated 19.11.2004 issued by EPFO also states clearly "permanently absorbed on re-employment";
- (v) The RRs for the post of Superintending Engineer were notified in exercise of the powers conferred by sub-section 7 (a) of section 5 (D) of the Employees' Provident Funds and Miscellaneous Provisions Act,

1952 by the Central Board of EPFO, which stipulates the method of recruitment as transfer on deputation/ re-employment (for ex-serviceman). These rules were notified in 1991. The Rule provides as follows:

"By transfer on deputation
For Armed Forces Personnel
Transfer on deputation/
Reemployment (for ex-serviceman)

Later, vide order dated 21.12.1997 the post of Superintending Engineer was upgraded and re-designated as Chief Engineer as per the decision of the Executive Committee of the Central Board of Trustees, EPF.

10. The learned counsel for the applicant stated that communication dated 9.04.2003 clearly mentions "with a view to consider the issue of absorption of the present incumbent (the applicant) as Chief Engineer in EPFO". In his consent letter dated 10.04.2003, the applicant had again stated "absorption in EPFO". In letter dated 23.07.2004, again it is stated that the competent authority has approved the permanent absorption of Lt. Col. P.K. Chaturvedi. In letter dated 24.08.2004, the Army Headquarters has also stated that premature retirement from Army is for permanent absorption in EPFO. In certificate issued by EPFO dated 19.11.2004, again the term used is "permanently absorbed." In office order dated 17.11.2004, the subject itself mentions "permanent absorption." The first sentence of the letter also mentions "permanent absorption."

11. It is further stated that when the matter came up before the Hon'ble High Court, vide order dated 15.07.2014, the High Court directed that during the pendency of the present proceedings, the respondents should not effect any recoveries. In its order dated 23.03.2015, the Hon'ble High Court observed as follows:

"After some arguments, Mr. Rajesh Gogna, the learned Government Standing Counsel for respondent Nos. 1 to 3 seeks some time to take instructions with regard to the decision of the DoP&T dated July, 2012 signed by Dy. Secretary (Pay) wherein the DoP&T took that the case of the petitioner cannot be treated as that of re-employment. This is so, particularly in view of the assurances already held out to him.

The matter is accordingly adjourned to 30.04.2015."

12. It is stated that the DoP&T filed a short affidavit before the before the High Court in which the following had been stated:

"4. That it is submitted that on a reference from the Ministry of Labour & Employment, the matter regarding appointment of the Petitioner in EPFO on absorption or re-employment basis was examined and that the views of the Respondent No.4 has been conveyed to the Ministry of Labour & Employment vide Department's ID Note No.18/29/2011-Estt. (Pay.II) dated 10.07.2012. The contents of which are self explanatory.

A copy of the Department's ID Note is annexed herein and marked as Annexure R-1.

5. That the consistent stand of Respondent No.4 is that the absorbed employees cannot be treated as reemployed pensioners. Therefore, it is view of the Respondent No.4 that the case of the Petitioner cannot be treated as the case of reemployment."

13. The DoP&T note dated 10.07.2012 is reproduced below as the issues have been discussed and advice is given to the Ministry of Labour:

"5. As per the RR relevant at that time:

Transfer on deputation/Reemployment (For Ex-Serviceman)

Armed Forces Personnel of the rank of Major and above who are due to retire or to be transferred to reserve within a period of one year and have the qualifications and experience prescribed for deputationists under column 12 shall also be considered. If selected, such officers will be given deputation terms upto the date on which they are due to release from the Armed Forces, thereafter they may be continued on reemployment terms. In case such officers have retired or have been transferred to reserve before the actual selection to the post is made their appointment will be on reemployment basis, (Reemployment upto the date superannuation with reference to Civil posts).

6. The EPFO letter dated 11th April, 2001 shows that the offer made to the officer was for appointment on deputation/reemployment basis. The letter dated 15th May, 2001 shows that the officer was appointed on deputation. The officer remained on deputation for 3 years till he submitted his papers for premature retirement therefore could not have been appointed on reemployment terms at that time because that provision applies only to those who had less than one year remaining or had been transferred to reserves.

xxxx xxxx xxxx xxxx

8. It is seen that M/o Labour letter dated 23.2.10 that they informed EPFO that DoP&T had advised them that after his reemployment the officer cannot be permanently absorbed and that his pay had to be fixed under the Central Civil Services (Fixation of Pay of Reemployed Pensioners) Orders, 1986.

9. It is however seen that the DoP&T's view has not been correctly understood. Vide the UO dated 22.9.09, we had requested the Ministry of Labour to clarify the position. The UO note reads as follows:

Ministry of Labour & Employment may be advised to elaborate the point of doubt. It is

not clear how after reemployment, a person is permanently absorbed. This Deptt may furnish clarification/interpretation relating to its instructions. For fixation on reemployment, this Deptt have issued OM No.3/1/85-Estt (Pay-II) dated 31.7.86 (as amended from time to time).

11. On absorption in an autonomous body, the officer is deemed to have retired from Central Government. We are not aware as to why Sh. Chaturvedi had to seek voluntary retirement from Army in order to get permanently absorbed in the EPFO. Normally officers who are absorbed submit a technical resignation and are deemed to have retired from Government on their absorption in an autonomous body. They are then allowed pensionary benefits for their service in Government. What is clear however is that the officer was on deputation with the EPFO. As he has been deemed to have prematurely retired with effect from the date of his absorption in the EPFO, his case cannot be treated as that of reemployment. This will be particularly so in view of the assurances held out to him. If nothing else, the action of EPFO is also hit by the law of estoppel which bars the EPFO from going back from its promise on the basis of which the officer has changed his position."

14. It is thus contended that the DoP&T has clearly advised the department that the applicant's case cannot be treated as a case of reemployment. In fact, the learned counsel for the applicant drew our attention to para 8 of the above note wherein the DoP&T has clearly stated that they have given no such advice that after his reemployment the officer cannot be permanently absorbed as stated in para 24 of the reply filed by the respondents.

15. Learned counsel for the applicant further pointed out that Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986 do not apply to persons re-employed

in posts, the expenditure of which is not debitable to the Civil estimates of the Union Government, as provided for in sub-section (4) of section 2 of these orders. It is argued that as EPFO is an organization run on the basis of the income generated by it, the expenditure in respect of the post wherein the applicant has been absorbed are not debitable to the civil estimates of the Union Government. In this connection, Rule 54 and 55 of the EPF Scheme 1952 are extracted below:

54. Expenses of Administration

- (1) All expenses relating to the administration of the Fund including those incurred on Regional Committee shall be met from the Fund.
- (2) All expenses of administration of the Fund, including the fees and allowances, of the trustees of the Central Board and salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident fund and other benefit fund instituted for the officers and employees of the Central Board, the cost of audit of the accounts, legal expenses and cost of all stationery and forms incurred in respect of the Central Board, cost and all expenses incurred in connection with the construction of office buildings and staff quarters shall be met from the Administration Account of the Fund.
- (3) The expenses incurred by the Central Government in connection with the establishment of the Fund shall be treated as a loan and such loan shall be repaid from the Administration Account.

55. Form and manner of maintenance of accounts

The Central Board shall maintain proper accounts of its income and expenditure, including its administrative accounts, in Form 10, and the balance sheet in Form 11. The accounts shall be prepared for the financial year and the books shall be balanced on the Thirty First March each year."

It is thus argued that deduction of pension on reemployment in EPFO is not permissible, even if the case of the applicant is treated as a case of reemployment.

16. Learned counsel for the applicant also added that the RRs were meant for the post of Superintending Engineer and they cannot be altered to be for Chief Engineer without going through the procedure namely a notification in exercise of the powers conferred under sub-section 7 (a) of Section 5 (D) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 on approval of the Central Board. It is not clear whether order dated 29.12.1997 has followed this procedure. This, however, does not help the applicant as if order dated 29.12.1997, for argument sake, is held as invalid, there would be no post of Chief Engineer in the EPFO, rendering the initial deputation and subsequent reemployment as ab initio null and void and the whole case of the applicant comes crashing down and the applicant has no case. Neither has the applicant challenged the validity of order dated 29.12.1997 in the OA.

17. We have heard the learned counsel for the parties and gone through the pleadings available on record.

18. There are two issues to be resolved in this OA. One, whether the appointment of the applicant in EPFO was on the basis of absorption or on reemployment and whether the Central

Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986 will apply in case of reemployment in EPFO.

19. Regarding the first issue, we have gone through carefully various correspondence alluded to by both sides to prove their point of view. In letter dated 23.07.2004, in the subject of the letter itself it is mentioned "appointment on reemployment". First para of this letter also states so. The second para further states that it will be on the basis of RRs. Though it is a fact that later on the words "permanent absorption" have been used but permanent absorption here would mean that the applicant would cease to be an Army employee and be a permanent employee of EPFO. This is the sense of the word "permanent absorption" also which is used in the letter dated 26.07.2004. The word "permanently absorbed" in the certificate dated 19.11.2004 again has to be read in the sense stated above. The final order dated 17.11.2004 also clearly states "on reemployment". Again the word "permanent absorption" here would mean that he becomes a permanent employee of EPFO from the day he joins in consequence of that order.

20. The statement made in para 24 of the reply filed by EPFO mentioned above that DoP&T has been consulted, cannot be held against the EPFO as they have strictly gone by the advice of the parent ministry namely Ministry of Labour. Therefore, there is no attempt to mislead this Tribunal.

21. The learned counsel for the applicant has also pointed to various internal notings of the EPFO filed along with their M.A. stating that the department had also internally approved absorption of the applicant and had taken a stand that his case cannot be treated as that of reemployment, particularly in view of the assurance given to him. In fact, the DoP&T in its advice which has been extensively quoted above, has stated that the applicant's case cannot be treated as that of reemployment, particularly in view of the assurances held out to him and, if nothing else, the action of EPFO is also hit by the law of estoppel which bars the EPFO from going back from its promise on the basis of which the officer has changed his position. Moreover, in the short affidavit dated 11.05.2015 filed before the Hon'ble High Court, the DoP&T had clearly taken the stand that applicant's case cannot be treated as a case of reemployment. Learned counsel for the respondents, however, argued that in para 5 of the affidavit, it is stated that "the consistent stand of Respondent No.4 is that the absorbed employees cannot be treated as reemployed pensioners" and it is in this background that the DoP&T stated that the applicant cannot be treated as a case of reemployment. However, this stand does not hold good in the light of para 5 of the detailed note filed along with the affidavit, which we have discussed at length.

22. What appears is that when on deputation, the applicant sought for absorption in EPFO. The matter was processed as such and the applicant was under the impression that his case is

being processed for appointment by absorption. When the matter was examined in the light of the RRs, the respondents realized that the RRs do not provide for appointment through absorption but only through reemployment and, therefore, in successive correspondence, the word used is "permanent absorption on reemployment". When it becomes a case of reemployment, the respondents invoked 1986 order and started deducting pension that the applicant received from Army. Obviously, the applicant did not realize that the respondents were treating his case as of reemployment as the officer order dated 17.11.2004 mentions "permanent absorption." In fact, the use of the word "permanent absorption" in almost all the correspondence, perhaps, gave the impression to the applicant that he is being appointed by absorption and not being reemployed. But the applicant should have been aware on 24.02.2005 vide which office order the respondents started deducting Rs.12225/- from his pension before 6th Pay Commission. He came before this Tribunal only in 2012 when the pension amount went up and the respondents refixed his salary in the new scale.

23. As stated earlier, from 23.07.2004 onwards, in various correspondence it was made clear by EPFO that the appointment was on reemployment and they will follow the RRs. Therefore, their stand cannot be faulted that since the RRs did not permit appointment on absorption for the post of Chief Engineer, only option open to EPFO and to the applicant was of reemployment.

Thus on the question of whether it has to be treated as a case of 'reemployment' or 'absorption', there is no doubt that since the rules provided for reemployment, there cannot be any other option but 'reemployment'. The argument of DoP&T in its note enclosed with the affidavit dated 11.05.2015 that there is an estoppel against EPFO, does not hold good because as mentioned earlier, all correspondence clearly mentioned 'reemployment'. We also do not accept the DoP&T's contention that assurances have been held out to the applicant. There were no assurances held out to the applicant. Applicant is a very senior officer and he was fully aware of the contents of this letter. Even if, for a moment, we accept that he did not realize from the language of the letter dated 23.07.2004 that he is being reemployed, he should have been aware of the fact when office order dated 24.02.2005 was issued (copy was also made available to the applicant) that pension drawn by him is being deducted from his salary, which can only be done in case of reemployment. The applicant chose to do nothing about it. Only when the pension amount went up and pay was refixed after the 6th CPC, did he approach this Tribunal. Therefore, the applicant cannot take the stand that some assurances had been held out to him that he will be appointed by absorption.

24. On the question whether it is 'absorption' or 'reemployment', from the facts and evidence, it is quite clear that this was a case of 'reemployment'.

25. The question now arises whether pension can be deducted in face of para 2 (4) (b) of the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986. In this regard, in para 29 of their reply, the respondents have stated that under Section 5 (D) 7 (a) & (b) of Employees Provident Fund & Miscellaneous Provisions Act 1952, the rules and orders applicable to the officers and employees of the Central Government are directly applicable to the employees and officers of the Central Board of Trustees, EPFO. Hence DoP&T instruction in respect of reemployment of ex-servicemen is also applicable to the applicant since in the appointment order of the applicant it has been clearly mentioned that the applicant is absorbed on reemployment basis. The contention regarding non-applicability of DoP&T circular to EPFO is not acceptable because all the income estimates and expenditure are placed, audited by the Comptroller and Auditor General of India. The financial balance sheet of the organization is placed before the Government. Relevant section is quoted below:

"5D. Appointment of officers. – (1) The Central Government shall appoint a Central Provident Fund Commissioner who shall be the chief executive officer of the Central Board and shall be subject to the general control and superintendence of that Board.

(2) The Central Government may also appoint a Financial Adviser and Chief Accounts Officer to assist the Central Provident Fund Commissioner in the discharge of his duties.

(3) The Central Board may appoint [subject to the maximum scale of pay, as may be specified in the Scheme, as many Additional Central Provident Fund Commissioners, Deputy Provident Fund Commissioners, Regional Provident Fund Commissioners, Assistant Provident Fund

Commissioners and] such other officers and employees as it may consider necessary for the efficient administration of the Scheme, the [Pension] Scheme and the Insurance Scheme.

(4) No appointment to [the post of the Central Provident Fund Commissioner or an Additional Central Provident Fund Commissioner or a Financial Adviser and Chief Accounts Officer or any other post under the Central Board carrying a scale of pay equivalent to the scale of pay of any Group 'A' or Group 'B' post under the Central Government] shall be made except after consultation with the Union Public Service Commission:

Provided that no such consultation shall be necessary in regard to any such appointment –

(a) for a period not exceeding one year; or

(b) if the person to be appointed is at the time of his appointment-

(i) a member of the Indian Administrative Service, or

(ii) in the service of the Central Government or a State Government or the Central Board in a Group 'A' or Group 'B' post.

(5) A state Board may, with the approval of the State Government concerned, appoint such staff as it may consider necessary.

(6) The method of recruitment, salary and allowances, discipline and other conditions of service of the Central Provident Fund Commissioner, and the Financial Adviser and Chief Accounts Officer shall be such as may be specified by the Central Government and such salary and allowances shall be paid out of the fund.

(7) (a) The method of recruitment, salary and allowances, discipline and other conditions of service of the Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay:

Provided that where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the

matters aforesaid, it shall obtain the prior approval of the Central Government.

(b) In determining the corresponding scales of pay of officers and employees under clause (a), the Central Board shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Central Board shall refer the matter to the Central Government whose decision thereon shall be final.

(8) The method of recruitment, salary and allowances, discipline and other conditions of service of officers and employees of a State Board shall be such as may be specified by that Board, with the approval of the State Government concerned."

In view of this, clearly the objection of the applicant will not hold good in case of EPFO as the Act itself provides for similarity with Central Government.

26. Thus on both counts, the finding goes against the applicant and the OA does not succeed. It is, therefore, dismissed. There shall be no order as to costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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