

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

OA No.060/00264/2016

Date of decision-27.03.2018

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

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Pankaj Sharma, son of Sh. Satyapal Sharma, aged 42 years, working as Upper Division Clerk (UDC), Employees State Insurance Corporation Model Hospital, Industrial Area, Phase-II, Ram Darbar, Chandigarh-160002 (resident of House No.177, Sector 30/A, Chandigarh.

...APPLICANT

**BY ADVOCATE : Mr. K.B. Sharma, proxy for Sh. D.R.Sharma,
counsel for the applicant**

VERSUS

1. Union of India through Secretary, Ministry of Labour and Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. Employees State Insurance Corporation (Headquarters) through the Director General (ESIC) Panchdeep Bhawan, CIG Marg, New Delhi.
3. The Deputy Director (Admn.) Employees State Insurance Corporation Model Hospital, Industrial Area, Phase-II, Ram Darbar, Chandigarh-16000.
4. The Regional Director (Admn.), Employees State Insurance Corporation (Headquarters), Sector 19/A, Madhya Marg, Chandigarh-160019.

...RESPONDENTS

BY ADVOCATE: Mr. K.K.Thakur, counsel for the respondents.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER(J):-

1. Applicant seeks quashing of orders dated 11.01.2016 (Annexure A1), 18.11.2015 (Annexure A4) and 09.10.2015 (Annexure A5). Further prayer has been made that respondents be directed to restore the pay of the applicant already fixed vide order dated 27.07.2015

(Annexure A15). The issue which arose for the consideration is that whether the respondents after re-fixing the pay of the applicant and subsequently after fixation of his pay, he was directed to deposit the lumpsum amount paid to him upon his re-fixation vide order dated 27.07.2015.

2. Learned counsel appearing on behalf of the applicant submitted that after discharge from Indian Air Force as Sergeant (SGT) on 31.07.2012, the applicant joined the respondent department namely Employees State Insurance Corporation (ESIC) as Upper Division Clerk (UDC) under Ex-serviceman category in the pay band of Rs.5200-20200 with GP 2400/- vide appointment order dated 17.08.2012 (Annexure A9). While fixing his pay, the respondents have granted him benefit for which he was/is not entitled as per Rule formulation. Thus, realising their mistake that his pay has wrongly been fixed, the respondents while correcting their mistake has passed order. Therefore, respondent no.3 issued recovery order dated 18.11.2015 to the applicant to deposit the excess payment paid to him.

3. Sh. K.K. Thakur, learned counsel, representing the respondents submitted that since the applicant's pay has been fixed as per his entitlement without considering the fact that he is getting pension as Ex-serviceman category. Therefore, this mistake has been occurred by the respondents while correcting their mistake, they have passed the impugned order. As per para 4(b)(i) under para 2 of Memo dated 05.04.2010, where the pension is fully ignored, the initial pay on re-employment shall be fixed as per entry pay in the revised pay structure of the re-employed post. He argued that an undertaking has also taken by the respondents that the impugned order dated

11.01.2016 is a speaking order where respondent no.3 has categorically observed that the applicant had made representation dated 24.02.2015 for fixation of his pay under Re-employed ex-serviceman category and the same was disposed of vide letter dated 01.07.2015 with directions to get his pay fixed as per para 4(b)(i) of official memo dated 05.04.2010. Since the applicant has also given an undertaking for recovery of excess payment, therefore, the impugned order was passed.

4. Learned counsel for the respondents, also argues that the issue has already been considered in the case of **M.S. Ravi Vs. UOI & Ors.** in OA No.170/01334/2015, decided on 28.07.2016 passed by the C.A.T. Bangalore Bench, copy of which has been annexed as Annexure R-1. Therefore, he submitted that the OA is devoid of any merit and submissions made at the hands of the respondents that the applicant's pay has wrongly been fixed, without considering the fact that the applicant is getting pension under Ex-serviceman category. Accordingly, the respondents have re-fixed the pay of the applicant and they are liable to recover the amount which has been paid excess to him. This issue has already been considered by the Hon'ble Apex Court in Civil Appeal No.9873/2013 arising out of SLP (C) No.17881/2008, dated 01.11.2013, Wherein the Hon'ble Apex Court had clearly held in Paragraph 10 of the order that whenever a person receives a military pension and on his re-employment it is not taken into account to fix the pay, then it shall be in accordance with Rule 4(b)(i) that the at the minimum of scale available to a direct recruit. When the Hon'ble Apex Court had settled the matter and it appears

that even the judgment produced by the applicant also supports this view, we will also hold as follows:

“Whenever a military Ex-servicemen retiree applies for and obtains a new engagement under the government, his prospects shall be fixed in two ways. If the military pension is ignored, then it shall be at the rate of minimum scale available under direct recruitment at the same level, but if it is not ignored and taken into account in fixing his pay, then his earlier service will come into play and in accordance with only that, pay will be fixed.”

5. In the backdrop of aforesaid discussion, we see no reason to interfere with the impugned order, accordingly, Original Application is found to be devoid of any merit and as such is dismissed.

6. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 27.03.2018.

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