

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

Pronounced on : 31.07.2018
Reserved on : 24.07.2018

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

OA No. 060/00858/2017

Sahib Singh, aged 49 years, son of Sh. Babu Ram, Senior Social Security Assistant – (Group C), Employees Provident Fund Organization (EPFO) Regional Office, SCO 4-7, Sector 17-D, Chandigarh, r/o House No. 315-A, Sector 30-A, Chandigarh

...Applicant

BY ADVOCATE: **Sh. Madhav Pokhrel**

Versus

1. Central Board of Trustees (CBT) through Central Provident Fund Commissioner, Employees Provident Fund Organization, Head Office Bhavishya Nidhi Bhawan No. 14, Bhikaji Kama Palace, New Delhi – 110 066.
2. Regional Provident Fund Commissioner – 1, Employees Provident Organization, Regional Office, Chandigarh, SCO No. 4-7, Sector 17-D, Chandigarh.

...Respondents

BY ADVOCATE: **Sh. Aseem Rai**

ORDER

BY MRS. P. GOPINATH, MEMBER(A):-

Applicant in this OA is an ex-serviceman who retired from the Air Force in the rank of Sergeant on 27.09.2005. Applicant came to be appointed as a Social Security Assistant on 14.08.2008. The pay of the applicant was fixed on the basis of entry level initial pay

scale of the post, as if he was a fresh recruit. This pay fixation was objected to by the Audit following which the respondents refixed the pay of the applicant vide office order dated 09.01.2014 taking into consideration the last basic pay drawn in pursuance of para 3(v) of DoP&T OM dated 05.04.2010. On 13.05.2016, the applicant's pay was refixed in supersession of the above pay fixation order dated 09.01.2014. As a consequence of this order, the pay of the applicant was refixed retrospectively from the date of joining, i.e. 14.08.2008 on the basis of entry level initial pay scale for the post, bypassing the last basic pay drawn by the applicant as an Ex-Serviceman. This was followed by several representations by the applicant in response to which he was informed that the matter of pay fixation of Ex-Serviceman was under consideration of the Head Office.

2. The prayer of the applicant is to replace his pay fixation made on the basis of the entry level basic pay of the post to which he was appointed with pay fixation based on last basic pay drawn by the applicant in the Armed Forces w.e.f. 14.08.2008. The applicant places reliance on para 4 (b)(i) of DOP&T OM dated 05.04.2010 which clarifies that where pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the re-employed post. Para 3(v) of this OM reads as under:-

“Fixation of pay of personnel/officers who retired prior to 1.1.2006 and who have been re-employed after 1.1.2006: In the case of personnel/officers who had retired prior to 1.12006 and who have been re-employed after 1.1.2006, their pay on re-employment will be fixed by notionally arriving at their revised basic pay at the time of retirement as if they had retired under the revised pay structure. This will be done with reference to the fitment

table of the Defence Service Rank/Civilian service post (as the case may be) from which they had retired and the stage of basic pay at the time of their retirement. Their basic pay on re-employment will be fixed at the same stage as the notional last basic pay before retirement so arrived at. However, they shall be granted the grade pay of the re-employed post. The maximum basic pay cannot exceed the grade pay of the re-employed post plus pay in the pay band of Rs.67000 i.e. the maximum of the pay band PB-4. In all these cases, the non-ignorable part of the pension shall be reduced from the pay so fixed.

3. The respondents argue that Annexure A-15 DOP&T OM dated 05.04.2010 on which applicant places reliance, is applicable to retired Commissioned Officers/Group 'A' Civilian Officers and not to retired enlisted rankers like the applicant. The respondents while examining the issue of pay fixation of re-employed military pensioners in EPFO for the post of SSA made a reference on 28.12.2015 to the Ministry of Labour and Employment for a clarification on whether para 3 (v) of DOP&T OM dated 05.04.2010 was applicable to pensioners, whose pension is fully ignored during pay fixation on re-employment.

4. The Ministry of Labour and Employment issued the 26th July, 2017 clarification on initial pay fixation of re-employed Ex-Servicemen who held the post below Commissioned Officers rank in Defence Forces and retired before the age of 55 years and were appointed on re-employment basis in civilian post. This document on which respondents place reliance is produced as Annexure R-1 which has been received from the Ministry of Labour and Employment.

Para 5 of this letter is reproduced as below:-

“5. Therefore, keeping in view the above position as well as the DOP&T clarification received, such SSAs who were earlier retired from the defence services and who were not holding posts of the Commissioned Officer rank at the time

of retirement, will not be eligible for protection of pay in accordance with the instructions issued by DOPT&T OM dated 05.04.2010 and in particular Para 4 (b) (i) of the said OM. In view of this, the protection of pay allowed to the ex-servicemen at the time of their joining as SSA may be reviewed and necessary action to rectify wrong fixation of pay and allowances to such SSAs under the rules may be taken."

5. Para 3(v) of OM dated 05.04.2010 is applicable to persons who retired prior to 01.01.2006 and re-employed after 01.01.2006 and was applicable to Commissioned Service Officers of the Defence Forces and Group 'A' Civilian pensioners. For such indicated persons, the initial basic pay on re-employment was to be fixed on the basis of the last basic pay drawn before retirement as laid down in para 4(b)(i) of GOI OM dated 05.04.2010.

6. The applicant's relies on the judgement of the Bangalore Bench of this Tribunal in OA No. 1189 to 1196/2013 titled P.M. Kayarappa & Ors. Vs. UOI & Ors. decided on 18.06.2014 wherein the Tribunal had directed for re-fixing the pay as per Rule 3(v) of OM dated 05.04.2010.

7. The respondents rely on a latter judgement dated 09.01.2018 in OA No. 020/00037/2014 titled A. Dhruva Kumar & Ors. Vs. UOI & Ors. passed by Hyderabad Bench of this Tribunal wherein the Bench had supported the contention of the respondents and also held that the law is well settled that even if an illegality is held somewhere, that cannot be a ground to give a direction to perpetuate that illegality.

8. The prayer of the applicants in this OA were for fixation of pay in the re-employed post on the basis of last pay drawn by them in

the Defence services at the time of retirement and the contention of the applicants was dismissed.

9. This is a covered matter and the recent judgement of the Hyderabad Bench in OA No. 37/2014 delivered on 09.01.2018 is very relevant to the matter before us and is reproduced below:-

“12. The issue that arises for consideration in this OA is whether the applicants, who belong to the Non-Commissioned cadre and who were discharged from Military service and re-employed in civilian posts under the Central Government, are entitled to pay fixation in the respondent Organization on the basis of the last pay drawn by them in the Armed Forces.

13. The fixation of pay of the re-employed Defence personnel is notified under CCS (Fixation of pay of Re-employed Ex-servicemen) Orders 1986 and the latest clarifications received vide OM dated 5.4.2010. The office memorandum dated 5.4.2010 states that after the issue of the OM dated 11.11.2008, the DOPT has been in receipt of certain references seeking clarification regarding the manner of fixation of pay of retired Defence Forces personnel/officers re-employed in Central Government civilian posts after the implementation of the CCS (Revised Pay) Rules 2008. This OM dated 5.4.2010 was issued in view of the need to amend the relevant provisions of CCS (Fixation of Pay of Re-employed Ex-Servicemen) Rules after the introduction of the system of running Pay Bands and Grade Pays during the VI CPC.

14. Admittedly, the applicants fall in the category of Ex.Servicemen who held posts below Commissioned Officer rank in the Defence Forces and retired before attaining the age of 55 years. As per their averments, applicants 1 to 7 retired after 2006 and were re-employed in 2010 and 2012. Applicants 8 to 10 retired prior to 2006 and were re-employed during 2006. In view of the fact that they belong to the Non- Commissioned Officer rank, their entire pension and pension equivalent to the retirement benefits shall be ignored. In a scenario, where the pension is fully ignored, Sub-Para 4 (b) (i) of the Office Memorandum as extracted below would come into operation:

Existing Pension	Proposed Revised Pension
Para 4(b)(i) : In all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the re-employed post.	Para 4(b)(i): In all cases 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 applicable in the case of direct recruits appointed on or after 1.1.2006 as notified vide Section II, Part A of First Schedule to CCS (RP) Rules, 2008.

15. The respondents have rightly pointed out that Para 3 (v) of the OM relied upon by the applicants relates to those persons whose pay is fixed taking into consideration the non-ignorable part of pension as in the case of Commissioned Officers. As such these instructions do not apply to the applicants whose entire pension has to be ignored for the purpose of pay fixation in the re-employed post. There cannot be any doubt in this regard in view of the last sentence in this Para which reads as follows:

“In all these cases, the non-ignorable part of the pension shall be reduced from the pay so fixed.”

Reduction of non-ignorable part of the pension from the pay would arise only in the case of Commissioned Officers.

16. In view of this position, it is clear that in cases where the pension is fully ignored, the initial pay on re-employment shall be fixed as per the entry pay in the revised pay structure of the re-employed post only and not on the basis of the last pay drawn by them in their earlier re-appointment. Thus, there is no basis at all for the applicants' contention that they are entitled for pay fixation on the basis of the last pay drawn by them in their previous service.

17. The applicants have cited the case of Sri Harischandra D Ghag, who had approached the Central Administrative Tribunal, Mumbai, with a prayer to fix his pay on the basis of the last pay drawn as Ex.Serviceman and also ignore the Military Pension while fixing his pay after he joined the respondent-department as LDC. However, it is observed that the said OA was allowed on the ground that the applicant therein was re-employed with effect from 12.7.1985, and that the OM of the DOPT, which was issued on 31.7.1986, cannot have any retrospective operation. Para 6 of the aforesaid judgment is extracted hereunder:

“6. The facts relating to Shri Dhupkar are not before me but I have no doubt that the applicant is similarly situated to Shri SK.Nair working in the same organization. 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.

O.A. is, therefore, allowed with no order as to costs. Respondents are directed to make notional pay fixation from the date 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."

In the present case, the question of any retrospective application does not arise and therefore the ratio in the Harishchandra Ghag' case has no relevance to this OA.

18. Similarly, in the case of Markandeya Sharma in O.A.No.456/2003, dated 3.5.2006, the question that was decided was whether the action of the respondents in ignoring only Rs.15 per month as ignorable pension and then deducting the balance as non-ignorable pension, is in order. The applicants' case was that his entire pension has to be ignored as he belonged to the category below the Commissioned Officer rank. The OA was allowed by granting the benefits as prayed for. The applicants in this OA do not have a case that their pension was not ignored. Their grievance is with regard to the non-consideration of the Last Pay Drawn in their previous service, while fixing their pay on re-employment in the respondent Organization. Therefore, the judgment cited has no relevance. Similarly, in the case of Sri Harishchandra Reddy v. NIRD, the issue that was decided was that the office memorandum dated 31.7.1986, according to which persons re-employed after 1.7.1986 will not be entitled to advance increments, will apply only to appointments made on or after 1.7.1986 and that the said OM does not apply to the petitioners as they were re-employed prior to 1.7.1986. This issue also has no relevance to the present case inasmuch as the matter that has come up for consideration in this OA is as to whether the last pay drawn in the earlier service can be the basis for pay fixation in pursuance of the office memorandum dated 5.4.2010. For similar reasons, the Rajasthan High Court judgment in Union of India v. Mool Singh dated 7.12.2001, which considered the provisions of Order of 1986 cannot come to the support of the applicants as they have admittedly been re-employed between 2006 to 2012, by which time CCS (Revised Pay) Rules have come into force.

19. The applicants have cited some instances of the respondent-Organization/other Central Government Departments granting refixation of pay on the basis of the last pay drawn. Even if that be the case, when the respondents herein have acted in accordance with the existing instructions as laid down in OM dated 5.4.2010, we do not find justification for interference. Further, the law is well settled that even if an illegality has been committed somewhere, that cannot be a ground to give a direction to perpetuate illegality. In **Union of India v. Arul Mozhi Iniarasu** (2011) 7 SCC 397, the Apex Court has observed that "*It is trite law that there cannot be equality in illegality.*"

20. In view of the foregoing discussions, we find no merit in the OA. The OA is accordingly dismissed with no order as to costs.”

10. We find that this OA is fully covered by the judgement in OA No. 020/00037/2014 of the Hyderabad Bench of this Tribunal and is disposed off accordingly in the same terms. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
ND*

