

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A.No.020/00037/2014.

Date of CAV:30.11.2017.

Date of Order : 09.01.2018.

Between :

1. A.Dhruva Kumar, s/o A.Markandeyulu,
aged about 42 yrs, Occ:Social Security Assistant,
O/o the Regional PF Commissioner-I,
Employees' Provident Fund Organization,
Regional Office, 3-4-763, Barkathpura,
Hyderabad-500 027.

2. P.Chandra Mohan Reddy, s/o P.Somireddy,
aged about 43 yrs, Occ:Social Security Assistant,
O/o the Regional PF Commissioner-I,
Employees' Provident Fund Organization,
Regional Office, 3-4-763, Barkathpura,
Hyderabad-500 027.

3. N.Ramesh, S/o N.Bhimaraju,
aged about 47 yrs, Occ:Social Security Assistant,
O/o the Regional PF Commissioner-II & OIC,
Employees' Provident Fund Organization,
Sub-Regional Office, Balaji Nagar, Kukatpally,
Hyderabad-500 072.

4. G.V.Ramana Murthy, s/o G.Subbaiah,
aged about 40 yrs, Occ:Social Security Assistant,
O/o the Regional PF Commissioner-I,
Employees' Provident Fund Organization,
Regional Office, 3-4-763, Barkathpura,
Hyderabad-500 027.

5. K.Srinivasa Rao, s/o late K.Narayana Rao,
aged about 46 yrs, Occ:Social Security Assistant,
O/o the Regional PF Commissioner-II & OIC,
Employees' Provident Fund Organization,
Sub-Regional Office, 12-1, Susheeram Complex,
Patancheru-502 319, Medak District.

6. B.Srinivasa Rao, s/o B.Raja Gopala Prasad,
aged about 44 yrs, Occ:Social Security Assistant,
O/o the Regional PF Commissioner-II&OIC,,
Employees' Provident Fund Organization,
Sub-Regional Office, 19-25/1/1, Hyderabad Road,
Prashanth Nagar, Siddipet-502 103, Medak District.

7. V.S.Ravi Prasad, s/o Sri V.S.R.V.Satya Murthy, aged about 44 yrs, Occ:Social Security Assistant, O/o the Regional PF Commissioner-II&OIC,, Employees' Provident Fund Organization, Sub-Regional Office, 19-25/1/1, Hyderabad Road, Prashanth Nagar, Siddipet-502 103, Medak District.

8. Ch.K.V.V.Dhananjaya Rao, s/o late Ch.Ramaiah, aged about 47 yrs, Occ:Social Security Assistant, O/o the Regional PF Commissioner-I, Employees' Provident Fund Organization, Regional Office, 3-4-763, Barkathpura, Hyderabad-500 027.

9. G.Srinivasa Rao, s/o G.Anjaneyulu, aged about 50 yrs, Occ:Social Security Assistant, O/o the Regional PF Commissioner-I, Employees' Provident Fund Organization, Regional Office, 3-4-763, Barkathpura, Hyderabad-500 027.

10. P.Appaji Rao, s/o P.Rama Rao, aged about 48 yrs, Occ:Social Security Assistant, O/o the Regional PF Commissioner-I, Employees' Provident Fund Organization, Regional Office, 3-4-763, Barkathpura, Hyderabad-500 027. ... Applicants

AND

1. The Union of India, rep., by its Secretary, M/o Labour & Employment, Teenmurthy Lane, New Delhi-110 001.

2. The Central PF Commissioner, Employees' Provident Fund Organization, Head Office, Bhavishya Nidhi Bhavan, 14, Bhikaji Cama Place, New Delhi-110 066.

3. The Regional PF Commissioner-1,
 Employees' Provident Fund Organization,
 Regional Office, 3-4-763, Barkathpura,
 Hyderabad-500 027.

4. The Regional PF Commissioner-II & OIC,
 Employees' Provident Fund Organization,
 Sub-Regional Office, Balaji Nagar, Kukatpally,
 Hyderabad-500 072.

5. The Regional PF Commissioner-II & OIC,
 Employees' Provident Fund Organization,
 Sub-Regional Office, 12-1, Susheeram Complex,
 Patancheru-502 319, Medak District.

6. The Regional PF Commissioner-II&OIC,,
 Employees' Provident Fund Organization,
 Sub-Regional Office, 19-25/1/1, Hyderabad Road,
 Prashanth Nagar, Siddipet-502 103, Medak District. ... Respondents

Counsel for the Applicants ... Mr.K.Sudhakar Reddy
 Counsel for the Respondents ... Mr.G.Jayaprakash Babu, SC for EPFO

CORAM:

THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)

ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

The applicants are Ex.Servicemen, who served in the Armed Forces and retired before attaining the age of 55 years. The applicants 1 to 7 retired after 2006 and applicants 8 to 10 retired prior to 2006. After their retirement from the Defence services as Ex.Servicemen, they were all re-employed in the respondent Organization between 2006 and 2012 as Social Security Assistants and are presently working in the Hyderabad Region. Their re-employment has been done in terms of Ex-Servicemen (Re-Employment in Central Services and Posts) Rules 1979 for providing re-employment to Ex-Servicemen in Central Government Organizations. Their pay in the re-employed post has been fixed, vide CCS (Fixation of Pay of Re-employed

Pensioners) Orders 1986 and on the basis of the Circulars and OMs issued by the Central Government from time to time.

2. The applicants submit that after implementation of the VI CPC, DOPT issued OM dated 5.4.2010. Para 3 of the OM dated 5.4.2010, which deals with the fixation of pay of the Personnel/Officers, who retired prior to 1.1.2006 and re-employed after 1.1.2006 states as follows:

“ Fixation of Pay of Personnel/Officers who has retired prior to 1.1.2006 and Re-Employed after 1.1.2006 it is stated under Para 3 (v):-

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 re-employed post plus pay in 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. It is submitted that the applicants 1 to 7 were re-employed in 2010 and 2012 and 8 to 10 during 2006. Hence, they are entitled for their pay fixation in terms of the aforesaid Circular and the memorandum last issued by the DOPT vide their OM dated 30.3.2010. It is further submitted that Sub-Para 4 (d) (i) of Para 2 of the OM dated 5.4.2010 also provides as follows:

“Para 4 (d): In the case of persons retiring before attaining the age of 55 years and who are re-employed pension (including PEG and other forms of retirement benefits) shall be ignored for initial pay fixation in the following extent:-

- (i) *No change.*
- (ii) *In the case of Commissioned Service officers belonging to the Defence Forces and Civilian pensioners who held Group 'A' posts at the time of their retirement the first Rs.40001 – of the pension and pension equivalent retirement benefits shall be ignored.”*

Thus, according to the OM, their pay is to be fixed in the re-employed post and that they are eligible for pay fixation on the basis of the last pay drawn by them in the Defence services at the time of their retirement. The respondents have not fixed their pay in accordance with the said Circulars. However, the requests made by the applicants in this regard did not evoke any response from the respondents. Though initially on 11.6.2013 and 17/24.06.2013, the pay fixation was made as per the last pay drawn certificate, the same was finally rejected by the respondents vide their letters dated 26/28.11.2013, 10.12.2013 and 11.12.2013 by applying the wrong provision. The applicants contend that they are entitled for pay fixation on the basis of the last pay drawn along with the Grade Pay of the re-employed post by applying OM dated 5.4.2010 and the other guidelines issued in respect of the re-employment of Ex.Servicemen. It is also submitted by the applicants that the special provisions for Ex.Servicemen who retire before attaining the age of 55 years have not been considered by the Respondents while rejecting their representations. The applicants have also relied on the judgment of the Mumbai Bench of this Tribunal in ***Sri Harischandra D Ghag v. The Employees' Provident Fund Organization, Bandra, Bombay***, which was allowed. They also submit that this Bench allowed a similar relief in the case of ***Sri K. Markandeya Sarma v. O/o the Accountant General (Accounts & Entitlement) Hyderabad***. Hence, they are also entitled to the same relief.

4. The respondents have contested the OA by filing a reply statement stating that as per the extant rules, the fixation of pay of Ex.Servicemen depends on the rank they held prior to their discharge from Military Service. This aspect of pay fixation of Ex.Servicemen is dealt in Chapter-2 of Re-Employment of Penisoners (Civilians & Ex.Serviceman) and the CCS (Fixation of Pay of Re-employed Pensioners) Orders 1986. The applicants belong to the cadre below the commissioned officer rank. The first seven applicants submitted their representation within the stipulated time for exercising option for fixation of pay by requesting to fix their pay in accordance with the clarifications issued vide OM dated 5.4.2010 and by taking into consideration the last pay drawn. The last three applicants submitted their representations in the month of November 2013. It is submitted by the respondents that Para 3 (v) of OM dated 5.4.2010 relied upon by the applicants is applicable to those persons whose pay is fixed taking into consideration the non-ignorable part of pension i.e., persons holding the rank of commissioned officers OR Group 'A' posts before re-employment. As the applicants belong to the cadre below Commissioned Officers rank, their entire pension and pension equivalent to retirement benefits shall be ignored in terms of Sub-Para (4) (d) (i) of Para 2 of OM. In such cases, the initial pay on re-employment shall be fixed as per the entry pay in the revised pay structure of the re-employed post as applicable in the case of Direct Recruits appointed on or after 1.1.2006. Therefore, in all 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 and in the case of Direct Recruits joined on or after 1.1.2006 as notified vide Section II Para (A) of First Schedule of CCS (Revised Pay) Rules, 2008 and OM dated 5.4.2010. As the pay of the applicant was fixed in terms of the aforesaid instructions, no re-fixation was required. Therefore, their request was rejected pointing out the rule position.

5. The respondents concede that the earlier representations of the applicants were taken into consideration and the possibility of the refixation of their pay by taking their pay in the previous post was examined. However, on consultation with the Pay Audit Cell and the Internal Audit Party, it was found that the pay fixation done was correct. They further point out that it has not come to their notice as to whether any other Department has given such refixation to officers belonging to non-commissioned officers' rank. With regard to the case of Sri Harischandra D Ghag, they point out that the Mumbai Bench of CAT held that no fixation/amendment can be with retrospective effect. As such, the CCS (Pay Fixation) Rules of Re-employed Ex.Servicemen 1986 will not be effective in the case of Shri Harischandra D Ghag who was employed earlier during 1985. Thus, it was ordered that Shri Ghag be given the benefit without applying the revised pay fixation rules of 1986.

6. The applicants have filed rejoinder pointing out that many offices of the Employment Provident Fund Organization as well as other Central Government departments such as Income-tax Department and the Indian Railways have rightly interpreted the provisions and done the re-fixation of the pay of the re-employed Ex-serviceman correctly. It is only the respondents who are denying the legitimate fixation benefits. They also point out that it is necessary to exercise option only in such cases where both retirement and re-employment has occurred prior to 1.1.2006. In the present case, the dates of re-employment of all the applicants are after 1.1.2006. As such, it is not necessary for them to exercise any option. They also submit that the respondents are confusing the issue by integrating Sub-Para 4 (b) (i) and 4 (d) (i) of Para 2 without appreciating the fact that these instructions are on different footing. It is also pointed out that the intention of the Legislature while issuing the words "the pay

is to be fixed as per the “entry pay” was that the grade pay of the re-employed post is to be considered, while fixing the initial pay in accordance with the last pay drawn before retirement. As a single pay band has been set up consisting of different types of grade pays, the OM has made it clear that only the grade pay of the re-employed post will be taken and not the grade pay of the previous post. The applicants also state that prior to the implementation of the VI Central Pay Commission, the initial pay is to be fixed at the minimum of the scale of pay of the re-employed post which means that the initial pay would be same as the last pay drawn and shall continue to be in the scale of re-employed post pay till the next promotion/financial upgradation.

7. The applicants reiterate that the 3rd respondent had allowed the pay fixation of Sri G.Suryanarayana, who was recruited as LDC on 1.12.1984 and similar benefits have been given by the other offices of the EPFO at Chandigarh, Nagpur and Karnal etc.,. The procedure adopted by them in re-fixation of pay clearly indicates that Ex.Servicemen who retired before attaining the age of 55 years are eligible for pay fixation in the re-employed post and that the initial pay is to be fixed as per the last pay drawn.

8. The respondents have filed an additional reply statement stating that the provisions of the OM dated 5.4.2010 have been strictly followed. They also point out that Sub-Paras 4 (b) (i) and 4 (d) (i) are not separate but inter related to each other. Hence, the interpretation of the applicants that even when the pension is fully ignored, their pay should be fixed as per the last pay drawn is not mentioned in Para 2 of the OM dated 11.10.2010. They also state that the example in Swamy’s compilation is with regard to a Military pensioner, who held a post in the Army before retirement in a

non-commissioned post and was re-employed before attaining the age of 55 years and the applicants come in the same category. They also state that they cannot merely rely on the decisions taken by other Government departments and ignore the rules applicable for pay fixation of Ex.Servicemen on their re-employment in several posts.

9. The applicants have filed additional rejoinder statement reiterating their earlier averments and rebutting the contentions of the respondents. They also state that the extracts given in Swamy's compilation show the pay fixation from lower pay band to the higher pay band. The applicants have however retired in the Pay Band-1 and are re-employed in the very same pay band. As such, the model fixation relied upon by the respondents is not correct in their case. It is also submitted that the respondents are not adhering to the DOPT instructions in fixing the pay of Ex.Servicemen.

10. Heard the learned counsel on both sides and perused the record.

11. The learned counsel for the Applicants heavily relied on the judgment of the Rajasthan High Court in Union of India v. Mool Singh in which it has been held that Sri Mool Singh who retired from services on 31.8.1981 and was re-employed in the Telecommunication Department as Telephone Operator on 26.10.1982 was entitled to have his pay fixed in the pay scale of the post on which he was re-employed at the same stage at which he was last drawing pay in his previous employment. He also relied on an order issued by the Ministry of Defence with regard to pay fixation on re-employment, which had stated that where the entire amount of pension is ignored furnishing the last pay drawn particulars of the Military pensioner will suffice for the purpose of fixation of pay on re-employment and that the particulars of last pay drawn from the date of enrolment to the date of discharge is not required to be furnished.

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 provision

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 reemployed post.

Proposed revised provision

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 reemployed 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 S.K.Nair working in the same organisation. 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.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 09th day of January, 2018

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