Central Administrative Tribunal, Principal Bench

Original Application No.2210 of 2003
M.A.1891/2003

New Delhi, this the 23rd day of April, 2004

Hon'ble Mr.Justice V.S.Aggarwal, Chairman
Hon'ble Mr.R.K. Upadhyaya, Member(A)

Shri Yogesh Prasad
S/o late Shri N.P. Mathur,
R/o Flat No.1798, Sector-29
Noida-201301
Uttar Pradesh ....Applicant

(By Advocate: Shri Vikas Singh)

Versus

Union of India,
Through the Secretary,
Ministry of Personnel, P.G. & Pensions,
Department of Personnel & Training ....Respondents

(By Advocate: Shri Madhav Panikar)

O R D E R(ORAL)

By Justice V.S. Aggarwal, Chairman

By virtue of the present application, the applicant seeks a direction to re-fix his pay with effect from 1.1.96 without reducing the same on account of enhancement of pension. He further prays for a direction to the respondents to pay him the arrears on fixation of his pay without making any such deduction referred to above.

2. Some of the relevant facts can conveniently be delineated. The applicant had joined the Indian Army in December, 1962. He served there upto 31.7.1983. He was re-employed in the Cabinet Secretariat on 1.8.1983.

3. It is asserted that from 1.1.1986, the 4th Central Pay Commission recommendations had been enforced

and the respondents had issued an office memorandum holding that pay of ex-servicemen who were in employment of a civil post as on 1.1.86 following their re-employment was to be reduced by an amount equivalent to the enhanced pension made available to such ex-servicemen. This decision was challenged before the Supreme Court in the case of **Union of India and others v. G. Vasudevan Pillay and others,** (1995) 2 SCC 32. The Supreme Court held that decision to reduce the enhanced pension from the pay of those ex-servicemen who are holding civil posts on 1.1.1986 was invalid.

4. Subsequently, the applicant contends that the office memorandum was issued implementing the decision of the Supreme Court.

5. The grievance of the applicant is that the respondents in violation of the said decision, issued another office memorandum holding inter-alia that the pay of ex-servicemen who were on re-employment should be fixed by deducting the amount equivalent to the revised pension in the 5th Pay Commission recommendations. It is on basis of these facts contending that the said decision is invalid, the present petition claiming the reliefs referred to above has been filed.

6. Needless to state that in the reply filed, the petition has been contested.

7. Learned counsel for the respondents urged that

the applicant has not challenged the office memorandums which have been issued as a result of which the aforesaid reduction is being effected and, therefore, the petition is not maintainable.

8. While appreciating the said argument, necessarily one has to read the petition as a whole. Perusal of the same clearly shows that the applicant strongly relies upon the decision of the Supreme Court in the case of G. Vasudevan Pillay (supra) and also refers to the impugned order that has now been passed. Once there is a decision of the Supreme Court, necessarily that would be the law of the land. It has to prevail. Any decision to the contrary can easily, therefore, be ignored or held to be invalid. Therefore, this particular plea for purposes of the present petition must be held to be without merit.

9. Once of the questions before the Supreme Court in the case of G. Vasudevan Pillay was as to whether reduction of pay equivalent to enhanced pension of those ex-servicemen who were holding civil posts on 1.1.1986, following their re-employment, is permissible or not. The Supreme Court had considered the same and held that decision to reduce the enhanced pension from pay of those ex-servicemen only who were holding civil posts on 1.1.1986 following their re-employment, was unconstitutional. The findings of the Supreme Court are:

> "12. The ground of attack is that the aforesaid decision violates Articles 14 and 16 of the Constitution inasmuch as there is no rational basis for classifying the employees for the aforesaid purpose on the basis of their being in employment on

1.1.1986. This submission has been advanced because the reduction of the aforesaid nature has not been made in respect of those who have been in employment since 1.1.1986. The additional affidavit filed on behalf of Respondent 1 in SLP (C) No.17456 of 1991 on 25.8.1994 contains some names of those who were re-employed after 1.1.1986 and are being paid both the revised pay and revised pension. This factual position has been admitted in the aforesaid written submissions filed on behalf of the Union of India inasmuch as it has been stated in page 9 that the pensioners who are re-employed after 1.1.1986 enjoy the benefit of revised pay and also revised pension with effect from 1.1.1986.

13. Reliance has been placed in support of aforesaid submission on a two-Judge Bench decision of this Court, to which one of us (Kuldip Singh, J.) was a party. That decision was in the case of T.S. Thiruvengadam v. Secy. to Govt. of India, (1993) 2 SCC 174. The facts of that case are, however, different inasmuch as there the Memorandum dated 16.6.1967 stating that revised pensionary benefits would be made available only to those Central Government servants who have been absorbed in public sector undertakings after that date was not found to be constitutional because the very object of bringing to the existence the revised terms and conditions by the memorandum was to protect the pensionary benefits which the Central Government servants had earned before their absorption into the public sector undertakings. It was, therefore, held that restricting the applicability of the revised memorandum only to those who are absorbed after coming into force of the same would not only defeat the very object and purpose of the memorandum but would be contrary to fair play and justice also.

14. Despite the aforesaid decision being of no aid in the present cases, we find no logic and basis for classifying the re-employed persons on the basis of their being in employment on 1.1.1986. Indeed, no justification has been canvassed before us. The decision which held the filed before the impugned memorandum is not taking note of pension while fixing pay of the ex-servicemen on re-employment, which was based on good reasons, had no good reason for its reversal, as enhanced pension was not confined to those who were in employment on 1.1.1986. The impugned decision is, therefore, arbitrary and is hit by Articles 14 and 16 of the Constitution. We, therefore, declare the same as void.

> 15. Our conclusions on the three questions noted in the opening paragraph are that denial of Dearness Relief on pension/family pension in cases of those ex-servicemen who got re-employment or whose dependants got employment is legal and just. The decision to reduce the enhanced pension from pay of those ex-servicemen only who were holding civil posts on 1.1.1986 following their re-employment is, however, unconstitutional."

10. Once such is the position in law, it would remain applicable even when the 5th Central Pay Commission report is received. The obvious conclusion therefore, would be that the applicant is entitled to the fixation of pay without reduction on account of enhancement of pension from 1.1.1996. He is also entitled to the consequential benefit of arrears of pay without making any such deductions. We order accordingly.

(R.K. Upadhyaya)
Member(A)

(V.S. Aggarwal)
Chairman

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