

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

A..
OA 944/2016

Lt Col Samir Singh (Retd)

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. I S Singh, Advocate

For Respondents : Mr. Neeraj, Sr. CGSC

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
09.01.2024

Vide our detailed order of even date; we have dismissed the OA 944/2016. Learned counsel for the applicant makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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ORDER

1. The applicant vide the present O.A 944/2016 has made the following prayers:-

“(a) Direct the Respondents to pay Dearness Relief/Allowance to the applicant, on his service pension w.e.f. 16.08.2010;

(b) Direct the Respondents to pay interest at the rate 12% per annum on the Arrears due to the Applicant on account of Dearness Allowance/Relief on his service pension;

(c) Award cost of litigation in favour of the Applicant and against the Respondents; and

(d) Issue such other order(s)/directions(s) as may be deemed appropriate in the facts and circumstances of the case.”

2. The applicant Lt Col Samir Singh(Retd) was commissioned in the Indian Army on 19.12.1987 and took premature retirement from

service w.e.f. 16.08.2010 with due sanction of the competent military authority after putting in about 23 years of pensionable service. After his retirement from the Army, the applicant was employed by Pawan Hans Helicopters Ltd, a Govt of India Enterprise, as 'Captain' in the post of 'Helicopter-Pilot'. The applicant's basic salary with Pawan Hans Helicopters Ltd. was fixed @ Rs.32,900/-. **The Applicant's last 'basic-pay' drawn in the Army was Rs. 61,300/- (ie Rs.47,300/- as Basic Pay + Rs. 8000/- as Grade Pay + Rs.6000/- as Mil Service-Pay.** The applicant submits that his service pension has not been taken into account while fixing his salary/pay in Pawan Hans Helicopters Ltd.

3. The Office Memorandum no. 45/73/97- P&PW(G) dated 02.07.1999 of Govt. of India, Ministry of Personnel, Public Grievance & Pensions, Department of Pension & Pensioners Welfare states to the effect:-

"Subject: Recommendations of the 5th Central Pay Commission- Payment of Dearness Relief to re-employed pensioners and employed family pensioners-Decision regarding.

In terms of the existing orders, Dearness Relief of pensioners and family pensioners is to remain suspended during the period a pensioner/family pensioner is re-employed/employed under the Central or State Government or in a Stationary Corporation/Company /Body/Bank under them in India or abroad. These orders are also applicable to pensioners and family pensioners permanently absorbed in a Statutory Corporation/

Company/Body /Bank under the Central or State Government.

2. In Paragraph 138.21 of their Report, the 5th Central Pay Commission had recommended that Dearness Relief should be paid to employed family pensioners and re-employed pensioners in cases where their pay is fixed at the minimum of the pay scale of the post of re-employment ignoring the entire pension, and that, in other cases of re-employment, Dearness Relief shall be payable on pay plus the non ignorable portion of pension as was the case at present. The Commission had further recommended in paragraph 141.12 that, with a view to maintaining the original value of the pension, the payment of Dearness Relief should not be suspended where pay is fixed at the minimum of the pay scale during employment/re-employment of a family pensioner/pensioner.

3. These recommendation have been considered and accepted by the Government. The President is accordingly pleased to decide as follows.

(a) In so far as re-employed pensioners are concerned, the entire pension admissible is to be ignored at present only in the case of those civilian pensioners who held posts below Group "A" and those ex-servicemen who held posts below the ranks of Commissioned Officers at the time of their retirement. Their pay, on re-employment, is to be fixed at the minimum of the pay scale of the post in which they are re-employed. Such civilian pensioners will consequently be entitled to Dearness Relief on their pension in terms of the recommendations of the 5th Central Pay Commission at the rates applicable from time to time.

(b) In terms of the existing order on the subject, the pay of re-employed pensioners who held Group "A" post or posts of the ranks of Commissioned Officers at the time of their retirement is to be fixed at present:-

** at the same stage as last drawn before retirement or, if there is no such stage, at the stage next above the pay last drawn.*

** at the maximum of the pay scale, if the pay last drawn is more than the maximum of the pay scale of the post in which re-employed;*

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** at the maximum of the pay scale of the post in which re-employed. if it is more than the pay last drawn.*

Further, the pay on re-employment is required to be fixed after ignoring only a portion of the pension [Rs. 1,500] received for the previous employment, In view of the fact that (3) the pension is taken into account in such cases and is not entirely ignore; (ii) the pay the post of re-employment is not required to be fixed at the minimum of the scale in all cases; and (iii) Dearness Allowance at the rates applicable from time to time is also admissible on the pay fixed in terms of the orders on the subject, these re-employed pensioners will not be entitled, in addition, to any Dearness Relief on their pension.

(c) As regards employed family pensioners, since the family pension received by the eligible dependents of Central Government employees is in any case, not taken into account in determining their pay on employment, Dearness Relief at the rates applicable from time to time shall be admissible on their family pension.

(d) While implementing these decisions, orders issued by the Department of Personnel & Training vide OM No. 3/1/85-ESTT (Pay-11) dated 31.07.1986 and as amended from time to time regarding fixation of pay of re-employed pensioners shall be duly kept in view.

(e) These orders shall be effective from July 18, 1997.

(1) In accordance with the Government's decisions referred to in the preceding paragraph all family pensioners in receipt of family pension from the Central Government who were/are employed under the Central Government or the State Government or a Corporation/Company/Body/Bank under them in India or abroad shall be eligible to draw dearness relief, at rates applicable from time to time, on the amount of family pension with effect from July 18, 1997. A certificate may still be necessary to determine dependency. All Pension Payment Authorities, including authorised Public Sector Banks are requested to forthwith release dearness relief on family pensions in cases where this was withheld on account of the family pensioners concerned being employed. The arrears. if any, due with effect from July 18, 1997 shall also be paid.

(II) (a) In the case of Central Government pensioners who were/are re-employed under the Central Government or the State Government or a Corporation/Company/Body/Bank including an autonomous organisation under them in India or abroad or had/have been permanently absorbed in such corporation /Company/ body/bank or autonomous organisation, dearness relief will now be admissible to such of those re-employed pensioners who satisfy the conditions referred to in para 3(a) above. For this purpose, the Central Government Departments concerned, including subordinate organizations, State Government, Corporation/Company/Body/Bank etc. employing a Central Government pensioner shall be required to issue of certificate indicating the following.

(1) The re-employed pensioner retired from a Civil or military post in the Central Government and was holding a post not included in classified as group 'A' or a post below the rank of commissioned officer in the armed forces,

(ii) The entire amount of pension sanctioned by the Central Government was ignored in fixation of the pay on re-employment i.e. no part of the pension was taken into account in such fixation of pay in the pay scale of the post in which the Central government retired/retiree officer was re-employed/absorbed; and

(b) All Central Government Ministries/ Department/ Organisations shall bring these orders to the notice of all Central Government pensioners who happened to be re-employed by them as on July 18, 1997 or were/are re-employed subsequently. In cases such re-employed pensioners satisfy the conditions referred to above, the necessary certificate on the above lines shall be issued after verification from the details referred to in para 17 of the Central Civil Services (Fixation of pay of RE-employed pensioners) Order, 1986 issued vide Department of Personnel & Training OM. No. 3/185-Estt(Pay-II) dated 31.07.1986 and as amended from time to time.

(c) The Pension Disbursing Authority shall release dearness relief on pension to those re-employed pensioners who submit the Certificate referred to above.

(d) In all other cases of re-employed pensioners, no dearness relief shall be admissible on pension during the

period of their re-employment. Payment of dearness relief in these cases shall become admissible only with effect from the date they cease to be re-employed.

(e) The Pension Disbursing Authority shall require such a pensioner to produce a certificate of cessation of re-employment from the office in which he had been reemployed.

5. Formal amendment to the Central Civil Services (Pension) Rules, 1972, is being issued separately.

6. CPAO may take immediate action to suitably amend the relevant provision of the Scheme for Payment of Pension to central Government Civil Pensioners, including the proforma at Annexure-XVII and notify the same to all Public Sector Banks disbursing pension to Central Government pensioners/Family pensioners. A copy of the notification may be endorsed to this department.

7. Necessary orders in respect of re-employed Defence pensioners and family pensioners will be issued separately by the Ministry of Defence.

8. Administrative Ministries may bring these orders to the notice of all subordinate organizations, autonomous bodies and Public Sector Undertakings including Nationalised banks, financial institutions. etc. under them so that the eligible Central Government pensioners re-employed in these organisations do not face any difficulty in obtaining the requisite certificate.

9. This issues with the concurrence of the Ministry of Finance, Department of Expenditure.

10. In so far as these orders relate to personnel of the Indian Audit and Accounts Department, these have been issued in consultation with the Comptroller & Auditor General of India.

11. Hindi version will follow."

4. Thus in terms of Para-II(a) of the said letter dated 02.07.1999 Dearness Relief is admissible to such of those re-employed pensioners who satisfy the conditions referred to in Para-3(a) of the said letter reproduced once again herein to the effect:-



"3....

(a) In so far as re-employed pensioners are concerned, the entire pension admissible is to be ignored at present only in the case of those civilian pensioners who held posts below Group "A" and those ex-servicemen who held posts below the ranks of Commissioned Officers at the time of their retirement. Their pay, on re-employment, is to be fixed at the minimum of the pay scale of the post in which they are re-employed. Such civilian pensioners will consequently be entitled to Dearness Relief on their pension in terms of the recommendations of the 5th Central Pay Commission at the rates applicable from time to time."

5. In terms of Para-II(d) it has been specifically stipulated that in all other cases of re-employed pensioners, no dearness relief shall be admissible on pension during period of their re-employment and that payment of dearness allowance will become admissible with effect from the date they ceased to be re-employed. It is also essential to advert to the GoI, MoD letter no. 7(1)/95 /D(Pen/Service) dated 28.08.2000 which categorically provides vide Para-II(d) thereby to the effect:-

"In all other cases of re-employed commissioned officer pensioner, no dearness relief shall be admissible on pension during the period of their re-employment. Payment of dearness relief in these cases shall become admissible only with effect from the date, they cease to be re-employed. The pension Disbursing Authority shall require such a pensioner to produce a certificate of cessation of re-employment from the office in which he had been re-employed."

6. For the grant of Dearness Allowance in terms of the said letter dated 28.08.2020, the requisite parameters of Para-1(a) of the said letter read as under:-

"1.(a) In so far as re-employed pensioners are concerned, the entire pension admissible is being ignored at present only in the case of those ex-serviceman who held posts below the ranks of Commissioned Officers(PBOR) at the time of their retirement. Their pay on re-employment, is to be fixed at the minimum of the pay scale of the post in which they are re-employed. Such pensioners will consequently be entitled to Dearness relief on their pension in terms of the recommendations of the 5th Central Pay Commission at the rates applicable from time to time."

are required to be met.

7. It is also essential to advert to Circular No. 166 dated 07.03.2013 issued by the Principal Controller of Defence Accounts(P), Allahabad which reads to the effect:-

"(a) In case of re-employed pensioners who hold Group 'A' post or posts of the ranks of commissioned officers at the time of their re-employment will not be entitled to any dearness relief on pension on the fact that:

(I) A certain portion of pension is taken into account and is not entirely ignored.

(II) The pay in the post of re-employment is not required to be fixed at the minimum of the scale in all cases, and,

(iv) Dearness allowance at the rates applicable from time to time is also admissible on the pay fixed on re-employment.

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(c) The disability element is part of disability pension, therefore, position explained at a&b above will also apply for regulating dearness relief on disability element during re-employment of pensioner drawing disability pension.

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8. The Hon'ble Supreme Court in *Union of India & Ors. v. G. Vasudevan Pillay & Ors.* in Civil Appeal Nos. 3543-46 of 1990 vide verdict dated 08.12.1994 has considered the questions to the effect:-

- "1. Whether the decision of the Union of India not to allow dearness relief (DR) on pension to the ex-servicemen on their re-employment in a civil post is in accordance with law or not;
2. Whether denial of DR on family pension on employment of dependents like widows of the ex-servicemen is justified or not, and
3. Reduction of pay equivalent to enhanced pension of those ex- servicemen who were holding civil posts on 01.01.1986 following their re-employment, is permissible or not."

and held as under:-

"8.....even if Dearness Relief be an integral part of pension, we do not find any legal inhibition in disallowing the same in cases of those pensioners who get themselves re- employed after retirement. In our view this category of pensioners can rightfully be treated differently from those who do not get re-employed; and in the case of the re-employed pensioners, it would be permissible in the law to deny DR on pension in as much as the salary to be paid to them on re- employment takes care of erosion in the value of money because of rise in prices, which lay at the back of the grant of DR as they get dearness allowance on their pay which allowance is not available to those who do not get re-employed.

9. We, therefore, hold that the ex-servicemen were rightly debarred from Dearness Relief on their pensions after they got themselves re-employed to any civil post under the Government of India."

9. The facts of the instant case are wholly in *pari materia* with the facts of the case decided vide the verdict of the Hon'ble Supreme Court in ***Union of India & Ors. v. G. Vasudevan Pillay & Ors.***, in the instant case thus, the applicant having been an ex-serviceman being re-employed is not entitled to Dearness Allowance on his pension. In similar circumstances, this Tribunal in OA 247/2014 in ***Col Vinod Kr Sharma & Ors. Vs UOI & Ors.*** and OA 165/2015 in ***Col Kuldeep Singh Choudhary Vs. UOI & Ors.*** vide order dated 14.10.2016, has declined the prayer for the grant of Dearness Allowance. In the circumstances of the instant case, in view of the verdict of the Hon'ble Supreme Court in ***Union of India & Ors. v. G. Vasudevan Pillay & Ors.***, the issue is no larger *res integra* and no purposive interpretation of the rules as prayed by the applicant can be granted, in view of the express contents of Para-II(a) of the letter dated 02.07.1999 read with Para-3(a) thereof. The applicant is thus not entitled to the grant of Dearness Allowance as prayed by him after his

re-appointment with Pawan Hans Helicopters Ltd, till cessation of re-employment from the office in which he had been re-employed.

CONCLUSION

10. The OA 944/2016 is dismissed.

Pronounced in the open Court on the 9th day of January, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/