

**COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 1948/2019

Maj Avaninder Kumar (Retd.) **Applicant**
VERSUS
Union of India and Ors. **Respondents**

For Applicant : Mr. A.K. Aggarwal, Advocate
For Respondents : Mr. Prabodh Kumar, Sr. CGSC
Capt Abhishek Kumar, OIC Legal Cell

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

The applicant, a retired Commission Officer, re-employed with State of Himachal Pradesh, has invoked the jurisdiction of this Tribunal u/s 14 of the AFT Act 2007 seeking a direction to the respondent to grant Dearness Relief on the pension of the applicant wef 01.11.2014 (alongwith applicable arrears and interest thereon) under MoD letter dt 06.10.1999 r/w OM dt 02.07.1999.

2. The grievance of the applicant stems from the fact that on his re-employment with the State of Himachal Pradesh, not only his initial pay was fixed at the minimum of the scale of

the post employed at but he was also deprived of the DA on his pension.

3. The applicant has based his claim for continuation of Dearness Relief, upon the recommendation of the V CPC, which was considered and accepted by the Government of India vide letter dt. 02.07.1999, that prescribes grant of Dearness Relief to re-employed pensioners and employed family pensioners and also on letter dt. 06.10.1999 which makes the MoD letter 02.07.1999 applicable mutatis-mutandis to the Armed Force personnel, re-employed in civil post.

4. As per the applicant, he was employed by direct recruitment with the State of Himachal Pradesh, through a competitive exam conducted by Himachal Pradesh Public Service Commission, at the minimum of the pay scale of the post-employed at. It is submitted that the pay fixation rules of the Government of Himachal Pradesh, where he is re-employed, are different from that of the Central Government and do not provide for his initial pay to be fixed with protection of his last pay drawn. It is argued that since his initial pay is fixed at the minimum of the re-employed post, he became entitled to grant of DR on the pension as

provided under Clause 3 of the MoD letter dt 02.07.1999, which was made applicable mutatis-mutandis to Armed Force Personnel who are re-employed in civil posts and their pay is to be fixed as per Civil Pay Rules vide MoD letter dt. 06.10.1999.

5. Per contra, the submission of respondents is that DR is admissible only to such re-employed pensioners who satisfy the conditions referred to in Para 3(a) of the MoD letter dt 02.07.1999, i.e. who held post below Group A or below the ranks of Commissioned Officer at the time of their retirement, since the applicant retired as Commissiond Officer he is not entitled to DR on his pension after his re-employment. It is further argued that the anomaly as perceived by the applicant pertains to pay fixation by the State of Himachal Pradesh and not one of non payment of Dearness Relief in terms of MoD letters dt. 02.07.1999 and 06.10.1999 and required to be agitated before appropriate forum i.e. the State Government of Himachal Pradesh. Inviting our attention to the dictum by the Hon'ble Supreme Court in the batch of appeals (SLP Civil) lead being **R.K. Barwal & Ors. v. State of Himachal Pradesh & Ors.** (2017)16 SCC 80, it is submitted that the rule position regarding the initial pay

fixation of the applicant's pay has attained finality. It is only after the ruling in R. K. Bartwal (Supra) that the applicant has filed this OA.

6. It is an admitted fact that applicant is a retired commissioned officer receiving Disability Pension and re-employed with the State of Himachal Pradesh as an Administrative Service (HPAS) Officer, since 01.11.2014. Upon commencement of his re-employment with the State of Himachal Pradesh, the Dearness Relief on his Disability Pension was discontinued.

7. OM No. 45/73/97-P&PW(G), GoI, Min of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners' Welfare, Office Memorandum dt 02.07.1999 prescribes for grant of Dearness Relief to pensioners and family pensioners as per recommendations of 5th Central Pay Commission (CPC) and is reproduced hereunder:-

No. 45/73/97-P&PW(G)
Government of India
Ministry of Personnel, Public Grievances & Pensions Department of
Pension & Pensioners Welfare

Third Floor, Lok Nayak Bhavan
Khan Marker, New Delhi 110003
Date: 2nd July, 1999

OFFICE MEMORANDUM

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 to 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 Statutory 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 recommendations 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 orders 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 the 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.
 - at the minimum 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 the pension is taken into account in such cases and is not entirely ignored, if 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-II) 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.

(I) 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 Bank are requested to forthwith release dearness relief on family pensions 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 (a) above. For this purpose the Central Government Departments concerned, including subordinate organisations State Government, Corporation/Company/Body/Bank etc employing a Central Government pensioner shall be required to issue of certificate indicating the following:

(i) 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 post below the rank of commissioned officer in the armed forces,

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

(iii) The pay of the re-employed/absorbee was/is fixed at the minimum of the pay scale of the post in which he had/has been initially re-employed after his retirement from the Central Government

(b) All Central Government Ministries/Departments/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 later 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 3/15 Estt(Pay-11) 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. The Pension Disbursing

(e) Authority shall require such a pensioner to produce a certificate of cessation of re-employment from the office in which he and hers re-employed

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 provision at Annexure-XVT) 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 sent separately by the Ministry of Defence.

8. Administrative Ministries may bring these orders to the notice of all subordinate organization, 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 issue 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.

(GANGA MURTRY)
Director

8. A bare perusal of the aforesaid MoD letter shows that those ex-servicemen who held post below the rank of Commissioned Officer (PBOR) at the time of retirement, their pay on the re-employment is to be fixed at the minimum of pay at the post in which they are re-employed. Such civilian pensioners will be consequently entitled to Dearness Relief on their pension in terms of recommendation of the V CPC. However, the pay of re-employed pensioner who held the post of the ranks of Commissioned Officer at the 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 last pay last drawn or 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, or at the minimum of the pay scale of the post in which re-employed, if it is more than the pay last drawn. It further clarifies that though Dearness Allowance at the rate applicable from time to time maybe admissible on the pay fixed in terms of the orders on the subject, but these re-employed (Group A/Commissioned Officers) pensioners will not be entitled to any Dearness Relief on their pension.

9. Further, GoI, MoD letter dt. 06.10.1999 (Annexure A-4) states that *"DP & PW (G) letter dt 02.07.1999 will be applicable mutatis-mutandis to Armed Forces Personnel who are re-employed in civil posts and their pay is to be fixed as per civil Pay Rules"*, meaning thereby that those re-employed Army personnel, in civil post, whose pay is fixed as per civil pay rules will not be eligible/entitled for Dearness Relief (DR) on their pension.

10. Furthermore, the Notification dt 16.08.1974 (filed by applicant as (Annexure A-7), prescribes the rules for regulating the reservation of vacancies in the Himachal Pradesh Administrative Services (HPAS) for Demobilized Emergency Commissioned Officers, Short Service Regular

Commissioned Officers and other Released Indian Armed Forces personnel. Rule 4 (i) of the Notification provides for fixation of Pay, seniority and retirement benefits, that the period of military service rendered by the candidate appointed against reserved vacancies under Rule-2 shall count towards fixation of pay and seniority subject to terms and conditions mentioned therein clause (a) to (c).

11. The letter dt 17.05.2013 PER(AP)-C-B(19)-3/96-VOL-VII Government of Himachal Pradesh, Department of Personnel (AP-III), (Annexure A-8) reveals that instructions were given to maintain status quo in the light of interim order passed in SLP preferred against the judgments of Hon'ble High Court of Himachal Pradesh in Civil Writ Petition No. 1352/2006 **V.K. Behal and Ors. v. State of Himachal Pradesh and Ors.** decided on 29.12.2008 and **Rajinder Singh and Ors. v. State of Himachal Pradesh and Ors.** The provisions of Rule 5(1) of the Demobilized Armed Forces Personnel (Reservation of vacancies in Himachal Pradesh state Non-Technical Services) Rules 1972, has been read down and held un-constitutional and the provisions of Rule 4(1) of the Demobilized Indian Armed Forces Personnel Rules, 1974 has been quashed by the Hon'ble High Court of Himachal

Pradesh in the judgment dt. 29.12.2008 in Civil Writ Petition No. 488/2001 **V.K. Behal and Ors.** v. **State of Himachal Pradesh and Ors.** and further Civil Writ Petition No. 1352/2006 titled as **Rajinder Singh and Ors.** v. **State of Himachal Pradesh and Ors.** decided on 16.11.2007 respectively. These judgments were challenged by filing various SLPs. Initially interim order of status quo was passed.

12. Notification dt. 21.10.2014 shows that applicant was offered appointment to Himachal Pradesh Administrative Services (HPAS) subject to certain terms and conditions and on furnishing a written letter of acceptance of appointment to the Principle Secretary (Personnel) to the Government of Himachal Pradesh, within one week, the applicant gave his consent for fixation of pay to ex-service candidate under the existing Rules as reflected from Annexure A-9 dt November, 2014.

13. Facts remains that the applicant joined the Himachal Pradesh State Services to make his career in his home state on his own violation, exercising it as a matter of choice and was aware and bound by the terms and conditions of service where he was reemployed. Admittedly applicant had retired

as Commissioned Officer/Major and re-employed with State of Himachal Pradesh in administrative services. He is now seeking parity with PBOR under clause 3(a) for grant of Dearness Relief (DR) on his pension. An individual who is discharged as a Commissioned Officer cannot seek parity with a person below officer rank (PBOR), hence clause 3(a) is not applicable to him, he is covered under clause (b) which clearly stipulates that re-employed pensioners will not be entitled to any Dearness Relief on their pension.

14. In view of the aforestated, we find no merits in the present petition, the OA being misconceived and devoid of merits is dismissed as such.

15. No order as to cost.

Pronounced in the open Court on this 23rd September, 2025.

**[JUSTICE NANDITA DUBEY
MEMBER (J)]**

**[RASIKA CHAUBE
MEMBER (A)]**

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