

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O.A. NO.9 OF 2016

WEDNESDAY, THE 01st DAY OF MARCH, 2017/ 10th PHALGUNA , 1938

CORAM:

HON'BLE MR. JUSTICE S.S.SATHEESACHANDRAN, MEMBER (J)
HON'BLE VICE ADMIRAL M.P.MURALIDHARAN, AVSM & BAR, NM, MEMBER (A)

APPLICANT:-

S. MURALEEDHARAN PILLAI,
EX 0614209 H, SGT (DISCHARGED FROM THE INDIAN AIR FORCE)
AGED 61 YEARS, S/O SREEDHARAN PILLAI,
RETIRED AS MANAGER,
INDIAN BANK, KOLLAM BRANCH, KOLLAM DISTRICT.

RESIDING AT: HYRAMBAM, RAMANKULANGARA, KAVANAD (P0)
KOLLAM DISTRICT.

BY ADVS. MR. M.V.THAMBAN & SMT. THARA THAMBAN

Versus

RESPONDENTS:-

1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY , MINISTRY OF DEFENCE (ARMY),
SOUTH BLOCK, NEW DELHI – 11.
2. THE CHIEF OF AIR STAFF,
AIR HEADQUARTER (VAYU BHAVAN), NEW DELHI – 110011.
3. THE OFFICER-IN-CHARGE
RECORDS, AIR FORCE RECORD OFFICE
SUBROTO PARK, NEW DELHI PIN- 110 010.
4. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSION),
DRAUPADI GHAT, ALLAHABAD PIN – 211 014.
5. DEFENCE PENSION DISBURSING OFFICER,
NO.185, ASHIANA BUILDING, POLAYATHODE,
KOLLAM, KOLLAM DISTRICT, PIN – 691 010.

BY ADV.SRI M. RAJAENDRA KUMAR, SENIOR PANEL COUNSEL

ORDER

VAdm.M.P.Muralidharan, Member (A):

1. The Original Application has been filed by S.Muraleedharan Pillai, Ex Sgt, No.0614209 H, of the Air Force claiming that he is entitled to Dearness Relief on the military pension granted to him for the service in the Air Force in addition to the Dearness Allowance being paid to him for his service in a Public Sector Bank.

2. This is the second round of litigation by the applicant on the same subject. He had earlier filed OA No.101 of 2013 before this Tribunal which had been disposed of by order dated 17 Feb 2014 directing the respondents to reconsider the applicant's case for grant of Dearness Relief (Annexure A12). In pursuance of the order, a speaking

order was issued by the respondents stating that he was not entitled to Dearness Relief on his military pension as his pay had been protected in his re-employed post and would only be entitled for Dearness Relief on his retirement from the re-employed post (Annexure A14) and hence, the O.A.

3. Smt. Thara Thampan, the learned counsel appearing for the applicant, submitted that the applicant who was discharged from service on 31 Aug 1988 on fulfilment of his conditions of enrolment, was granted service pension. Subsequently, the applicant was selected and appointed in the Indian Bank on 13 Dec 1989 and was confirmed in the Bank with effect from 13 Jun 1990 from where he retired on 31 Jan 2014. The learned counsel submitted that the applicant had been sanctioned Dearness Relief along with his service pension, but the same was stopped from 01 Jun 1990 and the Dearness

Relief already granted to him was recovered from his pension.

4. Learned counsel submitted that in accordance with recommendations of 5th Central Pay Commission, Dearness Relief is to be paid to re-employed pensioners in cases where their pay is fixed at the minimum of the pay scale of the post on re-employment ignoring the entire pension. In other cases of re-employment, Dearness Relief shall be payable on pay plus the non ignorable portion of the pension. The 5th CPC had also recommended that in view of maintaining the original value of the pension, the payment of Dearness Relief should not be suspended where minimum of pay fixed during the employment/re-employment. Accordingly, Ministry of Personnel, vide Office Memorandum No.45/73/97-P&PW(G) dated 02 July 1999, had accepted the recommendations of 5th CPC and that the

benefit should be made available from 18 July 1997 (Annexure A1). Learned counsel for the applicant submitted that even though the applicant was eligible for Dearness Relief on the military pension from 18 July 1997 he has not been paid the same.

5. Learned counsel further submitted that the applicant's employer viz. Indian Bank while fixing the applicant's pay had ignored the entire amount of military pension sanctioned and it was not considered while fixation of pay in the re-employed post. His basic pay in the re-employed post was fixed in the minimum of pay. Applicant, who has not been paid Dearness Relief, made an appeal to the respondents requesting restoration of his Dearness Relief and also submitted due certificate from the Indian Bank showing that his pay was fixed without taking into account military pension (Annexures A2 and A3).

However, his request was rejected vide Annexure A4 stating that his basic pay fixed at the time of re-employment had been stepped up in the pay scale and a person who had availed advance increment on re-employment was not entitled to Dearness Relief along with his pension. Since the applicant was not clear as to the Government policy based on which his request for Dearness Relief was rejected, he sought the same under the Right to Information Act (Annexure A5) and was intimated that it was based on the Office Memorandum of Ministry of Personnel, Department of Pension & Pensioners' Welfare at Annexure A1. Learned counsel submitted that the said OM (Annexure A1), nowhere stipulates a bar against claiming of Dearness Relief if higher increment has been granted. The counsel further submitted that Circular No. 165 issued by PCDA(P) on 22 Feb 2013 has clarified the position of payment of Dearness Relief to re-employed pensioners

(Annexure A7). Para 7(b)(ii) of the Circular clarifies that Ex-servicemen (PBOR) who retired prior to attaining the age of 55 years and were re-employed thereafter with their pay fixed at higher stage because of advance increments and where no protection of the last pay drawn was given, the pay should be treated as fixed at the minimum only, for the purpose of ignoring the entire pension and allowing Dearness Relief on pension. Learned counsel submitted that it is evident that the respondents have overlooked the directions at Annexure A7 and, as per Annexure A3 certificate, the bank had not considered the applicant's service in the Air Force for granting him higher grade.

6. Applicant had accordingly filed OA No.101 of 2013 before this Tribunal and after considering all issues, vide orders at Annexure A12, had allowed the OA directing the respondents to reconsider his case based on the

observations made in the order. Further, the respondents, vide Annexure A14, had turned down the applicant's claim for Dearness Relief despite the advice of PCDA(P) that payment of Dearness Relief on pension after re-employment is to be as per Para 7 of Circular No.165 (Annexure A7) as well as Circular No.386 (Annexure A 15). The learned counsel submitted that the applicant was legitimately entitled to Dearness Relief and therefore may be granted the same.

7. The respondents in the reply statement submitted that in accordance with Government decisions on the recommendations of 5th CPC which was promulgated by Office Memorandum at Annexure A1, no Dearness Relief was payable to re-employed defence personnel prior to 18 July 1997. Therefore, no re-employed defence personnel, such as the applicant, was eligible for Dearness Relief prior

to that date. Before that the 4th CPC allowed Dearness Relief to re-employed personnel subject to fulfilment of specified conditions. Para 3(a) of the policy at Annexure A1 stipulates that the pay, on re-employment, is to be fixed at the minimum of the pay scale of the post in which they are re-employed and only such pensioners will consequently be entitled to Dearness Relief in terms of recommendations of 5th CPC. This policy promulgated by Department of Pension & Pensioners Welfare for civilian personnel specifically applies to Armed Forces personnel through a letter issued by Ministry of Defence on 06 October 1999 (Annexure R1). Further, Para 3(e) of Annexure A1 clearly specified that orders will be effective with effect from 18 July 1997 and not earlier.

8. The respondents further contended that the applicant was re-employed in the Indian Bank and the Bank

had clarified vide letter issued by their HRM Department that the applicant's basic pay was fixed with effect from 13 Dec 1989, ie from the date of his re-employment, protecting the last drawn Basic Pay and Dearness Allowance as per last pay certificate issued by the Air Force authorities (Annexure R2). The fixation of his pay as indicated by the Bank is at Annexure R3, which clearly indicates that the applicant's last drawn pay in the Air Force, including the Dearness Allowance admissible was Rs.1629/- whereas the Bank has protected, on re-employment, by giving a total pay of Rs.1643.12 (Basic Pay plus DA). Respondents further contended that, vide Para 7(b)(ii) of PCDA(P) Circular No.165 (Annexure A7) those who retired before the age of 55 years and were re-employed thereafter, where pay was fixed at higher stage because of advanced increments and no protection of last pay drawn was made, the pay should be treated as fixed at minimum

for the purpose of allowing Dearness Relief. Whereas the applicant's pay was protected on his re-employment and therefore, his pay cannot be treated as fixed at the minimum. Hence, he is not entitled for Dearness Relief. Respondents further contended that speaking order at Annexure A14 was issued in compliance of directives of the Tribunal in O.A.No.101 of 2013. Prior to issue of speaking order, a clarification was also issued in this regard by the PCDA(P) vide letter at Annexure R4 which also clearly brings out, since the applicant's salary had been fixed on re-employment protecting his last pay drawn plus Dearness Allowance, he was not entitled to Dearness Relief in accordance with Circular No.165 and the earlier Circular No.386 of June 2008.

9. Heard rival submissions and perused records.

10. Applicant's contention for Dearness Relief on his military pension is based on the Ministry of Personnel, Public Grievances & Pensions, Department of Pensions & Pensioners Welfare, Office Memorandum of 02 July 1999 (Annexure A1) and the certificate issued by the Kollam Branch of the Indian Bank, which states that the entire amount of military pension was ignored in fixation of pay on re-employment and that the pay in the re-employed post is fixed at the minimum of the scale of pay (Annexure A3).

11. Para 2 of the Office Memorandum at Annexure A1 brings out that 5th CPC recommended that Dearness Relief should be paid to re-employed pensioners in cases where their pay is fixed at the minimum of the pay scale of the post on re-employment ignoring the entire pension. Further, Dearness Relief should not be suspended where pay is fixed at the minimum of the pay scale during

employment/re-employment. This was accepted by the Government and relevant portions of the Government Orders (Annexure A1/R1) are quoted below:

"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.

xxxx

xxxx

xxxx

4 (I)

xxx

xxxx

xxxx

(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.”

12. The above OM which was made applicable to ex-servicemen vide Ministry of Defence letter of 06 October 1999 (Annexure R1), brings out that persons whose pay on re-employment is fixed at the minimum of the pay scale, would be entitled to Dearness Relief. It also clarifies that in case of personnel re-employed in Banks, such as the applicant, Dearness Relief will be admissible to those who satisfy the conditions of Para 3(a) of the OM. The term 'minimum pay' has been clarified by Para 4 of Circular No.386 of PCDA(P) dated 19 Jun 2008. This was amended vide Circular No.395 of 04.09.2008 and reads as follows:

“It is therefore, clarified that in the cases

where PBOR retired before attaining the age of 55 years and re-employed thereafter their pay fixed at a higher stage because of advance increments and no protection of the last pay drawn were given, the pay should be treated as fixed at a minimum for the purpose of ignoring the entire pension and allowing Dearness Relief on pension.”

13. It therefore emerges that if the pay on re-employment is fixed at higher stage because of advance increments and no protection of the last pay drawn was given, then the pay should be treated as fixed at a minimum for the purpose of ignoring the entire pension and allowing Dearness Relief on pension. In other words, grant of Dearness Relief was only if no protection was given to the last pay drawn. In case of the applicant, the clarification issued by the HRM Department of the Bank (Annexure R3) clearly brings out that the salary on re-employment of the applicant was fixed by protecting his

last drawn Basic Pay plus Dearness Allowance as per the certificate issued by the Air Force authorities. The total last drawn pay of the applicant amounted to Rs.1629/- and his total pay on re-employment amounted to Rs. 1643.12/-. It is therefore evident that the applicant's pay was protected on his re-employment by the bank. The certificate at Annexure A3 produced by the applicant was issued by a Branch of the Bank and is at variance with that issued by the HRM Department of the Bank which clearly specifies that last drawn pay of the applicant was protected by the Bank on re-employment as per Government guidelines. We have therefore to go by the letter issued by the HRM Department of the Bank vis-a-vis one issued by a Branch as fixation of pay at the time of employment of a person would be done by the HRM Department of the Bank. Therefore, in our view, the applicant is not entitled for Dearness Relief till his retirement from his re-employed

O.A. No. 9 of 2016

post and the speaking order issued at Annexure A14, which is in keeping with the policy and guidelines issued by the Government, needs no interference.

14. In view of the foregoing, we do not find any merit in the contentions of the applicant and the O.A. is accordingly dismissed.

15. There will be no order as to costs.

16. Issue free copy to the parties.

Sd/-

**VICE ADMIRAL M.P. MURALIDHARAN,
MEMBER (A)**

krs.

Sd/-

**JUSTICE S.S.SATHEESACHANDRAN,
MEMBER (J)**

//True Copy //

Private Secretary