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Court : Central Administrative Tribunal CAT Kolkata

Decided On : Aug-11-2005

Reported in : (2006)(92)SLJ179CAT

Judge : B P Vice, M a M.K.

Appellant : Sushil Kumar Das and ors.

Respondent : Union of India (Uoi) and ors.

Judgement :

1. These three original applications along with the connected MAs/RA are taken up together for disposal as similar facts and points of law are involved.

2. For the sake of convenience we shall take up OA 55/98 first. This OA has been filed by four applicants as named in the cause title.

Applicant Nos. 1 and 2 were earlier Members of the West Bengal Higher Judicial Service and after their selection as Judicial Member of the Railway Claims Tribunal, Kolkata (Tribunal for short), they took voluntary retirement from their earlier service and joined the Tribunal on 1.9.94 and 2.10.94 respectively. It may be pointed out that as per relevant Rules a person has to take retirement from his earlier service in order to join the Tribunal as a Judicial Member or Technical Member.

Similarly applicant Nos. 3 and 4 were working as FA&CAO in the Eastern Rly. and S.E. Rly. respectively and they joined the Tribunal, Calcutta as Technical Member

on 30.11.94 and 25.1.95. Thus all the applicants joined the Tribunal prior to 1.1.96 when 5th Pay Commission's recommendations did not come into force. All the applicants were in receipt of pension ranging from Rs. 3050 to Rs. 3725 for their earlier service. The scale of pay of the Member in the Tribunal prior to 1.1.96 was Rs. 7300-8000 (or Rs. 7300-7600).

3. On their appointment, the pay of the applicants was fixed in terms of Rule 3 of the Railway Claims Tribunal (Salaries and Allowances and Condition of Service of Chairman, Vice-Chairman and Members) Rules, 1989 (for short 1989 Rules). The relevant rule for fixation of pay as provided in Rule 3 of the said 1989 rules is quoted below.

The Chairman shall receive a pay of rupees eight thousand per mensem, a Vice-Chairman shall receive pay in the scales of rupees 7300-100-7600 per mensum and shall in addition, be eligible for a special pay of rupees five hundred per mensem subject to the condition that the pay, together with special pay does not exceed rupees eight thousand per mensem, a Member shall receive pay in the scale of -rupees 7300-100-7600 per mensem, provided that in the case of appointment as Chairman, Vice-Chairman or Member of a person who has retired as a Judge of a High Court, or who has retired from service under the Central Government or a State Government and who is in receipt of, or has received or has become entitled to receive any retirement benefits by way of pension, gratuity employer's contribution provident fund or other forms of retirement benefits, the pay shall be reduced by the gross amount of pension or pensionary equivalent of employer's contribution to the contribution Provident Fund or any other form of retirement benefits, if any, drawn, or to be drawn by him.

4. The principal grievance of the applicants is against the above proviso to Rule 3 whereby the pay is to be reduced by the amount of pension which a person is in receipt or has received or has become entitled to receive while fixing pay as Member. The contention of the applicants is that since as per Rule 5 of the said 1989 rules for appointment in the Railway Claims Tribunal either as Chairman or Vice-Chairman or as Member, a person has to take retirement from his earlier service, such a provision of fixation of pay by reducing the same to the extent of

pension drawn or to be drawn is unjustified. It is contended that had such a person is not required to take voluntary retirement in order to join the Tribunal he would have earned increments in his parent service till his normal retirement notionally and would have earned more pension.

4A. The applicants further contend that proviso to Rule 3 of aforesaid Rules is itself arbitrary and illegal because the service under the Railway Claims Tribunal is an independent judicial service and it has no relation with the past service of the Members. Therefore, the pension which they earned in their previous service, cannot be taken into account for calculating their pay in the new service under the Railway Claims Tribunal. According to them, their pay should be fixed directly in the pay scale attached to the post of Member without any reference to the pension which they were drawing for their past service. In other words, the pension which they are in receipt for their earlier service cannot be deducted from the pay fixed as Member.

5. Their further grievance is that although in the Railway Tribunals Act there is provision for payment of gratuity for the service rendered under the Tribunal, but there is no rule framed granting payment of such gratuity and hence direction should be given to the Government to amend 1989 Rules so that provision for payment of gratuity is incorporated.

6. They have another grievance that the qualifying service in the Tribunal for calculation of pension is counted under Rule 8(2) of the Rules, but under the said provision pension is payable at certain rate for each completed year of service or part thereof. The applicants claim that in all other services the qualifying service for pension is calculated on half yearly period basis and fraction equal to three months and above is treated as on 1/2 year period. The applicants claim that similar provision should also be made for them also in the relevant 1989 Rules.

7. The respondents have contested this application and have files a reply. The applicants have also filed a written argument in this case.

8. It may be noted in this connection that at the time of admission of this OA, an interim order was passed by this Tribunal on 31.3.98 directing that the

respondents shall not deduct the enhanced portion of the pension from the pay of the applicants and that they should be allowed to draw their salary by deducting only the old pension of Rs 3050 per month. This interim order was subsequently modified on 15.9.2000 against which the applicants have filed RA 25/2000. The background for such interim order will be clear from the facts of the other two OAs to which we shall make reference in the subsequent paragraphs.

9. O.A. 826/2000 has been filed by two applicants who are applicant Nos. 3 and 4 of 55/98, i.e. by the Technical Members of the Tribunal as stated above while OA No. 1087/ 1999 has been field by Shri Sushil Kumar Das, who is applicant No. 1 in OA 55/98, and was functioning as Judicial Member.

10. As already pointed out earlier all the applicants were appointed as Member of the Tribunal on different dates prior to 1.1.96 when revised pay scale did not come into force on the basis of recommendation of the V CPC, and their pay was fixed in the unrevised scale of Rs. 7300-8000 by deducting their pension which they were drawing at that time for their earlier service. The pay scales of all the Central Government employees were revised from 1.1.96. Consequent upon such revision of pay, the pension of the Central Government pensioners was also revised upwardly and accordingly the pension of the applicants was also enhanced ranging from Rs. 9200 to Rs. 11200 for their earlier service.

11. The pay scales of the Chairman, Vice-Chairman and Members of the Railway Claims Tribunal were also revised and the revised pay scale of the Members became Rs. 22400-24500 w.e.f. 1.1.96 and 22400-26000 w.e.f.

26.9.96. After such revision of pay scale, the pay of the applicants was fixed, though belatedly after they made repeated representations, by deducting the enhanced portion of pension which they became entitled to on the basis of the recommendation of the V CPC.12. In both these OAs, the grievance of the applicants is that once their pay was fixed on joining as Member of the Tribunal before 1.1.96 after deducting the old pension which they were in receipt at that point of time, the respondents cannot again re-fix their pay in the revised pay scale by deducting the enhanced portion of pension. Their submission is that since their pay was already fixed on their appointment as Member by deducting the unrevised

pension, their such pay was final and the pay as on 31.12.95 has to be fixed in the revised pay scale straightway and not by again deducting the enhanced portion of pension. Since the respondents have done so illegally, they have been prejudiced monetarily by such double deduction. According to them by such deduction they have been treated differently as in respect of other re-employed Government employees the enhanced portion of pension is ignored in terms of OM dated 14.10.97 which was issued in compliance of a decision of the Hon'ble Supreme Court.

13. The main issues involved in all these three OAs are -(1) Whether proviso to Rule 3 of the Railway Claims Tribunal (Salaries etc. Rules 1989) is ultra vires, illegal and bad in law and (2) whether the respondents were just: fied in deducting the enhanced portion of pension after revision of pension from 1.1.96 from the revised pay of the applicants.

14. The applicants have contended that they were not in re-employment in the Railway Claims Tribunal but were appointed afresh in tenure service and, therefore, CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986, have no application in their case. According to them, they were fresh appointees to an independent Judicial Service under the Tribunal which is not connected with the affairs of Union or State and therefore their past service cannot be tagged with their service under the Tribunal, so that pension earned by them for their past service can be deducted while fixing pay as Member of the Tribunal, In support, they have relied on the decision of the Hon'ble Supreme Court in the case of Union of India v. K.B. Khare and Ors. 1994 Supp (3) SCC 502=1994(3) SLJ 102 (SC). In that case the respondent No. 1 (K.B.Khare) was a retired District Judge and was appointed as Judicial Member of the CAT. After his retirement from CAT, he claimed that his service as a District Judge in State Judicial Service should be tagged with the service rendered in the Tribunal and his pension and other retiral benefits be calculated on the basis of his total aggregate service accordingly. The Apex held that State Judicial Service and the service under the Tribunal are different and therefore the two services cannot be tagged for calculating pension. It was also held that service in CAT was not on re-employment basis in connection with the affairs of the Union and was an independent judicial service, CCS

(Fixation of Pay Rules on Re-employed Pensioners) Orders, 1986 cannot have any application. Relying on this decision, the applicants contended that the provisions in the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 1985 are analogous to the Railway Claims Tribunal (Salaries etc, etc.) Rules, 1989 and therefore they should also be treated to be in independent Judicial Service having been appointed on tenure basis. Therefore, in their case also the CCS (Fixation of Pay of Re-employed Pensioners) Orders of 1986 cannot have any application and in that event the authorities cannot deduct the pension while fixing their pay as Member of the Tribunal. Since such a provision has been made in Rule 3 of 1989 Rules, the said provision is unconstitutional and should be struck down. Their further contention is that in the case of appointment to Public Sector Undertakings after retiring from Govt.

service, the pro rata pensionary benefits granted by the Govt. are not deducted while fixing pay in such Undertakings. Therefore, similarly, they should also be allowed to retain their pension and additionally they should get salary for their service as Member of the Tribunal without any deduction pension. It is also submitted that in case of directly recruited Members from Bar, no such deduction is made and they are in receipt of full pay in the scale whereas in their case, the pay is reduced below the minimum of the pay scale attached to the post, thus they were treated differently though they belong to the same class and category.

15. On a careful consideration of the issue, we are, however, not impressed by these arguments of the applicants. The Railway Claims Tribunal (Salaries etc.) Rules, 1989 are independent rules and the applicants are governed by the same and their pay has been fixed in terms of this Rules and not by any other rules. The applicants no doubt were getting certain pension for their past service and such pension is allowed to be retained as per provision of the said rules. But there is a distinct scale of pay for the post of Member, i.e. Rs 24400-26000 and it is stated that their pay was fixed after 1.1.96 at the minimum of the scale. If the pension they were getting is totally ignored, their pay plus pension becomes more than the stage where pay is fixed or even more than Rs. 26000 i.e. maximum of the scale in some case. In the M/F OM No. 19012/22/86-Ad.II-A dated 14.7.88 it has been

clearly laid down that while granting increments it should be ensured that the pay and pension together on re-employment should not exceed Rs 26000 per month vide page 627-28 of Swamy's Complete Manual on Establishment and Administration, 9th Edition. Now, even if the contention of the applicants that they were not on re-employment but were appointed afresh to an independent Judicial Service is accepted, in that event also we find that as per Ministry of Finance OM No. 19048/7/80-E.IV.dated 8.10.87 circulating the guidelines in the matter of fixation of pay and other terms of retired Judges of the Supreme Court/High Courts on their appointment on Commission/Committee of Inquiries etc. (vide page 300 of "Swamy's Annual 1987"), the pay is to be fixed in such a manner so that pay together with pension and pension equivalent or other forms of retirement benefits does not exceed Rs. 8000 per month (unrevised). It may be noted that now it has been increased to Rs 26000 after 1.1.96. Therefore, the position is that apart from aforesaid 1986 Orders of Re-Employed Pensioners, there are also Govt. orders for fixation of pay of Judges of Supreme Court/High Courts who are also not functioning in connection with affairs of Union, which provides that in case of a retired Judge of High Court or Supreme Court appointed to a new assignment, the total pay plus pension should not exceed Rs 26000.

Now if the pension which the applicants were in receipt for their past service is totally ignored, in that event their pay plus pension will certainly become more than the level where pay was fixed in the time scale or even more than Rs. 26000 which is not permissible. Moreover, pension is granted as per certain rules and every Pension Rules provide that payment of pension to the pensioners will depend on certain conditions. Re-employment after retirement is also such a restricted condition. Undoubtedly all the applicants were appointed as Member of the Tribunal after their retirement from Govt. service. Both pay as Member and the pension are being paid from the Govt. account.

Therefore, payment of pension which they are getting will depend on the restriction imposed in respective pension rules and right to receive such pension even in case of appointment after retirement to a new assignment is not absolute. Further, by reduction of pension, the pensioner is not in any way prejudiced because the reduced pay is compensated by the pension and he is entitled to all other

allowances on the basis of his full pay and not on reduced pay. Moreover, such Members are also entitled to additional pension for their service rendered in the Tribunal after retirement. It is also to be noted that in respect of those who are appointed below the age of 55 years, Rs. 1500 is ignored from pension to compensate the loss of service for taking early retirement.

16. The question whether pension can be deduced while fixing pay in such type of appointment after retirement from one service was also considered by the Hon'ble Supreme Court in the case of M.S. Chawla v.State of Punjab . In that case the appellant was earlier holding the post of District Judge under Punjab & Haryana Govt.

and after his retirement he was appointed as President of the District Consumer Forum. While fixing his pay as President, the pension was deducted as per rules. This action was challenged in the aforesaid appeal after losing in the High Court. The Apex Court held as follows: The appointment of a District Judge, after his superannuation as the President of the District Consumer Forum under the Consumer Protection Act, cannot but be held to be a case of re-employment of a pensioner inasmuch as the said District Judge is in receipt of a pension for the service rendered as a District Judge in accordance with the provisions contained in the Punjab Civil Services Rules, Volume II. Since Section 2.1 of Chapter II of Volume II, unequivocally states that every pension shall be held to have been granted subject to the conditions contained in Chapter VII and Chapter VII contains Rule 7.18 as well as Note 3(a)(i), which have been extracted before, the conclusion is irresistible that the appropriate authority will have to decide the pay and allowances, which the retired District Judge is entitled to receive on being appointed as the President of the District Forum notwithstanding the fixation of such pay under the Rules framed under Consumer Protection Act and while fixing the same, the principle underlined in Note 3(a)(i) has to be followed. This being the position, we see no infirmity with the Government Order dated 25th of January, 1996 and under the said notification the salary of reemployed District Judges as President of the District Consumer Forum, have rightly been fixed, taking into account the pension, which they are in receipt of, as retired District Judges. The contention of Mr. Rao that the salary fixed under the act and the Rules framed

thereunder is being altered by an administrative order is of no force. In view of the legal provisions enumerated above and in fact it is the provision of the Punjab Civil Services Rules, dealing with the salary of re-employed pensioners, which governs the filed. The other contention on the basis of the judgment of this Court in D.S. Nakara , that pension is not a bounty is also of no consequence. In the aforesaid premises, we do not find any legal infirmity with the judgment of the High Court, requiring our interference under Article 136 of the Constitution. These appeals accordingly fail and are dismissed.V.S.Mallimath v. Union of India and Ors.

the writ petitioner had earlier held the post of Chief Justice as well as Chairman of Central Administrative Tribunal whereafter he was appointed as Member of National Human Rights Commission. He claimed that his pension as Judge should not be taken into account for fixation of pay as Member of the Human Rights Commission as both the service were independent service and connected with the affairs of Union. He relied on the decision of the Apex Court in Pratibha Bonnerjee's case . The Apex Court did not accept the contention and It is difficult to accept the contention that the pension received by a Judge of the High Court shall not be taken into account for determining his salary as a member of the Human Rights Commission as the services of a Judge of the High Court by no stretch of imagination, even though pensionable, can at all be intended to be excluded for determining the salary which such member on retirement as a Judge or Chief Judge of a High Court is entitled to receive under Rule 3(b) of the Rules. A Judge of the High Court occupies a unique position under the constitution. But conferring that status to a Judge of the High Court, so as to enable him to discharge his duties without fear or favour, affection or ill will, has got nothing to do in interpreting a particular provision of the Rules governing the service conditions of the Chairman and Members of the Human Rights Commission.

When the Rule Making Authority provide for a salary to be paid to a member under Rule 3(b), a proviso was inserted for deduction from such salary, the amount of pension other than disability or would pension, which such member was in receipt of, in respect of any previous salaries (service). The intention of the Rule Making Authority is crystal clear that any pension which a member has been in receipt of, for services rendered earlier, has to be deducted from the salary, which under the

Rules has been indicated to be equal to the salary of the Judge of the Supreme Court. The proviso to Rule 3(b) would apply to the retired Chief Justice of India or the retired Chief Justice of a High Court and the pension which they are in receipt of, apart from the disability or would pension, has to be deducted from their salary, which they are entitled to under the Rules.

17. The other contention of the applicants that in the case of appointment to Public Sector Undertakings from Govt. service, there is no provision for deduction of pensionary benefits received from Govt.

service and therefore similar provision should be made in their case also, does not hold much water. The service under the Public Sector Undertakings and service under the Tribunal are different. According to the applicants themselves, they should be treated to be in independent Judicial Service, therefore, they cannot equate such service with service under the Undertakings which is mainly commercial in nature and payment of salary etc. is made from the fund of the Undertaking.

18. Similarly, Members appointed after retirement cannot also be equated with Bar recruit Members. In case of Bar recruits, they have no past service and hence the question of deduction of pension in their case does not arise.

19. In view of above, there is no merit in the contention of the applicants and hence their challenge to Rule 3 of the 1989 Rules as made in OA 55/99 must fail.

20. So far as the claim for gratuity is concerned, we find that this issue was also agitated before the Jodhpur Bench in OA 597/94 in the case C.S. Goel v. Union of India and the judgment was rendered on 10.2.97 (a copy is produced before us) which held that the applicant therein who was also a member of State Judicial Service earlier and retired as Judicial Member of Railway Claims Tribunal was entitled to gratuity. In that view of the matter since no other contrary order has been placed before us we need not go into this issue once again.

Regarding the other prayer for issuing a direction to respondents to amend Rule 8(2) for counting qualifying service for pension on half-yearly basis, we are of the

opinion that this Tribunal cannot give such a direction. Amendment to the rules is the prerogative of the Government under the provisions of the relevant Act and no Court or Tribunal can give such a direction to amend rule in a particular manner. Moreover the applicants have themselves argued that they do not belong to any civil service and are holder of independent judicial service on tenure basis and therefore they cannot claim parity with other civil services, especially when the Government have framed rules independently for the Chairman, Vice-Chairman and Members of the Railway Claims Tribunal.

21. In the other two O.As. the applicants' main grievance is against deduction of their enhanced portion of pension while fixing their pay in the revised pay scale as already stated above. Their further grievance is that they have not been paid the balance amount of leave salary for the unutilized leave standing at their credit on their retirement as Member of the Tribunal after adjusting the leave salary which they received in their earlier service. They have also some grievance about their LTC payment. Their further grievance is that pension for the service under the Railway Claims Tribunal had not been property worked out.

22. The applicants have argued their own case while Mr. P.K. Arora, the learned Counsel has represented the respondent authorities. These applicants have also separately filed written note of argument. After all the matters were heard and judgment was reserved, Mr. S.K. Das, applicant No. 1 of OA 55/98 and the sole applicant of OA 1087/99 appeared and wanted us to re-hear the matter as he was not informed about the date of hearing of the case. It may be noted that a detailed order was passed earlier directing that all the three matter would be heard together as the issues involved were similar. However, for the ends of justice, we directed him to submit his written note of argument, but he preferred not to do so. Accordingly, we have considered the matter on the basis of materials available on record and after hearing other co-applicants.

23. The applicants mainly contended that since their pay was already fixed once by deducting their old pension at the time of their initial appointment as Member, therefore, the respondents cannot again refix their pay by deducting the enhanced pension while fixing pay in the revised scale. The applicants have drawn our

attention to an office memorandum issued by DOPT dated 14.10.97 which stipulated that such enhanced pension (due to 4th CPC) was not to the deducted from the re-employed pensioner who were in service on 1.1.86. It is contended by the applicants the same principle should be followed in the case of fixation of pay after 5th CPC. The relevant portion of the said OM dt.

14.10.97 is quoted below: 2. The clarification given by this Department in the OM, dated the 11th September, 1987, was challenged in the Supreme Court by way of several writ petitions/SLPs. The Hon'ble Supreme Court in their judgment, dated the 8th December, 1994 had declared 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, as unconstitutional on the ground that no logic and basis for classifying the re-employed persons on the basis of their being in re-employment on 1,1.1986 was canvassed. The Review Petition in the matter justifying Government Order has also been dismissed. The Government have examined the judgment of the Supreme Court and have decided to implement the same. It has accordingly been decided that the pay of pensioners who were in the employment on 1.1.1986 and whose pay was fixed in terms of this Department's OM, dated 9.12.1986 may be refixed with effect from 1.1.1986 ignoring the enhanced portion of pension with effect from 1.1.1986.

24. Relying on this OM the applicants have contended that since they were in employment under the Railway Claims Tribunal as on 1.1.96 the respondent authorities cannot reduce their pay while fixing their pay in the revised scale to the extent of enhanced pension which they are entitled to after 5 CPC and if any amount has been deducted the same should be refunded to them.

25. The applicants have also drawn our attention to the Railway Board's letter by which the admissible limit of encashment of unutilized leave has been raised from 240 days to 300 days. The applicants contended that since they had encashed 240 days leave in their past service, they are entitled to further leave salary for the unutilized portion of leave standing at their credit for their service rendered under the Tribunal which according to them is for 51 and 57 days respectively, whereas they have been paid less depriving them 28 days and 30 days respectively. It is

contended by them in respect of some others, the respondents have granted the residual period of leave salary ignoring 240 days and more. It is also submitted that the two Judicial Members have also been paid arrears of pay and allowances by ignoring the enahnced pension whereas in their case the respondents have reduced their pay by , enhanced pension.

26. On a perusal of OM dated 14.10.97, we find that while fixing pay in the revised pay scale (4th CPC) it cannot be reduced by enhanced pension for Ex-Servicemen who were in service as on 1.1.86 on re-employment basis. We further find that this question was considered by the Apex Court in the case of Union of India v. G. Vasudevan Pillay and Ors. decided on 8, 12.94 and reported in 1995(2) SCC 32. The Apex Court has held that there is no logic and basis for classifying the re-employed persons on the basis of their being in employment on 1.1.1986.

27. The OM dated 14.10.97 relief on by the applicants (copy at Annexure A8) is a sequel to this decision of the Hon'ble Supreme Court. On a careful perusal of the said OM it appears that while the pay was revised after 4 CPC with effect from 1.1.86 the question arose whether consequent on revision of pension with effect from 1.1.86 the revised pension should be taken into account for the purpose of fixation of pay of the person in the revised pay scale. The Government considered the issue and passed an order vide DOPT memo dated 11.9.87, which is quoted below: 2. The matter has been considered. It has been held that if the revised pension is not taken into consideration, certain unintended benefits are likely to accrue to re-employed pensioners as they will draw the revised amount of pension which would invariably be higher than the earlier amount of pension, in addition to pay already fixed on the basis of the pension granted to them earlier. The President is accordingly pleased to decide that pay of pensioners who were in re-employment on 1.1.1986 and whose pay was) fixed in accordance with the provisions of this Department O.M. dated 7.12.1986, may be refixed with effect from 1.1.1986, by taking into account the revised pension. Likewise increase in the pension of ex-servicemen under separate orders of Ministry of Defence may also be adjusted by refixation of their pay in terms of provisions of this Department OM dated 9,12.1986. Overpayments already made may be recovered/adjusted, as it deemed necessary. All re-employed pensioners would, therefore, be required to

intimate to the Heads of Offices in which they are working, the amount of revised pension sanctioned to them with effect from 1.1.1986 for the purpose of refixation of their pay after taking into account their revised pension.

28. The Hon'ble Supreme Court however did not accept this and set aside this OM as a consequence the Government had to issue the revised OM dated 14.10.97 as quoted above. The Government decided that the pay of pensioners who were in employment as on 1.1.86 and whose pay was fixed in terms of the earlier orders dated 9.12.86 may be refixed ignoring the enhanced portion of pension with effect from 1.1.1986 and wherever recoveries have already been made as per earlier OM dated 11.9.87 the same may be refunded as per the new OM.29. But on careful scrutiny of the matter we find that this order is applicable in respect of 4th CPC scale. On perusal of the DOPT OM dt.

9.12.86 we find this was in respect of fixation of pay of re-employed pensioners in the revised pay scale under Rule 2(2)(i) of CCS (RP) Rules, 1986. However, in the case of the applicants, they are guided by separate Rules and their pay was revised by separate Govt. orders and not by CCS (Revised Pay) Rules of 1986 or 1996. Moreover, so far as 5th CPC pay scales effective from 1.1.96 are concerned, no such order has been issued. In fact the applicants along with their written note have produced a copy of letter dt. 28.4.98 addressed to DOPT wherein this question was raised and request has been made to issue a similar order in respect of re-employed pensioners who were in service as on 1.1.96.

No such order from DOPT has been produced before us.

30. In this context it is also to be noted that the applicants have themselves stated that they were in receipt of pension earlier ranging from Rs. 3050 to Rs. 3725 which was enhanced to Rs. 9200 to Rs. 11200.

Thus the increase is more than three times the old pension. This was not the case while pension was revised during 3rd and 4th CPC when the increase of pension was not much. According to the calculation sheet annexed to the OAs, it appears that the applicants while claiming arrears of salary had taken their pay by reducing it by the old amount of pension and not the enhanced pension. As is seen the

enhancement of pension was to the tune of Rs. 6150 and more. The pay of the applicants had been fixed at the minimum of the revised scale i.e at the stage of Rs. 22400. The applicants claim that their pay should be fixed at Rs. 22400 - Rs. 3050 (old pension) - Rs. 19350. In that event adding the enhanced portion of pension, the total pay and pension total becomes more than Rs. 22400 [Rs. 19350 + 6150 (enhanced portion of the pension) = Rs. 25500] or even more than Rs. 26000 in some cases or after one increment. Therefore, the claim of the applicants that only old pension has to be deducted and not the enhanced pension, does not have sufficient justification in view of the fact that in no event the applicants cannot get more than the pay fixed in the revised scale or more than Rs. 26000 i.e. maximum of the scale. It is also to be noted that the aforesaid circulars of DOPT were applicable to re-employed pensioners under CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986 and the applicants themselves have claimed that the same are not applicable to them. Therefore, they cannot approbate and reprobate at the same time. Thus, we find no justification in the claim of the applicants in this regard. The deduction of enhanced portion of pension in the case of the applicants, in our opinion, is based on good logic and on cogent and justified reasons. We see no infirmity in this regard.

31. So far as the claim of the applicants that they are entitled to receive leave salary for the unutilized leave standing at their credit upto 60 days i.e. (300-240= 60 days) is justified. When the applicants retired from their earlier service, the maximum amount of leave salary admissible was for 240 days. But after 5th CPC, this limit was raised to 300 days and the Railway Claims Tribunal has also adopted this limit for their Members. Therefore, the applicants on their retirement as Member from the Tribunal are no doubt entitled to get maximum upto 60 days i.e. difference between 300 and 240 days, of leave salary provided such leave was standing at their credit. If the respondents have not paid leave salary or paid less than the maximum limit of 60 days or the leave standing at their credit whichever was less, the applicants have to be paid the difference.

32. In view of our discussions made above, OA 55/98 with connected RA is dismissed subject to observation made in para 20 above. OA 826/2000 and OA 1087/99 and connected MAs are allowed partly by directing the respondents to

pay cash equivalent of leave salary to the applicants to the extent of 60 days or to the extent of leave standing at their credit on the date of retirement as Member of the Tribunal, whichever was less. The admissible amount calculated accordingly after adjustment of any amount already paid on this score, be disbursed to the applicants within 60 days from the date of communication of this order.

33. This common order will govern all the three OAs and the connected RA/MAs. There will no order as to costs in either case.

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