NATIONAL EX-SERVICEMEN CO-ORDINATION COMMITTEE ETC. ETC. A

v.

CONTROLLER GENERAL OF DEFENCE ACCOUNTS AND ORS.

SEPTEMBER 9, 1996 B

[KULDIP SINGH AND B.L. HANSARIA, JJ.]

SERVICE LAW :

Ex-Servicemen (Re-employment in Central Services and Posts) Rules, 1979 : C

Ex-servicemen—Re-employment—Dearness Relief—Pension—Office Memorandum regarding—O.M. denying to ex-servicemen re-employed to posts under Central Government without a similar provision for those re-employed in public sector—Held not discriminatory. D

Service Law—Policy decision—Scope of judicial review—Service conditions—Alteration by executive instructions—Permissibility of.

Constitution of India, 1950 : Seventh Schedule—List—Entry 2.

E

"Armed Forces"—Scope of expression.

The question involved in this petition relates to payment of dearness relief to ex-servicemen on re-employment. The Office Memorandum dated 1.8.1975 had been made applicable by the Ministry of Defence vide their letter dated 28.10.1975 to the Armed Forces pensioners also. For the F **petitioners it was contended that : (i) the denial of the Dearness Relief to the service personnel re-employed in posts under Central or State Government, without there being a similar provision for those re-employed in public sector undertakings or nationalised banks was discriminatory; (ii) the Ministry of Defence's letter dated 28.10.1975 was inapplicable in view** G **of Ministry of Defence's O.M. dated 8.2.1983; (iii) the service conditions of armed personnel being not attractive they should be treated differently from the re-employed civilians; (iv) their service conditions cannot be altered by mere executive instructions; (v) realisation of Dearness Relief on pension already paid to re-employed service personnel would cause hardship to them; and (vi) the letter dated 28.10.1975 was not applicable** H

A to the personnel of naval, military and air force.

Dismissing the Review Petition, this Court

HELD : 1. Government employees form a distinct class and their service conditions can be different from those who are employed in public
B sector undertakings or nationalised banks. [677-F-G]

2. The subject matter of 1983 O.M. is entirely different and cannot effect the rationale in denial of Dearness Relief on pension on re-employment - the same being that the Dearness Relief paid after re-employment takes care of the erosion in the value of the money because of rise in prices,
C which lies at the back of grant of Dearness Relief, Payment of Dearness Relief in such a situation on pension would amount to giving Dearness Relief twice, which is not visualized. [678-B-C]

3. The question whether ex-servicemen should be treated differently
D from re-employed civilians being a matter of policy has to be appropriately decided by the Government. The Government would do so keeping in view the present scenario and national perspective. [678-D]

4. It is settled law that service condition can be altered by issuing executive instructions where the field is not occupied by statutory rules.
E The non-amendment of the Rules has, therefore, no sequitur. [679-C]

5. The appropriate authorities should sympathetically consider that the realisation of the Dearness Relief on pension already paid may not be insisted. [678-F]

F 6. The word "other" in the second part of Entry 2 of List I of the Seventh Schedule to the Constitution clearly shows that naval, military and air forces have been accepted as armed forces. [678-H, 679-A]

CIVIL APPELLATE JURISDICTION : Review Petition No. 1002 of 1993 Etc.

G

IN

Civil Appeal No. 1809 of 1993 Etc.

From the Judgment and Order dated 23.2.93 of the Delhi High Court
H in C.W.P. No. 1966 of 1992.

WITH

Civil Appeal Nos. 11984, 11981, 11983 and 11982 of 1996.

H.N. Salve, P.P. Malhotra, N.N. Goswami, K.V. Mohan, S.M. Hooda, N.S. Bisht. G. Prakash, Ms. Beena Prakash, Ms. Anil Katiyar, T.V. Ratnam, Ms. Indra Swahney and P.P. Tripathi for the Appearing parties.

The Judgments of the Court was delivered by

HANSARIA, J. These review petitions were entertained on a grievance being made that while deciding the appeals in question reliance had been placed on some documents which had been annexed along with the written submission filed after the judgment was reserved, as permitted by the Court, because of which the review petitioners did not get opportunity to have their say on the applicability and relevance of the documents.

2. During the hearing of the review petitions it was not disputed by either Shri Salve on Shri Tripathi appearing for some of the review petitioners that the Office Memorandum of 1.8.1975 had been made applicable by the Ministry of Defence vide their letter dated 28.10.1975 to the Armed Forces pensioners also, as mentioned in para 6 of the judgment since reported in [1995] 2 SCC 32. What was rather contended by Tripathi was that the denial of the Dearness Relief to the service personnel re-employed to posts under Central or State Government, without there being a similar provision for those re-employed in public sector undertakings or nationalised banks, is discriminatory. We are not impressed with this contention as it is known that Government employees form a distinct class and their service conditions can be different from those who are employed in public sector undertakings or nationalised banks.

3. To the aforesaid submission of Shri Tripathi, Shri Salve's booster was that the Ministry of Defence's letter dated 28.10.1975 would become non-applicable in view of Ministry of Defence's OM No. 2(1)/83/D(Civ-I) dated 8.2.1983 by which while fixing the pay of ex-servicemen on re-employment pension drawn by them was required to be ignored either fully or upto a specified limit. Relying on this OM, the submission made was that pension has been treated differently from pay, and so, the Dearness Relief paid on pension should be treated different from the Dearness

A Relief available after re-employment. According to the learned counsel both the reliefs can co-exist. We are not persuaded to accept this submission because the subject matter of 1983 OM is entirely different and cannot affect the rationale of denial of Dearness Relief on pension on re-employment as mentioned in the judgment rendered in the appeals - the same being that the Dearness Relief paid after re-employment takes care of the B erosion in the value of the money because of rise in prices, which lies at the back of grant of Dearness Relief. Payment of Dearness Relief in such a situation on pension would amount to giving Dearness Relief twice, which is not visualised.

C 4. The further submission of both Shri Salve and Shri Tripathi was that the service conditions of armed personnel being not attractive as would be apparent from many posts in the army lying presently vacant, which is not in the larger national interest, a case for treating the ex-servicemen differently from the re-employed civilian does not exist. There appears to be some force in this contention, but this being a matter of policy has to D be appropriately decided by the Government. We do think that the Government would do so keeping in view the present scenario and national perspective.

5. A submission was also made by Shri Tripathi that despite some E re-employed service personnel having retired on superannuation by now, steps are being taken to realise Dearness Relief on pension which had been paid to them at one stage. This is causing hardship to these persons, according to the learned counsel. We do find force in this submission and would require the appropriate authorities to consider that the realisation F of the aforesaid amount may not be insisted.

6. What is left is to deal with the submission of Shri Bisht advanced in Review Petition No. 1039 of 1995. According to the learned counsel, the aforesaid letter of Ministry of Defence dated 28.10.1975 by which the Office Memorandum of 1.8.1975 was made applicable to Armed Forces G pensioners has no application to the personnel of naval, military and air forces. To show the rationality of this submission, we were referred to Entry 2 of List I of the Seventh Schedule to the Constitution reading : "Naval, military and air forces; any other armed forces of the Union". The word "other" in the second part of the entry itself demolishes the contention H advanced, as this clearly shows that naval, military and air forces have been

accepted as armed forces. Further, if these forces would not be armed forces, it is difficult to visualise which forces would be so. Thus, there is no substance at all in this submission of Shri Bisht. His another contention was that instead of issuing aforesaid executive orders, if the intention was to deny Dearness Relief to the ex-servicemen on re-employment, appropriate amendment could have been made to the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979. The submission has also no force inasmuch as it is settled law that service conditions can be altered by issuing executive instructions where the field is not occupied by statutory rules. The non-amendment of the Rules has, therefore, no sequitur.

7. No other submission having been made, or indeed being available, the review petitions are dismissed. We would, however, desire the Union of India to apply mind to the question whether ex-servicemen could be treated differently from others in so far as the matter at hand is concerned, in view of their service conditions said to be not attractive. We would also desire the Central Government to sympathetically consider the question of non-realisation of amount already disbursed to re-employed ex-servicemen on the aforesaid account.

HANSARIA, J. Leave granted. Heard learned counsel for the parties.

2. In view of the judgment of this Court in *Union of India & Ors.* v. *G. Vasudevan Pillay & Ors.*, [1995] 2 SCC 32, these appeals are allowed by setting aside the impugned judgments, inasmuch as the review petitions concerning those cases have been dismissed today by a separate judgment. The observations made in the judgment relating to non-realisation of the amount already disbursed shall apply to these cases as well.

T.N.A. Appeals allowed.