

PETITIONER:
NATIONAL EX-SERVICEMENCO-ORDINATION COMMITTEE ETC.ETC.

Vs.

RESPONDENT:
CONTROLLER GENERAL OF DEFENCEACCOUNTS AND OTHERS

DATE OF JUDGMENT: 09/09/1996

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
KULDIP SINGH (J)

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

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 or 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 nationalized 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 nationalized 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 Defences OM No.2(1)/83/D(Civ-I) dated 8.2.1983 by which while fixing the pay of exserviceman 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 Relief available after reemployment. 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 reemployment takes care of the 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 visualized.

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 exist. There appears to be some force in this contention, but this being a matter of policy has to 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 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 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 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 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 visualize 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.

Union of India & Ors. etc.etc.

V.

V.P. Ayyappan & Ors.

J U D G M E N T

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. Vasudenvan Pillay & Ors., 1995 (2) SSC 32, these appeals are allowed by setting aside the impugned judgment, 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.