

IN THE HIGH COURT OF DELHI AT NEW DELHI.

WP(C) No.8329/2005

Date of Decision: 21st July 2008

M.K. SAJEEV

....Petitioner

Through: Mr.A.K.Trivedi, Advocate

Versus

UNION OF INDIA & ORS.

....Respondents

Through: Mr. R.V.Sinha, Advocate

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | No |
| 3. | Whether the judgment should be
reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (ORAL)

1. The petitioner was enrolled in the Indian Air Force as an Airman on 26th November, 1982 and retired from service on 30th November, 2002. The petitioner was promoted to the rank of Junior Warrant Officer which rank was held for the period of six months prior to his retirement. The grievance of the petitioner is that while calculating the pension, his rank as a Junior

Warrant Officer has not been taken into consideration on account of the fact that he had not completed 10 months of service in the said rank.

2. It is not disputed that in terms of Pension Regulation for the Air Force 1961, Part-I, a provision has been made in Regulation 122, which reads as follows:

“122. Except as otherwise provided for, service pension is assessed on the lowest substantive rank and the lowest group held by an individual during the last two years (now amended to 10 months) of his service qualifying for pension.”

It is also pointed out that a similar issue arose in the case of Writ Petition (Civil) No.20050/2004 Ex.JWO M. Kumaran v. Union of India & another, decided on 19th October, 2006 by the Division Bench of this Court. The Circular which is sought to be referred to in the present proceedings was also referred to in those proceedings and it was held that though certain inter departmental communications did make a concession in respect of waiver of such 10 months of service in the rank, in the view of the aforesaid Regulation 122 which has statutory force, the said Regulation would prevail.

3. It has been pointed to the learned counsel for the respondent and it is not in dispute that in fact the Pension Regulation do not have a statutory force. It was thus not correctly pointed out to the Division Bench dealing

with the case of *M. Kumaran* (supra) that the Pension Regulations though labelled as “Regulations” actually have not statutory force. It may be noticed that such Pension Regulations whether for the Army or for the Air Force have a similar character. It would be useful to reproduce the preface to the provisions of Pension Regulations for the Army which clarify this aspect :

1. “Regulations for the Army: are issued under the authority of the Government of India. These were last revised in 1962 in the supersession of the “Regulations for the Army in India-Reprint 1945” and “Instructions by His Excellency the Commander-in-Chief, Reprint 1945”.

2. This is a comprehensive compilation covering the salient aspects of administration of the Regular Army. Commanding and other officers shall be responsible for ensuring that these regulations are strictly observed and that any local instructions or regimental orders that may be issued are in accordance with the spirit and intention of these regulations

3. These regulations, being non-statutory, are supplemental to the relevant statutory provisions, wherever they exist, and do not supplant them. Officers are expected to interpret and apply these regulations reasonably and with due regard to the interest of the Service, bearing in mind that no attempt has been made to provide for necessary and self evident exceptions nor for such matters as should ordinarily be

dealt with by local authorities.

4. Departmental orders and instructions are based on, and take their authority from, these regulations. Should any variance arise between such orders and instructions and these “Regulations for the Army”, the latter shall prevail.”

(emphasis supplied)

4. A reading of the aforesaid shows that these Pension Regulations are non-statutory and would be supplemental to the relevant statutory provisions and thus would supplant them. The Regulation would have force where they are not in conflict with statutory provisions. Since inter departmental circulars also have administrative force they would be treated at par and thus if certain benefits are extended by such inter departmental communications, then, they would have force as against the Regulations which were earlier enacted. The later one would prevail.

5. The case of the petitioner is on Circular dated 7th June 1999. The relevant portion of the said Circular reads as follows:

“To

The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff

Subject: Implementation of
Government's decision on the
recommendations of the Vth CPC
relating to pensionary benefits in
respect of Commissioned officer and
Personnel Officer Rank.

Consequent on issue of Ministry of Personnel, Public Grievances and Pensions, Deptt. of Pension & Pensioners Welfare Off No.45/10/98-P&PW(A), dated 17.12.1998 regarding modified provisions on grant of pension/family/pension in respect of civilians, the undersigned is directed to say that the President is pleased to decide that w.e.f. 1.1.96 pension of all Armed Forces pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 1.1.1996 of the rank, and rank and Group (in case of PBOR) held by the pensioner. However, the existing provisions in the rules governing qualifying service and minimum pension shall continue to be operative. Similarly, w.e.f. 1.1.1996 family pension shall not be less than 30% of the minimum pay in the revised scale introduced w.e.f. 1.1.1.996 of the rank, and rank and group (in case of PBOR) last held by the pension/deceased individual. Accordingly, the provisions as contained in this Ministry's letters No.1(6)/98/D(Pen/Sers), dated 3.2.98 (Post 1.1.96 cases) No.1(2)/97/D (Pen/Sers), dated 24.11.97 (Pre-1.1.96 cases), No.1(3)/98D(Pen/Sers), dated 23.5.98 (pre-1.1.96 Commissioned Officers) and No.1(2)/98D(Pen/Sers) dated 14.7.98 (Pre-1.1.96 PBOR), shall be treated as modified to the extent indicated above.”

(emphasis supplied)

6. The aforesaid Circulation makes it clear that what is brought into force is the benefit of pension irrespective of date of retirement being prior to 1st

January 1996 and such pension being not less than 50% of the minimum pay in the revised scale of pay introduced with effect from 1st January 1996 of the rank. Simultaneously, it is stated that the existing provisions in the Rules governing qualifying service and minimum pension shall continue to be operative. This stipulation thus protects the Regulation 122 which provides for minimum service in the rank and thus does not help the petitioner.

7. The learned counsel for the petitioner contends that after the aforesaid Circular, another Circular was issued on 9th February 2001 which reads as follows:

“To

The Chief of the Army Staff,
New Delhi.

Sub: Implementation of
Government decision on the
recommendations of the 5th Central
Pay Commission relating to
pensionary benefits in respect of
commissioned officers and Personnel
Below Officer Rank.

Sir,

I am directed to refer to this
Ministry's letter No.1(1)99/D
(Pen/Sers) dated 7.6.1999 as amended
wherein Government and decided that
w.e.f. 1.1.96 pension of all Armed
Force Pensioners, irrespective of their
date of retirement shall not be less
than 50% of the minimum of the
revised scale of pay introduced w.e.f.
1.1.96 PCDA (P) Allahabad had not

been giving the benefit of revision of pension under modified parity to those officers who have not held their rank for last 10 months before retirement as per prevailing rules. However, there is no such stipulation in the Government order under reference.

The matter has been reconsidered in consultation with O/o CGDA. It is clarified that pension of all pre-96 basis of the rank/group last held by the individual and the revised pay scale connected thereto, even if the rank/group was held for less than 10 year before retirement. Such pension will be reduced proportionately if the qualifying service is less than 33 years. Other conditions to earn pension will continue to apply.

This issues with the concurrence of Ministry of Defence (Finance / Pension) vide their U.O. No.143/Pen/01 dated 12.01.2001.

Yours faithfully

sd/-

(Amrit Lal)

Deputy Sect. to the Govt. of India”

(emphasis supplied)

8. The aforesaid Circular shows that the application of Regulation 122 has in fact been dispensed with for persons who had retired prior to 1st January 1996 but there is no specific reference to persons who retired after 1st January 1996.

9. The rationale of the aforesaid has been explained in the counter

affidavit filed by the respondents and the relevant portion is extracted as under:

“It is further submitted that the pension of an airman is calculated on the maximum slab of the scale of the rank held for the last 10 months before retirement. If the provisions of GOI letter dated 09/02/01 is applied in the petitioner's case, his pension will be fixed on the minimum of the scale of JWO rank and in the final analysis he will be looser. The revision of pension of the petitioner if calculated on the minimum pay of JWO(Gp-1) would be:

$$\frac{(20 + 5) \times 5530}{66} = \frac{2094.69}{2095} =$$

Whereas, if pension of the petitioner is calculated on the maximum revised pay scale of Sergeant (Gp-1_ as on 01st January 1993, which amounts to Rs.2236/- p.m. which is more than the pension of JWO rank as calculated above in terms of the clarifications issued vide GOI, MOD letter dated 09th and 22nd February 2001 relied upon by the petitioner.”

10. The aforesaid explanation would show that if the benefit of the circular dated 9th February 2001 is given to the petitioner, his pension would actually stand reduced as the pension has to be calculated on the minimum scale.

11. It is trite to say that there has been large increase in the emoluments of

the personnel over the period of time. Persons who have retired from service earlier get a smaller pension because the total emoluments admissible to them were much less when they retired from service as compared to persons who have retired on a subsequent date. Steps have been taken to evaluate the consequences which arise from revision of pension so that they are beneficial to persons who have retired earlier and it is in furtherance of this objective that the circular dated 9th February 2001 was issued. The object can hardly be to reduce the pension rather than increase it and if such circular would have made applicable to the petitioner, possibly, the petitioner would have had a grievance. The circular is thus applicable only to the cases of the persons who retired pre 1st January 1996 and the petitioner cannot seek revision of pension (which, in fact, would be adverse to the petitioner).

12. The writ petition is accordingly dismissed.

SANJAY KISHAN KAUL, J.

JULY 21, 2008
dr

MOOL CHAND GARG, J.