

# SUPREME COURT OF INDIA

N.N.Godfred

Vs.

Union of India

C.A.No.10035 of 2010

(S.Abdul Nazeer and Indu Malhotra,JJ.,)

11.07.2018

## JUDGMENT

### **Indu Malhotra,J.,**

1. The present Civil Appeal has been filed under Section 30 of the Armed Forces Tribunal Act, 2007 to challenge the judgment and order dated February 25, 2010 passed by the Principal Bench of the Armed Forces Tribunal, New Delhi in Transfer Application No. 492 of 2010.

1.1 The three appellants had enrolled in the Indian Navy as Sailors, and subsequently joined the Submarine Arm. After being promoted through the ranks, all three appellants superannuated from service on January 31, 1983. While Appellant No. 1 was holding the rank of Chief Petty Officer (ERA-II), Appellant Nos. 2 and 3 were holding the rank of Chief Engine Room Artificer in the Submarine Arm of the Indian Navy at the time of their superannuation.

1.2 Initially, the appellants were not granted pensionary benefits on account of the non-inclusion of their four-year training period, while computing their qualifying service. Aggrieved by the same, the appellants filed a Writ Petition before the Delhi High Court which was allowed in terms of the decision of this Court in *Anuj Kumar Dey v. Union of India*<sup>1</sup>.

1.3 Pursuant to the said judgment, the appellants started getting pensionary benefits. The pension of the appellants was computed on the basis of the pay of a Chief Petty Officer.

1.4 On February 8, 2005, Appellant No.3 made a representation to the Bureau of Sailors-Respondent No. 3 for a clarification whether Submarine Pay of Rs. 300 per month, which was being granted to them after joining the Submarine Arm, was

included for computing the pension payable. It was submitted that Submarine Pay was a component of their “pay”, and not an “allowance”.

1.5 On March 29, 2005 Respondent No. 3 rejected the representation stating that Submariners and Aviation Sailors were categorized under the group “Other than A”, which is lower than Group A, and that the pensionary benefits granted were “in order”.

1.6 The three appellants being aggrieved by the refusal of the respondents to take into account Submarine Pay while calculating pension payable to them filed separate Writ Petition Nos. 19145-47 of 2006 before the Delhi High Court.

1.7 During the pendency of the Writ Petitions, the Armed Forces Tribunal Act, 2007 came into force. The Writ Petition Nos. 19145-47 of 2006 were transferred to the Principal Bench, Armed Forces Tribunal, New Delhi and renumbered as Transfer Application No. 492 of 2010.

1.8 The Armed Forces Tribunal disposed of the Transfer Application No. 492 of 2010 by a cryptic Order dated February 25, 2010 wherein it was merely mentioned that submarine pay/allowance cannot be counted for the purpose of determining pension.

2. Aggrieved by the impugned order, the appellants preferred the present Civil Appeal.

2.1 The appellants have submitted that Submarine Pay would form part of their basic pay, and hence ought to be included for computation of Service Pension. This was for the reason that Sailors working in the Submarine Arm of the Indian Navy were granted Submarine Pay on account of the highly dangerous nature of the work undertaken, and the arduous conditions in which they had to function.

2.2 It was further submitted that Submarine Pay was included in the Last Pay Drawn Certificate dated August 10, 1983. In contrast, Sailors who were not working in the Submarine Arm, were not being granted this additional pay. The appellants gave the illustration of one M.V. Kumaran who was not working in the Submarine Arm. He was not being granted Submarine Pay, on account of the difference in the nature of duties performed.

2.3 The appellants further submitted that since they belonged to the group “Other than Group A” they were entitled to higher rates of pay as specified in Appendix A, Clause 3 of the Navy Instructions No. 2/S/74 dated August 17, 1974.

2.4 Reliance was placed on two decisions of this Court in *BALCO Captive Power Plant Mazdoor Sangh and another v. National Thermal Power Corporation and others*<sup>2</sup> and *Paradeep Phosphates Limited v. State of Orissa & ors.* [Civil Appeal Nos. 3997-3998 of 2018 decided on April 19, 2018 to contend that conditions of service cannot be altered to the detriment of employees.

3. Per contra, the case of the Respondents is that the amount received under the head of Submarine Pay is an “allowance”, and hence cannot be included for the purposes of computing Service Pension.

3.1 It was contended the head of Submarine Pay was listed as an allowance under Appendix B of the Navy Instruction No. 2/S/74 dated August 17, 1974.

3.2 It was further submitted that any allowance, including Submarine Pay, were not treated as reckonable emoluments for the purposes of computing Service Pension.

3.3 The respondents submitted that pursuant to the Fifth Pay Commission, Special Pays like Flying Pay, Submarine Pay, Technical Pay etc. were re-designated as allowances vide GoI/MoD Letter 4(1)/2001/D(Pay/Services) dated March 01, 2004.

4. The issue which arises for consideration is whether Submarine Pay was to be included for computing the Service Pension of the appellants, who retired on 31.1.1983 in the rank of Chief Petty Officer and Chief Engine Room Artificer.

#### Findings

5. Section I of Chapter III of the Navy (Pension) Regulations, 1964 provides the framework for grant of pensionary benefits to Sailors in the Indian Navy. Sailors who have served for a period of fifteen years i.e. the minimum qualifying service for pension, or more, are eligible for grant of Service Pension.

5.1 Service Pension is fixed on the basis of the rank and group held by a person as per Regulation 84 of the Navy (Pension) Regulations, 1964 which has been reproduced hereunder:

“84. Rank and group for assessment of service pension.- The service pension shall be assessed on the basis of the rank actually held by an individually continuously whether in a substantive or paid acting capacity and the lowest group for which he was paid during the last ten months of his service qualifying for pension”

5.2 Regulation 86 of the Navy (Pension) Regulations, 1964 provides the rates of Service Pension. The relevant extract of Regulation 86 is reproduced hereunder:

“86. Rate of service pension.- The following are the rates of service pension:-

#### RATES OF SERVICE PENSION-SAILORS

Rank	Completed years of service	Rates of service pension			
		Group 'A' Naval Aviation Sailors of Group 'A' & rates of pay	Group 'B'	Group 'C'	Naval Aviation Sailors other than those on Group 'A' rates of pay
(1)	(2)	(3)	(4)	(5)	(6)
		Rs.	Rs.	Rs.	Rs.
		p.m.	p.m.	p.m.	p.m.
	15	83	83	83	99
	16	88	88	88	105
	17	94	94	94	112
	18	99	99	99	118
4. Chief Petty Officer/Artificer Class III/Mechanician Class III	19	105	105	105	125
	20	110	110	110	131
	21	116	116	116	138
	22		121	121	145
	23		127	127	151
	24		132	132	158
	25		138	138	164*

5.3 A perusal of Regulation 86, and the rates of Service Pension reveals that Chief Petty Officers and Artificer Class III belonging to the group “Other than Group A”, which has higher rates of Service Pension as compared to those in “Group A”.

5.4 The concept of Submarine Pay was introduced by the Union of India vide Letter No. PA/4102/NHO/504.S/D (PAY/SERVICES) dated May 31, 1967. It was granted to Officers and Sailors who were qualified to serve in submarines, and were deputed to go to sea from time to time. Submarine Pay was to be treated as “pay for all

purposes”, as per the instructions issued by the Ministry of Defence to the Chief of Naval Staff vide Letter No. PA/4102/NHO/504.S/D(PAY/SERVICES) dated May 31, 1967.

5.5 The pay scale and allowances of Officers and Sailors were revised with effect from January 1, 1973 pursuant to the Navy Instruction No. 2/S/74 dated August 17, 1974. Navy Instruction dated August 17, 1974 was issued to give effect to the recommendations of the Third Pay Commission, and remained in force till January 1, 1986.

5.6 Clause 4(a) of Navy Instruction No. 2/S/74 defined the term “basic pay” to denote the pay “actually drawn” in the scale prescribed for the rank and group. Clause 2 provided that the revised rates of pay applicable to Sailors were specified in Appendix A. As per Clause 3, Artificer/Mechanician Sailors of the Submarine Arm were entitled to rates of pay specified under column titled “Group A” in Appendix A. The heads of Submarine Pay and Submarine Allowance were separately listed in Appendix B at S. Nos. 14 and 15, respectively.

The relevant extract of Appendix B is extracted hereinbelow for ready reference:

“ALLOWANCES -REVISED RATES

<i>Sl No.</i>	<i>Allowances</i>	<i>Existing Rate(s)</i>	<i>Revised Rates GROUP 'A'</i>	
<i>14.</i>	<b><i>Submarine Pay</i></b>	<i>MCPOs I &amp; II</i>	<i>350 p.m.</i>	<i>170</i>
		<i>CPO</i>	<b><i>300</i></b>	<i>p.m.</i>
		<i>PO</i>		<i>150</i>
		<i>Leadings</i>	<i>275</i>	<i>125</i>
		<i>Sea I</i>	<i>265</i>	<i>115</i>
		<i>Sea II</i>	<i>250</i>	<i>100.00</i>
<i>15.</i>	<b><i>Submarine Allowance</i></b>	<i>MCPO I &amp; II</i>	<i>Nil</i>	<b><i>2 p.d.*</i></b>

As per Navy Instruction No. 2/S/74, a Chief Petty Officer was entitled to Submarine Pay at the rate of Rs. 300/- per month, which was distinct from Submarine Allowance.

5.7 Pursuant to the recommendations of the Fourth Pay Commission the rates of pay and allowances of Officers and Sailors were revised by Special Navy Instruction No. 1/S/86 (with effect from January 1, 1986). Further revisions took place pursuant to the recommendations of the Fifth and Sixth Pay Commissions. The definition of “basic pay” was changed to exclude Submarine Pay.

The reliance on these instructions by the counsel for the Respondents is misplaced, as the case of the appellants was governed by the instruction issued pursuant to the Third Pay Commission for computing the pensionary benefits i.e. Navy Instruction No. 2/S/74 dated August 17, 1974 and Letter No. PA/4102/NHO/504.S/D(PAY/SERVICES) dated May 31, 1967 as they retired on January 1, 1983.

5.8 As per Letter No. PA/4102/NHO/504.S/D(PAY/SERVICES) dated May 31, 1967 Submarine Pay was to be treated as “pay for all purposes”, which would include computation of Service Pension.

5.9 Clause 4(a) of Navy Instruction No. 2/S/74 defined the term “basic pay” to denote the pay actually drawn in the scale prescribed for the rank and group. The Last Pay Drawn Certificate of the appellants shows that Submarine Pay was actually being drawn as a separate head of “pay”. Navy Instruction No. 2/S/74 did not exclude Submarine Pay from the computation of “pay” for the purpose of calculating Service Pension.

5.10 In contrast, it would be instructive to refer to the entries with respect to Aviation Sailors. Note (ii) below Appendix B of Navy Instruction No. 2/S/74 specifically excluded Flying Pay from being treated as “pay” for the computation of pension and gratuity.

5.11 Appendix B of Navy Instruction No. 2/S/74 specifically mentions both Submarine Pay and Submarine Allowance separately at S. Nos. 14 and 15, respectively. The terms Submarine Pay and Submarine Allowance are not used interchangeably, as has been erroneously done in the impugned Order.

5.12 The submission of the respondents that Submarine Pay was excluded from the ambit of basic pay as per Special Navy Instruction No. 1/S/86, Special Navy Instruction No. 1/S/9W and Special Navy Instruction No. 1/S/08 cannot be accepted, since these notifications came into force subsequent to the date of superannuation of the appellants. These would therefore have no application to the cases of the present appellants, which were governed by the Navy Instruction No. 2/S/74 dated August 17, 1974 issued pursuant to the recommendations of the Third Pay Commission.

6. In view of the aforesaid facts and legal position, Submarine Pay was includible in “pay”, for the purposes of computing the Service Pension of the appellants. As a result, the Civil Appeal is allowed, and the judgment and order dated February 25, 2010 passed by the Principal Bench, Armed Forces Tribunal, New Delhi in Transfer Application No. 492 of 2010, is hereby set aside, with no order as to costs.

Judgment Referred.

<sup>1</sup>(1997) 1 SCC 0366

<sup>2</sup>(2007) 14 SCC 0234

