

(2018) 08 CAT CK 0054

In the Central Administrative Tribunal

Case No : Original Application No. 1447 Of 2017

Hari Vansh Sharma

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 24-08-2018

Acts Referred:

Citation : (2018) 08 CAT CK 0054

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : Dr. (Maj.) J.C. Vashista, Madan Lal, Yashika Sood, Gyanendra Singh

Final Decision : Disposed Of

Judgement

1. Heard the learned counsel for applicant and the learned counsel for respondents.

2. The applicant's plea is that he was commissioned in Army as an Emergency Commissioned Officer on 26.04.1964. Thereafter he was given permanent Commission in National Cadet Corps (NCC) on 28.12.1969. Thereafter he retired on 30.11.1990 in the rank of Major. His Pension Payment Order (PPO) was issued by the office of CCDA (Pensions), Allahabad, vide PPO No. C/1093/90 on 23.07.1990. Thereafter the pension was revised vide PPO No. C/Corr/Misc/PO-86/005050/2000 in the year 2009 wherein post last held was shown as Major and pay scale was shown as Rs.2200-100-3800-150-5000.

2.1 Ministry of Defence, vide letter no. 10515/CPC/DGNCC/ Pers(C)/1/001/D(GS-VI)/2009 dated 27.07.2009, issued instructions on how to revise the pay scales in pursuance of 6th CPC and Government decision thereon. The opening para of this letter reads:

"In pursuance of the recommendations of the Sixth Central Pay Commission and the Government decision thereon, I am directed to convey the sanction of the President for revision of the existing pay scales of NCC Whole Time Lady Officers

with effect from 01 Jan 2006 and fixation of pay in the revised scales in accordance with the provisions contained in the succeeding paragraphs."

It gives a concordance table as well as instructions for "fixation and regulation of Pay of officers commissioned prior to 01.01.2006" as well as for "Regulation of pay of officers promoted/commissioned on or after 01.01.2006."

In respect of Major, following was indicated:

REVISED PAY STRUCTURE

Sr. No.

Rank

Existing in 5th CPC

Pay Band/Scal

Corresponding scale in 6th CPC

Pay Scale

Rank Pay

Pay Band/Scales

Grade Pay

(1)

(2)

(3)

(4)

(5)

(6)

(7)

3.

Maj

11300- 325- 14550

1200

PB-3

15600- 39100

6600

2.2 Subsequently, the office of PCDA (O), Golibar Maidan, Pune vide their order

no.45/2012 dated 25.10.2012, issued the procedure for revision of pension, in compliance to the judgment given by the Hon'ble High Court of Kerala, Ernakulam in the case of Major Dhanapalan vs. Union of India (IA No.9/2010 in TP (C) No.56/2007 vide orders dated 04.09.2012). The office of PCDA assigned duties to the Pay Revision Cell, EDP Centre, Pension Cell and LW Co-ord (AT). As per these instructions, the pay in respect of all officers was to be revised without deducting Rank Pay on fixation of pay as on 01.01.1986 in the integrated pay scale as per 4th CPC orders and Rank Pay was to be admitted in addition to the same. For, NCC officers the integrated scale indicated was Rs.2200-100-3800-150-5000. These instructions showed the calculation for Regular Army Officers as well as NCC officers in pre Dhanapalan stage (which were as per SAI 1/S/87) as well as post Dhanapalan judgment.

This was issued pending receipt of any instruction from Ministry of Defence. In absence of any subsequent instruction from Ministry of Defence, this letter attained finality.

2.3 Almost simultaneously, Department of Ex-Serviceman Welfare, Ministry of Defence vide instructions Dt. 17.01.13, issued the directives to the Chief of Army Staff, Naval Staff and Air Staff in respect of pension. This reads as under:-

"Subject: Implementation of the Government decision on the recommendations of Committee on the issues related to Defence Service Personnel and Ex-Serviceman, 2012 - Minimum guaranteed pension to pre-2016 Commissioned Officers pensioners/Family pensioners."

The relevant extracts of these directives are as follows :-

"The undersigned is directed to refer to the Ministry's letter No. 17(4)/2008(f)(D) (Pen/Policy) dated 11.11.2008 as amended issued for implementation of Government decision of the recommendations of the Sixth CPC for revision of pension/family/family pension in respect of pre-2006. Armed Forces pensioners/family pensioners. As per provisions contained in Para 5 therein, with effect from 1.1.2006 revised pension and revised ordinary family pension of all pre-2006. Armed forces pensioners/family pensioners determined in terms of fitment formula laid down in Para 11 of the above said letter dated 11.11.2008, shall in no case be lower than fifty percent and thirty percentage respectively, of the minimum of the pay in the pay band plus the Grade pay corresponding to the pre-revised scale from which the pensioner had retired/discharged/invalided out/died including Military Service Pay and 'X' Group pay where applicable. Accordingly, rates of minimum guaranteed pension/ordinary family pension for Commissioned Officers were notified under Annexure -II (for pensioners of Regular Commission). Annexure-IIA (for pensioners of Military Nursing Services), Annexure IIB (for pensioners of Territorial Army) and Annexure-IIC (Post-1996 Emergency/Short Service Commission pensioners) of this Ministry's letter No. 17(3)/2010/D(Pen/Policy) dated 15.11.2010 and No.17(4)/2008(1)/D(Pen Policy)-Vol.VI dated 18.1.2011. The minimum guaranteed pension / family

pension in respect of pre-1996 Emergency/ Short Service Commission pensioners has, however, been notified vide this Ministry's letter No.1(1)/2007-D(Pen/Policy) dated 3.9.2009.

2. In order to consider various issues on pension of Armed Forces personnel and Ex-Servicemen, the Government had constituted a Committee of Secretaries headed by Cabinet Secretary. The Committee in its Report have recommended that the minimum guaranteed pension/ordinary family pension of pre-2006 retiree Commissioned Officers pensioners/family pensioners should be determined with reference to minimum of the fitment table for the rank in the revised pay structure issued for implementation of recommendations of Sixth CPC instead of the minimum of the pay band.

3. The above recommendation of the Committee has been accepted by the Government and the President is pleased to decide that with effect from 24th September 2012 the minimum guaranteed pension and ordinary family pension in respect of pre-2006 Commissioned officers pensioners / family pensioners shall be determined as fifty and thirty per cent respectively, of the minimum of the fitment table for the rank in the revised pay band as indicated under fitment tables annexed with SAI 2/S/2008 as amended and equivalent instructions for Navy & Air Force and SAI 4/S/2008 plus the Grade pay corresponding to the pre-revised scale from which the pensioner had retired/discharged/invalidated out/died including Military Service Pay, wherever applicable. It has also been decided that with effect from 24 th September, 2012 the minimum guaranteed pension and ordinary family pension in respect of pre-1996 EC/SSC pensioners/ family pensioners shall be determined as fifty and thirty percent respectively, of the pay in the pay band corresponding to the pre-revised pay of Rs.10,500/- (in terms of Para 9 (a)(i) of SAI 1/S/2008 as amended and equivalent instructions for Navy & Air Force) plus the Grade pay of Rs.5400 and Military Service Pay of Rs.6000/-.

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5. All other terms and conditions shall remain unchanged.

6. The provisions of this letter shall take effect from 24 th September 2012 and no arrears shall be allowed for the past period.

7. This issues with the concurrence of Finance Division of this Ministry vide their ID No. PC/1/10(12)/2012/FIN/PEN dated 10.01.2013."

2.4 Further vide Ministry of Defence, letter No.7501/Pay Revision/NCC HQ/MS(B)/209/DC GS-VI/2017 dated 09.03.2017, following directions were issued:

"2. It is clarified that the pay scales notified vide this Ministry's letter No.10515/CPC/DGNCC/Pers (C)/1001/D (GS-VI)/2009 dated 27 Jul 2009 for NCC WTLOs of the rank of Lieutenant, Captain and Major be taken into consideration for revision of pension of pre-2006 retirees NCC WTOs of the corresponding ranks.

3. This issues with the approval of MOD (Finance/AG/PA) vide their ID No.1

(83)/2013-AG (45-PA) dated 02 Mar 2017."

The relevant parts of letter dated 27.07.2009 are reproduced in para 2.1 above.

2.5 The case of applicants is that they were promoted to their respective ranks as regular Defence officers. Their service conditions were governed by Special Army Instructions (SAI) as per Appendix A to AO 549/67 issued vide Ministry of Defence letter no. 5431/NCC/Pers (D)/775-III/D (GS-III) dated 21.12.1963. They were stated to have been treated as regular Army officer with similar Army ranks and designations and were enjoying all the allowances as admissible to regular Army officers. They were paid from defence estimates/Budgets, as per Government of India instructions dated 23.05.1980. However, they were governed by Central Civil Services (Pension) Rules 1972.

3. Respondents brought out that parallel to instructions brought out in para 2.1 above, some instructions were issued by office of Pr CDA (P), Allahabad in follow up to the instructions of 6th CPC, vide circular no.57 dated 17.09.2008 which were followed by another circular no.141 dated 07.12.2009, wherein instructions were issued to the effect that:

"Circular No.57 dated 17.09.2008

A copy of GOI, Ministry of P, PG and Pension Dep't. Of P&PW OM No.38/37/08-P&PW(A) dated 1st September, 2008 is enclosed for immediate implementation of Govt's decision on the recommendation of Sixth Central Pay Commission relating to revision of pension of pre 1-1-2006 pensioners/family pensioners w.e.f. 1-1-2006.

2. The following further clarification/instruction are issued for smooth implementation of the Govt. orders on the subject:-

APPLICABILITY

3.1 Para-2.1 of the enclosed Govt. OM provides the extent of applicability of the said Govt. order. It is further clarified that the present orders are applicable to the pensioners/family pensioners in whose respect Pension Payment Order (PPO) have been issued by CDA (Pensions)/Chief CDA (Pensions)/Pr. CDA (Pensions) in respect of Defence Civilians which includes pensioners of Defence Accounts Department, General Reserve Engineer Force, Coast Guard, Military Nursing Service (Local) and National Cadet Corps Officers.

3.2 As stated in Para 2.2 of the enclosed Govt. orders, nothing contained in the enclosed Govt. order applies to Commissioned Officers and Personnel Below Officer Rank (PBOR) of Armed Forces, as separate orders will be issued for them by Ministry of Defence.

3.3 Consolidation of pension in respect of categories mentioned in para-3.1 above is to be done only in r/o Civilians/their families who retired/died before 1.1.2006. In other words, cases of retirement/death in service on or after 1.1.2006 are not repeat not covered by these orders.

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9. If any overpayment is in the process of recovery, the amount still due for recovery should be adjusted in lump sum against the arrears payable.

Circular No.141 dated 07.12.2009

"In view of the above it is requested that all paying branches under your jurisdiction may be instructed that whenever any excess payment/over payment of pension/wrong debits is detected the entire amount thereof should be credited in to Govt. account through Demand Draft issued in favour of Pr. CDA (P) Allahabad.

Paying branches may further be instructed not to overlook the prescribed rates of recovery to be affected from pensioners as mentioned in para 1 above since the existing Govt. Orders provide for only instalment recovery of over paid pension from pensioner, except where specific Govt. orders have been issued for recovery of overpayment from the arrears of pension."

3.1 The respondents brought out that in compliance to instructions in para 3 above, the pension of applicant was revised vide corrigendum to the PPO, issued by office of Pr. CDA (Pension), Allahabad vide his letter no. C/MIS/Corr/165/2014 issued on 27.10.2014, wherein the Pension of applicant was fixed as Rs.13,457/- p.m. w.e.f. 01.01.2006 for life. This belated revision in 2014, lead to severe reduction in pension of applicant and that also from back date as brought out in para 4 below.

3.2 Therefore, as per respondents, the pension of applicant got revised as under:

5th CPC

w.e.f. 01.01.1996

Rs.5954/- p.m.

6th CPC

w.e.f 01.01.2006

Rs.13,457/-, which is revised to Rs.14,925/- as per para 4.2 of OM dated 01.09.2008 (Circular no.167 dated 21.06.2017)

7th CPC

w.e.f. 01.01.2016

Rs.38,358/-

Therefore, in compliance to above, pension was revised and recoveries were also ordered/effectuated.

3.3 The respondents further drew attention to judgement by Hon'ble Supreme Court in High Court of Punjab & Haryana and others vs. Jagdev Singh (Civil

Appeal No.3500 of 2006, judgement dated 29.07.2016, wherein recoveries have been allowed except from Class-III and Class-IV service employees who are presently (Group C and Group D service respectively.) The applicant is a Gazetted officer and is pleaded beyond the purview of this judgment.

The downward revision of pension and recoveries for excess payments already made, therefore, are pleaded to be in order.

4. The applicant produced the Pension Payment slip issued by the bank for the month of December 2015 wherein the basic pension is shown as Rs.18,205/-. Thereafter, another Pension Payment slip of January, 2016 was produced wherein basic pension amount is shown as Rs.13,457/-. This reduction is as a result of revised PPO issued by Pr CDA (Pension), Allahabad on 27.10.2014 (para 3.1 supra), which in turn is in follow up of instructions referred in para 3 above.

5. In accordance with these instructions the pension of the applicant was reduced retrospectively starting from the month of September 2012 till December 2015 and the bank worked out that Rs.3,74,982/- are already paid in excess and hence recoverable from applicant. This is already recovered. Another amount of Rs.1,90,348/- is also proposed to be recovered now.

6. Thus, the grievance of the applicant in this OA is two-fold. Firstly, they were always treated as regular army officers in respect of pay and allowances and pension was fixed accordingly in the year 1990 when he retired. Revision in subsequent years can only be given effect to CPC recommendations for same rank officers.

Therefore, his pension cannot be reduced in absence of any valid instructions from Ministry of Defence and especially in view of instructions brought in para 2.1 to 2.4 (supra). Thus, there being no case for reduction in pension there was actually no excess payment involved. Further, the instructions dated 17.09.2008 and 07.12.2009 referred in para 3 above, were never applied in his case all these years. And secondly, even otherwise, the excess amount already paid cannot be recovered in accordance with various judgments of the Hon'ble Supreme Court (State of Punjab & ors. vs. Rafiq Masih, (2014) 8 SCC 883) and decision by this Tribunal's Chandigarh Bench in OA No.060/00054/2016 decided on 17.01.2018. The relevant portions of these two judgments are reproduced below:

OA No.060/00054/2016

"15. Therefore, once the amount of pension was duly fixed and granted to the applicants, in that eventuality, the amount cannot arbitrarily be reduced by the competent authority, without issuing SCN, providing adequate opportunity of being heard and following the due procedure and passing a speaking order, which have in fact, not been adhered to in the present case by the respondents. Hence, their action is arbitrary, which has caused a great deal of prejudice and inculcated and perpetuated injustice to the cause of the applicants, which is not legally permissible. This matter is no longer res-integra and is now well settled.

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24. In the light of the aforesaid reasons the instant O.As are accepted. and any other orders, letters or instructions, having the effect of reduction of pensionary benefits and consequential recovery from the applicants, are arbitrary, illegal and are hereby set aside. As a consequences thereof, the respondents are permanently restrained from recovery the alleged impugned excess amount of pensionary benefits from the applicants, at this belated stage. However, the parties are left to bear their own costs."

State of Punjab and vs. Rafiq Masih (supra)

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

13. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.

14. The appeals are disposed of in the above terms."

7. The applicant sought following relief in instant OA:

(i) To set aside corrigendum PPO No. C/MISC/ CORR/165/2014 in Original PPO No.C/1093/90 as amended vide PPO No.C/CORR/MIOSC/PO-86/ 5050/2000 issued by Respondent No.2 i.e. PCDA (Pensions) Allahabad, U.P.

(ii) To issue necessary instructions/directions to the respondent No.1 & 2 to issue necessary corrigendum to the PPO favouring the applicant and restoring the applicant's pension @ Rs.47,483/- or as applicable in his case in terms of existing policy of Govt. of India on the subject matter.

(iii) To issue necessary directions/instructions to the respondent No.3 & 4 to credit the recovered amount of Rs.3,74,982/- in the account of the applicant alongwith an interest @ 24% per annum on the amount recovered.

(iv) To revise the pension of the applicant as per Govt. Policy qua One Rank One Pension as applicable in his case.

(v) To grant a sum of Rs.2,00,000/- as compensation for the harassment, mental pain and agony caused to the applicant at the behest of Respondents for their illegal, arbitrary, malafide, mischievous and misconceived actions.

(vi) To allow cost of present application in favour of the applicant and against the Respondent No.1 to 4.

(vii) To pass any other or further orders/directions as this Hon'ble Tribunal may deem fit and proper in the light of facts and circumstances enumerated hereinabove in favour of the applicant and against the respondents.

8. As against this, the respondents brought out that the applicant was in NCC which is not the same as the regular Armed Forces. Further, Govt. had issued directions for fixation of their pension brought out in para 3 above, which need to be implemented.

8.1 The Respondents brought out in their counter as under:

"3. That in terms of para 8 of Appendix 'A' under GOI letter No.5431/DGNCC/FC/IIICS/NS(B)/1130/A/D (GS.VI) dated 23.05.1980 subject under Terms and Conditions of service, pension, Family Pension, Death-cum-Retirement Gratuity and other terminal benefits of these officers (NCC) will be governed by the Central Civil Service (Pensions) Rules, 1972 as amended from time to time. Copy of the Govt. letter dated 23.05.1980 is enclosed herewith and marked as Annexure-R1.

4. That for implementation of Govt. Decision as per recommendation of 6th CPC, the said pensioners are entitled to receive revised pension as per Govt. of India, Ministry of P, PG and Pension, Department of P&PW OM No.38/37/08-P&PW(A) dated 01.09.2008 which has been circulated to Pension Disbursing Agencies i.e. Bank, DPDO, Treasury etc. vide Office of the PCDA (Pension), Allahabad circular No.57 dated 17.09.2008 and subsequent Circular/Order issued in this regard. This is subject to the fact that in no case the pension of pre 2006 retiree should be less than 50% of the sum of minimum of pay in pay band and the grade pay corresponding to the pre-revised pay scale at the time of retirement of pensioner. However, the said PDAs by erroneous interpretation of Govt. Order dated 01.09.2008 made the overpayment and when it came to their notice, PDAs

started recovery of overpayment in the light of Circular 141 of this office & RBI circular dated 01.06.2009. Copy of circular 57, Circular 141 & copy of GOI letter dated 13.01.2014 are enclosed herewith and marked as Annexure-R2, Annexure-R3 & Annexure-R4 respectively."

8.2 The policy instructions for revision of pension of pre 2006 pensioners were issued to all Ministries by the DoP&PG vide their order dated 30.07.2015 followed by instructions of Reserve Bank of India to all Banks vide their order dated 17.03.2016 wherein the procedure for deducting recoveries was also specified. The respondents further pleaded that it is well settled that if excess payments have been made, the same can be recovered and such recoveries are permitted by the Supreme Court judgments also. E.g. High Court of Punjab & Haryana & Ors. vs. Jagdev Singh in Civil Appeal No.3500 of 2006 delivered on 29.07.2016.

9. The matter has been heard at length and carefully considered. It is noted that the pension of the applicant was paid as fixed vide PPO at the time of retirement in 1990 and thereafter revised in the year 2009 as indicated in para 2 above and as per further CPC orders and judicial pronouncements in Dhanapalan case (para 2.1 to 2.4 supra).

Subsequently, the pension of NCC officers was revised downwards and that also belatedly in 2014 without any instructions from Ministry of Defence and it was applied retrospectively. This revision actually meant reduction and accordingly recoveries have also been worked out from a back date.

Further, this reduction and recovery has been done without giving any show cause notice to the applicant, which is also not sustainable in law. Such recoveries are barred vide Hon'ble Supreme Court judgement titled Rafiq Masih (supra), quoted in para 6 above, wherein recovery from retired employees, or employees who are due to retire within one year have been specifically barred.

Therefore, it is the view of Tribunal that recoveries cannot be allowed in instant case. Further, the principles, equivalence and level which was the basis to fix the pension of applicant in 1990, cannot be altered subsequently unless it is also brought out that pension fixation in 1990 was incorrect and in that case also adequate opportunity is to be afforded to the applicant followed by a speaking order by respondents. In the instant case, respondents have nowhere brought out that fixation in 1990 was incorrect.

Subsequent revision can only be to give effect to fixation of pension as per modification to pay scales, Grade Pay and other such associated items, in follow up of CPC recommendations duly keeping in view the principles, equivalence and level that prevailed in the year 1990 and other Govt. instructions e.g. "one rank one pay" etc.

Therefore, such belated revision of pension, which in fact is downward fixation, as in instant case, cannot be allowed.

9.1 The question of reduction of pension of another NCC officer had also come up

before this Tribunal in OA No.4666/2015 which was decided on 29.11.2016, with following directions:

"12. The respondent No.2, much belatedly giving effect to its Annexure R2 instructions, has issued the revised PPO (Annexure A-1) dated 23.09.2014 downwardly revising the pension of the applicant from `26,265/- to `17,399/-. This has culminated into a recovery of `7,62,819.14, out of which a sum of `1,96,274.00 has already been recovered from the pension of the applicant, leaving an outstanding balance of `5,66,595.14. In my considered view, this action of respondent No.2 was not at all justified. As mentioned earlier, the pay and consequently pension revision of the applicant have come into effect by virtue of Annexure A- 6 instructional order of PCDA (O) Pune. Annexure A-6 has not been rescinded by MoD and as such it has attained finality. Thus any tampering or interference by respondent No.2 in the pension of the applicant fixed on the strength of Annexure A-6 is not only unwarranted but also illegal, in view of the fact that Annexure A-6 is based on the judgment of the Apex Court in Major Dhanapalan.

13. In the conspectus of the discussions in the foregoing paragraphs, I quash and set aside the Annexure A-1 revised PPO issued by respondent No.2. I direct that the pension of the applicant should be fixed/restored as per Annexure A-3 PPO order dated 31.05.1995 in conjunction with Annexure A-6 instructional order of PCDA (O) Pune dated 25.10.2012. This shall be done within a period of eight weeks from the date of receipt of a copy of this order. Any amount recovered from the applicant pursuant to the Annexure A-1 PPO, which now stands quashed and set aside, shall be returned to the applicant. It is clarified that the applicant shall not be entitled for any interest on this amount."

10. In the event, the OA is allowed and following orders are passed:

(i) The corrigendum to PPO issued on 27.10.2014 is quashed, and I also direct that pension of applicant should be fixed/restored as per PPO order issued in year 2009 in conjunctions with instructional orders of PCDA (O), Pune Dated 25.10.2012, MoD letter dated 17.01.2013, 09.03.2017 and 7th CPC orders. This shall be done within a period of eight weeks from date of receipt of these orders.

(ii) The recovery of Rs.3,74,982/- as is already made, is set aside. This be refunded fully within a period of eight weeks, failing which it will carry interest at GPF rates starting from date of recovery till it is refunded.

(iii) The further proposed recovery of Rs.1,90,348/- is also set aside and it shall not be effected.

(iv) In regard to applicability or otherwise of subsequent policy directive of "one rank one pay" in the instant case, the respondents will pass a speaking order within a period of three months of receipt of any representations to that effect, if and when submitted by applicant.

11. The OA is accordingly disposed off. No order as to costs.