

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2751/2002

New Delhi this the 30 th day of May, 2003

(9)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

D. L. Khilani,
L-1/126B, DDA Flats,
Kalkaji, New Delhi-110019

.. Applicant

(By Advocate Shri S.N.Anand)

VERSUS

1. Union of India through
Director General.Civil
Aviation Tech.Centre,
Safdarjang Airport,
New Delhi.
2. The Central Pay and Accounts
Officer, Director General
Civil Aviation. Safdarjang
Airport. New Delhi-110003.

.. Respondents

(By Advocate Shri V.K.Rao)

O R D E R

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J))

This is the second round of litigation by the applicant as he along with three other persons had earlier filed Original Application (OA 480/1998) which was disposed of by Tribunal's order dated 13.11.2000. In the present application, the applicant has alleged arbitrary and discriminatory action on the part of the respondents in reducing his pension without any prior notice and denial of Dearness Relief (DR) as per the Central Government orders.

2. I have heard Shri S.N.Anand. learned counsel for the applicant and Shri V.K.Rao. learned counsel for the respondents and perused the pleadings and relevant documents on record.

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3. By Order dated 13.11.2000, OA 480/1998 was disposed of with the following directions to the respondents:-

(i) The respondents are directed to fix the applicants' pension in accordance with CCS(Pension) Rules on the basis of last pay drawn and also to pay arrears from the due dates upto the date of payment alongwith interest @ 12% and not @ 18% as asked for by the applicants;

(ii) The respondents are also directed to make payments in respect of the other retiral benefits on the same basis;

(iii) The respondents are further directed to take note that fixing of pension in accordance with the CCS (Pension) Rules would mean fixation of pension @ 50% of the average emoluments drawn during the last 10 months preceding to the date of retirement in each case'.

4. In the present application, one of the reliefs of the applicant is for a direction to the respondents to fix pensionary benefits strictly in accordance with the Central Civil Services (CCS) (Pension) Rules, 1972 (hereinafter referred to as 'the 1972 Rules') read with the aforesaid order of the Tribunal dated 13.11.2000. As the direction has already been given by the Tribunal with regard to the prayer in Paragraph 8 (a), no further direction is required and this prayer is also barred by the principles of res judicata.

5. Learned counsel for the applicant has contended that the action of the respondents in denying Central DA/DR on pension to the applicant as per his option, is contrary to the provisions of the 1972 Rules. He has relied on Rule

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33 Note 10 of the 1972 Rules. He has submitted that the respondents ought to have calculated pension of the applicant, taking into account emoluments drawn by him in the autonomous body, in which he had been absorbed on 2.10.1989 i.e. Airport Authority of India (AAI) at the rate of 50 % of the average emoluments drawn by him prior to his entry, in terms of the Tribunal's order dated 11.11.2000 with Central DA/DR. Learned counsel has also relied on the Govt. of India O.M. dated 27.10.1997, copy placed on record. The respondents have disputed this contention stating that the applicant is not entitled for DA which is to be given to the Central Govt. employees as he is enjoying the benefits of the Industrial Dearness Allowance (IDA) pattern pay scales and cannot, therefore, claim for pensionary benefits meant for the Central Govt. employees. According to the respondents, in compliance with the orders of the Tribunal, the applicant has been given the revised pension and other retiral benefits in accordance with the 1972 Rules. Learned counsel for the respondents has submitted that the applicant is under wrong assumption that in spite of his option for absorption in an autonomous body, he is entitled for the pay scale which has to be given to the Central Govt. employees, and what is applicable to him is the IDA pay scale which he has accepted. Learned counsel for the respondents has, however, submitted that as per letter dated 14.5.2002 issued by the Central Pay and Accounts Office, Civil Aviation Department, New Delhi (page 39 of the paper book), a final decision has not yet been taken by the Department of Public

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(P)

Enterprises (DPE) because of lack of some information from the AAI/Ministry of Civil Aviation. In view of this, the arrears amount of Rs. 3,95,908/- worked out by the Bank have not been paid to the applicant which shall be done as soon as the aforesaid decision is taken by the competent authority.

6. It is relevant to note that in the letter dated 14.3.2002, it has been stated that a decision has yet to be taken regarding applicability of the IDA to the applicant, copy of which has been filed by the applicant himself in the OA on 16.9.2002. Both learned counsel for the parties have submitted that the respondents had filed Writ Petition against the Tribunal's order dated 13.11.2000 which has been disposed of by the Hon'ble Delhi High Court on 15.5.2002 after disposal of CP No.624/2001 filed by one of the applicants in OA 480/1998 on 6.11.2001. The applicant has filed the present OA on 16.9.2002. The respondents have filed reply affidavit on 3.1.2003, in which they have stated that DR on pension has yet to be decided in consultation with the DPE after receipt of the report.

7. When the case was taken up for hearing on 21.5.2003 what decision, if any, has been taken by the competent authority was not forthcoming or placed on record which is a very sad state of affairs. Considering particularly the fact that what is involved is DR due to the pensioner, who has retired from service in the year 1994.

Yours

(B)

From the aforesaid letter dated 14.3.2002, it is also noticed that the payment of arrears of nearly four lacs has ~~also~~ been held up for want of necessary decision/final decision by the DPE which, in the circumstances of the case, can only be considered as an inordinate delay.

8. With regard to the applicant's contention that his pension has been reduced, the respondents have stated that that is wrong because, according to him, his pension has been enhanced from Rs.1440/- to Rs.3175/- from 1.2.1994. However, what the learned counsel for the applicant, based on the Bank statement, submits is that while the applicant had received pension of Rs. 3862/- in October, 2000, the same has been reduced to Rs.2117/- in October, 2001 and that too without issuing any show cause notice. He has submitted that on certain clarifications, the Bank authorities have informed him that he is not entitled for DA on the revised pension amount but a decision has yet to be taken by the DPE. As mentioned above, I see no reason why from 14.3.2002 till the middle of May, 2003, the competent authority has not yet taken any decision with regard to the arrears of pension due to the applicant. In view of what has been stated above, OA is disposed of with the following directions:-

(i) Respondents to take a final decision in the pending matter as per their own letter dated 14.3.2002 referred to above, if not already taken, within one month from the

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date of receipt of a copy of this order, with intimation to the applicant;

(ii) Respondents shall take necessary steps expeditiously to have the arrears amount due to the applicant paid and in any case within one month thereafter. They shall also furnish the computation statement of the pensionary benefits as due to the applicant, within the aforesaid period.

(iii) In the circumstances of the case, in view of the inordinate delay caused by the respondents in taking an appropriate decision in the matter, cost of Rs.5000/- (Rupees five thousand) is granted in favour of the applicant and against the respondents.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'

mp
H/t