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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No 1153/2002

Date of Decision 14.5.2003

R.C.Garg ... Applicant

Sh. Shailesh Kapoor ... Advocate for the Applicant

VERSUS

VOI & Ors ... Respondents

Shri M.M.Sudan, ~~Sp. Counsel~~ Advocates for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V.K.Majotra, Member (A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Vice Chairman (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1153 OF 2002

New Delhi this the 14 th day of May, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri V.K. Majotra, Member (A).

R.C. Garg,
S/o late Shri Deep Dayal Garg,
R/o 51/23, Old Rajinder Nagar,
New Delhi-110060. ... Applicant.

(By Advocate Shri Shailesh Kapoor)

Versus

1. Union of India,
through its Secretary,
Dept. of Space,
Lok Nayak Bhawan,
New Delhi-110001.
2. The Director,
Advance Data Processing Research Institute,
Secunderabad (AP). ... Respondents.

(By Advocate Shri M.M. Sudan, senior counsel)

O R D E R

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

The applicant had claimed a number of reliefs as given in Para 8 (i), (ii) and (iii) and an alternative prayer. During the hearing of the case, after making some submissions on the payers as above, Shri Shailesh Kapoor, learned counsel for applicant states that he does not press reliefs in Para 8(i) and (iii) and only press the alternative relief for a direction to the respondents to treat the special pay of Rs.2000/- PM as part of the pay for computing pension/ retiral benefits with all consequential benefits.

2. With regard to the alternate claim made by the applicant, it is relevant to note that the respondents had

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issued Office Memorandum dated 3.2.1999. In this Memorandum, it has been stated, inter alia, that taking all the relevant factors into account and in order to attract, retain, inspire and motivate the Scientists/Engineers to give their best contributions, the President is pleased to sanction the following:

"Special Pay to Scientists/Engineers 'H' in the scale of pay of Rs.18400-22400:

Grant of Special Pay of Rs.2000/- per month to Scientists/Engineers 'H' in the Department of Space/Indian Space Research Organisation (ISRO) in the scale of pay of Rs.18400-500-22400 w.e.f. 1.1.1996 in lieu of a separate higher pay scale, after Peer Review".

By another O.M. dated 12.8.1999, with reference to the aforesaid O.M. dated 3.2.1999, it was clarified that the special pay of Rs.2000/- to be paid to the Scientists/Engineers 'H' will be admissible to all the existing Scientists/Engineers 'H' in the pay scale of Rs.18400-22400 without any fresh 'Peer Review' since they have already undergone such review. In the case of other Scientists/Engineers 'G' who are in the same scale, the special pay will be admissible only after 'Peer Review' in accordance with the norms of such review.

3. In the present case, the applicant had been promoted from the post of Scientist/Engineer 'G' to the post of Scientist/Engineer 'H' w.e.f. 1.7.1997 which would mean that 'Peer Review' has already taken place at the relevant time. In any case, as the applicant was promoted earlier, in terms of the clarification issued by the respondents vide O.M. dated 12.08.1999 there will be no

fresh 'Peer Review' in applicant's case since he has already undergone that review.

4. Learned counsel for the applicant has submitted that in the later clarificatory O.M. issued by the respondents to the earlier decision taken by the President which was issued vide O.M. dated 3.2.1999, a clarification has been given under Paragraph I (c) to the effect that the Special Pay of Rs.2000/- which was given to the applicant will not be treated as a part of pay for the purposes like Dearness Allowance, HRA, Pension, etc. He has submitted that there was no such intention when the President had approved the issuance of the O.M. dated 3.2.1999 to exclude the special pay which was to be paid to Scientists/Engineers 'H' and the clarification was, therefore, contrary to the O.M. dated 3.2.1999. He has submitted that this is ultra vires the Presidential O.M. as the clarification has not been issued with the sanction of the President which was necessary. He has submitted that the applicant has retired from service on 31.12.2001. Therefore, he has contended that the special pay paid to him while in service as Scientist/Engineer 'H' should be counted as part of pay for purposes of calculating applicant's pension and other retiral benefits and this cannot be taken away by the so called clarificatory O.M.

5. On the other hand, the respondents have stated that the special pay of Rs.2000/- was granted to the Scientists/Engineers 'H' as an incentive and by the Department's O.M. dated 12.8.1999, it has been clearly

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stated that it will not be treated as a part of pay for the purposes like Dearness Allowance, HRA, Pension, etc. Shri M.M. Sudan, learned senior counsel has submitted that the action taken by the respondents is in accordance with the Rules on the subject and, therefore, is not arbitrary or illegal.

6. A reference has been made to the proviso¹⁸ of Rule 9 (21) (a) of the Fundamental Rules which reads as follows:

"(21) (a) Pay means the amount drawn monthly by a Government servant as-

- (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and
- (ii) overseas pay, special pay and personal pay; and
- (iii) any other emoluments which may be specially classed as pay by the President".

7. It is seen that the Office Memorandum issued by the respondents dated 3.2.1999 has been issued with the President's approval sanctioning special pay to Scientists/Engineers 'H' of an amount of Rs.2000/- per month w.e.f. 1.1.1996. One condition that is mentioned in Paragraph (i) of the O.M. is that the grant of Special Pay of Rs.2000/- will be after 'Peer Review'. This has been clarified in the subsequent O.M. issued by the respondents dated 12.8.1999 to mean that the special pay will be admissible to all the existing Scientists/Engineers 'H' like the applicant without any

fresh 'Peer Review'. It is relevant to note that it is only in the later O.M., that it has been clarified in paragraph I (c) that the special pay will not be treated as a part of pay for the purposes like Dearness Allowance, HRA, Pension, etc. Under FR 9(21)(a) (iii) it is open to the President to grant any other emoluments, including special pay, which may be classed as pay of a government servant. It is further relevant to note that while issuing the O.M. dated 3.2.1999, it has been specifically stated that all relevant factors have been taken into account in order to attract, retain, inspire and motivate the Scientists/Engineers to give their best contributions for which the special pay was sanctioned to them by the President. In the circumstances, We see merit in the submissions made by the learned counsel for the applicant that the Presidential order cannot be materially altered or modified by any other subordinate authority by way of the clarification issued in the subsequent O.M. dated 12.8.1999. The provisions of FR 9 (21) (a) (ii) does not also exclude the special pay and personal pay as part of pay. In the present case Rs.2000/- was paid to the Scientists/Engineers 'H' in the Department of Space/ISRO in the scale of Rs.18400-22400 w.e.f. 1.1.1996 in lieu of a separate higher pay scale for them, taking into account all the relevant factors mentioned in the O.M. by the President. The purpose why the President had granted the special pay to those Scientists/Engineers is unexceptionable. This has also taken into account the fact that the grades of Scientists/Engineers 'G' had got merged with the earlier higher posts of

Scientists/Engineers 'H' as a result of the acceptance of the recommendations of the 5th Central Pay Commission by the government and in lieu of a separate higher pay scale. That being the case, we see no reason why the special pay of Rs.2000/- granted to such Scientists, like the applicant, should not be taken as part of his pay/ emoluments for purposes of pension and retiral benefits also.

8. In the facts and circumstances of the case, the O.A partly succeeds and is allowed as follows:

(1) Para 1 (c) of the clarificatory O.M. dated 12.8.1999 issued by the respondents is quashed and set aside with regard to non-inclusion of the special pay as part of pay for purposes of pension, having regard to the provisions of the earlier O.M. issued by the respondents dated 3.2.1999;

(2) The respondents are accordingly directed to reconsider the matter and take an appropriate decision in the matter of including the grant of special pay of Rs.2000/- p.m. to Scientists/Engineers 'H' in the Department of Space/ISRO w.e.f. 1.1.1996 as part of pay, keeping in view the aforesaid observations;

(3) The above action shall be taken within three months from the date of receipt of a copy of this order with intimation to the applicant.

(4) The applicant shall be entitled to the revision of pension, retiral benefits as a result of the above decision, which shall be paid to him expeditiously and in any case within one month thereafter.

No order as to costs.

V.K. Majotra
(V.K. Majotra)

Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Vice Chairman (J)

'SRD'