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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1331/2002

New Delhi, this the 28/8 day of August, 2002.

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

B.R.Agnihotri S/O Ram Chand Agnihotri,
R/O 66 East End Enclave,
Delhi-110092, retired Admn.
Officer of the Comptroller and
Auditor General of India.

... Applicant

(In person)

-versus-

Comptroller and Auditor General of India,
10 Bahadur Shah Zafar Marg,
New Delhi-110002.

... Respondent

(By Shri Madhav Panikar, Advocate)

O R D E R

Applicant retired as Administrative Officer on 31.12.1981 from the office of Comptroller and Auditor General of India. At the time of his retirement he was drawing pre-1986 scale of Rs.840-40-1200 plus special pay of Rs.150/- per month. From 1.1.1986 on the recommendations of the Fourth Central Pay Commission the above pay scale was revised to Rs.2375-75-3200-100-3500 plus special pay of Rs.300/-. Applicant is aggrieved that on 1.1.1986 his notional pay in the revised scale was fixed at Rs.3300/- without taking into account special pay and as such, his pension was fixed at Rs.4967/- per month w.e.f. 1.1.1996. According to him, if special pay is taken into account his notional pay on 1.1.1986 would increase to Rs.3500/- and he would be entitled to a pension of Rs.5265/- per month w.e.f. 1.1.1996. He has alleged that exclusion of special pay while fixing notional pay has resulted in a recurring monthly loss of Rs.298/- in pension plus dearness relief thereon.

2. Applicant has contended that the special pay of Rs.150/- was attached to the pre-revised scale of Rs.840-40-1200. It was in lieu of a separate higher scale and as such has to be treated as basic pay for various purposes including pension and as such his pension should be fixed with reference to his existing emoluments including the special pay. Applicant has relied on Rajaram Shankar Gawade v. Union of India, (1994) 27 ATC 329 decided on 13.12.1993 by C.A.T., Bombay.

3. On the other hand, the learned counsel of respondents stated that as per Annexure R-VII which is a memorandum issued in September, 1999, it was clarified that from 1.1.1986 the special pay granted to officials posted at the Headquarters Organisation in the office of Comptroller and Auditor General is not in lieu of higher scale of pay. According to him, nomenclature of special pay being paid to an Administrative Officer was changed as "special allowance" w.e.f. 1.8.1997 as per Department of Pension and Pensioners Welfare O.M. dated 10.2.1998. He further referred to Annexure R-III dated 19.12.2000 issued by Department of Pension and Pensioners' Welfare stating that special pay can be taken into account for notional fixation as on 1.1.1986 in such cases where Fourth CPC has recommended the replacement of the applicable pre-revised scale with special pay by a revised scale without special pay. He stated that the revised pay scale for the scale of Rs.840-40-1200 carried a special allowance, therefore, the special pay drawn by applicant prior to 1.1.1986 could not be reckoned for computing notional fixation. As per Annexure R-VIII dated 14.6.2002 Department of Pension and Pensioners Welfare clarified

that the special pay of the post of Administrative Officer was not replaced by another scale without special pay by the Fourth CPC and the rate of such special pay was doubled w.e.f. 1.1.1986 with the revised special pay not being treated as part of pay and its nomenclature being changed to "special allowance". The learned counsel stated that applicant's O.A. No.1083/2000 was disposed of vide order 9.2.2001 directing respondents to pass a detailed speaking order. Respondents passed a detailed speaking order on 26.3.2001 (Annexure R-V). Applicant filed another O.A. No.2140/2001 for the same relief. The Tribunal disposed of that O.A. by order dated 19.2.2002, in compliance whereof a detailed order was passed by respondents on 30.4.2002 indicating reasons for rejecting applicant's case. Applicant has now challenged the order passed by respondents on 30.4.2002 (Annexure A-1).

4. Applicant has contended that he was granted special pay in lieu of a higher pay scale. Respondents have admitted in para 10 of their reply stating, "the special pay drawn by Administrative Officer was allowed to count towards pay for the purpose of pension, prior to 1-1-86 as per Rule 33 of CCS (Pension) Rules, 1972 as the special pay so granted was in lieu of higher scale of pay." (Emphasis supplied). This special pay was not granted to applicant in consideration of any "specially arduous nature of the duties" or "a specific addition to the work or responsibility", as mentioned in FR 9(25). 'Pay' has been defined in FR 9(21) 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

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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."

"Special pay" in terms of FR 9(21) is a part of "pay". Annexure R-VIII talks of "special allowance" and not "special pay" which was being drawn by applicant as Administrative Officer prior to 1.1.1986. The ratio in the case of Rajaram Shankar Gawade (supra) is squarely applicable to the facts of the present case, as respondents have admitted that applicant was drawing a special pay in lieu of a higher pay scale. Respondents have not come forward to establish that the special pay drawn in the pre-revised scale was taken into consideration while revising the pay scale. Respondents have also not come forward with any general orders regarding change of nomenclature for special pay to a special allowance.

5. Having regard to the above discussion as also the ratio in Rajaram Shankar Gawade (supra) I allow this O.A. and direct respondents to re-fix applicant's pension w.e.f. 1.1.1996 taking into consideration the special pay of Rs.150/- that he was drawing up to 1.1.1986. Such updation of pension shall be made by respondents within a period of two months from the date of receipt of these orders. They shall also pay consequential arrears as also interest thereon at the rate of 6% per annum. No costs.

V. K. Majotra
(V. K. Majotra)
Member (A)

/as/