

8

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 828/2002

Friday, this the 1st day of November, 2002

HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

WG. CDR. (Retd) Onkar Singh Wadhawan  
S/o Late Shri Balik Singh Wadhawan,  
Resident of E-194, Jal Vayu Vihar,  
Sector-21, Noida - 201301 (UP)  
last employed as Inspector of Flying  
in the Office of Director General of  
Civil Aviation, DGCA Complex,  
Opp. Safdar Jung Airport,  
New Delhi  
(Applicant in person)

... Applicant.

Versus

1. Secretary,  
Ministry of Civil Aviation,  
Rajiv Gandhi Bhawan,  
Safdar Jung Airport,  
New Delhi

2. Director General of Civil Aviation,  
DGCA Complex,  
Opp. Safdar Jung Airport,  
New Delhi

(By Advocate : Shri Neeraj Goyal)

... Respondents

O R D E R (Oral)

By S.A.T. Rizvi, Member (A) :

The grievance in the present case arises from the refusal of the respondents to re-fix the pay of the applicant, who is a retired Wing Commander and has been re-employed in the civil post of Inspector of Flying, w.e.f. 25.01.1983.

2. We have heard the applicant and the learned counsel appearing on behalf of the respondents and have also perused the material placed on record.

3. The facts relevant for the purpose of adjudication of this case briefly stated are the following

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88

4. Consequent upon his retirement from the Indian Air Force, the applicant was re-employed as Inspector of Flying in the Civil Aviation Department w.e.f. 05.03.1977 and was placed in the pay scale of Rs.1800-100-2000 with his pay provisionally fixed at Rs.1800/- per month. Subsequently after taking into account his pension, the applicant's initial pay was fixed at Rs.1030.94<sup>and</sup> later revised to Rs.1080.94 per month. A new method of fixation of pay of re-employed pensioners was thereafter devised and the related instructions were issued on 19.07.1978 which provided that in the case of retired officers like the applicant, the first Rs.125/- of the pension will have to be ignored at the time of fixation of pay on re-employment. The said instructions<sup>also</sup> provided that in the case of persons who were already re-employed, the pay could be re-fixed on its basis subject to the person concerned opting for it. It is not in dispute that the applicant did not exercise the aforesaid option and chose to agitate the matter before the High Court and later before the apex Court. An opportunity was nevertheless given to the applicant to exercise his option in the aforesaid matter by respondents' letter of 23.03.1982 (A-6)

5. The High Court and thereafter the Supreme Court took note of the fact that the applicant had not exercised his option as above and found nothing wrong with the manner in which the pay of the applicant had been fixed by the respondents by their order dated 03.08.1982, a copy of which was produced before us at the time of hearing and has been taken on record. It is seen that by the

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aforesaid order the pay of the applicant has been fixed, as already stated, at Rs.1080.94 per month with effect from 05.03.1977.

6. We have perused the order passed by the apex Court on 28.09.1994 (A-5) and find that though the Court had noted that the applicant's claim, inter alia, was for the payment of the difference in the amount of pay for the period from August 1982 to January 1988 in which month the applicant retired from the post of Inspector of Flying, it has nowhere provided for the manner in which the period after August 1982 is to be treated. The apex Court was content to waive the recovery imposed on the applicant for the period prior to the fixation of his pay by the aforesaid order dated 03.08.1982. The Court further noted that from August 1982, the applicant was paid the reduced amount but this observation was made in the context of the instructions dated 19.7.1978 providing for a sum of Rs.125/- only to be ignored out of the pension amount for refixation of pay.

7. The respondents again issued an Office Memorandum (OM) on 24.10.1983 with its contents clarified on 23.12.1983 (Annexure A-8) providing for the quantum of pension to be ignored in fixing the pay of Military pensioners on re-employment in civilian posts. The same provided that in the case of officers like the present applicant, the first Rs.250/- of the pension was to be ignored for fixing the pay in the civilian post, in place of Rs.125/- to be ignored in terms of the earlier OM of 19.07.1978. These orders were to take effect from 25.1.1983. Those who were already re-employed as on the said date were also rendered eligible to opt for the aforesaid arrangement and have their pay re-fixed w.e.f.

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25.01.1983. It appears that even at this stage the applicant did not exercise his option in time as the matter was then still pending before the High Court. The verdict of that Court became available on 10.07.1984 (Annexure-V). It seems that the applicant thereafter proceeded to exercise his option for re-fixation of his pay by ignoring Rs.250/- of the pension amount in terms of the aforesaid OM dated 24.10.1983. The respondents accordingly issued orders dated 20.01.1988<sup>revised</sup>, copy enclosed with the applicant's rejoinder (A-1 to the rejoinder), re-fixing his pay by ignoring Rs.250/- of the pension amount as stated in the rejoinder. These orders have been made effective, however, from 01.01.1986 and not from 25.01.1983.

8. We have considered the aforesaid submissions made by the applicant. The fact regarding re-fixation of the applicant's pay in the manner stated in the above paragraph has not been disputed on behalf of the respondents. Neither the High Court nor the apex Court has passed any order preventing the respondents from extending the benefit of the aforesaid OM of 24.10.1983 to the applicant. The respondents have not, in the impugned order dated 23.03.2001 (A-1), brought forth any good and convincing reason for denying the benefit of the aforesaid OM to the applicant w.e.f. 25.01.1983, having regard to the fact that the same has already been extended to him w.e.f. 01.01.1986. The reasons in support of this are already available in the preceding paragraphs. The<sup>abnormal</sup> delay in exercising the option to which a reference has been made in the impugned order also stands explained in view

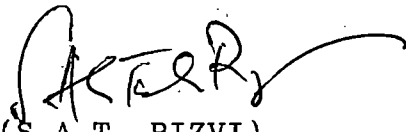
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of the respondents' own letter of 29.07.1986 (A-4) by which they have advised the applicant to await the outcome of the case pending in the apex Court and the apex Court's judgement became available only on 28.9.1994. The impugned order (A-1) is accordingly found by us to be without merit and deserves to be quashed and set aside.

9. In the light of the foregoing, the impugned order (A-1) is quashed and set aside. The OA is allowed. The respondents are directed to pay arrears of difference of pay to the applicant for the period from 25.01.1983 upto 31.12.1985. Since the applicant has also prayed for the payment of interest on the aforesaid arrears, the respondents are further directed to make payment of interest on the aforesaid amount at the rate of eight per cent per annum calculated with effect from 29.07.1986 on which date the applicant was asked by the respondents to await the final decision of the apex Court. The amount of interest will be calculated for the period from 29.07.1986 upto the date of actual payment. The respondents are directed accordingly. They are further directed to make the aforesaid payments within a period of two months from the date of receipt of a copy of this order.

No costs.

  
(S.A.T. RIZVI)  
Member (A)

  
(V.S. AGGARWAL)  
Chairman

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M.A.1128/2003 in  
C.A.828/2002

28.5.2003

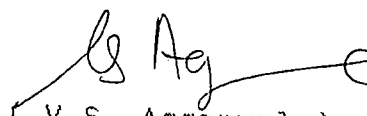
Present: Applicant in person

M.A.1128/2003

There is no ground to grant compound interest.  
Dismissed.

( Govindan S. Tampi )  
Member (A)

/dkm/

  
( V.S. Aggarwal )  
Chairman.