

56

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A.No.1246/2001

New Delhi, this the 28th day of June, 2004

Hon'ble Shri S.K. Naik, Member (A)

Rajendra Prasad Pandey aged about 76 yrs
s/o Suraj Bhan Pandey, retired Assistant
Central Intelligence Officer (G)
Office of the Director Intelligence Bureau
Ministry of Home Affairs
Govt. of India, R.K.Puram, New Delhi
presently residing at 302-B La-Place
Shahnazaf Road, Hazratganj
Lucknow

..Applicant

(By Advocate: Shri R.K.Shukla)

Versus

1. Principal Secretary,
Homes, Govt. of India
Sansad Bhawan, New Delhi
2. Director Intelligence Bureau
Ministry of Home Affairs
Govt. of India
R.K.Puram, New Delhi
3. Pay & Accounts Officer
Pay & Accounts Office
Intelligence Bureau (MHA)
AGCR Bhawan, New Delhi

..Respondents

(By Advocate: Shri S.M.Arif)

O R D E R

Applicant - Shri Rajendra Prasad Pandey - retired from the post of Assistant Central Intelligence Officer-I (G) from the Intelligence Bureau, Ministry of Home Affairs on 30.6.1983. He has filed this OA on 14.5.2001 claiming that the respondents have deprived him of the following retiral benefits:-

- i) that consequent to the recommendations of the 4th Central Pay Commission, his pension which had been fixed at Rs.513 PM earlier had not been correctly revised. He claims that the revised

Draw

pension should have been fixed at Rs.1407 PM w.e.f. 1.1.1986 whereas the respondents have fixed the same at Rs.1076 PM.

- ii) that his pension based on the recommendations of the 5th CPC has been wrongly fixed as it was based on the lower rate of pension stated earlier.
- iii) that an amount of Rs.1165 out of his entitlement for gratuity had been illegally withheld by the respondents from 1.7.1983 to 31.12.1999 for which he is entitled to interest @ 18% p.a, and
- iv) that the respondents have denied him the medical allowances @ 100 PM w.e.f. 1.1.1996 as recommended by the 5th CPC.

2. Counsel for applicant has contended that consequent to the recommendations of the 4th CPC, the pension of the applicant should be fixed after adding the following components to his original pension of Rs.513:-

- a) Rs.653 on account of dearness relief upto consumer price index of 608 points.
- b) Rs.60 - first instalment of interim relief.
- c) Rs.52 - second instalment of interim relief.

Jaik

d) Rs.129 - additional relief.

3. The revised pension of the applicant thus should have been fixed at Rs.1407 w.e.f. 1.1.1986 whereas the respondents have arbitrarily fixed the same at Rs.1076 PM. Despite repeated representations, the respondents have not rectified the mistake which has further resulted in injustice being compounded as a result of the recommendations of 5th CPC whose benefit has again been based on the earlier incorrect fixation of pension. If the pension of the applicant had been fixed at Rs.1407 w.e.f. 1.1.1986, the counsel contends that the applicant would have been entitled to the pension of Rs.4240 w.e.f. 1.1.1996 instead of Rs.3250 as has been fixed by the respondents. The counsel, therefore, contends that the orders impugned need to be set aside and a direction be issued to the respondents to fix the pension of the applicant correctly both w.e.f. 1.1.1986 and thereafter w.e.f. 1.1.1996 consequent to the recommendations of the 5th CPC.

4. On the point of withholding of a part of the DCRG, the counsel has drawn my attention to the counter affidavit filed by the respondents and has stated that the respondents have themselves admitted the undue delay in releasing a part of DCRG and they should be directed to pay the interest thereon to the applicant.

5. Similar is the argument with regard to the non-payment of the fixed medical allowance which the applicant is entitled to as he is residing in a non-CGHS area.

7/2/2008

(4)

6. Counsel for respondents has contested the claim of the applicant; in particular the claim on fixation of revised pension. They have also filed an additional affidavit in support of their contention to defend that the pension has been correctly fixed. He has submitted that the contention of the counsel for applicant that the pension should have been revised by adding dearness relief upto consumer price index of 608 points and further taking into account the first and second instalment of interim relief as also the additional relief is being mis-interpreted inasmuch as while these elements were being taken into account for fixing the pay of serving Government employees, it was not applicable for revising the pension of those who had already retired from Government service before 1.1.1986. The counsel contends that the pension of pre 1.1.1986 pensioners was to be revised vide Govt. of India, Deptt. of Pension & Pensioners' Welfare OM dated 16.4.1987. Para 6.1 of the said OM states that the pension of existing pensioners was to be consolidated w.e.f. 1.1.1986 by adding the following components:-

- i) the existing pension/ existing family pension.
- ii) the existing dearness relief, and
- iii) the additional benefits accruing from paragraphs 4 & 5 of the OM.

Ans

(5)

7. Vide paragraph 5 of the OM, the additional relief to be given to existing pensioners has been divided into four different categories. The applicant having retired after 1.1.1982 but before 31.3.1985, he was entitled to dearness allowance upto CPI 320 and the additional relief admissible to him had to be regulated as follows:-

"In case of pensioners drawing pension above Rs.500/- additional relief shall be equal to the difference between the existing fixed dearness relief of Rs.463 and the notional relief calculated at 70% of existing pension as defined in para 3.1 (b) subject to the condition that where the said difference shows negative amount or is less than Rs.100, the additional relief shall be Rs.100."

8. The counsel further argues that paragraph 5 of the OM provides re-calculation of pension at 50% of average emoluments in place of slab formula and benefit of difference accruing out of above calculations to the existing pensioners. Since the pension of the applicant was calculated on the basis of average emoluments, therefore, the applicant was not eligible for any benefit under this para of the OM. Therefore, the counsel vehemently argues that the pension of the applicant has been rightly fixed at Rs.1076/- and after taking into account his basic pension of Rs.513/- and adding thereto the dearness relief of Rs.463/- which was the maximum prescribed plus 100 the minimum that is envisaged.

9. The counsel further contends that the applicant is adopting totally wrong method and has been attempting to persuade this Tribunal to agree to his claim, which is not tenable. The applicant has sought the advantage of

3400

(6)

dearness relief upto consumer price of 608 points but the same amount of dearness relief could be fixed upto a maximum of Rs.463/- and not beyond.

10. With regard to the withholding a part of DCRG, the counsel contends that an amount of Rs.1165/- was withheld because of the non-receipt of 'no dues certificate' from the Estate Officer since the applicant was in occupation of the Govt. accommodation, that too unauthorizedly beyond the permissible period. While the Estate Officer took sometime in raising the final bill, the matter escaped the attention of the concerned officer dealing with the case and the amount was finally released in 1999. In this connection, the counsel further states that even when a copy of the order releasing the withheld amount was given to the applicant, he made no efforts whatsoever until 1999 to approach the Department to claim the withheld amount. In this peculiar background of the case, the counsel contends that the applicant will not be entitled to any interest thereon.

11. Insofar as the payment of fixed medical allowance is concerned, the counsel for respondents has contended that in accordance with the recommendations of the 5th CPC, the Central Govt. pensioners residing in non-CGHS area have been sanctioned fixed medical allowance @ Rs.100 PM. As per the procedure laid down by the Ministry of Personnel, Public Grievances & Pension vide their OM dated 19.12.1997, a pensioner is required to approach his bank from where he is drawing his pension for the grant of medical allowance after giving an undertaking that he is not residing in an area covered by

3/200

the CGHS and the pension disbursing authority, i.e., the bank would automatically release the same for which no special sanction or authority is required to be issued by the respondents. However, the respondents would have no hesitation in directing the bank to release the fixed medical allowance to the pensioners, the counsel contends.

12. I have heard the counsel appearing for the parties. Insofar as the claim of the applicant that his pension w.e.f. 1.1.1986 has not been correctly fixed is concerned, I am afraid the same is based on the misunderstanding of the provisions of the OM dated 16.4.1987. As has been pointed out by the counsel for respondents, the formula based on which the applicant is claiming his pension to be revised to Rs.1407 is applicable for fixation of pay of serving Govt. employees whereas in case of the pensioners, the dearness relief of CPI of 608 points subject to a maximum of Rs.463 and a minimum of Rs.100 being the notional relief calculated at 70% of the existing pension can only be allowed. This distinction appears to have been misunderstood by the applicant.

13. Insofar as the release of a part of the DCRG amount is concerned, I find that the respondents are certainly to be blamed for the delay in releasing the same. The plea advanced by the counsel for respondents that a part of the blame for the delay has to be shared by the applicant as he did not approach the respondents for the release of the amount even after the copy of the releasing order was endorsed to him, I am afraid, is not

3000

going to cover up the lapse on part of the respondents. On the contrary, I find that the reply of the respondents in effect amounts to an admission of the lapse on their part. The applicant, under the circumstances, will be entitled to an interest for the delayed period of payment at least from 7.2.1985 until the date of payment and I order that the applicant be paid simple interest @ 9% p.a.

14. Insofar as the payment of fixed medical allowance is concerned, the applicant should approach the concerned bank from where he is drawing his pension quoting the authority on the subject and after furnishing the necessary undertaking and hopefully the bank will have no difficulty in releasing the same. I, however, direct the respondents also to issue an advisory to the bank in the matter so as to facilitate the release of the fixed medical allowance to the applicant.

15. In view of the discussions above, the OA partly succeeds and is allowed with the directions given above. No costs.

Naik
(S. K. Naik)
Member (A)

/sunil/