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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1396/2001

This the 5th day of December, 2001.

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

Chaman Lal S/O Sunder Dass,
R/O A-39/3, Gali No.6,
East Vinod Nagar,
Delhi-110091.

... Applicant

(In person)

-versus-

1. Union of India through
Secretary, Ministry of Personnel,
Public Grievances & Pensions,
North Block, New Delhi-110001.
2. Secretary, Ministry of Home Affairs
(Union Territories), North Block,
New Delhi-110001.
3. Govt. of N.C.T. of Delhi through
Lt. Governor through
Chief Secretary, Delhi Administration
Secretariat, 5, Sham Nath Marg,
Delhi-110054.

... Respondents

(By Shri Bhaskar Bhardwaj for Shri Rajan Sharma, Adv.)

O R D E R

Applicant, who was working as Office Superintendent in the Directorate of Education, Delhi Administration, retired on 28.2.1986. Pay scale of the post (Rs.550-900) held by him was revised to Rs.1640-2900 w.e.f. 1.1.1986 on the recommendations of Fourth Central Pay Commission (4th CPC). Applicant's pension was fixed at Rs.1156/- p.m. on the basis of pay last drawn, i.e., Rs.2540/- p.m. from 1.1.1986 to 28.2.1986 (i.e., date of retirement).

2. Applicant is aggrieved by the alleged anomaly arisen in fixation of 'notional pension' of pre-1986

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retirees and 'actual pension' of post-1986 retirees due to implementation of recommendations of 5th CPC. Applicant has challenged Annexure A-1 dated 7.12.2000 and Annexure A-2 dated 8.10.1999. Vide Annexure A-2 "The average emoluments based on the basic pay of the preceding ten months of those Government Servants who had opted to come over to the revised scales of pay and had retired within a period of 10 months reckoned from January 1, 1996 shall be calculated as follows for the purpose of determining their pension entitlement :

(A) For the period during which pay was drawn in the pre-revised pay scales : The total emoluments for the number of months for which pay was drawn in the pre-revised pay scales shall be calculated after taking into account the following :

- (i) Basic Pay (including increments, if any drawn during the intervening period).
- (ii) Dearness allowance upto CPI 1510, i.e., @ 148%, 111% and 96% of the basic pay as the case may be.
- (iii) The first and second instalments of Interim Relief appropriate to the Basic pay drawn during the relevant period.
- (iv) Notional increase of the Basic Pay applying the Fitment Benefit of 40 percent on the Basic pay in the pre-revised pay scale.

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(B) For the period during which pay was drawn in the revised scales : The aggregate of the Basic pay for the number of months for which pay was drawn in the revised scales.

The average emoluments of the preceding ten months will thereafter be calculated by adding (A) and (B) and dividing the result by 10. Pension admissible will consequently be 50% of the average emoluments so calculated." Vide Annexure A-1 applicant's request for settlement of dispute regarding disparity in revision of pension was rejected. It was stated therein that revision of pension falls within the parameters of general policy of Government based on recommendations of expert bodies like CPC. It was further stated that 5th CPC had not recommended any notional fixation of pay/pension for post-1986 retirees. 5th CPC had only recommended consolidation of applicant's pension as on 1.1.1996 by adding D.A. at AICPI 1510 on 1.1.1996, Interim Relief I & II and fitment weightage of 40% to basic pension thus making total of above as basic pension as on 1.1.1996. Such pension was not to be less than 50% of minimum of revised scale of pay as on 1.1.1996 of the post last held by the pensioner at the time of retirement...

3. Applicant has alleged discrimination vis-a-vis one Shri Sohan Lal, who retired on 31.5.1984. Basic pay of applicant and Shri Sohan Lal on 31.5.1984 was Rs.810/-. Applicant's pay rose to Rs.870/- on 1.7.1985.

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In revised scale of Rs.1640-2900, pay of applicant and Shri Sohan Lal was fixed on 1.1.1986 at Rs.2540/- and Rs.2360/- (notional), respectively. Applicant's pension as on 1.3.1986 was determined as Rs.1156/- p.m. on the basis of 10 months' average emoluments (1.5.1985-28.2.1986). Shri Sohan Lal's pension as on 1.3.1986 was fixed notionally as Rs.1180/-. Pension of applicant and Shri Sohan Lal as on 1.1.1996 was fixed as Rs.3496/- p.m. and Rs.3567/- respectively.

4. Applicant is aggrieved that whereas Government have been liberal in determining pension entitlement of retirees between 1.1.1996 and 30.9.1996, retirees of 1.1.1986 to 30.9.1986 have been discriminated against.

5. Applicant has sought refixation of his pension from 1.1.1996 @ Rs.1270/- (notional) instead of Rs.1156/- on similar lines/orders as made applicable in case of Shri Sohan Lal.

6. Learned counsel of respondents stated that 5th CPC have not recommended any notional fixation of pay/pension in respect of post-1986 retirees to which category applicant belongs. According to him, pension continues to be decided based on average emoluments drawn during last 10 months prior to retirement. 5th CPC recommended that all past pensioners be brought to 5th CPC level by notionally fixing their pay and pension as on 1.1.1986 in the same manner like serving employees and pension so fixed be consolidated as stated in para 2 above. Pension so arrived at is pension as on 1.1.1996.

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Government recommended modified parity in respect of employees who retired after 1.1.1986 by consolidation of their pension and wherever such pension fell short of 50% of minimum of revised scale of pay as on 1.1.1996 of the post last held, it was to be stepped up to that level, which according to learned counsel was done in case of applicant. Learned counsel further stated that since 5th CPC did not make any recommendations except consolidation in respect of those retired after 1.1.1986 like applicant, necessary action can be taken only if Government of India issue such orders.

7. Whereas it is not appropriate for this Tribunal to find fault with recommendations of the expert body, i.e., 5th CPC and Government ~~are~~^h within their powers to determine revised pay/pension of those retired between 1.1.1986 and 30.9.1986 and those who retired between 1.1.1996 and 30.9.1996, but in our view the respondents have certainly failed to satisfactorily explain the anomaly in determination of revised pension of pre-1986 retirees on the basis of notional fixation of pay w.e.f. 1.1.1986 in revised scale of pay and actual pension of post-1986 retirees. They have also failed to explain rationally how, given the facts as they are, Shri Sohan Lal's pension as on 1.1.1996 is fixed at a higher level than applicant.

8. Having regard to reasons recorded and discussion made above, this OA is disposed of directing the respondents to treat this OA as applicant's

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representation and decide the same by passing reasoned and speaking orders within a period of two months from communication of these orders. No costs.

V. K. Majotra

(V. K. Majotra)
Member (A)

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