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CENTRAL ADMTNSTRATIVE TRIBUNAL
PRTNCTPAL BENCH: NEW DELHI

O.A. NO. 2012/2001

NEW DELHI THTS. 28. DAY OF JANUARY 2003

HON'BLE SHRT GOVTNDAN S. TAMPT, MEMBER (A)
HON'BLE SHRT SHANKER RAJU, MEMBER (J)

Shri A S Rao,
B-5/142, Safdarjung Enclave,
New Delhi - 110049

.....Applicant

(By Shri Gyan Prakash, Advocate)

VERSUS

1. Union of India
through Secretary,
Ministry of T & B
Shastri Bhawan, New Delhi -110 001
2. Director, DAVP, Min. of T & B,
PTT Building, Parliament Street,
New Delhi - 110 001
3. Controller of Accounts, TRA,
Min. of T&B, AGCR Building,
New Delhi
4. Secretary,
Min. of Personnel, PG and Pension,
Dept. of Pension & Pensioners Welfare,
Lok Nayak Bhawan, New Delhi

.....Respondents

(By Shri R N Singh, Advocate)

O R D E R

BY HON'BLE SHRT GOVTNDAN S. TAMPT, MEMBER (A)

Applicant seeks to assail respondents letter No.
A-42012/3/98-Admn. T dated 10.11.2000, enclosing
Ministry's letter dated 20.10.2000, rejecting his request
for revision in his pension.

2. S/Shri Gyan Prakash and R N Singh learned counsel
appeared for the applicant and the respondents respectively
during the oral submissions.

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3. Shri A. S Rao, applicant was working as Dy. Director (Outdoor publicity) in the Directorate of Advertisement and Visual publicity (DAV)), in the pay scale of Rs. 1300 - 1700/- when he retired on 31.3.92. The post was re-designated as Jt. Director w.e.f. 24.8.95. The post was upgraded to the scale, of Rs. 3700 - 5000/- on the basis of 4th CPC recommendations. Therefore following, the acceptance of the 5th CPC, the revised scale stood at Rs. 12,000 - 12500/-. In terms of Presidential Order notified as OM dated 45/1098-P&PW (A) dated 17.12.98, pensioners were entitled to not less than 50% of the minimum of the revised scale of pay of the post held by him at the time of retirement. In view of the above the applicant felt that his pension should have been worked out in the grade of Rs.12000-16500/-. His representation dated 27.4.2000 was endorsed by his Branch, by holding that the post was having the scale of pay of Rs. 1300 - 1700/-, revised to Rs. 3700 - 5000/-, which was not agreed to in the impugned order. Hence this OA.

4. Grounds raised in the OA are:-

- i) as the post of Dy. Director which was held by the applicant was re-designated as Jt. Director and granted the pay scale of Rs.1300-1700/- revised to Rs. 3700 - 5000/- w.e.f. 1.1.86 and Rs. 12000 - 16500/- he was entitled to have his pension worked out in that grade;
- ii) Presidential Order contained in the OM dated 17.12.98 was mandatory;
- iii) working out his pension on the replacement scale of Rs.10000 - 15200/- was improper;
- iv) he was entitled for interest on the delayed payment of arrears on revised scale.

OA. should be allowed in his favour, the applicant pleads.

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5. In the reply it is pointed out that the post of Dy. director (Outdoor Publicity) where from the applicant retired on 31.3.82 was re-designated on 24.1.95, as Jt. Director and abolished thereafter on 24.11.95. The post was on the scale of Rs.1300- 1700/- prior to 1.1.86, and was given the replacement scale of Rs. 3700 - 5000/- though the replacement scale should have been Rs. 3000 - 5000/-. The respective revised scales are Rs.12000 - 16500/- and Rs. 10000 - 15200/-. His request for re-fixation of his pension with reference to the scale of Rs. 12000 - 16500/- as against that of Rs. 10000 - 15200/- had been examined but was not found favour with. The applicant's pension had been fixed at Rs.4601/- which was more than the revised pension what he should have got , w.r.t. the scale of Rs. 10000 - 15200/-. His case was to be dealt with on the basis of the scale in which he was drawing pay at the time of his superannuation and not on the upgraded scale which was granted to the post after his retirement. This matter has been cleared by the Department of Pensions & Pensioners Welfare OM No. 45/80/97 P & PW (A) Pt dated 11.5.2001, clarifying that the pension of all pensioners should not be less than 50% of the minimum of the corresponding scale as on 1.1.96 of the scale of pay held by the pensioner at the time of his retirement on superannuation. Fixation of the pension was on the basis of the advice rendered by the Deptt. of P&PW, that replacement scale for revision of pension should be taken w.r.t. the scale which the Govt. servant has been holding on the date of retirement and not on the upgraded scale which took place thereafter. Therefore the replacement scale should only have been Rs. 10000 - 15200/- and not Rs. 12000- 16500/-, as claimed by the applicant. Department has further clarified this by their OM

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No.45/86/97-P&PW (A) (Pt) dated 11.5.2001 that the pension should not be less than 50% of the minimum of the corresponding scale as on 1.1.96 of the scale of pay held by the petitioner at the time of his retirement on superannuation. This OM has been approved by the Ministry of Finance (Department of Expenditure) and therefore the respondents' action was proper. Department of P&PW's OM dated 17.12.98, advise by the DP&PW by their OM dated 22.10.99 and clarification dated 11.5.2001, have been correctly interpreted and the applicant has no case according to Sr. R N Singh, learned counsel for the respondents.

6. Applicant filed MA No. 1365/2002, assailing the P&PW OM dated 11.5.2001, as improper and as having been issued without proper sanction. It was not permissible to amend the Presidential direction of 17.12.98, by the Executive orders and to nullify the benefit granted by the Presidential Orders. Sh. Gyan Prakash therefore pleaded that his pension should have been worked w.r.t. the scale of Rs. 12,000 - 15,200/- and not Rs.10000 - Rs. 15,200/-.

7. We have carefully considered the matter. In this case the applicant who retired as Dy. Director (Outsider Publicity) in the Directorate of Advertisement and Visual Publicity (DAVP) in the Ministry of Information and Broadcasting on 31.3.1982, is seeking that his pension be fixed in terms of the DP & PW OM dated 17.12.98, according to which the pension of all persons should not be less than 30% of the minimum of the pay scale of the post which he held at the time of superannuation. According to him as the scale of pay of Dy. Director which was in the scale of

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Rs. 1300 - 1700/-, was given the replaced scale of Rs. 3700-5000/- as on 01.01.1986 and there after of Rs. 12000 - 16500/- . His pension therefore have to be fixed in that scale instead of with reference to Rs. 10000 - 15200/- . The same has not been agreed by the respondents as in terms of the DP & PW U.O. Note Departments were advised on 22.10.99 the replacement scale should be taken with reference to the scale which the Government servant holding on the date of retirement and not upgraded scale which took place after the government servant retired. As replacement scale for the scale in vogue when the applicant retired stood at Rs.1000 - 15200 that alone should have been taken. This is gist of the Ministry's clarification of 11.5.2001 as well. The applicant's pleas that the Presidential Order of December 1998 has been modified by introducing the subject of the scale of the pay in place of post they have put him to disadvantage. We find that this issue has been decided by this Tribunal on 20.9.2002 while disposing of the OA 480/2001 filed by, wherein the matter has been examined in detail. Relevant portion of the decision in para 5 to 8 would deserve to be repeated, as it deals with the same issue:

"5. The applicant held the post of Deputy Director General in All India Radio at the time of his retirement on reaching the age of superannuation on 31.3.1979. The post of Deputy Director General, at that time, carried the pay scale of Rs. 2000-125-2250/- . The aforesaid pay scale was later upgraded to Rs. 2250-1225-2500/- and this upgradation became effective from 13.1.1984, i.e. after the applicant had already retired. The aforesaid pay scale of Rs. 2000-125-2250/- was replaced by the scale of Rs.4500-5700/- in accordance with the recommendations of the 4th CPC. Subsequently, the aforesaid pay scale has been replaced by the scale of Rs.14300-18300/- w.e.f. 1.1.1996 on the basis of the recommendations of the 5th CPC. Thus, the pay scale of Rs.2000-125-2250/- which the applicant held at the time of his retirement, has been ultimately

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replaced by the 5th CPC by the scale of Rs.14300 - 18300/- by relying on the aforesaid clarification o 11.5.2001. It is not in doubt that by interpreting the President's decision contained in the extract reproduced in paragraph 1 above literally the applicant's pension should instead have been fixed at Rs.9200 PM as the post of DDG has been assigned of the pay grade of Rs.18400-22400.

6. The learned counsel appearing on behalf of the applicant submitted that the clarification issued vide DOP&PW's OM dated 11.5.2001 is bad in law inasmuch it has been issued without obtaining appropriate approvals. The OM dated 17.12.1998 was issued, according to her, after obtaining the approval of the President which would imply that the proposal contained therein had been approved by the Union cabinet. The clarificatory OM dated 11.5.2001 is, on the other hand, shown to have been issued by DOP&PW with the approval of the Ministry of Finance. Thus, having not been issued with the approval of Union Cabinet, the aforesaid OM cannot be relied upon for fixing the applicant's pension.

7. We have carefully perused the departmental file No.45/86/97-P&PW(A)/Pt. II dealing with the subject of "Implementation of decision of V Pay Commission on pensionary benefits to Central Government Employees", and find that the clarificatory OM in question has been issued after a good deal of consideration at various levels in the Departments of P&PW and Expenditure and only after receiving the approval of the finance minister as well as the Prime Minister. A conscious decision was taken on the file to issue the aforesaid clarificatory OM without bothering the Union Cabinet in the matter as the said OM was proposed to be issued only in order to clarify the position so as to remove an ambiguity.

8. The (Transaction of Business) Rules, 1961 provide for Departure from Rules in the following terms:

"12. Departure from Rules - The Prime minister may, in any case or classes of cases permit or condone a departure from these rules, to the extent he deems necessary."

Prime Minister's approval has been obtained after making it clear on the file that it was not considered necessary to bother the Union Cabinet. The Prime Minister having exercised the authority vested in him in accordance with the aforesaid rule, it cannot be argued that the clarificatory OM in question has been issued without obtaining appropriate approval. That being the case there is no merit left in the applicant's prayer . In paragraph 4.7 of the respondent's reply, it has been shown how the

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applicant's pension has been fixed at Rs.6392/- PM. The calculation has been correctly made by relying on the replacement sale (5th CPC) of Rs. 14300 - 18300/-. The others such as S/Shri M N Roy Choudhary and M S Batra, both of whom retired as Deputy Director Generals and were junior to the applicant have been correctly granted pension in the pay scale of Rs.18400 - 22400/- as both of them had survived in acting service after 13.1.1984 and had accordingly been placed in the higher pay scale of Rs.2250-2500/- (3rd CPC) before they retired on reaching the age of superannuation. In their case also, the respondents have relied on the aforesaid clarificatory OM of 11.5.2001. The clarificatory OM in question clearly emphasises the revised (5th CPC) scale of pay of the pension given in replacement of the pay scale held by him at the time of his retirement. We are accordingly unable to find any fault with the fixation of applicant's pension at Rs.6392/- PM w.e.f. 1.1.1996. The decision rendered by this Tribunal (Bangalore Bench) in OA Nos.1014 & 1028 of 2001 on 28.1.2002 (H.L. Nagaraja & Another Versus Union of India & Others) on which reliance has been placed on behalf of the applicant will not assist him either. It is seen that the aforesaid decision is distinguished, *inter alia*, for the reason that the matter had come up before the Bangalore Bench before the clarificatory OM dated 11.5.2001 had been issued. On a perusal of the aforesaid judgement, we find that the Tribunal has not discussed the aforesaid clarificatory OM in the body of the order."

8. Identical situation obtains here, ^{we} have also had the advantage of perusing the relevant file No. 45/3/99/P&PW, wherein the issue has been dealt with and orders have been obtained from the competent authority , leading to the issue of clarification No. 45/86/97-P&PW (A) (Pt) dated 11.5.2001. ^{We} are fully convinced therefore that the following clarification has been issued properly and it still stands. This would means that pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum of the corresponding scale as on 1.1.96 of the scale of pay held by the pensioner at the time of superannuation/retirement (emphasis supplied). There cannot be any quarrel with the

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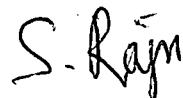
above position. And the applicant's case would have to be governed by this OM as it has correctly modified the earlier OM of 17.12.98.

9. The applicant was drawing his pay at the maximum in the pay scale of Rs.. 1300-1700/- at the time of his retirement and the replacement scale for the same was Rs. 3000 - 5000/- from 1.1.86 and 10000-15200/- from 1.1.96. Upgradation in the replacement scale of pay came subsequent to his retirement when the post of Dy. Director which he was holding came to be re-designated as Joint Director before it was abolished. The said upgraded post was granted the replacement scale of Rs. 3700 - 5000/- from 1.1.86 and the same became from 1.1.96 Rs. 12000 - 16500/- . The applicant could not therefore have asked for the fixation of pension keeping in mind the scale of Rs. 12000 - 16500/- as claimed by him and his pension could have to be worked only with reference to the grade of Rs.10000 - 15200/-. This cannot be assailed in law. However, we observe that the pay of the applicant has been fixed at Rs.4601/-, which is less than 50% of the minimum of the scale of Rs.10,000 - 15,200. The expression used in the clarificatory OM is that the pension shall not be less than 50% of the minimum of the corresponding scale as on 1.1.96 of the scale held by the pensioner at the time of superannuation/retirement and not the pay corresponding to the pay he was drawing. Therefore, the minimum of the scale of pay in the replacement scale being Rs.10,000/- the pension could not have been less than 5,000/- from 1.1.96, in terms of Govt's order dated 11.5.2001. Nothing has been brought on record as to how this amount has been modified to Rs.4601/- as the same does not have any sanction of the law . It has to be modified. justice.

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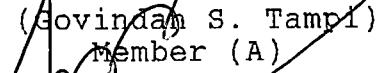
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10. In the above view of the matter the application fails substantially but succeeds marginally and is accordingly disposed of. The plea by the applicant to quash and set aside the respondent's letter dated 10.11.2000 enclosing Ministry's letter dated 20.10.2000 as well as Ministry's clarification dated 11.5.2001 are rejected as having no merit. The respondent's action in basing ~~up~~ the pay scale of Rs.10,000 - 15,200/- for working out pension of the applicant is upheld with the rider that the pension would have to be fixed at Rs. 5,000/- which represents the 50%, the minimum of the scale of Rs. 10,000 - 15,200/-, w.e.f. 1.1.96. The applicant shall be entitled for the arrears of pension worked out accordingly. The amount, which becomes so due shall be sanctioned and disbursed to the applicant within 3 months on receipt of this order. No costs.



(Shanker Raju)
Member (J)

Patwal/



(Govindam S. Tampli)
Member (A)