

Central Administrative Tribunal, Principal Bench
New Delhi

O.A. No.2778/2001

(8)

This the 1st day of August, 2002

Hon'ble Mr.Kulidip Singh, Member (J)

C.P. Saxena
2, Old Survey Road
DehraDun.
(Applicant in person)

- Applicant

Union of India through:
Director General of Audit,
Defence Services, L-II Block,
Brassey Avenue.
New Delhi.
(By Advocate : Shri M.K. Gupta)

- Respondent

Versus

ORDER (ORAL)

Hon'ble Mr. Kulidip Singh, Member (J)

Applicant has filed this OA whereby he is assailing the order dated 6.9.2001 (Annexure A1) vide which his representation has been rejected regarding payment of Dearness Allowance on pension after retirement consequent upon permanent absorption in Central Pulp and Paper Research Institute.

The relevant facts in brief as alleged by the applicant are that he was earlier joined the Audit Department, Defence Services on 3.4.1954 and was permanently absorbed in the Central Pulp and Paper Research Institute (an autonomous body) w.e.f. 26.11.1985. Since the applicant was eligible for pension at the time of his absorption, the pension of the applicant was calculated and the applicant opted for receiving a lump sum amount in lieu of pension applicable at the time of his absorption.

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2. The applicant submits that at the time of receiving a lump sum amount, the terms and conditions did not specify that he would not be paid D.A. as admissible to him, if he opted for receiving a lump sum amount in lieu of pension, else the position would have been otherwise.

3. The applicant further alleged that D.A. is a separate element altogether which is related to increased cost of leaving and is being revised as a policy matter every half year.

4. It is also stated by the applicant that in accordance with the extant rules the Government servants who commute 1/3rd of their pension on retirement are being paid the residual pension and D.A. calculated on the basis of his total pension and not on the basis of the residual pension. This would go to show that both pension and D.A. are separate elements and irrespective of the fact whether a Government servant commutes his pension or not, he is entitled for the D.A. calculated as per his total pension. Thus, the orders passed by the respondents rejecting his representation for grant of D.A. is illegal, arbitrary and the same is liable to be quashed and the respondents should be directed to issue necessary orders for the payment of D.A. on his pension as admissible from time to time w.e.f. 1.1.1989 when he retired from Central Pulp and Paper Research Institute and should also be directed to make the payment of arrears of D.A. early together with interest @ 18% per annum.

5. Respondent is contesting the OA and has stated that the applicant's representation dated 17.2.2000 was examined

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with reference to Rules on the subject and the applicant was informed on 6.9.2001 that he was entitled to get relief on commuted pension on restoration of commuted pension w.e.f.2.11.2002. It is further stated that since the applicant himself opted for a lump sum payment in lieu of pension so he is not eligible for D.A.. The respondent has also relied upon the judgement of the Hon'ble Supreme Court in the case of Des Raj Bhatnagar Vs. UOI (1991) 2 SCC 266 wherein it has been held that Central Government employees opting for permanent absorption in PSU and availing of benefit of commutation of full pension and getting a lump-sum amount constitute a class different from Central Government pensioners. Thus, they are not entitled for D.A. till the time their pension is restored. The respondent has also submitted that since pension itself not payable so there was no question of payment of D.A. relief.

6. The applicant filed his rejoinder therein he has reiterated his claim as made out in the OA.

7. I have heard learned counsel for the respondent and the applicant, who is present in person.

8. The short question involved in this case whether the Govt. employee on his absorption in PSU and opts for a lump sum amount in lieu of pension is entitled to D.A. or not.

9. Counsel for the respondent with regard to this issue has referred to Annexure R/1, which deals with grant of dearness allowance relief and interim relief to Pensioners and to those in receipt of family pension wherein it has been

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specifically mentioned that A Government servant, who on permanent absorption in an organisation referred to 2 (ii) of the above rules, elects the alternative of receiving the retirement gratuity and lump sum amount in lieu of pension, will not be eligible to receive any relief even after he has ceased to be in the employment of the organization concerned. Counsel for the respondent further referred to Annexure R/2, which is a letter written by Pay & Accounts Officer (Defence Audit), Office of the Joint Director of Audit Defence Services, C.C. Meerut to the A.G. (A&E)-II, U.P, Allahabad., whereby the Pension Payment Order was issued in favour of the applicant for arranging the payment of his pension etc. and it has been specifically mentioned that no relief on pension to Central Govt. pensioner who has been permanently absorbed in an undertaking/autonomous body. On the basis of these documents, learned counsel for the respondent submitted that the applicant is not entitled for D.A.

10. Learned counsel for the respondent has also referred to O.M. dated 12.7.2000 (Annexure R/4), which was issued by the Govt. of India, Ministry of Personnel, Public Grievances & Pension, Department of Pension and Pensioner's Welfare, for grant of pension, wherein it has also been mentioned that such type of employees like applicant are entitled to Dearness relief of full pension only from the date of restoration of 1/3 commutated pension. In the present case, the same is yet to be restored i.e. w.e.f. 2.11.2002 and this OM issued in accordance with the judgement of the Supreme Court dated 15.12.1995 and another judgement dated 26.4.2000.

11. In my view, since the aforesaid OM which entitled the employees like applicant dearness allowance only on

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restoration of 1/3 commuted pension and the same is also issued in accordance with the Supreme Court's judgement, the claim of the applicant i.e. entitlement of D.A. despite the fact that he has received a lump sum in lieu of pension at the time of his absorption in PUS, has no merit. The applicant can have the benefit of D.A. only after his 1/3 commuted pension is restored and not prior to that. The grounds taken by the applicant in the OA have no merit. It cannot be said that D.A. is a separate one even for those employees who have received a lump sum amount at the time of leaving the Govt. service and getting absorbed in PSU i.e. Autonomous Body.

12. Having regard to the above, I find that the present OA is without any merit and the same is accordingly dismissed. No costs.



(Kuldip Singh)
Member (J)

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