CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(5)

OA No.3377/2001
WITH
OA No.2913/2001
OA No.2914/2001
OA No.2916/2001
OA No.3378/2001

Thursday, this the 06th day of March, 2002

HON'BLE MR. S.A.T. RIZVI, MEMBER (ADMN)

A. Mitra and Ors. ..Applicants
(By Advocate: Shri R. Doraaiswami and
Shri Sant Singh)

Versus

Union of India & Anr. ...Respondents
(By Advocate: Shri Rajinder Nischal)

Corum:-

HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

1. To be referred to the reporter or not? YES

2. Whether it needs to be circulated to Benches of the Tribunal? NO

(S.A.T. RIZVI)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 3377/2001
WITH
OA 2913/2001
OA 2914/2001
OA 2916/2001
OA 3378/2001

Wednesday, this the 6th day of March, 2002

Hon'ble Shri S.A.T. Rizvi, Member (A)

OA-3377/2001

A. Mitra s/o Late Shri M.Mitra
aged about 70 years
R/O B-10/C, Gangotri,
Alaknanda, New Delhi-19
Last worked as Addl. Director General
(Inspection) in the Directorate
General of Supplies & Disposals,
New Delhi

..Applicant

OA-2913/2001

P.C.Kapur, s/o Late Shri Mangal Sain
aged about 84 years
R/O S-410, Greater Kailash-I
New Delhi-48.

Last worked as Dy. Director General
(Inspection) in the Directorate
General of Supplies & Disposals,
New Delhi

..Applicant

OA-2914/2001

Smt. Vimla Vohra w/o Late Sh. S.N.Vohra
Aged 73 years (expired while in service as
Deputy Director General (Inspection)
R/O 144, Mandakini Enclave
Alaknanda
New Delhi-19.

..Applicant

OA-2916/2001

Smt. Asha Chhabra w/o Late Shri J.L.Chhabra
r/o 301, Nilgiri Apartments,
Alaknanda
Delhi-19.

(Sh. J.L.Chhabra last worked as Dy. Director
General (Inspection) in the Directorate
General of Supplies & Disposals,
New Delhi before his retirement on 30.9.1989
and he expired on 16.2.2001)

..Applicant

OA-3378/2001

M.T. Kanse s/o Late Shri T.R.Kanse
aged about 67 years
R/O 12/129, Charkop
Ajinkyatara Society, Sector-I
Kandiwali (W)
Mumbai - 400 067
Last worked as Addl. Director General
(Inspection) in the Directorate
General of Supplies & Disposals,
New Delhi

..Applicant

(Advocates: Shri R.Doraiswami & Shri Sant Singh in all the OAs)

Versus

1. Union of India through
Director General of Supplies & Disposals
Jeewan Tara Building
5, Sansad Marg, New Delhi-1.

2. Chief Controller of Accounts
Department of Supply
Akbar Road Hutments
New Delhi-1.

..Respoondents in all OAs

(By Advocate: Shri Rajinder Nischal in all the OAs)

O R D E R (ORAL)

All these OAs raise similar issues of law and fact and are, therefore, taken up together for disposal by this common order.

2. The recommendations made by the 5th Central Pay Commission in respect of the pensioners have been enforced, to the extent accepted by the Government, by OM dated 27.10.1997. However, later on 17.12.1998, another OM was issued by the Department of Pension & Pensioners' Welfare (DPPW) by which the fixation of pension was liberalised in the following terms:-

"The President is now pleased to decide that w.e.f. 1.1.1996, pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the

revised scale of pay introduced w.e.f. 1.1.1996 of the post last held by the pensioner."

3. In pursuance of the aforesaid measure of liberalisation, the respondents proceeded to fix the pension of the applicants in these OAs as follows:-

OA No.	Name of applicant	Amt of Pension fixed	Amt of family fixed
3377/01	A. Mitra	Rs.10,861/-	Rs.6,720/-
2913/01	P.C. Kapur	Rs. 9,200/-	Rs.5.520/-
2914/01	Smt. Vimla Vohra	Rs. 5,520/-	Rs.4,290/-
2916/01	Smt.Asha Chhabra	Rs. 5,520/-	Rs.4,290/-
3378/01	M.T. Kanse	Rs.10,352/-	Rs.8,503/-

4. The applicants have been paid pension at the rates indicated above for quite some time. On 11.5.2001, the aforesaid liberalised pension scheme has been modified by issuing a clarificatory Memorandum which provides as under:

> "In the course of implementation of the above order, clarifications have been sought by Ministries/Departments of Government of India about the actual connotation of the "post last held" by the pensioner at the time of his/her superannuation, the second sentence of O.M. dated 17.12.1998, i.e. "pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay w.e.f. 1.1.96 of the post last held by the pensioner", shall mean 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."

5. In pursuance of the aforesaid clarificatory

Office Memorandum, the amounts of pension/family pension payable to the applicants have been revised as under:

OA No.	Name of applicant	Amt of Pension fixed	Amt of family fixed
3377/01	A. Mitra	Rs. 8,922/-	Rs.5,520/-
2913/01	P.C. Kapur	Rs. 7,150/-	Rs.4,290/-
2914/01	Smt. Vimla Vohra	Rs. 4,290/-	Rs.4,290/-
2916/01	Smt.Asha Chhabra	Rs. 4,290/-	Rs.4,290/-
3378/01	M.T. Kanse	Rs. 8,503/-	Rs.5,520/-

Orders have also been issued for recovering the excess amounts already paid. This has been done by common orders issued in respect of these applicants on 11.10.2001 and 15.10.2001 respectively. Since large scale recoveries were involved, the operation of the aforesaid order has been stayed in all cases on various dates.

6. The learned counsel appearing on behalf of the applicants has questioned the legality of the clarificatory Office Memorandum dated 11.5.2001 even though the same has not been challenged in any of the OAs. The issue of prospectivity has also been raised in relation to the same Office Memorandum. Whether the aforesaid Office Memorandum should be regarded as an entirely new/fresh order has also been debated. The learned counsel has, during the course of arguments, also drawn my attention to the liberal consideration shown to the pre-1986 retirees and has, in view of the same, argued that a similar treatment is contemplated in respect of post-1986 retirees, and if one has regard to

the aspect of liberalisation the applicants herein should be paid pension/family pension in accordance with the letter of the provision made in the Office Memorandum dated 17.12.1988, the relevant portion of which has been reproduced in paragraph 2 above. The learned counsel has also sought to argue that the treatment given to the ADGs (OA No. 3377/2001 and OA No.3378/2001) in view of the aforesaid clarificatory Office Memorandum dated 11.5.2001 will have the effect of placing them on par with the DDGs and this will amount to giving of equal treatment to unequals and will accordingly be violative of Articles 14 and 16 on the Constitution.

7. I will now go into the various questions raised one after the other.

8. It appears that the recommendations made by the 4th Central Pay Commission envisaged a review of cadres of DDGs and ADGs and in pursuance of the recommendations made by the same Commission the pay scales applicable to the DDGs and ADGs were to be upgraded subject to fulfilment of certain conditions and further subject to the Recruitment Rules to be framed for placing the incumbents in higher grades. Insofar as the DDGs and ADGs are concerned, the relevant exercise began sometime in 1991 and in due course orders were issued only on 31.12.1993 (Annexure A-7(II) - OA No. 2913/2001). The following provision made therein is relevant for the purpose of adjudication in these OAs:-

"2(a) That upgradation as well as creation of the posts shall be effective from the date (s) of the post(s) is/are filled up on regular basis following due process of selection based on eligibility conditions stipulated in the Recruitment Rules to be framed and notified in the Gazette of India; and

(b) that officers holding the post(s) which is/are to be upgraded shall continue to be in his/their existing post and grade till he/they are appointed on regular basis to the upgraded post(s) after due process of selection based on eligibility conditions stipulated in the Recruitment Rules to be framed and notified in the Gazette of India."

It had thus become clear to all concerned that until placed in the higher grade on a regular basis, the DDGs as well as ADGs were supposed to continue in their existing grades. Those who retired on reaching the age of superannuation or died before being placed in the higher grade on a regular basis in accordance with the aforesaid order dated 31.12.1993 were to be treated, by necessary implication, differently from those who were upgraded on a regular basis in pursuance of the aforesaid order. There could be no manner of doubt about this position.

9. One of the applicants, namely, Shri M.T. Kanse (OA No.3378/2001) who retired on 31.7.1993, i.e., before 31.12.1993 had approached this Tribunal through OA No. 563/1993 for securing upgradation to the pay scale of Rs.7300-7600 on the ground that as a result of cadre review and 4th CPC's recommendations, the pay scale attached to the post of ADG had been upgraded from Rs.5900-6700 to Rs.7300-7600 in 1991. From the material placed on record it appears, however, that the aforesaid

recommendation/decision for upgradation finally became enforceable only in pursuance of the order dated 31.12.1993. Shri Kanse, therefore, did not succeed and continued to work in the pay grade of Rs.5900-6700.

10. In pursuance of the 5th CPC's recommendations, the post of the ADG was placed in the pay scale of Rs.22400-24500 w.e.f. 1.1.1996. Similarly, the post of DDG was placed in the pay scale of Rs.18,400-22,400 w.e.f. the same date (1.1.1996). Since the DDGs and the ADGs working respectively in the pay grades of Rs.4,500-5700 and 5,900-6700 during the currency of the 4th CPC's recommendations were given the opportunity to secure pay upgradation to Rs.5,900-6700 and Rs.7300-7600 respectively in pursuance of the order dated 31.12.1993, and since those not able to achieve the aforesaid higher grades were to continue in the lower grades of Rs.4500-5700 and 5900-6700 respectively, it was clear that the revised pay scale of Rs.18400-22400 made applicable to the post of DDG w.e.f. 1.1.1996 was to be given only to those who had succeed in securing pay upgradation to the 4th CPC's pay scale of Rs.5900-6700 in pursuance of the order dated 31.12.1993. Like-wise, only those ADGs were to be placed in the revised pay grade of Rs.22,400-24,500 w.e.f. 1.1.1996 as had succeeded in securing pay upgradation to the higher scale of Rs.7300-7600 during the currency of the 4th CPC's recommendations in pursuance of the same order dated 31.12.1993.

11. Shri P.C. Kapoor, DDG, (applicant in OA No.2913/2001) retired on 28.2.1975. Shri S.N. Vohra, DDG, husband of the applicant in OA No. 2914/2001 died while in service on 17.7.1985. Similarly, Shri J.L. Chhabra, DDG, husband of the applicant in OA No. 2916/2001 retired on 30.9.1989 (died on 16.2.2001). Clearly the aforesaid DDGs died or retired much before they could secure pay upgradation to the higher pay scale of Rs.5900-6700 in pursuance of the order dated 31.12.1993. The first two DDGs who died or retired before 1.1.1986 received a liberal treatment and were notionally placed in the pay grade of Rs.4500-5700 (4th CPC). The third DDG who retired after 1.1.1986 was in any case placed in the aforesaid pay grade of Rs.4,500-5700. As stated, none of them could have been upgraded before retirement/death to the pay grade of Rs.5900-6700. Of the two ADGs, one (OA No.3377/2001) retired on 31.10.1989. This was obviously well before the aforesaid order dated 31.12.1993 came into force. He could not, therefore, be placed in the higher grade of Rs.7300-7600. The other ADG, namely, Shri Kanse also failed to secure the aforesaid higher grade of Rs.7300-7600 despite an attempt made by him by approaching this Tribunal. In short, therefore, the three DDGs among the applicants (or their spouses) either worked in the pay scale of Rs.4,500-5700 or were notionally deemed to have worked in that pay scale during the currency of the 4th CPC. Similarly, the ADGs, as stated, continued to work in the pay scale of Rs.5900-6700.

12. In the circumstances, insofar as the DDGs are concerned, the revised pay scale of Rs.18400-22400 made effective from 1.1.1996 could be given only to those DDGs who had been placed in the pay scale of Rs.5900-6700 in pursuance of the order dated 31.12.1993 and by the same token only those ADGs could be offered the revised pay scale of Rs.22400-24500 made effective from 1.1.1996 as had been placed during the currency of the 4th CPC's recommendations in the pay scale of Rs.7300-7600. I have already noticed that neither the DDGs among the applicants (nor their spouses) nor the ADGs among them could be placed in the aforesaid higher scales of Rs.5900-6700 and Rs.7300-7600 respectively. Thus, for the purpose of computing pension/family pension the claims of applicant DDGs could not be considered with reference to the 5th CPC's pay scale of Rs.18,400-22,400/-. For the same reason, for computing the pension/family pension of applicant ADGs also, their claims cannot be determined with reference to the pay scale of Rs.22,400-24,500/-.

13. The learned counsel appearing on behalf of the respondents informed that the claims of DDGs have been considered with reference to the 5th CPC's pay scale of Rs.14,300-18,300/- which corresponds to the 4th CPC's pay scale of Rs.4,500-5,700/- and similarly, the claims of the ADGs have been considered with reference to the 5th CPC's pay scale of Rs.18,400-22.400/- which corresponds to the 4th CPC's pay scale of Rs.5,900-6,700/-. Thus, it will be incorrect to say, according to him, that following the enforcement of the

5th CPC's recommendations, the distinction between the DDGs and the ADGs insofar as pension/family pension is concerned, has been allowed to be wiped out. The disparity in terms of pension/family pension remains and thus the plea that the provisions of Articles 14 and 16 of the Constitution were attracted would be seen to be untenable.

14. From the discussions contained in the above paragraphs, it is clearly seen that insofar as the payment of pension/family pension is concerned, the matter needed to be clarified with reference to the decision which had already been taken during the currency of the 4th CPC's recommendations. The decision then taken, embodied as it was in the order dated 31.12.1993, was a competent decision and there can be no dispute about this. A clarification issued in terms of a competent decision already taken could always be issued without seeking the approval of the competent authority/President once again. The Office Memorandum dated 17.12.1998 so heavy relied upon by the learned counsel for the applicants was, without any dispute, the outcome of a competent/Presidential decision. A clarification issued on the basis of a competent decision earlier taken cannot be questioned on the ground that the same has not had the approval of the President. There is, in my judgement, no need for a competent decision to be referred back to the competent authority once again before issuing a clarification. The validity of the clarificatory Office Memorandum dated 11.5.2001 cannot, therefore, be questioned. The

corresponding plea raised on behalf of the applicants is thus rejected.

15. The question of prospectivity can arise only in the context of a new/fresh order. Since the Office Memorandum dated 11.5.2001 is a clarificatory Office Memorandum, it can validly take effect from a back date, i.e., from the date of enforcement of the Office Memorandum dated 17.12.1998 which it seeks to clarify. The issue of prospectivity is answered accordingly.

16. The argument advanced on behalf of the applicants that the 5th CPC's recommendations deliberately sought to give a liberal treatment to all pensioners and, therefore, the pension/family pension of DDGs and ADGs should be fixed with reference to 5th CPC's pay scale of Rs.18,400-22,400/- and Rs.22,400-24,500/- respectively cannot hold good in view of what has been discussed and held in the preceding paragraphs. Where a clear and competent decision has been taken as in the order dated 31.12.1993, the respondents can have no option in the matter. The pensions/family pensions of DDGs have, therefore, been correctly computed, on revision, with reference to the 5th CPC's pay scale of Rs.14,400-18,300/-. For the same reason, the pension/family pension of the ADGs have also been correctly computed, on revision, with reference to the 5th CPC's pay scale of Rs.18,400-22400.

17. For all the reasons mentioned in the preceding paragraphs, the impugned letters dated 11.10.2001 and

15.10.2001 issued by the DGS&D in pursuance of the clarificatory Office Memorandum dated 11.5.2001 have been correctly and validly issued. The OAs, therefore, fail and deserve to be dismissed.

18. The learned counsel appearing on behalf of the applicants submits that the applicants have already received payments of pension/family pension on the basis of the higher pay grades of Rs.18,400-22,400/- and Rs. 22,400-24,500/- respectively. They are retired people. Two of them are widows of retired officers. It will cause undue hardship to them if they are at this stage called upon to refund whatever has already been received by them. The Hon'ble Supreme Court has, in a similar case, according to him, granted relief to the pensioners on the ground that enhanced payments were made for no fault of the pensioners. It was in the case of Shyam Babu Verms & Others vs. Union of India & Others (1994 SCCs (L&S) 683) that the Court had held that since higher pay scales were erroneously given to the pensioners and they had received payments arising from the higher pay scales for no fault of theirs it would be just and proper not to recovery any excess amount already paid to them. This is what the Supreme Court has held in the aforesaid case:-

> "11. Although we have held that the petitioners were entitled only to the pay scale of Rs.330-4880 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is

> being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

In my judgement, the ratio of the aforesaid judgement squarely applies in the present situation. The respondents are, therefore, directed not to recover from any of the applicants the amount of pension/family pension already paid to them in excess of what is found due to them as a result of the clarificatory Office Memorandum dated 11.5.2001.

19. The O.A. is disposed of in the aforestated terms. There shall be no order as to costs.

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

/pkr/

Court Officer
Central Administrative Tribunal
Principal Bench, New Delhi
Faridkot House,
Copernicus Marg,
New Delhi 110001