

Original Application No. 3125 of 2001

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New Delhi, this the 7th day of November, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Sh. P. D. Vaidya
Retd. Technical Adviser (FMR)
S/o Late Shri D.N. Vaidya
R/o 8-10 Sahyadri
9A, I.P. Extension, Patparganj,
Delhi-110 092.

..Applicant

(By Advocate: Shri Kumar Parimal)

Versus

1. Union of India
through the Secretary,
Department of Women and Child Development,
Shastri Bhawan,
New Delhi.
2. Secretary,
Department of Pension and Pensioners' Welfare,
Lok Nayak Bhawan,
New Delhi-110 003.

..Respondents

By Advocate: Shri M.M. Sudan, Sr. Counsel.

ORDER (ORAL)

The applicant has filed this OA seeking the quashing of the Office Memorandum dated 21.12.2000 whereby the request of the applicant for revision of his pension/family pension for the post of Technical Adviser in the Department of Women and Child Development under the Ministry of HRD had been rejected. The applicant has further sought direction to the respondents to refix the pension/family pension w.e.f. 1.1.1996 at 50% and 30% respectively of the minimum of revised pay scale of Rs.14300-18300/- introduced with effect from 1.1.1996 for the post of Technical Adviser.

2. The facts in brief are that the applicant while at the time of superannuation, i.e., 30.11.1995 was working as Technical Adviser in the pay scale of



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Rs.3700-5000 and his pension was fixed on the basis of said pay scale. The 5th Pay Commission granted replacement of pay scale of Rs.12000-16500 to the scale of Rs.3700-5000 w.e.f. 1.1.1996 and the basic pay of the applicant at the time of retirement was fixed accordingly.

3. However, there were certain demands for the upgradation of pay scales of various technical posts in the Food and Nutrition Board and after the 5th CPC, the respondents upgraded the pay scale of the same post of Technical Adviser (Nutrition) to Rs.4500-5700/- which was revised by the scale of Rs.14300-18300/.

4. Applicant further pleads that there were large number of representations made by pensioners association/individuals and the Government had come out with an OM dated 17.12.1998 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners' Welfare where it was held as under:-

"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".

5. So the applicant now pleads that on the basis of this OM dated 17.12.1998 the applicant ought to have been granted pay in the pay scale of Rs.14300-18300 because it is the pay of the post which was being held by the applicant at the time of his retirement.

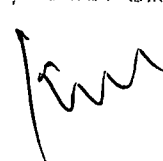


6. The respondents contested the OA and pleaded that the Government had not accepted the concept of one rank one pension. Pay Commission had recommended complete parity as on 1.1.1986 and modified parity thereafter.

7. It is further pleaded that post is always related to pay scale and for the stepping up of consolidated pension, the relevant scale would be the corresponding scale.

8. It was also pleaded that if comparison is not made on the basis of scale to scale but post and the post has got upgraded in the intervening period, this will in effect mean upgrading the post from a back date and revising the pension of the Government servant to a post and scale of pay that never existed on the date when the retired employee had retired. A clarification was also issued by Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners' Welfare with regard to their OM dated 17.12.1998 wherein it was prescribed as under:-

"In the course of implementation of the above order, clarifications had 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 OM dated 17.12.1998, i.e., "pension of all pensioners irrespective of their date from retirement shall not be less than 50% of the minimum pay in the revised scale of pay w.e.f. 1.1.1996 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 1.1.1996, of the scale of pay held by the pensioner at the time of superannuation/retirement".



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9. When the respondents relied upon this clarification dated 11.5.2001, the applicant filed an application for amendment of the OA wherein he has challenged the validity of OM dated 11.5.2001.

10. I have heard the learned counsel for the parties and gone through the record of the case and also on the pleas taken by the applicant in the application for amendment challenging the validity of OM dated 11.5.2001.


11. As regards the position of the applicant is concerned, there is no dispute about the facts that the applicant at the time of superannuation was working in the pay scale of Rs.3700-5000 which was revised to the pay scale of Rs.12000-16500. So now the question arises whether the applicant is entitled to the benefit of upgradation and then consequential fixation of his pension in the revised/upgraded scale of Rs.4500-5700 which has been replaced by the pay scale of Rs.14300-18300. According to the OM dated 11.5.2001 which is a clarification to the OM dated 17.12.1998 it has been made clear that the 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 held by the pensioner at the time of superannuation/retirement. Thus there is no dispute to the fact that the pension of the applicant has been rightly fixed in accordance with the OM dated 17.12.1998 which has been further clarified by the OM

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dated 11.5.2001.

12. The next question arises whether the clarification issued by the DOP&T on 11.5.2001 is ultra vires or invalid or whether it violates any of the provision of law or not. The counsel for the applicant submitted that it deals in a discriminatory manner to the pensioner. Prior to the report of the 5th Pay Commission as it does not allow their pay scale to be upgraded and thus it is violation of Articles 14 and 16 of the Constitution of India. In this regard the learned counsel for the applicant has also referred to a judgment of the Apex Court in V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another reported in 1992 (8) SCC 30. In the said case the scheme of retirement was modified to the extent that when the applicant had resigned from service he had not completed the qualifying service of 25 year. Subsequently the scheme was modified and the qualifying service was brought down to 20 years. The applicant at the time of his resignation has completed 20 years and it in that context that the Hon'ble Supreme Court has observed that if the Scheme of Pension has been amended to the extent that it covers the new class of pensioners, the earlier retirees who were not held eligible cannot get the benefit of the amendment.

13. The counsel for the applicant has also referred to another judgment in the case of D.S. Nakara



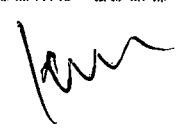
and Others Vs. U.O.I. reported in 1983 (1) SCC 305 wherein it was held as follows:-

"labour and Services - Pension - Revision of non-contributory retirement pension scheme - All pensioners have equal right to receive the benefits of liberalised pension scheme - Pensioners form a class as a whole and cannot be micro-classified by an arbitrary, unprincipled and unreasonable eligibility criterion for the purpose of grant of revised pension - Criterion of date of enforcement of the revised scheme entitling benefit of the revision of those retiring after that date while depriving the benefits of those retiring prior to that date, held, violative of Article 14 - Such unconstitutional part can be severed from the otherwise constitutional provision by reading down the provision - Omitting the offending criterion will not make the scheme, having financial implications, retrospective in operation - The specified date is to be retained only for the purpose of recomputation of pension of those retired earlier to it - No arrears can be claimed by such pensioners - Government of India Notifications No.F-19(3)-EV-79, dated March 31, 1979 and No.B-40725/AG/PS4-C/1816/AD (Pension)/Services, dated September 28, 1979 - Central Services (Pension) Rules, 1972, Rule 34 - Constitution of India, Article 14.

14. This judgment has been pressed to challenge the OM dated 11.5.2001 on the ground that the earlier order dated 17.12.1998 was issued by the President of India whereas the OM dated 11.5.2001 has been issued by the Additional Secretary (Pension).

15. I have given my thoughtful consideration to both the judgments.

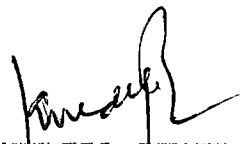
16. As far the judgments with regard to the amendment in the pension scheme is concerned, the same brings down the qualifying service making an employee eligible for pension but I find that the same does not



apply to the present facts of the case. In the present case the scheme itself has not been modified only states that a person who was drawing particular salary on the revision of the pay scales would be entitled to the minimum of the 50% of the start of the replacement scale and in this case the applicant was in the scale of Rs.3700-5000 and was given the replacement scale of Rs.12000-16500 so he was entitled to calculation of his pension at the minimum of the 50% of the replacement scale of Rs.3700-5000. In this case since the pay scale of the post have been upgraded from a subsequent date and the applicant was not holding the post on the date of upgradation of the post, that benefit cannot be allowed to the applicant, as pleaded by the respondents it would definitely mean that the upgradation of post will be from a back date than intended, hence I am of the view that the applicant has no case.

17. As far the validity of the OM dated 11.5.2001 is concerned, I find that the OMs dated 17.12.1998 as well as 11.5.2001 has been issued by the same authority. OM dated 11.5.2001 is only a clarification of the earlier OM and it cannot be said that same is not in accordance with the statutory provisions and administrative instructions.

18. In view of the above, I find that the OA does not call for any interference and the same is dismissed. No costs.


(KULDEEP SINGH)
MEMBER (JUDL)

/Rakesh