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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 3150/2001

New Delhi, this the 13th day of ~~December~~^{July}, 2002

Hon'ble Sh. Govindan S.Tampi, Member (A)

Mr. P.L.Kulshresth

S/o Sh. Badri Prashad Kulshresth

R/o E-472, Greater Kailash, Part-II

New Delhi - 110 048.

Retired as Section Officer -cum- Desk Officer
from the Ministry of Home Affairs, D/o
Official Language, New Delhi.

(By Advocate Ms. Shipra Ghosh)

...Applicant

Vs.

1. Union of India through Secretary
Ministry of Home Affairs, North Block
New Delhi.

2. The Additional Secretary
Govt. of India
Ministry of Personnel,
Public Grievances & Pension
Deptt. of Pension & Pensioner's Welfare
Lok Nayak Bhawan, Khan Market, New Delhi.

(By Advocate Sh. R.V.Sinha)

...Respondents

O R D E R

By Sh. Govindan S.Tampi,

Applicant in this case challenges the fixation of pension in his case ordered under Ministry of Home Affairs letter No.38014/83/98 Ad.T (C) dated 2-3/7/98 as well as Deptt. of Pension & Pensioners Welfare clarificating OM No.45/86/97 P&PW(A) dated 19.12.2000; directing the exclusion of Special Pay for pay fixation for pre-86 retirees.

2. Heard Ms. Shipra Ghose, learned counsel for the applicant and Shri R.V. Sinha, learned counsel for the respondents.

13

3. The applicant (Shri P.L. Kulshresth) who retired on superannuation on 28.02.1981, as Desk Officer in the Home Ministry, while drawing pay of Rs.1040/- (in the scale of Rs.650-1200/-)+ Special Pay of Rs.75/- per month was granted pension of Rs.660/-per month by the Pension Payment Order No.PN/PAO/SECTT/MHA/318 dated 25.05.1981. It was subsequently recalculated and fixed at Rs.677/- by the PAO basing the applicant's reckonable emoluments as Rs.1,354/- on 16.04.1987. This was after acceptance of IVth Central Pay Commission's recommendations after Vth CPC's recommendations were accepted Deptt. of Pension & Pensioners Welfare issued directions on 30.09.1997 followed by clarification on 10.02.1998 for fixing the pension of pre-86 retirees, by updating them notionally as on 01.01.1986 and consolidating thereon as on 01.01.1996. The position for pre-86 retirees would be the same as those serving on 01.01.1980 and therefore 'pay' under FR 9(21) and Rule 33 of CCS (Pension) Rule 72, included Special Pay, Personal Pay etc. It meant that for the purpose of pension, Rs.75/- the applicant was drawing as Special Pay was includible in pay. Respondents' action is seeking to exclude the computation. Respondents' action in seeking to exclude the Special Pay was clearly wrong. Applicants' pay fixation as the IVth Central Pay Commission Scale of Pay was only notional, Special Pay cannot be notionally fixed as on 01.01.1986 what was existing should not have been denied. Further, in terms of Rule 70 of CCS (Pension) Rules pensions already sanctioned shall not be revised to disadvantage of the pensioner, as confirmed in Delhi High Courts' decision in CWP No.2253/81 of

(14)

-3-

14.12.1981 and Tribunal's decision dated 11.04.2000 in OA No. 1022/1999. Further, reduction to a lower stage was a penalty which cannot be ordered without following the procedure for the same. Respondents action has discriminated pre-86 retirees vis-a-vis those serving on 01.01.1986 in that the latter are given the benefit of inclusion of Special Pay denied to those like the applicant, though they had also been brought to IVth Pay Commission, pay scale by notional fixation as on 01.01.1986. Similarly, discriminatory treatment between pre-86 pensioners and those retiring on 01.01.1986 or after in relation to stagnation increment, has been disallowed by the Tribunal on 21.07.2000, which disposing OA No.1554/1999, in line with the Hon'ble Supreme Court's decision in D.S. Nakara Vs. UOI (AIR 1983 SC 139). Respondents action also is the result of piecemeal interpretation of the instructions. Further, the clarification order dated 19.12.2000 was contradictory in nature and cannot be endorsed and has to be revoked. They also cannot act retrospectively in preference to earlier statutory orders. Tribunal has, while disposing of OA No.1022/1999 on 11.04.2000 held that deputation pay should be counted as a constituent of pay, while fixing the notional pay as on 01.01.1986 and then revising it as on 01.01.1996. Benefit of this reasoning should be extended to Special Pay in the case of pre-86 retirees, as the same is in ~~true~~ tune with pre-86 definition of pay and Special Pay. Respondents have not acted accordingly and issued the ordered/ excluding the Special Pay from the computation of pay for the purposes of pensions/ and had rejected the request of the applicant by their letter

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18

-4-

No.38014/83/98-ADT(c) dated 11.09.2001. Hence this OA. 4. As the two impugned orders are not based on correct premises and proper appreciation of facts and law and against the law laid down by the Tribunal they deserve to be set aside, pleads the applicant whose case is vigourously reiterated by Ms. Shipra Ghose, learned counsel.

5. In the reply filed on behalf of the respondents, it is pointed out that the applicant who retired as a Desk Officer in the pay scale of Rs.650-1200/- was granted pension of Rs.660/- per month working out his average emoluments at Rs.1,354/- on his filing the claim for revised pension w.e.f. 01.01.1996, the same was examined in the light of DP&PW's OM No.45/86/97-P&PW(A) Part-III dated 10.02.1998. Following the recommendation of the 4th Central Pay Commission, the scale of pay for the post stood revised to Rs.2000-3500/-+Rs.150/- w.e.f. 01.01.1986 and after 5th CPC it was Rs.6500-10500/-+Rs.300/- w.e.f. 01.01.1996 working out from the last pay drawn in pre 1986 scale of pay of Rs./ 650-1200/- and in terms of para 1 to 8 of the OM dt. 10-2-98, the revised pension was worked out at Rs. 4371/- p.m. w.e.f. 1-1-96. He was also advised that as the special pay of Rs. 75/- he was drawing as Desk Officer was not merged in the revised pay scale from 1-1-86, it was not taken in to account for fixation of notional pay on 1-1-1986 and the pay so fixed was treated as average emoluments for refixation of pension as on 1-1-1986 and for further consideration w.e.f. 1-1-1996. His representation dt. 8-5-2001 for refixation of pension while fixing

16

-5-

notional pay as on 1-1-1986 was taken up with Deptt. of Personnel and Training when the latter informed that in terms of para 7 (e) of the CCS (Revised Pay) Rules, 1986, the special pay could not be included for computation as the revised special pay was a separate component. Besides, Board of Arbitration in their reference No. CAR 1/2001 -BA (JCM)/21 dt. 30-1-2002 had declined to accept the demand of the staff side that special pay be treated as a part of pay for purposes of other allowance. On the same analogy, the applicant's case is bereft of any merit. According to the respondents the fixation of pay and pension has been done correctly and legally. The applicant's argument that by elimination of the element of special pay from the last pay drawn in the scale of Rs. 650-1200/-, his pension stood decreased was wrong as the notional fixation of his pay w.e.f. 1-1-1986, in terms of DP&PW's OM dt. 10-2-1998 entitled him to a revised pension of Rs. 4371/- p.m. Thus the applicant having not at all suffered any reduction or inconvenience, the OA has no basis and deserves to be rejected, according to Sh. R.V.Sinha.

6. Both in the rejoinder and during the oral submissions, the applicant reiterated his version that his case had not been dealt with correctly and that exclusion of the special pay from computation of pay for revised pension has affected him materially and deserved to be set aright.

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12



-6-

7. I have carefully considered the rival contentions and perused the written submission filed on behalf of the applicant. The applicant, a pre-86 retiree, had at the time of his retirement, got his pension fixed, working out his pay including therein the component of special pay of Rs. 75/- which he was drawing at the time of his retirement on superannuation. It also continued but by the impugned order dated 2.7.98, issued after the recommendations of the 5th CPC were accepted, it was indicated that the special pay was not includible in computing pay for the purpose of pension w.e.f. 1.1.86, as it had not become part of the pay and the pay is required to be fixed only with reference to basic pay in terms of CCS (Revised) Pay Rules, 1986. It is this direction that the applicant challenges as having affected his case adversely. He has desired the continued incorporation of the special pay for the purposes of pension, w.e.f. 1.1.86 and thereafter.

8. On examination of the issue, I am convinced that the applicant does not have a case in law. It is not his case that at the time of his retirement, the special pay he was drawing was not included while computing his pay for purposes of pension but that the same was not continued after 1.1.86, when the IV Pay Commission's recommendations were accepted the revised pension calculation did not include the element of special pay, a benefit granted to those in service on that day. This according to

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him, was discriminatory as he had been placed in a disadvantageous position vis-a-vis post 86 retirees. This argument has no basis in law. The applicants pay for the purposes of pension had been fixed, at the time of his retirement on superannuation by including the element of special allowance which he was drawing. The same had been taken on the basis for arriving at his revised pension w.e.f. 1.1.86, with reference to IV Pay Commission recommendations. Once the same has been done and the pension has been worked out, there is no case for its further inclusion in terms of Rule 7 of CCS(Revised) Pay Rules, 1986, while calculating the revised pension w.e.f. 1.1.86 and consolidating it w.e.f. 1.1.86. The clarification No. 38014/83/98-Ad II(C) dated 11.9.2001, bears reproduction in full:

" Sir,

I am directed to refer to your letter dated 8.5.2001 regarding treating the Special Pay for performing the duties of Desk Officer as part of emoluments while fixing notional pay as on 1.1.86. The notional pay as on 1.1.86 is to be fixed as per orders which were applicable to the serving employees on promulgation of the recommendations of the 4th Central Pay Commission. In terms of Rule 7 of CS (Revised Pay) Rules, 1986, the pay is required to be fixed with reference to basic pay only. The Rule further provides that only that Special Pay which was merged in the revised scale of pay effective from 1.1.86, should be taken into account for fixation of pay with effect from 1.1.86. Since the Special Pay payable to Desk Officers was not merged in the revised Scale of pay effective from 1.1.86, it is not to be taken into account for fixation of notional pay as on 1.1.86, and the pay so fixed is to be treated as "Average Emoluments" for re-fixation of pension as on 1.1.86 for further consolidation w.e.f 1.1.96."

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(19)

- 8 -

9. There cannot be any quarrel with the above clarification. Adopting the plea of the applicant means that the element of special pay would have to be added. Once the element of special pay has gone into reckoning while fixing the pension at the time of retirement there is no case for including it again while revising and consolidating it in tune with the accepted recommendations of the subsequent Pay Commission. This is what the applicant is seeking and it cannot be endorsed in law. I also recall that a very similar issue was decided by the Tribunal on 5/12/2000 while disposing of a bunch of OAs(621/2000, 624/2000, 625/2000, 626/2000, 914/2000 and 970/2000) filed by retired doctors on the inclusion of non practising allowance (NPA). In those OAs the applicants had desired that while computing their pay for the purpose of pension after 1.1.96, nPA would have to be added once again. The Tribunal in its decision (in which I was myself a party) had declined to accept the plea of the applicants, as NPA had been included at the time of retirement and what had taken place thereafter was revision and consolidation. The same is the position in this case and the rationale of the said decision is applicable in this present OA also. Otherwise it would amount to granting addition of special pay while ordering pay revision, on every subsequent occasion. The applicant's plea therefore has no basis and cannot therefore be endorsed. At the same time, if any amount has been paid in excess, even if wrongly, recovery or adjustment thereof would be harsh and is clearly avoidable especially as the applicant in this OA is a retiree since 1981.

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10. In the above circumstances, the reliance placed upon by the applicant in the decision of Hon'ble Delhi high Court on 14.12.81 in the case of OP Vohra Vs UOI & Others (CWP No. 2253/1981) issued much before the promulgation of CCS (Revised) Pension Rules 1986, would not be of any assistance to the applicant.

11. In the above view of the matter, I am convinced that the applicant has not made out any for Tribunal's interference. OA therefore fails and is accordingly dismissed with the only rider that any excess amount already paid, even under mistake, shall not be recovered.

Govindan S. Tampi
Member (A)

Patwal/