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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No 3203/2001

Date of Decision 30.12.2002

Sh.M.L.Ohri ... Applicant

In person ... Advocate for the Applicant

VERSUS

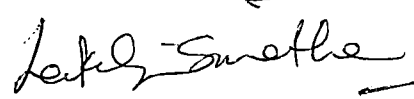
UOI & Ors. ... Respondents

Shri V.S.R.Krishna Advocates for the Respondents

Coram:-

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V.K.Majotra, Member (A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? No


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.3203/2001

New Delhi this the 30th day of December, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri V.K. Majotra, Member (A).

Shri M.L. Ohri,
S/o late Shri B.D. Ohri,
Flat No. 39, Pocket B,
Sarita Vihar,
New Delhi-110044.

... Applicant.

(In person)

Versus

1. Union of India through
the Secretary,
Ministry of Personnel, Public
Grievances and Pensions,
Department of Pensions and
Pensioners Welfare,
North Block,
New Delhi.

2. The Secretary,
Ministry of Finance,
Department of Expenditure,
North Block,
New Delhi.

3. The Pay and Accounts Officer,
Central Pension Accounting Office,
Ministry of Finance,
Treikoot II Complex,
(Behind Hotel Hyatt Regency),
Bhikaji Cama Place,
New Delhi-110066.

... Respondents.

(By Advocate Shri V.S.R. Krishna)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

This is the second round of litigation filed by
the applicant, the earlier application being O.A.622/2000,
which was disposed of by Tribunal's order dated
21.3.2001, in which one of us (Shri V.K. Majotra, Member
(A)) was also a Member. By that order, the O.A. was

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disposed of with certain directions calling upon a Committee to be set up by the respondents to consider the applicant's representation with regard to the claims of the applicant for higher pension. The observations had been made in that order as follows:

"10. We find force in the contentions of the applicant. Visibly when an employee has been drawing greater average emoluments for the last 10 months of his service and a higher pension prior to 1.1.1996 as compared to an officer though having a higher status and a higher scale of pay but drawing less average emoluments than the applicant, less basic pension prior to 1.1.1996 and less revised pension, in terms of Order dated 27.10.1997 according higher pension to the latter in terms of OM dated 17.12.1998 seems to be discriminatory having created a mini-classification on the basis of posts which revolts against the principles set out in the Pension Rules as well as in the ruling cited above. Obviously, the applicant has brought out a clear anomaly to the notice of the Court resulting from implementation of the recommendations of 5th CPC regarding revision of pension/family pension etc. which requires immediate attention. The classification made on the basis of posts in the orders challenged by the applicant appears to be arbitrary and not rational. If it is intended to accord benefit of liberalised pension to the Government servants the classification has to be founded on intelligible differentia such as average pay and not status/posts. However, we will like to refrain from according the reliefs claimed by the applicant ourselves leaving the decision to be taken by the Government themselves after taking into consideration the grounds taken by the applicant in his OA as well as those raised during the course of arguments before us..."

2. In pursuance of the aforesaid order, the applicant had submitted his representation dated 30.3.2001 which has been considered by a duly constituted Committee, as ordered by the Tribunal. After holding the

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meetings and also affording a personal hearing to the applicant, the Committee had submitted its report to the respondents, which has been conveyed to him in their letter dated 2.7.2001, which has been impugned in the present application. The applicant has prayed for quashing this letter as well as O.M. dated 17.12.1998, which, according to him, ~~are~~ in violation of the principles of Articles 14 and 16 of the Constitution and ultra vires of the CCS (Pension) Rules, 1972 (hereinafter referred to as 'the 1972 Rules'). He has prayed for a direction that the order dated 17.12.1998 may be modified to the effect that if the pension of pre-1996 retiree is revised upwards to 50% of the minimum of the revised pay scales of the post, the pension of all those drawing larger emoluments and more pension as on 1.1.1996 should also be stepped up to an equal amount. Accordingly, he has prayed for a direction to the respondents to revise his pension to Rs.6000/- per month with all consequential benefits, including pay and arrears of pension w.e.f. 1.1.1996.

3. We have heard the applicant and Shri V.S.R. Krishna, learned counsel for the respondents and perused the documents on record.

4. The applicant has given a chart in paragraph 4.11 of the O.A. which is reproduced below:

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Designation and Pay Scale	Last Pay drawn (average emoluments)	Basic Pension prior to 1.1.1996	Revised Pension in terms of O.M. dated 27.10.97	Re-revised Pension in terms of O.M. dated 17.12.98
(1) Under Secretary or equivalent Pay Scale 3000-100-3500-125-4500)	3888	1944	5557	5557
(2) Dy. Secy. or equivalent Pay Scale 3700-125-4700-150-5000).	3825	1913 (with one year service as Dy. Secy.)	5511	6000

He has vehemently contended that a great injustice has been done to him because he retired from the rank of Under Secretary. He was getting a higher pay in the pay scale of Rs.3000-4500 as Under Secretary which is in the revised pay scale of Rs.10000-15200 after 1.1.1996, as compared to a Deputy Secretary whose pay scale was revised from Rs.3700-5000 to Rs.12000-16500. He has submitted that such anomalies arise only when there is overlapping of the pay-scales in the feeder category and promoted post, for example, in his case when he retired as Under Secretary, he was drawing higher pay but getting lessor pension than a Deputy Secretary who was actually getting lesser pay at the time of retirement. He has again reiterated the arguments which he states have been taken in OA 622/2000, namely, that what is relevant under the 1972 Rules, is the actual emoluments drawn before his date of superannuation. He has

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submitted that what is required while fixing the pension is the actual pay and emoluments which have been drawn by a pensioner and not the rank. He has, therefore, submitted that the reasoning and conclusions of the Committee set up to look into the matter which has conveyed its decision vide letter dated 2.7.2001 are wrong and illegal and against the Rules. The applicant has relied on the judgements of the Supreme Court in K. Kuppusamy & Anr. Vs. State of T.N. and Ors. (1998 SCC (L&S) 1694) and C.L. Verma Vs. State of M.P. and Ors. (1991 SCC (L&S) 391). He has contended that statutory rules like the Pension Rules which lays down the principle for computation of pension, cannot be over-ridden by executive orders. His contention is that the O.M. of 17.12.1996 which is an executive instruction is in contravention of the 1972 Rules. He has also relied on the Constitution Bench judgement of the Hon'ble Supreme Court in D.S. Nakara & Ors. Vs. Union of India (1983 (1) SCC 305). He has submitted that the respondents cannot have mini-classification of a retiree and, therefore, seeks upgradation of his pension to that permissible to a retired Deputy Secretary, on the ground that his pay and allowances as Under Secretary on the date of his superannuation were higher than a Deputy Secretary, who had also retired prior to 1.1.1996.

5. The respondents in the impugned letter dated 2.7.2001 have set out the reasons for the conclusions in para 2 which read as follows.

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" Your petition has been rejected on the following grounds:-

(i) With the structural revision in pension based on the accepted recommendations of the 5th Pay Commission, it is no longer possible to subscribe to a mere mechanical application of the rule prescribed in the CCS(Pension) Rules, 1972 for calculating pension. The posts held at the time of retirement and the revised scales prescribed for those posts have to be necessarily taken into account while bridging the gap between pre-1.1.96 and post 1.1.96 pensions.

(ii) The object of the orders dt.27.10.1997 and 17.12.1998 was to give more benefits to the past pensioners who had retired before the 5th Pay Commission and to bring about a modified, equitable and reasonable parity amongst the respective classes of pensioners. As in the case of serving Govt.servants, broad banding and bunching has been done in the case of pensioners also in case their consolidated pension is less than 50% of the minimum of the corresponding scale of pay as on 1.1.96. This would mean that all those who were similarly placed have been similarly treated.

(iii) The objective of parity outlined in the order dt.17.12.1998 is based on treating similarly placed persons in the same manner. As a natural corollary, the petitioner's comparison will have to be made with persons holding the same rank and not with persons holding higher positions. Posts held are important and cannot be ignored. The parity recommended by the 5th CPC can be brought about only by taking into account the posts held at the time of retirement and the revised scales attached to these posts.

(iv) There cannot be micro-classification of pensioners. Post held by the pensioner at the time of retirement has to be necessarily made the basis for revision of pension for operationalising the concept of parity recommended by the Pay Commission and accepted by the Govt.

(v) Reasonable classification demands segregating past pensioners in terms of the posts held by them at the time of retirement and therefore no vested interest of the pensioners has been taken away.

(vi) In case pension is to be based on a mere mechanical law as suggested by the petitioner then the logical thing to do would be to cancel both the orders dt.27.10.1997 and 17.12.1998. This would be a blow to all pensioners as a whole including Sh. Ohri and any such step would

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result in a steep fall in pension at all levels which would not be in the public interest.

(vii) Government's orders are intended to improve the lot of pensioners as a class. The petitioner has also been benefited by Government orders because his pension was only Rs.1944 per month at the time of his retirement which has now become Rs.5557 per month. Insistence of a mere mechanical application of the rule for calculating pension would imply that the order dt.27.10.1997 under which the pension of the petitioner has been stepped up becomes irrelevant".

6. Learned counsel for the respondents has contended that the Government has accepted the recommendations of the 5th Central Pay Commission i.e. past pensioners should get the same amount of pension which their counter parts retiring on or after 1.1.1996 from the same post will get irrespective of the date of retirement or the emoluments drawn at the time of retirement. He has submitted that the applicant cannot accept part of the O.M. dated 17.12.1998 and at the same time ask for modification. According to him, by this O.M, the consolidated pension as recommended by the Pay Commission was not to be less than the 50% of the minimum pay of the post held by the pensioner at the time of retirement. He has contended that in terms of the directions of the Tribunal in OA 622/2000, the Committee has reconsidered the issues taking into account the contentions of the applicant. He has submitted that the case of the applicant is not an isolated case. As an example, he has submitted that even in the same level of two Government servants with different basic pay at the time of retirement and different basic and consolidated pension, they are drawing the same pension i.e. 50% of

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the minimum of the revised scale as on 1.1.1996. He has submitted that in no way the applicant has suffered any loss in pension by the order dated 17.12.1998 and the rationalisation to be achieved by the recommendations of the 5th Pay Commission which has been accepted by the Government, should not be modified in the manner the applicant contends only to take care of his particular case. He has also submitted that revision of pension on the basis of the post held at the time of retirement is neither artificial nor arbitrary as it is based on rational principle and is related to the object to be achieved i.e. the revised scales of pay of the 5th Pay Commission. Learned counsel has contended that the applicant's comparison of his pension with persons holding a different rank i.e. Deputy Secretary, who is holding a higher position, cannot be accepted and the classification adopted by the 5th Pay Commission and the Government is reasonable. The reasonable classification requires segregating past pensioners and is based in terms of the post held at the time of retirement which is neither unreasonable nor arbitrary and he has, therefore, contended that the O.A. may be dismissed. The respondents have relied on the judgement of the Tribunal in S.C. Prasher Vs. Union of India & Ors. (OA 480/2001), decided on 20.9.2002, in which one of us (Mrs. Lakshmi Swaminathan, Vice Chairman (J)) was also a Member.

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7. The earlier order passed by the Tribunal in OA 622/2000 had observed that there was some force in the contentions of the applicant as reproduced in Para 1 above. However, on reconsideration of the reasons given by the respondents in their letter dated 2.7.2001, it is seen that the adoption of the criteria advocated by the applicant would lead to further anomalies which was what has not been intended by the expert bodies, like the 5th Pay Commission which has treated similarly placed persons in the same manner. The comparison sought to be done by the applicant who admittedly retired as an Under Secretary with an officer who has retired in the next higher post of Deputy Secretary to the Government of India cannot be accepted, ignoring the parity recommended by the 5th Central Pay Commission which has taken into account the pay scale applicable to the post which has been held by a particular officer at the time of his retirement. At any rate, it cannot be stated that the applicant is getting any less pension than what he was getting earlier to 1.1.1996. It is not denied that the Central Pay Commission itself is a statutory body which has recommended beneficiary provisions to pensioners. It is also relevant to note the submission of the applicant himself that the anomaly which he has sought to point out in the O.A. will arise only in such cases where there is an over-lapping of pay scales between the feeder category and the next higher promotion post, which in this case is the Under Secretary and Deputy Secretary grades.

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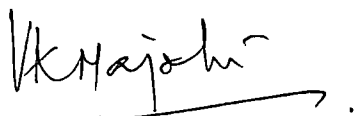
8. From Para 10 of the judgement dated 21.3.2001 in OA 622/2000 reproduced in para 6 above, while certain observations have no doubt been made indicating that there is some force in the contentions of the applicant and that an anomaly has been created in implementation of the recommendations of the 5th Central Pay Commission, however, the final decision has been taken by the Committee set up by the respondents. On reconsideration of the reasons given by the respondents in their letter dated 2.7.2001 and having regard also to the order of the Tribunal dated 20.9.2002 in OA 480/2001, in which the O.M. dated 17.12.1998 has also been considered, we find no good grounds to either set aside or to order its modification. The classification of pensioners and the revision of pensions based on the post held by them at the time of retirement cannot be held to be artificial or arbitrary only because in a particular case like the applicants, he happened to draw higher pay at the time of his retirement than another officer who was admittedly in a higher post and pay scale at the time of his retirement prior to 1.1.1996. The orders issued by the respondents in implementation of the 5th Pay Commission have also been issued by the Government of India and there is, therefore, no infirmity on the ground that they are merely executive instructions which have modified the statutory 1972 Rules (See S.C Parashar's case (supra)). The revision of pension as done by the respondents in respect of the applicant, that is giving

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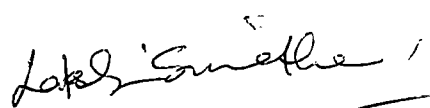
him 50% of the minimum of the revised pay scale of the Under Secretary also shows that he has got an upward revision of the pensionary benefits and he cannot have any grievance on this account also. In this view of the matter, on reconsideration of the contentions of the applicant and the reasons set out by the respondents in the impugned letter dated 2.7.2001, we find no good grounds justifying any interference in this matter. The judgement relied upon by the applicant in K.L. Rathee's case (supra) will not assist the respondents in the facts and circumstances of the case.

9. In the result, for the reasons given above, the O.A. fails and is dismissed. No order as to costs.



(V.K. Majotra)
Member (A)

'SRD'



(Smt. Lakshmi Swaminathan)
Vice Chairman (J)