

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 574/2001

(40)

New Delhi, this the 25th day of September, 2003

Hon'ble Shri Shanker Raju, Member (J)

Dr. N.C. Singhal.
C-115, Greater Kailash-I.
New Delhi - 110 048.Applicant

(By Shri B.K. Aggarwal
through Shri Rajiv Bansal, Advocate)

Versus

1. Union of India
through Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.
2. The Director,
Central Government Health Scheme,
Nirman Bhawan,
New Delhi.Respondents

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

ORDER

Applicant, a retired Government servant, has sought quashing of order dated 3.4.2000 whereby his request for fixation of pension at the maximum of the pay scale, after 5th Pay Commission, has been turned down.

2. Applicant retired on superannuation on 31.10.1980 as Specialist Grade-I.

3. Pension of the applicant was fixed at the maximum of pay scale at Rs. 2250/- along with Non-Practising Allowance [hereinafter referred to as "NPA"].

4. On recommendation of Fourth Pay Commission w.e.f. 1.1.1986, pay scale of the applicant was replaced to Rs. 4500-5700/- and accordingly pension of the applicant was fixed at the maximum of the pay scale at Rs. 5700/- with NPA in addition.

5. The above pay scale was again replaced after recommendation of Fifth Pay Commission to Rs. 14300-18300/- w.e.f. 1.1.1996 and the pension of the applicant was fixed at the minimum of the pay scale at Rs. 8803/-. The aforesaid has been represented before the respondents resulting in impugned order, giving rise to the present OA.

6. Contention put forth by Shri Rajiv Bansal, learned counsel for the applicant, that as the applicant, in the earlier pay scale, was getting pension at the maximum of the pay scale, fixation of pension at the minimum of the revised pay scale is arbitrary, illegal and contrary to doctrine of equality enshrined under Article 14 of the Constitution of India.

7. Applicant alleges discrimination by contending that he is to be treated at par with those who joined services whereas the applicant retired after rendering more than 32 years of service and was entitled to get the pension at the maximum of the pay scale.

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8. Learned counsel, relying upon OM dated 17.12.1998 issued by the Ministry of Public Grievances & Pension, contends that the first sentence of paragraph 5 of the OM dated 27.10.1997 has been substituted by holding that pension shall continue to be calculated at 50% of the average emoluments in all cases and shall be subject to a minimum of Rs. 1275/-p.m. and maximum of upto 50% of the highest pay applicable in the Central Government, which is Rs. 30,000/- per month since 1st January, 1996, but the full pension in no case shall be less than 50% of the minimum of the revised scale of pay introduced with effect from 1st January, 1996 for the post last held by the employee at the time of his retirement.

9. Having regard to the above, it is contended that there is no embargo on fixation of pension at the maximum of the pay scale but what has to be ensured is that it should not be less than 50% of the minimum of the revised scale of pay. According to Shri Bansal, this is the only harmonious and beneficial construction of the provisions.

10. In the rejoinder, by applying the formula, applicant states that his pension should have been fixed at the maximum of pay scale taking 50% of it which comes to be more than the pension now being disbursed to him.

11. On the other hand, respondents' counsel Shri V.S.R. Krishna, vehemently opposed the contention and stated that vide OM dated 10.02.1998.

Government has announced its decision to revise the pension of pre-1986 pensioners on acceptance of recommendation of Fifth Pay Commission. The aforesaid would be implemented by updating on notional fixation of pay and all pre-1986 retirees as on 1.1.1996 by adopting the formula for the serving employees. Accordingly pay of all government servant retired prior to 1.1.1986 has been fixed consequent upon promulgation of Revised Pay Rules. The notional pay so arrived at 1.1.1986 shall be treated as average emoluments for calculation of pension and pension so worked out shall be consolidated as on 1.1.1996 as per provisions contained in para 4.1 of OM dated 27.10.1997 and is to be treated as basic pension for the purposes of grant of dearness relief in future.

12. Shri Bansal states that vide OM dated 17.12.1998 it has been decided that w.e.f. 1.1.1996, pension of all the 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 held by the pensioner.

13. Keeping in view the aforesaid, it is stated that a similar controversy laid at rest by holding the formula for fixation of pension vide OM dated 10.2.1998 as valid in OA No. 626.2999 (Ajit Kumar Datta vs. Union of India & Ors.).

14. In the aforesaid backdrop, it is stated that pension of the applicant, as per the formula, has been fixed at Rs. 8803/- as a policy decision, which is neither malafide nor in violation of Articles 14 and 16 of the Constitution of India.

15. Lastly it is contended that interpretation of the applicant as to grant of pension at the maximum of pay scale cannot be countenanced.

16. I have carefully considered the rival contentions of the parties and perused the material on record.

17. The contention raised by the applicant that his pay is to be fixed at the maximum of the pay scale as per OM dated 17.12.1998 as he before the Fifth Pay Commission was getting pension at the maximum of the pay scale cannot be countenanced. The Government, as a policy decision to bring parity among the pensioners, decided that the pension, irrespective of date of retirement, should not be less than 50% of the minimum of the pay scale as revised by Fifth Pay Commission. The pay scale of the applicant which had been revised to Rs. 14300-18300/-, his pension has been rightly fixed at 50% of the minimum of the revised scale.

18. DOP&T OM dated 17.12.1998 has been further clarified by Department of Pension and Pensioners' Welfare letter dated 11.5.2001 wherein it is held that pension of all pensioners irrespective of

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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 retirement.

19. The matter was meticulously dealt with in OA No. 753/2002 (YBL Mathur & Ors) decided in April, 2003 wherein the OM dated 17.12.1998 has been held to be valid. Further the controversy has been put at rest in OA No. 621/2000 (Dr. Sukumar Chatterjee vs. Union of India) decided on 5.11.2000 by this Tribunal. Moreover having regard to the decision of the Apex Court in D.S. Nakara & Ors. vs. Union of India, 1983(2)SCR p.165, I do not find any discrimination meted out or arbitrary classification without any reasonable nexus violative of Article 14 of the Constitution of India on part of the respondents.

20. As the pension of the applicant has been correctly fixed as per the formula and the policy decision of the Government, which is neither assailed in this OA nor established to be malafide or in violation of Articles 14 & 16 of the Constitution of India, claim of the applicant is bereft of merit. Accordingly, the OA is dismissed. No costs.

S. Raju

(Shanker Raju)
Member (A)

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