

CENTRAL ADMINISTRATIVE TRIBUNAL. PRINCIPAL BENCH

OA No.914/2001

New Delhi this the 5th day of December. 2001.

HON'BLE MR. V.K. MAJOTRA. MEMBER (ADMNV)  
HON'BLE MR. KULDIP SINGH. MEMBER (JUDICIAL)

Mahadeo Prasad Agarwal.  
IES (Retd.)

-Applicant

(By Advocates Shri N.N. Dhingra with Sh. R.C. Chaudhary)

-Versus-

1. Union of India through  
Secretary to the Government of India.  
Ministry of Finance.  
Department of Economic Affairs.  
North Block. New Delhi.

2. Shri I.C. Kamboi.  
Under Secretary to the Govt. of India.  
Ministry of Finance.  
Department of Economic Affairs.  
North Block. New Delhi-110001. -Respondents

(By Advocate Shri R.V. Sinha)

O R D E R (ORAL)

By Mr. V.K. Majotra. Member (Admnv):

The applicant is a member of I.E.S. (Group 'A' Services). He was granted non-functional selection grade (NFSG) of I.E.S. w.e.f. 1.1.86 in the pay scale of Rs.4500-150-5700 vide notification dated 16.3.88. He retired on superannuation in June. 1988. He has challenged the order dated 3.10.2000 issued by respondent No.2 (Annexure A-1) whereby his request for refixation of his pay in NFSG was rejected. He has also challenged Annexure A-2 dated 29.3.2001. whereby his letter dated 29.1.2001 seeking revision of pension/family pension on the basis of fixation of his pay in NFSG was rejected on the ground that he had not opted for fixation of his pay in NFSG during his active service. The applicant has sought quashing and setting aside of both the above communications and direction to the respondents to refix his pay in NFSG w.e.f. 1.1.86 in terms of DOPT OM of 22.5.1989 with all

(2)

consequential benefits. such as arrears of revision in pension and other retiral benefits. The learned counsel for the applicant contended that as per Annexure A-5 dated 26.11.87 fixation of pay of officers appointed in the selection grade in Group 'A' Services was to be in terms of the provisions of FR 22 (a)(ii) of FR's and SR's. In order to remove the anomaly in fixation of pay on appointment from one post to another not involving assumption of higher duties and responsibilities. including appointment to non-functional selection grade post the Government issued instructions vide Annexure A-6 dated 22.5.89. However, as the applicant had already retired on 30.6.88 he could not become aware of the existence of Annexure A-6 till March, 1999. On learning about this circular from press reports he applied to the Government for revision of pension in March, 1999. The Department of Economic Affairs wrote to him to give his option as required under Annexure A-6 dated 22.5.89. He submitted his option but vide the impugned letter dated 3.10.2000 applicant's request for revision of pay etc. was rejected. Later on, the respondents furnished him the ground for rejection of his request. i.e.. he had not given his option during his active service. The learned counsel contended that the applicant was eligible to submit his option in terms of paragraph 4 of the Annexure A-6 and that the ground taken by the respondents for rejection of his request is against the spirit of Annexure A-6. The learned counsel also brought out that whereas the applicant had submitted his option in response to circular of 1989 on being asked by the respondents, which was rejected, the respondents had

12

revised family pension. DCRG. etc. in the case of a deceased colleague of the applicant vide memorandum dated 14.2.91 who had not submitted any option at all.

2. The learned counsel for the respondents stated that as per memorandum dated 26.11.87 the pay of the applicant was required to be fixed at the stage which was equal to his pay in JAG in the pay scale of Rs.3700-5000 or if there was no such stage in the scale of selection grade. i.e.. Rs.4500-5700. the stage next below and the pay plus personal pay equal to the difference to be absorbed in the future increases in the pay or in the minimum of the pay of the selection grade. whichever was higher. As in the case of the applicant the next annual increment became due to the applicant after rendering 12 months qualifying service in the selection grade fixation of pay in the NFSG in terms of OM dated 26.11.87 was not beneficial to him. Thus. he did not opt for fixation of his pay in the scale of pay of NFSG. Thereafter he retired on 30.6.88. His pension and other retiral benefits were calculated on the basis of his pay in the scale of Grade I of IES (JAG). i.e.. Rs.3700-5000. The learned counsel submitted that the applicant had intentionally not given any fixation of his pay in the NFSG. the same being not beneficial to him. According to the learned counsel the provisions of paragraph 4 of DOPT OM of 22.5.89. the applicant is not eligible to exercise his option to fix his pay in the pay scale of NFSG. Paragraph 4 of the said OM reads as follows:

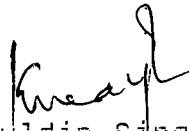
"4. These orders would be deemed to have taken effect from the 1st January. 1986. In the case of those Government servants who have been appointed to such posts not

involving assumption of duties and responsibilities of greater importance w.e.f. 1.1.86 and are holding such posts on the date of issue of these orders should exercise the option within a period of three months of the date of issue of this O.M. if they want to switch over to the new formulations."


3. The learned counsel stated that the applicant could have submitted his option as per Annexure A-6 provided that he had been in service. He had retired long back in 1988. The learned counsel admitted that the respondents took a lenient view and asked the applicant to submit his option so that the matter could be referred to DOPT whether the applicant could be given the benefit in terms of Annexure A-6. However, such action on the part of the respondents would not change the import of Annexure A-6. The plain reading of paragraph 4 of Annexure A-6 indicates that the option could be exercised by persons who were holding such posts on the date of issue of these orders within a period of three months of the date of issue of Annexure A-6. In our view the applicant is certainly not eligible to submit his option in terms of Annexure A-6, as he did not hold any post in NFSG on 22.5.89 when Annexure A-6 was issued. We also find that the applicant has not challenged the alleged discrimination in application of the provisions of Annexure A-6 between those who were holding non-functional selection grade posts and those who were not holding such posts.

4. From the above discussion we are of the view that the applicant had deliberately not chosen fixation of pay in the scale of NFSG in terms of OM dated 26.11.97 and that he is ineligible to give his option in terms of the letter/memorandum as he did not hold NFSG post at the time when Annexure A-6 was issued.

5. Having regard to the reasons recorded and discussion made above, we are of the view that the applicant has not been able to establish his claims. Accordingly, this OA is dismissed, being devoid of merit. No costs.

  
(Kuldip Singh)  
Member (J)

'San.'

  
(V.K. Maiotra)  
Member(A)