

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1885/1999

New Delhi, this 19th day of October, 2000

Hon'ble Shri M.P. Singh, Member(A)

Bharat Bhushan Puri  
House No.78, ESIC Colony  
Sector 56, NOIDA-201301 (UP)

.. Applicant

(By Shri C.B. Garg, Advocate)

versus

1. Accountant General (A&E)  
Union Territory Chandigarh  
17, Bays Building, Sector 17  
Chandigarh
2. Accountant General (A&E)  
Punjab, Sector 17, Chandigarh
3. Pay & Accounts Officer  
Central Pension Accounting Office  
Trikot Complex, Bhikaji Cama Place  
New Delhi
4. Secretary  
M/Pension & Pensioners' Welfare  
Lok Nayak Bhavan, New Delhi
5. Manager  
State Bank of India/PBB  
Sansad Marg, New Delhi
6. Director General  
ESI Corporation  
Kotla Road, Panchdeep Bhavan  
New Delhi

.. Respondents

(By Shri M.K.Gupta, Advocate)

ORDER(oral)

Applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985, challenging the order dated 23.2.99 passed by R-1.

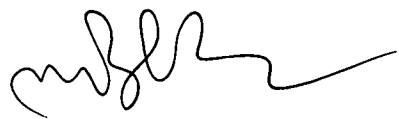
2. Brief facts of the case, as stated by the applicant, are that the applicant was appointed as Divisional Accountant in the office AG/HP on 1.11.76. While working under R-2, the applicant was promoted as Divisional Accounts Officer Grade I on 4.1.91. Thereafter he was selected through UPSC as Deputy Administrative Officer in Employees State Insurance Corporation (ESIC, for short) (R-6) on 29.1.92. The transfer



of the applicant under R-6 was on 'permanent absorption' basis as stipulated in the terms of appointment issued by ESIC vide their letter dated 8.11.91. In accordance with the requirement of pension rules, the respondent No.2 sanctioned the permanent absorption of the applicant. The applicant had filed his option to receive lump sum in lieu of monthly pension vide letter dated 17.4.97. (15)

3. After the revision of pension with effect from 1.1.1996, he <sup>became</sup> ~~is~~ entitled for recalculation of commuted value of pension (on the basis of revised pension after 1.1.96). Applicant sent a letter to pension sanctioning authority requesting them to recalculate his commuted value of pension. However, his request has been rejected by the impugned order dated 23.2.99 (Annexure A/1). Aggrieved by this, applicant has filed this OA seeking directions to the respondents to recalculate commuted value of pension on the basis of revised pension w.e.f. 1.1.96 and to make payment of difference between the amount of commuted value of pension so calculated and the amount already paid alongwith interest.

4. Respondents have stated in their reply that the applicant has filed OA No.1058-CH/95 in Chandigarh Bench of the Tribunal. That was dismissed due to non-appearance of the applicant vide order dated 19.11.96. Thereafter he made request~~s~~ to the respondents to issue requisite permanent absorption order so that he could receive pro-rata retirement benefits in view of his absorption in ESIC. As the applicant had opted for lump sum payment on absorption in ESIC he was not entitled to revision of pension w.e.f. 1.1.96 in view of the provisions contained in para 7 of Government of India OM dated 27.10.97. Applicant's case cannot be equated with that of normal pensioner who was in receipt of pension as on



31.12.95. Since the applicant was in employment in ESIC, he was not entitled for any dearness relief on the pension sanctioned w.e.f. the date of absorption viz. 29.1.92. As such recalculation of commuted value of pension on revised pension from 1.1.96 does not arise.

16

5. Heard the learned counsel for both the rival contesting parties and perused the records.

6. It is an admitted fact that the applicant had given option for absorption in ESIC in terms of para 3 (a)(ii) of letter dated 10.4.97. According to para 3(a)(ii) of the aforesaid letter, the applicant will receive lump-sum amount in lieu of Pro-rata pension and retirement gratuity. The question for consideration is as to whether the applicant is entitled to lump-sum amount in lieu of Pro-rata pension which he was entitled for on the date of absorption i.e. 29.1.92 or lump-sum amount in lieu of revised pension as on 1.1.96.

7. Learned counsel for the applicant has submitted that since the order for commutation of pension was passed by R-1 and medical examination of the applicant was done in October, 1998, he should be given commuted value of revised pension as on 1.1.96. On the other hand, the learned counsel for the respondents has submitted that all his retirement benefits have been paid with reference to the date of his absorption and he cannot now opt to get his pension revised w.e.f. 1.1.96 and get lump-sum amount in lieu thereof. In support of his contention, he has relied upon the judgement of the Hon'ble Supreme Court in the case of Des Raj Bhatnagar Vs. UOI (1991) 2 SCC 266, in which the apex court has held as under:




"In the present case the petitioners had not only got one-third of their pension commuted but exercised the option of getting the entire pension commuted and in lieu thereof got a lump sum. Such persons cannot fall in the category of central government pensioners for the purposes of getting benefit of liberalised pension rules which can be made applicable only to central government pensioners. It is no doubt correct that the family pension has been allowed in case of persons like the petitioners but that does not make them entitled to get any benefit given to the pensioners on account of liberalised pension rules taking note of the fallen value of the rupee".

17

8. Learned counsel for the applicant has relied in support of his contention on the judgement in the case of M.L.Mittal Vs. UOI in OA 23/92 decided on 18.1.94. After perusing this judgement, I am of the considered view that this is not applicable to the present case.

9. After hearing the submissions of the learned counsel for the parties and perusing the records placed before me, I feel that the applicant is not entitled the benefit of revised pension from 1.1.96 and the respondents have rightly fixed his pension with reference to the date of absorption of the applicant in ESIC and the payment of lump-sum amount has been made to him accordingly in terms of clause 3(a)(ii) of letter dated 10.4.1997.

10. In the light of the above discussions, I find the OA is devoid of merit and the same is accordingly dismissed. No costs.

  
(M.P. Singh)  
Member(A)

/gtv/