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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2423 of 1999

New Delhi, this 22nd day of May, 2000

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

J.C.Gangwar
S/o Shri B.S Gangwar
R/o Village: Bhatpura Jagir
P.O. Rithora,
Dist. Bareilly (U.P.) ... Applicant

(By Advocate: Shri S.S.Tiwari)

versus

1. Union of India, through
Secretary
Dept. of Posts
Ministry of Communications
Dak Tar Bhawan
New Delhi.

2. Director General of Posts
Dept. of Posts
Dak Tar Bhawan
Sansad Bhawan *Manoj*
New Delhi.

... Respondents

(By Advocates: Shri N.S. Mehta)

Order (oral)

By Reddy, J.

The applicant retired from Defence Service after serving for a period of 15 years, with effect from 1.6.1993 as Sergeant. At the time of his retirement in the Defence Service his basic pay was Rs.1450/-. Thereafter he was appointed as Sorting Assistant in Railway Mail Service, Bareilly and he joined in October 1996 and his basic pay was fixed by the Postal Department at Rs.975/-. The applicant submits that he is entitled for advance increments for the number of years of service he had undergone in the Defence.

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The respondents had fixed the basic pay contrary to the latest circulars in the department, adding the pension to the basic pay. The learned counsel submits that the fixation of pay is contrary to the judgment of the Supreme Court in Director General of Posts & Ors. Vs B. Ravindran & Ors (1997) 1 SCC 641. It is contended by the learned counsel for the applicant that as per the judgement of the Supreme Court (supra) the pension should be excluded for consideration of fixation of basic pay and in deciding whether it works out hardship to the applicant.

2. The learned counsel for the respondents however submits that the applicant had made representation in 1999 but rushed ^haddressed to the court without giving sufficient time ^{to h}for them to consider and dispose of the representation. It is submitted that ~~the~~ by impugned order dated 17.2.1997 the respondents had in fact sought to review the cases of all the employees in view of the judgment of the Supreme Court in B.Ravindran (supra). It is therefore submitted by the learned counsel for the respondents that the cases of all the employees is under active consideration of the Government and hence no orders are called for in this OA.



3. We have given careful consideration to the pleadings as well as arguments advanced by the learned counsel on either side.

4. The facts in this case are not in dispute. If the basic pay fixed by the respondents i.e Rs.975/- is added to the pension of the applicant Rs..531/-, the amount would exceed the basic pay of Rs.1450/- which applicant was drawing at the time of his retirement. The only question for consideration in this case is whether it is permissible for the respondents to add pension and the pension equivalent to the pay in order to find out whether there was any hardship caused to the applicant. This question is no longer res integra. The Supreme Court in B. Ravindran (supra) has categorically held that the ignorable part of the pension has to be ignored while totalling up pay plus pension in order to find out whether the pay scale of the reemployed post plus pension is more or less than ^{what he} he was getting at the time of retirement. If it exceeds the basic pay then, it should be considered that he was not suffering hardship and he was not eligible for increments, otherwise, he must be allowed the increments to the basic pay in the new post. In view of the above judgement, the pension that the applicant was drawing, has to be ignored for fixing the basic pay. Hence the applicant would be entitled for the advance increments at the time of fixation of his basic pay in the new post.

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5. Contrary to the above judgement of the Supreme Court, which was rendered as early as 8.11.1996, the respondents had not reviewed the case of the applicant nor for that matter ^{of} any of the employees similarly placed in the Department. The contention that the applicant has made representation only in 1999 is not correct. The applicant has made his first representation on 7.12.1998 in which he requested to fix his pay in accordance with the judgment of the Supreme Court. Having waited for more than six months, he filed the OA in November 1999. He cannot therefore be said to have rushed to this Court before a decision could be taken by the respondents. In our view since the Supreme Court has clearly settled this issue, there was no room for the respondents not to have reviewed the cases of all the employees similarly placed immediately after the judgement of Supreme Court. It is true that by the impugned order dated 17.2.97 information was asked for by the respondents to consider their cases in accordance with the judgement of the Supreme Court. But it is now more than three years, still the status quo continues. The contention that U/S 19 of the Administrative Tribunals Act, 1985 that once the OA is admitted the respondents' hands are tied, cannot be accepted. It should be noticed that the present OA is still not admitted and there is no reason for not considering the cases of the

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applicant as well as other employees whose pay was also fixed contrary to the judgement of the Supreme Court.

6. In the circumstances, the OA is allowed. The respondents are directed to refix the applicant's pay in terms of the judgement of the Supreme Court in Director General of Posts & Ors. Vs B. Ravindran & Ors (1997) 1 SCC 641, within a period of three months from the date of receipt of a copy of this order. It is also incumbent upon the respondents to consider ^{the} cases of all the employees in the Department whose pay was similarly fixed, with reference to the Supreme Court's judgement (supra) and pay should be refixed within a period of three months.

Shanta Shastry
(Mrs. Shanta Shastry)
Member(A)

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice Chairman(J)

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