

Central Administrative Tribunal
Principal Bench

O.A. 1022/99

New Delhi this the 11th day of April, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Om Prakash Vohra,
Superintendent (Retired),
Customs & Central Excise,
385, Bhera Enclave,
Outer Ring Road,
Delhi -110 087. Applicant.

(Applicant present in person)

Versus

1. Union of India through
The Secretary,
Ministry of Finance,
Department of Revenue and
Banking (Revenue Wing),
Central Secretariat,
New Delhi -110 001.
2. The Pay and Accounts Officer,
Customs and Central Excise,
117/7, Sarvodaya Nagar,
Kanpur -208 005. Respondents.

(None present for the respondents)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the letter issued by the respondents dated 22.3.1999 rejecting his representations dated 24.9.1998 and 18.2.1999 for revision of his pension/family pension in implementation of the Government of India's decision in accordance with the 5th Central Pay Commission.

2. The main contention of the applicant in this O.A. is that the aforesaid impugned order has been passed by the respondents disregarding the judgements and orders of the

18

Delhi High Court dated 14.12.1981 in W.P. 2253/81 and of this Tribunal in TA 1282/85 dated 3.7.1987.

3. The respondents in their reply have, after narrating the relevant facts, including reference to the judgement and orders of the High Court and Tribunal relied upon by the applicant, submitted that their action is in accordance with the laid down procedure which has been applied to pre-1986 retirees, including the applicant. They have referred to the definition given in FR 9(21)(a)(i) which means only the basic pay to form emoluments, and deputation allowance or special pay which was previously taken in determining emoluments prior to 1.1.1986 is not to be counted as part of total pay. They have, therefore, contended that taking into account the guidelines laid down by the Government in various O.Ms issued from time to time, in order to implement the recommendations of the IVth & Vth Pay Commissions, the respondents have acted within the parameters of those instructions. They have also submitted that the principle that pension cannot be revised to the disadvantage of the Government servant cannot be adhered to in all instances and that is why the applicant has been offered the option of drawing pension either in terms of O.M. dated 27.10.1997 or O.M. dated 10.2.1998.

4. I have carefully considered the pleadings, documents on record, including the written submissions made by the applicant and his oral submissions.

8.

5. I find force in the submissions made by the applicant that in his case in refixing his pension/family pension in terms of the decision taken by the Government pursuant to the recommendations of the 5th Central Pay Commission, the respondents have reduced his last pay drawn/pensionary emoluments from Rs.1152/- to Rs.960/- ignoring his special pay which is, therefore, to his disadvantage. The Hon'ble Delhi High Court in CWP No. 2253/1981 had directed as follows:

"In the circumstances, we have to allow the Writ Petition in favour of the petitioner. We have to hold that he is entitled to get a pension of Rs.475/- per month even though it may be more than what he would be entitled to get on a proper application of the Rules, we would hold thus, because the pension cannot be revised to the disadvantage of the petitioner"

Later, after the judgement of the Supreme Court in D.S. Nakara & Ors. Vs. Union of India (AIR 1983 SC 139) regarding liberalised pension, when the applicant was again aggrieved in the enhancement of pension granted to him ^{of Rs.} only Rs.5/-, he had filed another Writ Petition (WP 1424/84) in the Delhi High Court. This petition was transferred to the Tribunal and re-numbered as TA 1292/85 which was disposed of by the order dated 3.7.1987. In this order, the Tribunal, after referring to D.S. Nakara's case (supra) held that it is no valid defence to say that the pension thereby stands raised to Rs.480/- per month from Rs.475/-. Taking into account the totality of the facts, it was further held that the pensionary emoluments of the applicant cannot be refixed as done by the respondents and the relief claimed by the applicant was granted to him. The prayer in the TA was to quash the order of the Pay and Accounts Officer, Central Excise Collectorate, Kanpur dated 4.4.1984 and for a direction to the respondents to revise the pension on the

basis of emoluments of Rs.1,152/- on which the final pension of Rs.475/- per month was determined. The Tribunal held in that case as under:

"We have considered the rival contentions carefully. In our view, the fixation of the pension of the applicant at Rs.480/- per month excluding from pensionary emoluments, the DDA does serious violence to the decision of the High Court. True, the Delhi High Court has accordingly observed that there has been an error in revising the pension of the applicant from Rs.396/- to Rs.475/- but had no hesitation in holding that finally determined pension of Rs.475/- would not be revised to the disadvantage of the applicant.

(Emphasis added)

6. Having regard to the aforesaid judgement/orders of the High Court and of this Tribunal which have become final and binding, the applicant's contention that his basic pay cannot now be revised again to Rs.960/- instead of Rs.1152/- for purposes of refixation of his pension after 1.1.1996 is legally in order. It is seen from the reply filed by the respondents that they have revised the pension amounts due to the applicant in terms of the aforesaid orders earlier, but have again stated that his revised pension will not include the element of deputation pay while calculating average emoluments. This contention, therefore, is in contravention of the aforesaid judgements which have been given by the Hon'ble Delhi High Court and the Tribunal in favour of the applicant, after taking into account the facts and circumstances of the cases wherein it has already been clearly stated that the "pensionary emoluments is not susceptible of being reopened at any stage even if it be for the purposes of redetermining the pension..." The

respondents, therefore, cannot while recalculating the pension amount due to the applicant after 1.1.1996 ignore the earlier judgements (supra) which have been given in favour of the applicant which have also become final and binding. In the facts and circumstances of the case, the action of the respondents cannot be supported, as they are contrary to the principle of law declared by the courts which they themselves have implemented in the past.

7. The applicant has submitted that because of the action of the respondents persistently ignoring the relevant facts and law as applicable to his case, he has been forced to approach the High Court and Tribunal a number of times earlier as mentioned above. He has submitted that even now, the respondents are ignoring the aforesaid judgements and orders in revising his pension which has been necessitated following the recommendations of the 5th Pay Commission by wrongly calculating his pay. He has, therefore, prayed that he may be awarded the due pension amounts with interest at market rate of 18% per annum with effect from the due date till the date of payment and adequate compensation for continued harassment and costs.

8. In the result, for the reasons given above, the application is entitled to succeed and is accordingly allowed with the following directions:

(a) The respondents shall take into account the pay of the applicant as ordered by the Delhi High Court

8/

in its order dated 14.12.1981, that is Rs.960/- plus Rs.192/- i.e. Rs.1152/-, which amount has also been upheld in the Tribunal's order dated 3.7.1987 (supra) in revising his pension/family pension amounts in accordance with the relevant rules and instructions;

(b) The difference in the amount of pension shall be paid to the applicant within two months from the date of receipt of a copy of this order;

(c) The applicant shall also be entitled to interest @ 12% per annum on the difference of the pension amount with effect from the due date till the date of actual payment;

(d) In the facts and circumstances of the case, cost of Rs.2000/- (Rupees two thousand only) is awarded in favour of the applicant and against the respondents.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'