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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

C.P.No.236/2000, in OA No.1022/99

New Delhi: this the 17<sup>th</sup> day of November, 2000.

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A).

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Mr. Om Prakash Vohra,  
Superintendent (Retired),  
Customs & Central Excise,  
385-Bhera Enclave,  
Outer Ring Road,  
Delhi-87

.....Applicant.

(Applicant in person).

Versus

1. Mr. P.G. Mankad,  
Secretary (Revenue Wing),  
Department of Revenue & Banking,  
Ministry of Finance,  
Central Secretariat,  
New Delhi-1.

2. Mr. A.P.S. Suri,  
Joint Commissioner (P&V),  
Central Excise Commissionerate,  
117/7, Sarvodaya Nagar,  
Kanpur-208 005.

3. Mr. Waseem Ahmad,  
Pay & Accounts Officer,  
Customs & Central Excise,  
Central Excise Commissionerate,  
117/7, Sarvodaya Nagar,  
Kanpur-208 005

.....Respondents.

(By Advocate: Dr. Ranjana Kaul)

ORDER

Mr. S.R. Adige, VC(A):

Heard both sides on CP No.236/2000 alleging contumacious disobedience of the Tribunal's order dated 11.4.2000 in OA No.1022/99.

2. In that OA applicant was aggrieved by respondents' letter dated 22.3.99 rejecting his representations dated 24.9.98 and 18.2.99 for revision of his pension/family pension in implementation of GOI's decision in regard to the 5th pay Commission.

3. After hearing both parties OA No. 1022/99 was allowed by order dated 11.4.2000 with the following directions

- i) Respondents were to take into account applicant's pay as ordered by the Delhi High Court in its order dated 14.12.81 i.e. Rs. 960/- plus Rs. 192/- i.e. Rs. 1152/- in revising his family pension/ pension amounts in accordance with relevant rules and instructions;
- ii) The difference in the amount of pension was to be paid to applicant within two months;
- iii) applicant was entitled to interest @ 12% p.a. on the difference of pension amount with effect from the due date till the date of payment;
- iv) Cost of Rs. 2000/- were imposed upon respondents.

4. Pursuant to the above respondents have refixed applicant's pension @ Rs. 4595/- p.m. w.e.f. 1.1.96. Applicant however contends that in accordance with rules and instructions, he is entitled to pension @ Rs. 4818/- p.m. w.e.f. 1.1.96.

5. Applicant contends that the fixation of his pension at Rs. 4595/- p.m. w.e.f. 1.1.96 by respondents is based upon his notional pay fixation as on 1.1.86 at Rs. 3050/- p.m. but while doing so, respondents have not granted him the benefits of two annual notional increments of Rs. 75/- each in terms of Note 3 to Rule 7(1) CCS (Revised Pension) Rules, 1986. Had these two increments also been granted to him because of bunching of applicant's pay, his notional pay would have risen to

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Rs. 3200/- p.m. and his pension likewise revised to Rs. 4818/- p.m. w.e.f. 1.1.96.

6. In his written submissions, to the C.P. applicant has contended that respondents have presumably denied him the benefit of the two notional increments in the light of the contents of respondents' OM dated 10.2.98 which inter alia lays down that the benefit of any notional increments admissible in terms of rules and instructions applicable at the relevant time shall not be extended in any case of refixation of pay on notional basis. He then proceeds to contend that this results in an illegal and arbitrary distinction between those who retired before 1.1.86 such as persons like himself, and those who retired after 1.1.86, in as much as those who retired prior to 1.1.86 are debarred from the additional increments admissible due to bunching whereas there is no such restriction on Govt. servants retiring on or after 1.1.86. Various rulings have been relied upon to support these contentions including Nakaras' case AIR 1983 SC 130.

7. There is a contempt proceeding, which is essentially a proceeding between the court and the alleged contemnor(s) to punish those who deliberately, wilfully, wantonly and malafidely disobey or fail to implement court orders so that the Majesty of the Law is upheld. Contempt proceedings cannot be used as a forum to seek adjudication of disputed pensionary claims. Respondents have denied applicant's claim that he is entitled to the aforesaid two notional increments, and such a claim cannot be settled through a contempt proceeding.

In this connection, the Hon'ble Supreme Court's ruling in J.S. Parihar Vs. G. Duggar & Ors. JT 1996 (9) SC 608 which is extremely relevant is extracted below

"Once there is an order passed by the Govt. on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redress in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions..... But that would be a separate cause of action (and) cannot be considered wilful violation of the order."

8. Under the circumstance, without making any observations on the merits of applicant's claim for the two notional increments, and granting liberty to applicant to agitate his claims for the same through appropriate original proceedings in accordance with law, if so advised, the C.P. is dropped. Notices are discharged.

*A. Vedavalli*  
( DR. A. VEDAVALLI )  
MEMBER (J)

*S. R. Adige*  
(S. R. ADIGE)  
VICE CHAIRMAN (A)

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