

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA.No.1691 of 1998

New Delhi, this 26th day of May, 1999.

HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Brij Behari Lal Sharma
S/o Late Lakha Ram Sharma
C/o Shri V.K. Mudgal
House No.8121 Pocket-11 Sector-B
Basant Kunj
New Delhi-37

2. Narottam Prasad Sharma
S/o Shri Saligram Sharma
C/o Shri R.K. Srivastava
543 Baba Faridpuri
West Patel Nagar
New Delhi.

... Applicants

By Advocate: Shri D.P. Sharma

versus

1. Union of India, through
Secretary
Ministry of Communication
(Department of Posts)
New Delhi.
2. The Director Accounts(Postal)
U.P. Circle
Sector-D Aliganj
Lucknow.
3. The Senior Supdt. Post Offices
Mathura Division
Civil Lines
Mathura.
4. The Senior Postmaster
Civil Lines
Mathura.
5. The Sub-Postmaster
Vrindaban (Mathura)
6. The Sub-Postmaster
Mathura Chauck
P.O. Mathura.

... Respondents

By Advocate: Shri N.S. Mehta

O R D E R (Oral)

HON'BLE SHRI K.MUTHUKUMAR,M(A)

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The applicants retired from service on 31.1.96. In accordance with the rules and instructions on the subject, they were allowed pension under old scales and the pension of applicant no.1 was fixed at Rs.1008/- and the pension of applicant no.2 was fixed at Rs.980/-. Consequent on the implementation of the 5th Pay Commission, the respondents have issued two sets of orders (Annexures R-1 and R-2). The applicants being postal employees, the Postal authorities themselves disbursed the pension instead of Public Sector Banks. While authorising the pension under these orders, respondent no.4 who was the disbursing authority for the applicants, authorised payment of the consolidated pensions of Rs.3055/- in respect of applicant no.1 and Rs.2971/- in respect of applicant no.2 from the date of their retirement. The applicants, therefore, presumed this was the revised dates of pension for them. However, the respondents detected this and instead of applying the provisions of O.M. dated 27.10.97 applicable to such of those persons who retired on or after 1.1.96, the applicants have been given the benefit of consolidation of pension by O.M. of 27.10.97 applicable to such of those persons who retired prior to 1.1.96. On detection of this mistake, the respondents revised their basic pension applying the provisions of O.M. dated 27.10.99 (Annexure R-1) and fixed revised pension at Rs.2556/- in respect of applicant no.1 and Rs.2488/- in respect of applicant no.2.

2. The applicants being aggrieved by the above action of the respondents, have filed this OA. parties.

3. In the reply filed by the respondents, they have disputed the allegation of the applicants that there has been a reduction in pension in respect of these applicants. They have stated that respondent no.4 had erroneously applied the provisions of O.M. dated 27.10.97 applicable to those persons who retired on or before 31.12.95 instead of applying the provisions of O.M. of same date applicable to those persons who retired on or after 1.1.96. Accordingly, the respondents corrected their mistake and authorised the final pension by the impugned orders Annexures A-1 and A-2. The respondents maintained that they have correctly authorised for the final pension under the orders of the Government as prescribed in the O.M. dated 27.10.97.

4. I have heard the learned counsel for the parties.

5. The learned counsel for the applicants strenuously argued that the respondents have revised the pension for which they have no power. He referred to provisions of para 3.2 of O.M. dated 27.10.97 wherein it is provided that:

"Where pension/family pension/DCRG/Commutation of pension has already been sanctioned in cases occurring on or after 1.1.96 the same shall be revised in terms of these orders. In cases where pension has been finally sanctioned on the pre-revised orders and if it happens to be more beneficial than the pension becoming due under these orders, the pension already sanctioned shall not be revised to the disadvantage of the pensioner in view of the Rule 70 of the CCS(Pension) Rules, 1972."

6. The aforesaid provision is applicable to the persons who retired on or before 1.1.96. The learned counsel for the applicants however argued that while the applicants were given the consolidated pension of Rs.3055/- and Rs.2971/- in respect of applicants 1 & 2 respectively by the respondents, they have now revised and this is not in consonance with the aforesaid provision.

7. Learned counsel for the applicants also relies on certain cases of the Apex Court viz., D.S. Nakara & Ors. vs UOI & Ors. [AIR 1983 SC 130]; G.S. Fernandez Vs State of Karnataka [1995 SLJ (1) 24] and Sahabram Vs. State of Haryana [1995 SCC (L&S)] 248 to support his contention that pension cannot be revised fused once it is fixed.

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8. The learned counsel for the respondents argued that the applicants have been erroneously authorised basic pension of Rs.3055/- and Rs.2971/- respectively, in serving the O.M. dated 27.10.97 which is applicable only in respect of such of those persons who retired prior to 1.1.96 and, therefore, the fixation of pension of these cases erroneously by respondent-4 who is not the competent authority to fix the pension, is illegal. Respondent-4 had mechanically applied the provisions of O.M. dated 27.0.97 for consolidating the pension of applicants without verifying whether such a consolidated pension as provided under the O.M. will be applicable to the applicants or not.

9. During the arguments, learned counsel for the applicants fairly conceded that the O.M. dated 27.10.97 giving the consolidation pension is not applicable to the applicants but at the same time he argued that even if it is erroneously applied and pension authorised to the applicants, the respondents cannot subsequently revise the pension.

10. I have heard the learned counsel for the parties and perused the record.

11. Where the pension has been drawn erroneously by applying prima-facie certain O.M. of the Government which is not applicable to the applicants at all, the authorisation of pension by the authority concerned is nonest ab initio.

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12. The second point raised by learned counsel for the applicants is that the provision of para 3.2 of the O.M. dated 27.10.97 though applicable to the persons who retired on or after 1.1.96 is violated because the pension of the applicants had been reduced when the earlier pension was more advantageous to the applicants.

13. The above contention of learned counsel for applicants is misconceived. As stated in para 3.2, the basic pension is sanctioned on the basis of pre-revised scale and on the basis of the pay drawn in the pre-revised scale, if it happened to be more beneficial than the pension becoming due, then the earlier pension shall not be revised.

14. In this case, the pension as sanctioned in the pre-revised scale was Rs.1008/- and Rs.982/- in respect of applicant no.1 and applicant no.2 respectively whereas revised pension sanctioned by the impugned order is Rs.2566/- and Rs.2488/- respectively. It is clear that in terms of para 3.2 of the aforesaid O.M. where pension has already been sanctioned in cases applicable under that O.M., the same shall be revised and in case pension has been finally sanctioned on the pre-revised orders and if it happens to be more beneficial than the pension becoming due, the pension shall not be revised to the disadvantage of the pensioner.

15. Learned counsel for applicants submitted that what was granted to the applicants even erroneously was pension of Rs.3055/- and Rs.2971/- respectively and, therefore, comparison has been made with these rates of pension. Since the earlier pension of the applicants was wrongly fixed, this contention of the learned counsel for applicants will not be valid.

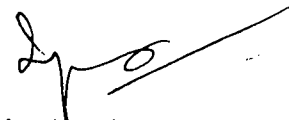
16. Learned counsel for applicants' reliance on the decisions in the cases cited by him does not hold good because those cases are not directly applicable to the facts and circumstances of the present case. Here, the simple fact is that there is no reduction in the basic pension as was finally sanctioned to the applicants in terms of the O.M. dated 27.10.97 applicable to the employees who retired on or after 1.1.96. It is not the case of the applicants that they have not opted to retain the pre-revised scales of pay for purposed of pension as provided in Rule 10 of the aforesaid O.M. It is admitted that the applicants have opted for pension under the revised scale. Therefore, there is no merit in the application.

17. However, there is force in the contention of learned counsel for applicants that the respondents cannot recover the over payments of pension made for the period from 1.2.96. He also submitted that

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although the respondents initiated recovery proceedings, this was stayed by the Tribunal by way of interim order. The respondents cannot recover the over payments of pension made at this stage.

18. In the light of the above, while dismissing this application as being devoid of merit, respondents are also directed not to make any recovery from the applicants in respect of past over payments of pension. No costs.



(K. Muthukumar)
Member(A)

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