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Central Administrative Tribunal: Principal Bench

DA No. 143/95

New Delhi this the 7th day of June, 1996.

Hon'ble Shri R.K. Ahooja, Member(A)

Shri R.C. Gupta
S/o Late Sh. Banwari Lal Gupta
B-255, Yojna Vihar,
Delhi. 110092. ..

Applicant

(Advocate: In person)

versus

1. Secretary,
Planning Commission
Yojna Bhawan
Parliament Street,
New Delhi. ..

Respondents

(. Advocate: Shri V.K. Mehta
Counsel for respondents)

ORDER

Hon'ble Shri R.K. Ahooja, M(A)

The applicant was originally working in the Planning Commission from where he was transferred to the Rural Electrification Corporation and was permanently absorbed there w.e.f. 8.9.72. Originally he was allowed pensionary benefits w.e.f. the date when he would have been eligible for voluntary retirement from 1982. The applicant claimed in the petition No. DA.1267/89 that he was eligible

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for pensionary benefits in respect of his service in the Planning Commission upto 8.9.1982, the date of his final absorption in REC. During the pendency of that CA the Planning Commission modified their ^{earlier} letter and issued an order on 13.11.90 which stated that pro-rata pension and gratuity would be admissible to him in respect of his service rendered in Govt. of India disbursible from the date of his absorption in the REC i.e. 9.9.1972. In view of this, the Tribunal gave the direction to the respondents to pay interest @ 10% per annum (simple interest) on the delayed payment of accumulated pension and gratuity for the period from 1977-1992.

2. As a result of this decision, the respondents paid the interest to the applicant vide their order dated 29.12.92 amounting to Rs.21,111/- and interest on delayed disbursement of DCA amounting to Rs.4,301/-. The applicant however having not been satisfied has come up with the present CA primarily on two grounds. The first being that the interest paid to him has not been rightly calculated as he was entitled to a ^{further} amount of Rs.2786.25 and secondly he was entitled to the arrears on pension for the period 1972-1982 on the basis of liberalised pension

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formula governed by the Govt. of India, Min. of Finance GM No.F.I(3)E.V/83 dated 22.10.1983 along with interest thereon.

3. When the matter came up before me for final hearing Shri V.K. Mehta, ld. counsel for the respondents fairly offered that as far as the first relief is concerned, the Deptt. will be ready to satisfy the petitioner regarding the calculation of interest on the amount of accumulated pension already paid to the petitioner. The petitioner however did not press this point and submitted that his main grievance was in respect of the second part of his claim, namely, the revision of pension for the period and between 1972 to 1982/ the payment of arrears thereon along with interest of 18% per annum.

4. I have heard the ld. counsel for the respondent and the applicant in person. The claim of the applicant is that he was a pensioner for the period 1972 to 1982 when the accumulated value of the pension due to him was paid to him. The respondents were not ready to allow his claim for pensionary benefits from 1972 and when ultimately they had to concede his claim he was paid pension for this period. However, the Govt. in 1983 issued orders on the basis of judgement of the Supreme Court that the liberalised pension formula

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will be applied to all the pensioners who retired before 1979. As such he having been retired in 1972, the liberalised formula had also to be applied in his favour and he is entitled to enhancement in his pension of Rs.34/- per month along with other relief on that account. It is this part of relief which he demanded from the respondents who have however illegally turned down his legitimate claim.

Deu The respondents refuted the claim of the petitioners that the liberalised pension formula was applicable in the case of petitioner. The ld. counsel Shri V.K. Mehta drew my attention to para-5 of the said CM which is available at Annexure-6 for understanding of the claim of the petitioner which is reproduced below:

" Central Government employees, who got themselves absorbed under Central public sector undertakings/autonomous bodies prior to 1-4-79 and have received/or opted to receive commuted value for 1/3rd of pension as well as terminal benefits equal to the commuted value of the balance amount of pension left after commuting 1/3rd of pension, are not entitled to any benefit under these orders as they were not Central Government pensioners as on 1-4-79. In cases where only a portion of pension has been commuted, the pension will have to be enhanced in accordance with these orders with effect from 1-4-1979."

As can be seen the liberalised pension formula was not applicable to those who had received or had

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opted to receive the commuted value of their pension.

As per Planning Commission letter dated 22.1.75

(Annexure B-1) regarding the permanent absorption

of the applicant in the REC, it was stated in

paragraph 1(v) that the officer will exercise

an option within six months of his absorption

either of the alternatives i.e. receiving

the monthly pension or the commuted value thereof.

Admittedly, the petitioner did not exercise

an option within six months, therefore in terms

of this letter which laid down that where no

option is exercised within the prescribed

period, the officer will automatically be

governed by the second alternative he became

entitled to receive the commuted value only.

The case of the respondents is that this had

hence occurred in the year 1975 and the liberalised

pension formula was not applicable in this case.

The applicant on the other hand claims that even

though it may be assumed that he had opted

for full commutation this was only in the context

of payment of his pensionary benefits from 1982.

The respondents had not allowed this claim, for the

pensionary benefits from 1972 and when after his

long struggle they finally allowed his rightful

claim then he had to be allowed a fresh option.

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In any event, the petitioner claims that the commutation of the pension did not take place / until 1982 and for the period 1972-1982 he had to be considered in the same way as other ordinary pensioners.

5. Having given careful consideration to the claims of the petitioner, I find little merit therein.

There is no doubt that the petitioner had opted for full commutation of his pension. This option having once become final irrespective of whether the pension was to be paid from 1972 or from 1982. He was of course entitled to receive monthly pension till such time that the full value of the commuted pension was not paid to him by but that itself did not change the fact of the exercise of option. It is significant that para-5 of LM No. F.I(3)-E-V/83 dt. 22.10.1983 regarding the liberalised pension formula excluded not only those who had received the commuted value of pension but also those who had opted to do so. Thus, the exercise of the option and its implementation was not the material in respect of the application of the liberalised pension formula. The applicant came and agitated before this Tribunal his claim for pensionary benefits in 1984 and also obtained the orders for payment of interest thereon. The only material change thereafter was that instead of 1982 the pensionary benefits started from 1972 for which arrears were paid along with interest thereon.

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what the petitioner now seeks is to get the best of both the worlds i.e. draw benefit of the liberalised pension from 1972 to 1982 on the basis that he did not exercise an option and receive the commuted value after 1982 on the basis that he had exercised an option. Having received the commuted value of pension from 1982 he is also governed by the option for the period prior to 1982 and hence would not be eligible for enhancement of pension on the basis of liberalised pension formula.

6. On the basis of above discussion, the Application is dismissed. There will be no order as to costs.

(R.K. Ahuja)
Member (n)

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