

Central Administrative Tribunal
Principal Bench

O.A.No.1329/97

(10)

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 2nd day of December, 1998

M.M.Mathur
s/o late Shri K.S.Mathur
r/o C-2/62-B, Lawrence Road
Delhi - 110 035.

... Applicant

(In person)

Vs.

Union of India through
the Secretary to the Govt. of India
Ministry of Personnel,
Public Grievances & Pensions
Department of Personnel & Training
North Block
New Delhi.

... Respondent

(By Shri K.R.Sachdeva, Advocate)

ORDER (Oral)

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

We have considered the pleadings and the arguments of the parties in this case conscious of the law laid down by the Supreme Court that no direction can be given to the Government to grant monetary benefits contrary to its policy unless it can be said that the decision of the Government is arbitrary (State of Fishery Officers Association, West Bengal & Anr. Vs. State of West Bengal & Anr., 1997(9) SCC 636).

2. The applicant who retired from a senior post under the Central Government is aggrieved that though he was granted other retiral benefits, he has been denied the benefit of encashment of Half Pay Leave (HPL), subsisting in his credit account at the time of retirement. He submits that the orders issued by the respondents in OM No.14020/1/90-Estt.(L) dated 6.4.1993,

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Annexure A1 as amended by OM of even number dated 13.4.1994 are arbitrary and restrictions therein amount to nullifying the benefit sought to be given to the retiring personnel. According to the OM, copy of which is at Annexure A1, the encashment of entire HPL at the credit of the Government servant who retires on superannuation is allowed but the same is made subject to the condition that pension and pensionary equivalent of other retirement benefits shall be deducted from the amount payable as cash equivalent. It is the case of the applicant that since both the HPL salary and the pension are normally fixed at 50% of the last pay drawn there would be no net benefit to the retiring government servant; in fact in his own case he was advised that if this claim was made, he will have to refund some amount. According to the applicant, this OM virtually makes a mockery and a farce of the objective sought to be achieved, i.e., the welfare of the Government servant who has retired after a long and creditable service having foregone, HPL during his service in the interest of Government's work. It has also been argued by the applicant that the background and history behind this OM is indicative of the object of welfare sought to be achieved, ^{and} the restriction imposed herein has rendered it infructuous. The provisions of encashment of HPL as provided under Rule 39(5) of the CCS (Leave) Rules, 1972 was originally confined to those who left government service either voluntarily or otherwise without attaining the age of normal superannuation. The provisions for encashment of HPL was accorded on the basis that by leaving service prior to the age of superannuation they had been deprived of the opportunity to avail of the HPL at their credit. Later there was a consistent demand on

the part of those who had retired after attaining the normal age of superannuation that they should have this benefit also. The matter was referred for arbitration on account of the disagreement of the Government in the JCM. The Board of Arbitration recommended that this benefit should also be extended to those Government servants who retired at the normal age of superannuation. The applicant pointed out that as shown by him if the restriction of reduction of amount of pension equivalent is imposed then there is in fact no net benefit to those who retired after attaining the age of superannuation. He submitted that this restriction is therefore in direct contravention of the policy decision which was to extend the benefit available to those who retired prematurely to those who rendered full service to the Government. In view of this position, he seeks a direction that the restriction imposed be struck down being arbitrary and unreasonable and the respondents be directed to allow encashment of HPL to him and other persons similarly constituted without deduction of the pension equivalent.

3. The respondents in reply have stated that this provision was extended to those retiring at the normal age of superannuation on the basis of the recommendations of the Board of Arbitration which took into account the formula enumerated, namely that the pension or pension equivalent would be deducted from the HPL salary. The demand was for extension of the benefit accorded to those who left Government service prematurely and it is this demand which was met by the OM which is being impugned. The learned counsel for the respondents points out that if the prayer made by the applicant is granted, then there would be wide ranging financial implications as there are

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37 lakhs Central Govt. employees of which approximately one lakh retire every year. In case encashment is allowed of the HPL at the credit of the Government servants the financial implications therein would easily amount to one thousand crores per annum. The respondents have also submitted that the Supreme Court has also, in the case of the Kanhaiyalal Parasai Vs. Union of India & Others, Writ Petition (C) No.1503 of 1979, examined and upheld the provision of the Rule 39 of CCS (Leave) Rules, 1972.

4. Having considered the matter, we find that the directions sought for by the applicant cannot be granted. The crucial question is whether the decision of the respondents to reduce the encashment by the pension equivalent is arbitrary or not. The history of the case as has been given out is that the facility was granted in the first instance only to those who left Government service prematurely. The demand was also that this facility should be extended to those who retired after attaining the age of superannuation. The demand which was raised in the JCM was referred to the Board of Arbitration. The Board of Arbitration in its award specifically provided for the deduction of the pension and pension equivalent of other retirement benefits. The Government have thus acted in accordance with the demand of the staff side and in pursuance of the award given by the Board of Arbitration on 19.12.1986, copy of which is at Annexure R-2. We therefore detect no arbitrariness in the decision of the Government. Looking to the reason on account of which this facility was granted to those who left service prematurely, we also do not consider that the provision for deduction of the pension can be

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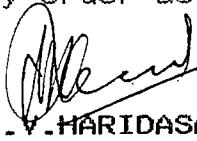
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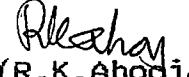
faulted. The reason given as mentioned in the award of Board of Arbitration is that those who retired from Government service prematurely were deprived of the opportunity to avail of the HPL at their credit. The provision of Rule 39(5) also stipulates that in case of those who retire prematurely the HPL which is encashed will not extend beyond the normal date of superannuation. Assuming that such persons had actually availed of the HPL upto the date of their superannuations they would not have been at the same time entitled to receive the pension. Obviously, such persons cannot obtain encashment on the premise that they could not avail of leave and simultaneously also receive the pension for the same period. Necessarily therefore amount of pension had to be deducted from the HPL encashment. The applicant's argument is that this has no relevance to those who retire after attaining the age of superannuation since the encashment of earned leave is not on the premise that Government servant was denied the leave but that he put the interest of the Government before his own convenience. We do not agree that those who earn full pension after putting the requisite 33 years of service ~~will~~ get no net benefit, but ~~There~~ are categories of Government servants who enter service at a late stage and are not able to put in the requisite qualifying service for obtaining the full pension. Doctors, Scientists and similar other categories immediately come to mind. Thus by extending the benefit to those who retire after attaining the age of superannuation a substantial benefit has come the way of such employees and it cannot be said ~~that~~ this extension is a mere farce or a mockery of the retiring government servants.

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5. While we do not agree with the respondents that the Hon'ble Supreme Court in the Kanhaiyalal Parasai (Supra) case cited above has given stamp of approval to the provision of Rule 39(5) of the CCS (Leave) Rules, 1972, as applicable to those who retire after attaining the age of superannuation we nevertheless are of the view that the decision of the Government regarding reduction of the pension equivalent cannot be regarded as arbitrary justifying any intervention on our part. Accordingly the OA is dismissed without any order as to costs.


(A.V. HARIDASAN)
Vice-Chairman


(R.K. Ahodja)
Member (A)

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