

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./~~12~~ No. 2337/94 /19

Decided on: 15.3.96

Shri S.C. Agarwal. APPLICANT(S)
(By Shri MA. Krishnamurthy. Advocate)

VERSUS

UDI & others. RESPONDENTS

(By Shri K.C. Sharma. Advocate)

OD RAM

THE HON'BLE SHRI S.R. ADIGE MEMBER (A).

THE HON'BLE SHRI/SMT./DR. 2

1. To be referred to the Reporter or not? **yes.**
2. Whether to be circulated to other Benches of the Tribunal ?

S.R. Adige
(S.R. ADIGE)
MEMBER (A).

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No.2337/94

New Delhi, dated the 15th March, 1996

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

Shri S.C. Aggarwal,
S/o late Shri P.L. Aggarwal,
R/o Flat No.229, Plot No.25,
Saraswati Kunj Society,
Patparganj,
Delhi-110092.APPLICANT

(By Advocate: Shri M.A. Krishnamurthy)

VERSUS

1. Union of India through
the Secretary,
Ministry of Personnel, Trg., P.G. & Pension,
Deptt. of Personnel & Trg.,
North Block,
New Delhi-110001.
2. The Dy. Secretary (SR),
CS-III, Central (Surplus Staff) Cell,
Dept. of Personnel & Trg.,
3rd Floor (Hall),
Lok Nayak Bhawan,
New Delhi-110003.
3. The Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi-110011.
4. The Controller of Stationery,
Govt. of India Stationery Office,
Ministry of Urban Development,
3, Church Lane,
Calcutta-700001.....RESPONDENTS

(By Advocate: Shri K.C. Sharma)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

I have heard Shri Krishnamurthy for
the applicant and Shri K.C. Sharma for the
respondents.

2. Both counsel agree that the point for
determination is whether the dearness
allowance of Rs.151.10p. for C.P.I. points 201
to 320 which was merged with the applicant's

pay w.e.f. 1.1.78 for revised pay fixation purposes, but was ordered to be deducted from his pay upon his redeployment in the Central Govt., and was further to be treated as Dearness Pay as per Central Govt. rules should or should not be adjusted, While refixing the applicant's pay w.e.f. 1.1.86 in terms of the Central Revised Pay Rules, 1986.

3. The applicant joined the Beas Construction Board on 19.2.73. Those working in the BCB were governed by the Punjab Pay scales. The Punjab Civil Services (Revised Pay) Rules, 1979 became effective w.e.f. 1.1.78 whereby DA on CPI 201 to 320 points was merged with pay for pay fixation purposes. Consequent to the winding up of BCB, the applicant was rendered surplus and was redeployed in the Ministry of Urban Development, Govt. of India w.e.f. 31.1.85. At that point of time, the Central Govt. pay scales were fixed on the basis of the IIIrd Pay Commission's recommendations effective from 1.1.73 at a CPI of 200 points with further DA instalments granted on increases beyond 200 points. Thus while in BCB the applicant was drawing pay according to Punjab pay scales as revised by the PCS (Revised Pay) Rules, 1979 effective from 1.1.78, whereby DA had been absorbed in pay upto CPI 320, on his redeployment in the Central Govt. w.e.f. 31.1.85 he came onto Central pay

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Scales based upon 3rd Pay Commission's recommendations at CPI 200, with DA increases beyond 200. Point to point fixation under Central Govt. not being possible, in the case of such BCB surplus employees, the DPAR issued O.M. dated 27.2.85 (Ann.1) by which such employees were given option either to continue in their existing BCB scales or to come over to Central Pay Scales. The manner of fixing pay under Central Govt. scales was set out in paras 7-11 of that O.M., which was further clarified in O.M. dated 10.3.86 (Ann.II) which provided that while fixing pay of BCB surplus employee in Central Pay Scales, the DA for CPI 201 to 320 which had merged in the pay scale of those employees w.e.f. 1.1.78, may be taken out from the pay drawn by them while in BCB, but this element would be treated as part of dearness pay as admissible under the rules in force in the recipient dept. The precise amount of DA for CPI points 201 to 320 which was merged in the pay scales of the BCB surplus employees concerned at the time of the enforcement of the revised pay scales w.e.f. 1.1.78 was to be ascertained in each case from the FA & CAO Beas Construction Board. It is not disputed that in the applicant's case this came to Rs.151-10. Subsequently the respondents issued a further O.M. dated 31.3.92 setting

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out the manner in which the pay fixation of BCB employees should be done and appending model pay fixation statements on the basis of which the calculations were to be made.

4. In this O.A. the applicant has contended that consequent to the pay fixation done by the respondents w.e.f. 1.1.86 in accordance with O.M. dated 31.3.92 his total emoluments stand reduced. His calculations are as follows:

(A)

Pay allowed as on 1.1.86 in pre-revised scale of Rs.330-560.

	Rs. P.
i) Basic Pay	470.00
ii) DA/ADA	775.00
iii) IR-I & II	110.00
iv) Dearness Pay	<u>151.00</u>
Total	<u>1506.10</u>

(B)

Pay allowed as on 1.1.86 in revised scale of Rs.1200-1800

i) Basic Pay	470.00
ii) DA/ADA upto 608 points	775.00 (including Rs.151.10 as DP)
iii) IR-I & II	110.00
iv) Minimum benefits of 20% of Basic Pay	94.00
Total	<u>1449.80</u>

Pay fixed at 1470 in revised scale of Rs.1200-1800 1.1.86.

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(X)

5. The applicant's calculation at (A) above, is wrong because here there has been a double counting of Rs.151-10. This sum which constitutes the DA for CPI 201 to 320 points, and which is included in DA/DA upto CPI 608 points, has also been claimed as Dearness Pay. It is for this erroneous reason, that it looks as if the applicant has suffered a reduction in his emoluments as a result of pay fixation w.e.f. 1.1.86.

6. In this connection in response to the Tribunal's directions dated 22.9.95, the respondents have filed an addl. affidavit on 20.10.95 regarding the pay drawn by the applicant just prior to 1.1.86. With this affidavit is a certificate from Inspector (Testing) Regional Stationery Depot, New Delhi showing the emoluments drawn by the applicant on 31.12.85.

	Rs.	p.	
Pay	460.00	}	
		}	
Personal Pay	8.90	}	
		}	
Dearness Pay (I)	195.50	}	
		}	
Dearness Pay (II)	151.10	}	815.00
D.A.			560.00
Interim Relief			110.00
C.C.A .			<u>39.85</u>
Total			<u>1525.35</u>

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6. In this addl. affidavit the respondents have stated that dearness pay of Rs.151.10 for CPI 201-320 points which was included in the DA of Rs.560/- was paid to the applicant a second time as Dearness Pay as part of pay through inadvertence, because he was entitled only to dearness pay for CPI 201-320 points but not for DA upto 320 points as a double benefit. This administrative error was corrected at the time of pay fixation on 1.1.86 consequent to 4th Pay Commission's recommendations. The respondents have reiterated that the dearness pay has to be counted only once, as has been clarified by the DPAR in the successive O.Ms and it has been further pointed out that this has also been upheld by the Tribunal's judgments in various cases, and that the respondents can correct an administrative error at any point of time, if the same is against the Rules, as there is no estoppel against laws/rules. No materials have been filed by the applicant to rebut the contents of this addl. affidavit.

7. In this connection, the applicant has sought support from the CAT, PB's judgment dated 21.10.93 in O.A. No.1370/88 Hans Raj Vs. UOI & others. It has been contended that in reply to that OA submitted by the Govt. on 24.1.89 the fact that

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the applicant's pay was revised to Rs. 1375/- w.e.f. 1.1.86 in the light of the IV Pay Commission's recommendation, was admitted and the applicant's case being identical with that of Shri Hans Raj, his pay should also have been fixed in the like manner. The respondents have, however, pointed out that Shri Hans Raj had challenged his pay fixation order and DOPT's O.M. dated 10.3.86. Since his pay was fixed in accordance with the rules in force at that time, the counter affidavit was also based on that rules. The CAT in Hans Raj's judgment dated 21.10.93 upheld the order dated 10.3.86. However, the DOPT's O.M. dated 10.3.86 was subsequently superseded by O.M. dated 31.3.92 which was issued pursuant to CAT Principal Bench's order dated 29.7.91 in OA. No. 159/87 O.P. Jaiswal & others Vs. UOI & others and the CAT, Chandigarh Bench upheld the said O.M. dated 31.3.92 in O.A. No. 1011/CH/92 S.K. Gupta Vs. UOI. The respondents have contended that the applicant's pay has been fixed in accordance with O.M. dated 31.3.92 whereas Hans Raj's pay has been fixed in accordance with O.M. dated 10.3.86, and since the O.M. dated 10.3.86 has been superseded, Shri Hans Raj's pay should have been fixed in pursuance of O.M. dated 31.3.92. The present respondents had been asked to issue necessary instructions if they had not acted upon already.

8. It is important to note here that the judgment dated 21.10.93 in Hans Raj's case (Supra) had dismissed the challenge to respondents' O.M. dated 10.3.86. The contents of the DOPT's O.M.

dated 31.3.92 do not appear to have been brought to its notice when it delivered that judgment and the question whether there had been double counting or not (in Hans Raj's case the sum in question was Rs.146-50) was neither raised nor adjudicated upon. Hence no benefit can accrue to the present applicant from that judgment, more particularly when the O.M. dated 31.3.92 on the basis of which his pay has been fixed , has been upheld by the CAT Chandigarh Bench in O.A.No.1011/CH/92 S.K.Gupta & 10 thers Vs. UOI & others decided on 27.1.94. It cannot be anyones' case that pay fixation should not be made in accordance with extant instructions on the subject, which have been upheld by the Tribunal, and if the applicant's pay has been fixed in accordance with those instructions, he can have no legitimate complaint.

9. In the result, I see no good ground to interfere in this matter. The OA fails and is dismissed. No costs.

S.R. Adige
(S.R.ADIGE)
MEMBER (A).

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