

Central Administrative Tribunal, Principal Bench

O.A.No. 622 of 2000

Date of Decision 21. 3 .2001

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Mr. M.L.Ohri

- Applicant

(In person)

Versus

Union of India and others

- Respondents

(By Advocate Shri K.C.D.Gangwani)

CORAM :

Hon'ble Mr.V.K.Majotra, Member (Admnv)

Hon'ble Mr.Shanker Raju, Member (Judicial)

1. To be referred to the reporter - Yes
2. Whether it needs to be circulated to other Benches of the Tribunal - No

V.K. Majotra

(V.K.Majotra)
Member (Admnv)

rkv.

Central Administrative Tribunal, Principal Bench

Original Application No.622 of 2000

New Delhi, this the 21st day of March, 2001

Hon'ble Mr.V.K.Majotra, Member. (Admnv)
Hon'ble Mr.Shanker Raju, Member(J)

Mr.M.L.Ohri, S/o late Shri B.D.Ohri, Flat
No.39, Pkt-B, Sarita Vihar, New Delhi. - Applicant

(Applicant in person)

Versus

1. Union of India, Through the Secretary,
Ministry of Personnel, Public Grievances
& Pensions, Department of Pensions &
Pensioners' Welfare, North Block, New
Delhi.
2. The Secretary, Ministry of Finance,
Department of Expenditure, North Block,
New Delhi.
3. The Pay & Accounts Officer, Central
Pension Accounting Officer, Ministry of
Finance, Trikot II Complex (Behind
Hotel Hyatt Regency), Bhikaji Cama Place,
New Delhi-110066. - Respondents

(By Advocate Shri K.C.D.Gangwani)

O R D E R

By V.K.Majotra, Member(Admnv) -

The applicant has challenged the validity of OM dated 17.12.1998 (Annexure-A-1) relating to implementation of Government decisions on the recommendations of Fifth Central Pay Commission (for short '5th CPC') relating to retirement benefits. This OM inter alia states that full pension in no case shall be less than 50% of the minimum of the revised scale of pay introduced with effect from 1st January, 1996 for the post last held by the employee at the time of retirement. It has been assailed on the ground that it is violative of Articles 14 and 16 of the Constitution of India in relation to employees who retired prior to 1.1.1996. Similarly, it is alleged that grant of family pension shall not be less than 30% of the minimum of the revised pay scale introduced from 1.1.1996 for the post last held by the concerned pensioners/ deceased Government servant, is also violative of said Articles

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in relation to employees retired before 1.1.1996. The applicant has maintained that the amount of pension is based upon average emoluments determined in accordance with Rule 34 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'the Pension Rules') and the status of the retiring employee has no nexus with the determination of the amount of pension. The applicant has also challenged the validity of letter dated 12.11.1999 (Annexure-A-2) issued by the Pay and Accounts Officer, Central Pension Accounting Office, New Delhi determining the revised pension payable to the applicant and the family pension in terms of OM dated 17.12.1998 on the ground that the same is arbitrary, discriminatory and violative of Articles 14 & 16 of the Constitution.

2. The applicant retired from the post of Assistant Director of Income-tax (Vigilance) on superannuation on 30.4.1990, after rendering more than 33 years of service. His basic pension was fixed at Rs.1944/- with effect from 1.5.1990. On the basis of the instructions contained in OM dated 27.10.1997, applicant's basic pension was revised to Rs.5,557/- from 1.1.1996. According to applicant in terms of Rule 49 of the Pension Rules, pension is calculated with reference to number of years of service and average emoluments. In the case of an employee retiring after qualifying service of 33 years, his pension is calculated at 50% of average emoluments. Average emoluments are determined on the basis of those drawn during the last 10 months of an employee's service. The pension of pre-1996 pensioners was revised with effect from 1.1.1996 as per OM dated 27.10.1997 (Annexure-A-3) consequent upon implementation of recommendations of 5th CPC. In

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accordance with the table annexed to OM dated 27.10.1997, a pre-1996 retiree drawing more basic pension gets more pension than pre-1996 pensioner drawing lesser pension. However, Annexure-A-1 according to applicant has resulted in distortion in the admissible pension, by linking the pension of pre-1996 pensioners to the post last held instead of basic pension drawn by him at the time of retirement. The applicant has stated that an employee retired from the rank of Under Secretary or equivalent like the applicant who was drawing more pay and pension than the employee retiring as Deputy Secretary or equivalent rank, however, ultimately gets smaller revised pension in terms of OM dated 17.12.1998. By way of illustration the following table has been extracted from the OA-

| Designation & Pay Scale | Last Pay drawn (average emoluments) | Basic Pension prior to 1.1.1996 | Revision Pension in terms of order dt. 17.10.97 | Pre-revised Pension in terms of OM dt. 17.12.98 |
|--|-------------------------------------|---------------------------------|---|---|
| Under Secretary or equivalent pay scale 3000-100-3500-125-4500 | 3888 | 1944 | 5557 | 5557 |
| Dy. Secretary or equivalent (with one year service as Dy. Secretary) pay scale 3700-125-4700-150-5000. | 3825 | 1913 | 5511 | 6000 |

The applicant has sought quashing of OM dated 17.12.1998 (Annexure-A-1) and/or a direction to respondents to modify OM dated 17.12.1998 to ensure that if pension of a pre-1996 retiree is revised upwards to 50% of the minimum of the revised pay scales of the post, the pension of all those drawing greater emoluments and more pension as on 1.1.1996 should also be stepped up to an equal amount. The applicant has also sought a direction

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to revise his pension to Rs.6,000/- per month and family pension to Rs.3,600/- per month along with arrears of pension with effect from 1.1.1996. 16

3. In their counter the respondents have stated that the 5th CPC had recommended that past pensioner should get the same amount of pension which their counterparts retired on or after 1.1.1996 from the same post get irrespective of the date of retirement. The 5th CPC recommended a modified parity by bringing all pensioners to the 4th CPC level. They recommended notional fixation of pay and thereafter pension in respect of all pre-1986 retiring as on 1.1.1986. The Government accepted the recommendations and set out to notionally fix pay of pre-1986 retiree as on 1.1.1996 at par with serving employee and thereafter consolidated their pension as per the prescribed formula. Such consolidated pension was not to be less than 50% of the minimum of the pay of post held by the pensioner at the time of retirement. Respondents issued OM dated 27.10.1997 permitting consolidation of basic pension as per formula i.e. basic pension + DA + IR-I + IR-II + FW 40%; OM dated 10.2.1998 regarding notional fixation of pay in respect of pre-1986 pensioner and OM dated 17.12.1998 providing that if consolidated pension is less than 50% of the minimum of the revised pay scale, it may be stepped up to 50%. The respondents have contended that the applicant cannot be allowed to make a comparison with an officer of a higher status. He should make a comparison with an officer of his own status. According to them, concept of parity recommended by the 5th CPC can be operationalised only with reference to the post held. According to them the applicant has not suffered any loss and his revised

pension is in excess of 50% of the minimum of the revised pay scale of the post held by him at the time of retirement.

4. The applicant has filed a rejoinder as well.

5. We have heard the applicant in person, who is also a practising lawyer, and Shri Gangwani, learned counsel of respondents. We have also perused the material available on record.

6. The applicant has contended that the pension has to be regulated under the Pension Rules and determined on the basis of average emoluments drawn by a Government servant during the last 10 months of his service. In case a Government servant has rendered a qualifying service of 33 years, his pension has to be determined on the basis of 50% of the average emoluments drawn by him during the last 10 months. Relevant Rules 5 & 34 of the Pension Rules read as under:-

"5. Regulation of claims to pension or family pension.

(1) Any claim to pension or family pension shall be regularised by the provisions of these rules in force at the time when a Government servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be.

34. Average Emoluments

Average emoluments shall be determined with reference to the emoluments drawn by a Government servant during the last ten months of his service."

7. The applicant argued that if the Government grants greater benefits than those determined as per the rules stated above, their application cannot be made to one class, such benefits have to be extended to all classes. In this regard applicant relied on the following decisions (i) D.S.Nakara & others Vs. Union of India, 1983 (1) SCC 305, (ii) K.L.Rathees Vs. Union of India & others, 1997 SCC (L&S) 1253; (iii) C.L.Verma Vs. State of Madhya Pradesh and another, 1991 SCC L&S 891; and (iv) K.Kuppusamy and another Vs. State of T.N. and

others 1998 SCC (L&S)1694. It has been held in Nakara's case (supra) that all pensioners have equal right to receive the benefits of liberalised pension scheme. They form a class as a whole and cannot be micro-classified by an arbitrary, unprincipled and unreasonable eligibility criterion for the purpose of grant of revised pension. The classification must not be arbitrary but rational, it must be founded on an intelligible differentia which distinguishes those that are grouped together from others and also that the differentia must have rational relation to the object sought to be achieved by the Act. When all pensioners form a class as a whole further sub-classification without any reasonable criteria is impermissible. In the present case, the respondents have accorded a more generous revision of pension to people retired from higher posts. In the illustration provided by the applicant a Deputy Secretary having worked for a short-while on that post is allowed a higher pension than an Under Secretary who retired after putting in a long service and who had been drawing a higher average pay and higher pension than such a Deputy Secretary. Thus, status according to the applicant cannot form the basis of a further classification among the pensioners for according more generous pension to the people having higher position. Referring to K.L.Rathee's case (supra) applicant contended that the rule of computation of pension must be the same i.e. the average of last 10 months' emoluments irrespective of date of retirement but amount of pension of the retirees of the same rank cannot be the same irrespective of date of retirement. Those who were actually drawing larger emoluments in the last 10 months of their service will certainly get larger amount of pension. The applicant relied upon the

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case of C.L.Verma (supra) to contend that whereas Annexure-A-1 OM dated 17.12.1998 is only in the nature of executive instructions, they cannot be allowed to supersede the statutory provisions contained in the Pension Rules. Whereas determination of pension has to be based on 50% of the average emoluments drawn during the last 10 months of the service provided that the retiree has completed 33 years of qualifying service, by the said OM, if the pension, determined in terms of the above requirement, falls short of 50% of the minimum of revised scale of pay, computation of the same has to be raised to 50% of the minimum of the revised scale of pay. Such a computation leads to discrimination as illustrated by the applicant above.

8. Applicant supplemented his arguments that statutory rules cannot be overridden by the executive orders through the ratio in the matter of K.Kuppusamy (supra) wherein it was held that where the rules framed under Article 309 of the Constitution had not been amended the Government should not act contrary to such rules merely because it had taken a decision to amend them. Administrative instructions/ circulars/ orders cannot override statutory rules. The applicant pointed out that various allowances and benefits have always been related to the pay of the Government servants. They are not related to the posts. Travelling allowance, dearness allowance etc. have always been related to the basic pay of a Government servant. The contention of the respondents that pension has to be related to 50% of the minimum of the revised pay scale of a post according to the applicant has unsettled the hitherto principle and practice of recognition of

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average pay for the last 10 months for computing pension in favour of weightage to the higher status of Government employees. 20

9. The learned counsel of respondents took exception that the applicant has not come up with any concrete example. He has only cited a hypothetical case. According to learned counsel of respondents there cannot be a case of the type mentioned by the applicant. According to him, the applicant has not suffered any loss in pension by the order of 17.12.1998. He maintained that the comparison drawn by the applicant is incorrect. He is comparing his case with a differently placed person. Comparison has to be between individuals holding similar posts. The learned counsel contended that the pension formula still continues with the calculation of last 10 months' average emoluments and qualifying service. Additionally, the pensions of pensioners have been stepped up to 50% of the minimum of the revised scale of pay as on 1.1.1996 in respect of Government servants retiring after this date, notwithstanding the average emoluments. The applicant contradicted the argument of the respondents' counsel relating to a hypothetical case, stating that if such a case was not put there, there would not have been any need to issue OM dated 17.12.1998 (Annexure-A-1) contemplating that full pension calculated as per rules could be less than 50% of the minimum of the revised scale of pay and thus providing for raise in pension in such cases up to 50% of the minimum of the revised scale of pay of the post.

10. We find force in the contentions of the applicant. Visibly when an employee has been drawing greater average emoluments for the last 10 months of his service and a higher pension prior to 1.1.1996 as

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compared to an officer though having a higher status and a higher scale of pay but drawing less average emoluments than the applicant, less basic pension prior to 1.1.1996 and less revised pension, in terms of Order dated 27.10.1997 according higher pension to the latter in terms of OM dated 17.12.1998 seems to be discriminatory having created a mini-classification on the basis of posts which revolts against the principles set out in the Pension Rules as well as in the ruling cited above. Obviously, the applicant has brought out a clear anomaly to the notice of the Court resulting from implementation of the recommendations of 5th CPC regarding revision of pension/ family pension etc. which requires immediate attention. The classification made on the basis of posts in the orders challenged by the applicant appears to be arbitrary and not rational. If it is intended to accord benefit of liberalised pension to the Government servants the classification has to be founded on intelligible differentia such as average pay and not status/posts. However, we will like to refrain from according the reliefs claimed by the applicant ourselves leaving the decision to be taken by the Government themselves after taking into consideration the grounds taken by the applicant in his OA as well as those raised during the course of arguments before us. In our view it would meet the ends of justice if the respondents are called upon to obtain a representation on the subject from the applicant, set up a committee comprising officers of the rank of Additional Secretary from the Ministry of Finance (Department of Expenditure); Ministry of Personnel, Public Grievances & Pensions; and Ministry of Law to

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consider applicant's representation and take a decision on the recommendations of the Committee within a stipulated period.

11. The OA is accordingly disposed of with the following directions:-

- (i) The applicant will make a representation on the subject to Secretary, Department of Expenditure within 15 days of the receipt of this order.
- (ii) The committee of representatives of various Ministries as stated above should consider representation at (i) above and make their recommendations to Secretary, Department of Expenditure within a period of two months of the receipt of the representation after providing an opportunity of personal hearing to the applicant.
- (iii) Respondent 2 Secretary, Department of Expenditure would take final decision in the matter within 15 days of the receipt of the report of the above committee.

No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (Admnv)

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