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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1165/89
T.A. No.

199

DATE OF DECISION 10.12.1991Shri S. Manohar Singh~~Petitioner~~ ApplicantShri S.C. LuthraAdvocate for the ~~Petitioner(s)~~ Applicant

Versus

Director, Intelligence Bureau RespondentShri K.C. Mittal

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble ~~Mr.~~ Miss Usha Savara, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? */*
4. Whether it needs to be circulated to other Benches of the Tribunal? */ m*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who is presently working as Assistant Engineer (Safety) in National Thermal Power Corporation Ltd., Surat, is challenging the decision of the respondents in not giving him the terminal benefits on the revised rates with effect from 1.1.1986. He has a catalogue of other grievances which are not relevant in the present context. He joined the Intelligence Bureau under the Ministry of Home Affairs in 1968. He applied for a post in N.T.P.C. in 1981. On his selection in the N.T.P.C., he was relieved from the I.B. w.e.f. 22.1.1982.

As he was a permanent Government servant, his lien was retained in the I.B. for 2 years, but it was terminated w.e.f. 31.3.1984. He has sought for the following reliefs:-

- a) Pension for the period 1.4.1984 to 15.11.1988, i.e., 55½ months.
- b) Pension at old rate for the period 1.4.1984 to 31.12.1985 and at revised rate from 1.1.1986 to 15.11.1988.
- c) Amount of D.A. relief as applicable for the period applicant has been treated as pensioner.
- d) Other retirement benefits at revised rate.

2. The Pay & Accounts Office, Shillong, under the Ministry of Home Affairs, have informed the applicant by their letter dated 28.11.1988 as follows:-

"2) In regard to your letter dt. 1.10.88 regarding revision of your pension with effect from 1.1.86, I am to state that since you have drawn one time lumpsum terminal benefits equal to 100% of your pension, the pension will not be revised with effect from 1.1.86. In this connection, para 10(a) of G-I O.M. No.2.1/87-PIE-I dated 16.4.87 of Ministry of Personnel, Public Grievances & Pensions, Department of Pension and Pensioners' Welfare may please be referred to."

3. The respondents have contended that the applicant had opted for one time lump sum settlement of his terminal benefits equal to hundred per cent of his pension on termination of his lien in I.B. w.e.f. 31.3.1984 consequent upon his absorption in NTPC. Hence there is no question of

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revising his pension denovo with effect from 1.1.1986 as per para.10 (a) of Ministry of Personnel, Public Grievances & Pensions, Department of Pension and Pensioners' Welfare O.M. No.2/1/87-PIC-I dated, 16.4.87.

4. According to the aforesaid instructions, where the Government servants on permanent absorption in public sector undertakings/autonomous bodies continue to draw pension separately from the Government, their pension will be updated in terms of these orders. In cases where the Government servants have drawn one time lumpsum terminal benefits equal to 100% of their pensions, their cases will not be covered by these orders.

5. We have gone through the records of the case and have heard the learned counsel for both the parties. Admittedly, the Pension Payment Order was issued to the applicant only after 1.1.1986 even though he had formally retired from Government service in 1984. His status between 1984 and 1986 was that of a retired pensioner entitled to the revision of pension like any other pensioner. The benefit of the revised pension, available under the O.M. dated 16th April, 1987 (Annexure A-1), is admissible to the 'existing pensioners'. The definition of 'existing pensioner' as given in para 3.1(a) of the O.M. of 16th April, 1987 reads as follows:-

"Existing pensioner' or 'Existing Family pensioner' means a pensioner who was drawing/entitled to pension/family pension on 31.12.1985. For purposes

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of updating family pension it also covers members of family of employees retired prior to 1.1.1986 and in whose case family pension has not been commenced as the pensioner is/was alive on 31.12.1985."

As regards those Central Government employees who have been permanently absorbed in Public Sector Undertakings, the revision of the pension will be governed by para 10(a), which reads as follows:-

"10. The cases of Central Government employees who have been permanently absorbed in public sector undertakings/autonomous bodies will be regulated as follows:

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- (a) Where the Government servants on permanent absorption in public sector undertakings/autonomous bodies continue to draw pension separately from the Government, their pension will be updated in terms of these orders. In cases where the Government servants have drawn one time lumpsum terminal benefits equal to 100% of their pensions, their cases will not be covered by these orders."

Reading the aforesaid two paras (3 and 10) together, one gets the impression that an 'existing pensioner' who was drawing pension as on 31.12.1985, even though he had been absorbed in a Public Sector Undertaking, would be entitled to get revised pension with effect from 1.1.1986. An exception has been made in the cases of those pensioners permanently absorbed in Public Sector Undertakings who had commuted 100% of their pension, if they had commuted their entire pension with effect from a date earlier than 1.1.1986, in that event, they ceased to be 'existing pensioners' and,

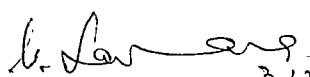
therefore, the question of revising their pension in accordance with the aforesaid O.M. does not arise. The clarification issued by the Ministry of Personnel and Public Grievances in their O.M. of 8th March, 1989 relevant to the case reads as follows:-


<u>Points for clarification</u>	<u>Clarification</u>
Whether the orders dated 16th April, 1987 will be applicable to Central Govt. Employees who have been absorbed in Public Sector Undertakings from a date prior to 1.1.86 and opt or have opted for 100% commutation but in whose case the commutation amount has not been paid before 1.1.1986.	The orders dated 16th April, 1987 will not apply to the retirees who have been absorbed in public sector undertaking or autonomous bodies from a date prior to 1.1.86 and have opted or may opt for 100% commutation of pension even if the commutation value has not been paid to them before 1.1.86. Their pension will not be revised in terms of OM dated 16.4.1987 and the commutation value will be based on the original amount of pension admissible under the pre-1.1.1986 provisions.

6. In view of the above, another Bench of this Tribunal has held in judgement dated 7.12.1990 in OA-317/88 (M.S. Venkatachalam Vs. Union of India & Others) that the clarification simply states that a pensioner absorbed in public sector undertakings before 1.1.1986 and who opted for 100% commutation of pension before that date will not be entitled to the benefits of the O.M. dated 16th April, 1987. If he had opted for 100% commutation before that date, even if the actual payment of commutation value of pension was effected after 1.1.1986, his case will not be covered by the O.M. It could never be the intention of the Government to deprive the existing pensioner of the benefit of revised

pension who continued to draw pension even after 1.1.1986 and commuted the same like the applicant before us after that date. It is axiomatic that a clarification of an order is not intended to modify the order but to make the intendment of the original order more specific and clear. Since the O.M. of 16th April, 1987 allows revised pension to the pensioners absorbed in Public Sector Undertakings who continued to draw pension immediately before and after 1.1.1986 and had not got the pension dissolved by 100% commutation on 1.1.1986, the clarification cannot deprive them of the originally intended benefits.

7. We respectfully reiterate the same view. In the instant case, the Pension Payment Order was issued only on 28.11.1988 retiring the applicant with effect from 1.4.1984. In the conspectus of the facts and circumstances, we allow the application declaring the applicant as an 'existing pensioner', as contemplated in the O.M. dated 16.4.1987 and direct the respondents to refix the pension of the applicant w.e.f. 1.1.1986 in accordance with the O.M. dated 16.4.1987 with all consequential benefits, including revision of pension, commutation of pension and all other retirement benefits. The respondents shall comply with the above directions within a period of three months from the date of communication of this order. There will be no order as to costs.


(Usha Savara)
Administrative Member


(P.K. Kartha)
Vice-Chairman(Judl.)