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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1969  
T.A. No.

1989

DATE OF DECISION 24.11.1989.

Shri S.L. Juneja Applicant (s)

Shri B.B. Rawal, Advocate for the Applicant (s)

Versus  
C.S.I.R. & Ors. Respondent (s)

Shri Manuel Thomas, Section Officer, for the Respondent (s)

CORAM :

The Hon'ble Mr. P. Srinivasan, Administrative Member.

The Hon'ble Mr. T.S. Oberoi, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT (ORAL)

(Delivered by Hon'ble Shri P. Srinivasan)

This application has been listed before us for admission today with notice to the respondents. Shri B.B. Rawal, learned counsel alongwith the applicant himself is present and they have both been heard. Shri Manuel Thomas, Section Officer, Legal Section, of respondent No.1 is present for the respondents and he has also been heard. After hearing both sides, we feel that this application can be disposed of at this stage itself by passing appropriate orders.

2. The applicant who was working as Senior Scientific Officer in the National Physical Laboratory, a unit under the Council of Scientific & Industrial Research (CSIR), was compulsorily retired from service with immediate effect by order dated 5.8.1986 passed by the Disciplinary Authority after holding an enquiry. Prior to this, he was placed under suspension with effect from 22.7.1985.



He continued to be under suspension till the date ~~of his~~ <sup>he was</sup> compulsorily retired. He was paid subsistence allowance during the period of suspension based on the pay and allowances which he was drawing immediately prior to his suspension i.e. 22.7.1985. Even though the suspension was continued beyond 31.12.1985, his subsistence allowance was not revised after that date in accordance with the pay and allowance to which he would have been entitled, if in service, on the basis of the recommendations of the 4th Pay Commission. On his retirement i.e. on and from 5.8.86, his pension was determined on the basis of the pay drawn by him during the 10 months period immediately prior to his suspension. The prayer of the applicant as modified by Shri Rawal and the applicant before us is that while computing his subsistence allowance on and from 1.1.1986, the revised pay scale adopted by the Government on the basis of the recommendations of the 4th Pay Commission should have been taken into account and that for the purpose of calculating his pension, the pay that he would have drawn with effect from 1.1.1986, had he been in service, should have been taken into account.

3. The applicant and his counsel Shri Rawal submitted as follows: the applicant's retirement from service took effect from 5.8.1986, according to the order of that date which appears at page 15 of the application. Since the pay and allowances of Government servants were revised from 1.1.1986 in accordance with the recommendations of the 4th Pay Commission, subsistence allowance payable on and after 1.1.1986 to such Government servants under suspension should also have been revised upwards. The revision of pay scales of Government Servants from 1.1.1986 was allowed taking into account the higher cost of living. Subsistence allowance is meant to meet the minimum cost of living, and therefore, with the rise in the cost of living, subsistence allowance as much as normal pay and allowance should also have been revised. Secondly, since the applicant's retirement took effect

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after the recommendations of the 4th Pay Commission came into effect, in the matter of calculating pension the pay that he would have drawn, had he not been under suspension, should have been taken into account for calculating his pension. The revised formula for calculating pension became effective from 1.1.1986 and is applicable to all persons who retired voluntarily or were compulsorily retired after that date.

4. Shri Manuel Thomas, Section Officer, ably argued the case of the respondents. He drew our attention to para 2 Clause (a) on page 206 of Swamy's compilation of FR-SR, 8th Edition, according to which, a Government servant under suspension retains his lien on his substantive post and, therefore, could be allowed the option to chose between the old and revised scales of pay, in this case between the pre-1.1.1986 and the post 31.12.1985 scales of pay. "The benefit of the option will, however practically accrue to him in respect of the period of suspension, only after his reinstatement depending on the fact whether the period of suspension is treated as duty or not." (Emphasis supplied). Accordingly, even though the applicant, while under suspension opted for the post-31.12.1985 scale of pay, the benefit of this option did not accrue to him during the period of suspension. Therefore, granting him pay in the revised scale from 1.1.1986 or subsistence allowance calculated on such revised pay after that date did not arise. Secondly, even though the applicant was retired from service with effect from 5.8.1986, since he was under suspension from 22.7.85 till the date of his retirement and since that period was not treated as duty, he is entitled to have his pension calculated only on the basis of the pay which he actually drew before 22.7.1985.

5. We have considered the matter carefully. On the question of subsistence allowance admissible to the applicant on and after 1.1.1986, we must agree with Shri Rawal and the

*P. S. Rao*

applicant that it should have been revised upward according to the pay that the applicant would have been eligible to draw if he had been in service. As its name itself suggests, subsistence allowance is granted to a Government servant to enable him to subsist and to meet his minimum needs to subsist. When the cost of living goes up, the minimum need to subsist also goes up. Therefore, if the pay of a Government servant is revised to meet the higher cost of living, it follows that the subsistence allowance also should be revised to meet the rising cost of living. We are, therefore, satisfied that the applicant's subsistence allowance for the period 1.1.1986 till the date of his retirement should be calculated with reference to the pay in the revised pay scale corresponding to the pay in the old pay scale which he was drawing immediately before his suspension.

6. So far as the calculation of pension and other retirement benefits are concerned, we must remember that the applicant's retirement became effective according to the order at page 15 to the application only from 5.8.1986, i.e. after 1.1.1986 when the revised formula for pension recommended by the Fourth Pay Commission came into effect. In view of this, we are of the opinion that the pension payable to the applicant should also be calculated according to the revised formula. In other words, the pay of the applicant on the date of his retirement for the purpose of calculating retirement benefits should be the pay in the revised scale (effective from 1.1.1986) corresponding to the pay he was actually drawing immediately before his suspension. The period for which he should have drawn this revised pay should be taken as the period from 1.1.1986 till the date of his retirement for the purpose of calculating average emoluments. For the balance of the total 10 months period over which average emoluments are to be \_\_\_\_\_ calculated, the pay actually drawn by him \_\_\_\_\_

*P. H. V.*

prior to the date of his suspension may be taken into account. In this manner,, the applicant's average emoluments and the pension due to him should be calculated and paid to him from the date of his retirement. The other retirement benefits should also be calculated on the revised pay corresponding to the pay that he was actually drawing immediately before his suspension.

7. To sum up, we pass the following orders:-

(i) The subsistence allowance payable to the applicant from 1.1.1986 till the date of his compulsory retirement should be re-calculated with reference to the pay in the revised scale brought into force from that date corresponding to the pay that the applicant was actually drawing in the old scale of pay immediately before his suspension.

(ii) The pension payable to the applicant after retirement should be re-calculated in the following manner:

For the purpose of calcula-ting average emoluments, he should be deemed to have actually drawn the pay in the revised scale corresponding to the pay in the old scale which he was drawing immediately before suspension during the period <sup>by from</sup> 1.1.1986 till the date of his retirement and for the balance of <sup>the by</sup> 10 months' period, over which average emoluments have to be worked out, he shall be deemed to have drawn the pay which he was actually drawing prior to his suspension.

(iii) All other retirement dues payable to him should be calculated with reference to the pay in the revised pay scale applicable after 1.1.1986 corresponding to the pay that he had actually drawn immediately prior to his suspension.

(iv) All arrears due to the applicant in accordance with (i) to (iii) above should be paid to the applicant,

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within three months from today.

8. The application is disposed of on the above terms at the stage of admission itself, leaving the parties to bear their own costs.

*24.11.85*  
(T.S. Oberoi)  
Member (J)

*P. Srinivasan*  
(P. Srinivasan)  
Member (A)