

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 235/89
T.A. No.

199

DATE OF DECISION 24.12.1991

<u>Shri C.P. Saxena</u>	Petitioner
<u>In person</u>	Advocate for the Petitioner(s) Applicant
Versus	
<u>the Director of Audit, Defence Services & Others</u>	Respondent
<u>Shri P.P. Khurana</u>	Advocate for the Respondent(s)

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

The Hon'ble Mr. B.N. Dhoundiyal, 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? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

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

Two questions have been raised in this application filed by the applicant who has worked as Audit Officer, Defence Services and was deputed as Administrative Officer in the Central Pulp and Paper Research Institute, Dehra Dun (CPPRI for short), an autonomous organisation under the Ministry of Industry:-

- (1) Whether he is entitled to pensionary benefits on the basis of the Fourth Pay Commission's recommendations which were given effect to w.e.f. 1.1.1986;

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(2) Whether he has a legal right for extension of the period of his deputation by about one month and seven days only so that he may get full pensionary benefits on the basis of the revised pay as admissible to him as on 1.1.1986 as per the recommendations of the Fourth Pay Commission.

2. We may first consider the second question. The applicant was sent on deputation to CPPRI w.e.f. 26.11.1981. His last term of deputation period expired on 25.11.1985. His request for further extension of the term was not acceded to by the respondents. He was absorbed in the CPPRI w.e.f. 26.11.1985.

3. There are three parties to deputation - the lending Department, the borrowing Department, and the Government servant concerned. Unless all the three parties agree, there cannot be a deputation. In the instant case, the lending Department for its own reasons, did not agree to the extension of the term of deputation of the applicant. As the applicant has no legal right to deputation for any length of time, he cannot make a grievance on the ground that his parent department did not accede to his request for extension of the term of his deputation period.

4. With regard to the first question, it is noticed that the sanction of the President to the permanent

absorption of the applicant in CPPRI was issued by office order dated 18.6.1986 which was stated to be with effect from 26.11.1986. The said office order reads as under:-

"The sanction of the President has been accorded to the permanent absorption in Central Pulp and Paper Research Institute (C.P.P.R.I.) of Shri C.P. Saxena, substantive Audit Officer of this Department with effect from 26.11.1986 (FN) in public interest. His absorption will be governed by the terms and conditions contained in the annexure enclosed. His lien in this Department on his substantive post of Audit Officer, Defence Services, stands terminated with effect from 26.11.1985 (FN), in terms of FR-14-A(d)."

5. The applicant was required to exercise an option within six months from 26.5.1986 which he did on 25.11.86. He exercised his option for receiving the pro-rata gratuity and a lump sum amount in lieu of pension worked out with reference to the commutation tables obtaining on the date from which pension will be admissible and the commuted value becomes payable. The commutation of pension became absolute w.e.f. 2.7.1987 when the medical report was signed by the medical authorities. The Pension Payment Order was issued to him on 4.9.1987. The applicant has also produced evidence to show that he

made contribution to the Central Government Employees Group Insurance Scheme and made subscriptions to G.P.F. from November, 1985 to June, 1986, every month.

6. The contention of the applicant is that he is entitled to revision of his pension w.e.f. 1.1.1986 on the basis of orders for rationalisation of pension structure issued by the Department of Personnel vide O.M. dated 16.4.1987. According to the respondents, he having opted for commutation of his entire pension w.e.f. 26.11.1985 which is the date of his permanent absorption in CPPRI, he was not considered as a pre-1.1.1986 pensioner of the Central Government and O.M. dated 16.4.1987 does not apply to his case.

7. In the instant case, the Pension Payment Order was issued to the applicant only after 1.1.1986 even though he had formally retired from Government service before that date. The benefit of revised pension under the O.M. dated 16.4.1987 is admissible to "the existing pensioner" as defined in para.3.1 (a) of the said O.M.

which reads as under:-

"Existing pensioner" or "Existing Family pensioner" means a pensioner who was drawing/entitled to pension/family pension on 31.12.1985. For purposes 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 1.1.86, and 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

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to the case reads as follows:-

Points for clarification	Clarification
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 undertakings 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.

8. 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

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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.

9. Following the ratio in the aforesaid judgement, we hold that the applicant is to be considered as an "existing pensioner" as contemplated in the O.M. dated 16.4.1987, to whom the Pension Payment Order was issued only on 4.9.1987. The application is, therefore, partly allowed. The respondents are directed to refix the pension of the applicant with effect from 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.

B. N. Dhoundiyal
(B.N. Dhoundiyal)
Administrative Member

P.K. Kartha
24/12/91
(P.K. Kartha)
Vice-Chairman(Judl.)