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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A. 279/1989.

DATE OF DECISION: 14.9.1990.

Shri P.L. Arora Applicant.

Shri K.L. Bhandula Counsel for the Applicant.


V/s.

Union of India & Anr. Respondents.

Shri M.L. Verma Counsel for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

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


(J.P. SHARMA)
Member (J)


(P.C. JAIN)
Member (A)

14/9/90

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Shri M.L. Verma	Counsel for the Respondents

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGMENT

This application under Section 19 of the Administrative Tribunals Act, 1985, praying for discontinuation of the deduction of Rs.103.00 per month in lieu of Death-cum-Retirement Gratuity retrospectively from 1.1.86 and raising the pension to Rs.414 per month in terms of the Department of Pension and Pensioners' Welfare O.M. dated 12.3.1986, has been filed by the applicant, a pre-1938 entrant to Government service, who retired as Section Officer on superannuation on attaining the age of 60 on 10.3.1971.

2. Briefly stated, the relevant facts are given below: -

The applicant was governed by the Pension Rules in force upto 16.4.1950. Revised Pension Rules effective from 17.4.1950 were issued vide Ministry of Finance O.M. No.F.3(1)-Est.(Spl.)/47, dated April 17, 1950 and O.M. No.F.3(16)-Est(Spl.)/50, dated January 2, 1951. The pre-1938 entrants (Government servants who were in permanent pensionable service on 30.9.1938) were allowed the following options on the introduction of the Revised Pension Rules effective from 17.4.1950: -

- 2 (a) Coming on to the New Pension Scheme; or
- (b) continuing under the Rules in force on the 16th April, 1950; or

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(c) drawing pension, including additional pension, under the rules in force on 16th April, 1950 reduced by the pension equivalent of the gratuity admissible under the New Pension Scheme and receiving in lieu of this reduction the death-cum-retirement gratuity as provided under this scheme."

The applicant exercised option as per clause 2(c) above vide his option dated 9.4.1951 (Appendix R-I to the counter-affidavit).

3. In O.M. No.F.16(7)-E.V/70, dated 12.11.1970 issued by the Ministry of Finance, Department of Expenditure, it was decided "that such of the pre-1938 entrants as were in service or on leave preparatory to retirement on the 15th June, 1968 and had elected clause (b) or clause (c) of para 2 of this Ministry's Office Memorandum referred to above may be allowed to exercise fresh option to come over to clause (a) of para 2 of the aforesaid Office Memorandum." The O.M. referred to herein is O.M. dated 2.1.1951 (supra). The option was required to be exercised within a year from the date of issue of that order and, once exercised, was to be treated as final. Failure to exercise a fresh option within the stipulated period was to mean that the original option subsists. In pursuance of this O.M., the applicant filed a declaration (Appendix R-III to the counter-affidavit), which is reproduced below: -

" D E C L A R A T I O N

Whereas for purposes of pension, I, Shri P.L. Arora, opted Para 2(c) of the Ministry of Finance O.M. No. 3(16)-Est(Spl)/50 dated the 2nd January, 1951, I hereby reexercise my option in favour of Liberalised Pension Rules, as allowed by the Ministry of Finance vide their O.M. No.F.16(7)-EV/70 dated the 12th November, 1970.

Countersigned

Sd/- Director (Administration)
Ministry of Education & Social Welfare
(Department of Education) 19.6.1971.

Sd/- P.L. Arora
Section Officer "

4. In Department of Pension and Pensioners' Welfare O.M. No.38/G/GG P&PW, dated 12.3.1986, it was decided, purely as an ex-gratia measure, that the reduction of pension by the pension equivalent of gratuity (PEG) may be discontinued from the pre-1938 entrants drawing pension under option at 2(c) effective from the pension for the month of March, 1986 payable in April, 1986. The date is stated to have since been changed to 1.1.1986. These orders were made applicable to all 2(c) optees of the pre-1938 entrants.

5. The applicant's claim is that his monthly pension under the rules in force upto 16.4.1950 came to Rs.414/- per month and as a result of the option as per clause 2(c) exercised by him, his pension was reduced to Rs.311/- per month in lieu of the death-cum-retirement gratuity sanctioned to him in accordance with that option. He, therefore, claims that the original pension should be restored with effect from 1.1.1986 in view of the orders issued on 12th March, 1986 (Annexure A-I to the O.A.).

6. The case of the respondents is that the applicant having re-exercised his option in pursuance of O.M. dated 12.11.1970 (Annexure B-II to the counter-affidavit), his pension was calculated and sanctioned in accordance with the revised option, which came to Rs.310.61 rounded off to Rs.311/- per month and the admissible death-cum-retirement gratuity, came to Rs.13,500/-. After deducting a sum of Rs.1,780/- equal to two months pay for Family Pension, the balance amount of Rs.11,570/- was sanctioned to the applicant in addition to the monthly pension of Rs.311/-.

7. We have carefully perused the documents on record and have also heard the learned counsel for the parties.

8. In his pleadings, the applicant has nowhere disputed that he exercised a fresh option in pursuance

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of the O.M. dated 12.11.1970. His ^{second} option is undated ^{here} and has been countersigned by the concerned officer on 19.6.1971. The applicant has tried to set up a case that this is not applicable as it was exercised after his retirement. This plea is not tenable in view of the fact that the option was to be exercised within a year from 12.11.1970, and this was exercised as is evident from the counter-signature of the officer concerned within the permissible period. The second option can only mean that the applicant opted to come under the Revised Pension Rules, which came into force on 17.4.1950. There can be no other interpretation in the light of the provisions of the O.Ms already referred to above.

9. The reply of the respondents shows beyond any doubt that the applicant was sanctioned pension and DCR gratuity on his retirement in pursuance of his second option, i.e., no pension equivalent of gratuity was deducted from the pension otherwise admissible to the applicant ^{as} no such provision existed in the rules applicable to him in accordance with his second option. Respondents have further stated that "if PEG were to be deducted at all, it would have been Rs.113.40 and ~~NOT~~ Rs.103.00, as stated by the applicant."

10. In view of the foregoing discussion, we cannot come to the conclusion that the applicant was sanctioned pension in accordance with his first option or that pension equivalent of gratuity was deducted from pension while sanctioning pension to him. Further, the second option exercised by the applicant was within the period prescribed for exercising the option and in the absence of any averment by the applicant to the effect that he did not exercise any such option, which is a part of the service record, it cannot be held that he

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is not bound by that option. As no PEG could have been deducted from his pension in pursuance of his second option, and no such PEG was in fact deducted from the pension admissible to him, the provisions of the O.M. dated 12.3.1986 are not applicable to him and the relief claimed by him cannot be granted. The application is devoid of merit and is accordingly dismissed, leaving the parties to bear their own costs.

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(J.P. SHARMA)
Member (J)

Clear 14/9/90
(P.C. JAIN)
Member (A)

14.9.1990.