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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. OA 1243 of 1988 Date of decision: 17.4.90

Roshan Lal Koshal Applicant

Vs.

Union of India Respondents

PRESENT

Shri B.B. Srivastava, counsel for the applicant.

Shri P.P. Khurana, counsel for the respondents.

CORAM

Hon'ble Shri Justice Amitav Banerji, Chairman

Hon'ble Shri B.C. Mathur, Vice-Chairman.

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? —
4. To be circulated to all Benches of the Tribunal? ✕



(B.C. Mathur)

Vice-Chairman



(Amitav Banerji)

Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1243 of 198 8
T.A. No.

DATE OF DECISION 17.4.1990

Roshan Lal Koshal Applicant (s)

Shri B.B. Srivastava Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

Shri P.P. Khurana Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chair man.

The Hon'ble Mr. B.C. Mathur, Vice-Chair man.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
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JUDGEMENT

(Judgement of the Bench delivered by Hon'ble Shri
B.C. Mathur, Vice-Chairman)

This is an application filed by Shri Roshan Lal Koshal retired Supervisor in the Office of the Comptroller and Auditor General of India, New Delhi, against the impugned orders No. 391-OE&Admn/111-87 dated 29.1.88 and No. 5/13/87 P&PW (PIC) dated 6.5.88 passed by the Office of the Comptroller & Auditor General of India and the Ministry of Personnel, Public Grievances and Pensions respectively disallowing personal pension to the applicant.

2. The case of the applicant is that he retired as Supervisor on 30.4.1986 and his pension was fixed at Rs. 1020.00 and he was also getting a personal pension of Rs. 64.00 per month. The Ministry of Personnel vide O.M. dated 14.4.87 (Annexure A-2 to the application) issued instructions for revision of pensions in pursuance of the recommendations of the Fourth Pay Commission. In this O.M. it was mentioned that those who retired or will be retiring between 1.1.1986 and 30.6.1987 will have an option to retain the pre-revised scale of pay and have their pension and DCRG calculated under the rules in force immediately

before coming into effect of these orders. Those who had exercised their option in favour of the revised scales of pay were given another opportunity to re-opt the pre-revised scales of pay from 1.1.1986 provided they refunded to Government the excess pay and allowances drawn by them as a result of coming over to the revised scales of pay. In this O.M. it was mentioned that personal pension, if any, will also be allowed where due but this will continue as a separate element and will continue to be excluded from calculation of dearness relief as at present.

3. In pursuance of the above provisions, the applicant opted for the pre-revised scale of pay and his pension was revised by the Director of Audit, Central Revenues, as follows:

	<u>Pre-revised</u>	<u>Revised</u>
(i) Full Pension	Rs. 1020/-	Rs. 1182/-
(ii) Reduced Pension	Rs. 680/-	Rs. 788/-
(iii) Personal Pension	Rs. 64/-	nil
(iv) Dearness relief		w.e.f. 1.5.86 - Nil
		w.e.f. 1.7.86 - Rs. 48/-
		w.e.f. 1.1.87 - Rs. 95/-

While revising this pension, the personal pension of Rs. 64.00 which was already sanctioned to the applicant had been ignored altogether while refixing the applicant's pension. The applicant represented against the exclusion of the personal pension, but he was informed that granting of personal pension did not arise as pension based on 568 points merger of additional dearness allowance was not less than the pension based on 320 points merger of additional dearness allowance plus dearness relief thereon at 568 points. The Ministry of Personnel also confirmed the reply given by the Comptroller & Auditor General ignoring the personal pension of the applicant and he has filed this case against this refusal to grant him personal pension which according to Government's O.M. dated 16.4.87 (Annexure A-15 to the application) and vide Government's O.M. dated 14.4.87 (Annexure A-2 to the application) has to be protected.

4. The case of the applicant is that since he had opted in favour of the special provisions contained in para 10 of the O.M. dated 14.4.87, his personal pension in terms of O.M. dated 21.6.85 will continue as a separate element and continue to be excluded from calculating dearness relief as per clause (iii) of para 10.1 of the O.M. dated 14.4.87. He also states that he stands at par with those who retired prior to 1.1.86 and as such he is entitled to draw personal pension. The applicant has cited the case of D.S. Nakara Vs. Union of India - AIR 1983 S.C. 130 - decided by the Supreme Court which directs that "the pensioners form one class and person who retired prior to March 31, 1979 should not be denied the benefit of liberalised pension". As such, the applicant cannot be denied his personal pension on the plea that he retired after 31.12.1985 when he had duly exercised his option.

5. The respondents in their reply have stated that the pension of the applicant has been fixed according to rules. Personal pension is allowed as a separate element and will continue to be excluded from the calculation of dearness relief as at present. In the present case, the question of granting personal pension did not arise since the pension based on 568 points merger of Additional D.A. worked out more than the pension based on 320 points merge of ADA plus dearness relief thereon on 568 points Average Index Level. It has been stated that personal pension granted in terms of Department of Pension's O.M. dated 21.6.85 was to be continued only in respect of pensioners who had retired between 31.3.85 and 31.12.85 and as the applicant retired in 1986, this would not apply to him. According to the respondents, the Supreme Court in D.S. Nakara's case has held that the revised pension formula applicable from a specified date should be applied to past pensioners from that particular specified date. There is no discrimination in this case. The liberalised pension scheme has also been applied to the applicant.

6. The following factors have to be seen to appreciate the case in the proper perspective:

The applicant had retired on 30.4.86 and his pension was fixed prior to the issue of the revised orders of pension dated 14.4.87. His pension would be as follows:

Average emoluments with DP at 568
CPI Rs. 2237.00

Pension

1st Rs. 1000.00 - Rs. 500 (at the rate of 50%)

Next Rs. 500 - Rs. 225 (at the rate of 45%)

Next Rs. 737 - Rs. 295 (at the rate of 40%)

Total: Rs. 1020.00

Personal pension

- Personal pension represents the difference between-
- (i) pension calculated after merger of Dearness Pay upto CPI 320 plus dearness relief between CPI 320 and CPI 568 on the one hand, and
 - (ii) pension calculated after merger of Dearness Pay upto CPI 568.

On the basis of the above criteria, the personal pension calculated was as follows:

Average emoluments with DP 320 CPI Rs. 1407.38

Pension

1st Rs. 1000.00 - Rs. 500.00

Next Rs. 407.38 - Rs. 183.21

Total: Rs. 683.21 rounded off to Rs. 684.00

The dearness relief between CPI 320 to
568 on pension of Rs. 684.00 Rs. 400.00

Total: Rs. 1084.00

Therefore, the total pension works out to Rs. 1084.00.

As he was getting Rs. 1020.00 only, he was given the difference between Rs. 1084.00 and Rs. 1020.00 as personal pension which comes to Rs. 64.00.

7. Consequent on the issue of O.M. dated 14.4.87, on the basis of the recommendations of the Fourth Pay Commission, the pension and personal pension were recalculated. These are as follows:

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Average emoluments with DP upto
568 CPI= Rs. 2237.00

Pension at the rate of 50% = Rs. 1119.00

The quantum of personal pension would be
as follows:

Average emoluments based on CPI 320= Rs. 1407.38

Pension = Rs. 704.00

Dearness relief between CPI 320 and
CPI 568 Rs. 400.00

Total: Rs. 1104.00

8. As the pension of Rs. 1119.00 is higher than Rs. 1104.00, there will be no element of personal pension as such. Personal pension is meant to protect the fall in the element of dearness relief on pension and does not have the character of pension for being protected under rule 70 of the CCS (Pension) Rules, 1972. It is also noted that personal pension does not qualify for dearness relief and is to be paid only where the pension calculated after merging DP upto 320 CPI plus dearness relief between CPI 320 and 568 happens to be more than the amount of pension calculated after merging dearness pay upto CPI 568.

9. The case of the applicant is that Office Memorandum dated 14.4.1987 issued by the Department of Pension and Pensioners' Welfare (Annexure A-2 to the application) clearly brings out that personal pension, if any, in terms of that Department's O.M. dated 21.6.85 would also be allowed where due, but this will continue as a separate element and will continue to be excluded from calculation of dearness relief as at present. The O.M. dated 21.6.85 (Annexure A-16 to the application) clarifies that the amount of personal pension will not be taken into account for the purpose of determining the commuted value of pension and relief on pension. The applicant further states that had he retired prior to 31.3.85, he would have received a pension of Rs. 684.00, the equivalent of which under the Fourth Pay Commission works out to Rs. 1247.00 and that it is inconceivable that a person retiring after 1.1.1986 should get lesser

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pension than a person retiring in 1985. The learned counsel for the applicant also raised the point that the intention of the Government was very clear when they asked that personal pension would always be excluded from any calculations of pension and since the applicant's pension was not provisional, but final it was not even subject to revision to his disadvantage.

10. We have considered the pleadings and arguments on both sides carefully. The whole case of the applicant is based on para 10.1 (iii) of Office Memorandum dated 14.4.87 where it says that "personal pension" will also be allowed where due, but this will continue as a separate element and will continue to be excluded from calculation of dearness relief as at present. The emphasis has to be on the words "where due". We have, therefore, to see whether personal pension is due. As mentioned earlier, personal pension represents the difference between pension calculated after merger of D.A. upto Consumer Price Index 320 plus dearness relief between CPI 320 and CPI 568 on the one hand and pension calculated after merger of dearness pay upto CPI 568. If this is the criteria for calculating 'personal pension', this criteria must be applied in the case of the applicant as well. It is quite possible that in many cases even after re-calculation of the revised pension, it may be necessary to continue the 'personal pension', but it may not be so in all cases. In some cases, full personal pension may have to be continued, in some cases it may have to be reduced to some extent whereas in some cases it may have to be given up completely depending on the revised pension under CPI-568. Prior to the revision, the applicant was drawing a pension of Rs. 1020.00 plus personal pension of Rs. 64.00 = Rs. 1084.00, whereas the revised pension calculated under CPI 568 came to Rs. 1119. As such, he is in receipt of a higher pension than what he was getting earlier. The intention of the Government appears to be clear that personal pension should be protected where due and "where due" will have to be related to the total emoluments as discussed earlier. Personal pension is to protect any fall in the element

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of dearness relief on pension and does not have the character of pension being protected under rule 70 of the CCS (Pension) Rules, 1972, as mentioned earlier. It does look a bit odd that a person retiring after 1.1.1986 should get a pension lower than what would have been applicable to a person retiring earlier, but it is not possible to relate pension to the date of retirement in individual cases. Pensions have to be decided according to rules and in certain cases it may be possible that a person retiring earlier may get a higher pension, but as long as a person is drawing a higher pension under CPI 568 than was was admissible to him under CPI 320, we see no reason to add the element of 'personal pension' when the very basis for the personal pension is not relevant. It is quite clear that when the Government said that 'personal pension' would not be touched, it was so only in cases "where due" and this can only be calculated on the principles of 'personal pension' explained earlier. In the circumstances, we see no merit in the application and the same is dismissed. Parties to bear their own cost.

B.C. Mathur
(B.C. Mathur) 17.4.96
Vice-Chairman

Amitav Banerji
(Amitav Banerji)
Chairman