

**Central Administrative Tribunal
Principal Bench, New Delhi**



**O.A. No. 817/2020
M.A. No. 1070/2020
M.A. No. 247/2021**

This the 29th day of January, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

K.S. Dhingra
S/o S. Santokh Singh Dhingra
(Group A Retired)
Aged about 70 ½ years
Resident of 73 Fourth Floor)
Karuna Kunj, Sector 3
Dwarka, New Delhi-110078. Applicant

(through Sh. D.S. Mahendru, Advocate)

Versus

1. Union of India through Secretary
Department of Defence
South Block, New Delhi-110011.
2. Secretary
Ministry of Power
Shram Shakti Bhawan
Rafi Marg, New Delhi-110001.
3. Secretary
Department of Pension and Pensioners' Welfare
Lok Nayak Bhawan
Khan Market, New Delhi-110003.
4. Joint Secretary& Chief Administrative Officer
Ministry of Defence

E-Block Hutmants
Dara Shikoh Marg
New Delhi-10011.



5. Asstt General Manager/ Chief Manager
State Bank of India
Centralised Pension Processing Centre
State Bank of India Building
2nd Floor, Chandni Chowk
Delhi-110006. .. Respondents

(Through Sh. Y.P. Singh, Advocate)

ORDER (ORAL)

Mr. A.K. Bishnoi, Member (A)

Briefly the facts of the case are as follows:

The applicant joined the service of Respondent no. 1, Ministry of Defence in the year 1973 as Assistant in the Armed Forces Head Quarters (AFHQ). In the year 1999, he applied for deputation to Central Electricity Regulatory Commission (CERC) to the post of Joint Chief (Legal) where he continued till his absorption there with effect from 07.06.2004. His date of retirement from AFHQ was deemed as 06.06.2004. Regarding pension and other benefits, he was given two choices and he exercised the option to receive pro rata retirement benefits from the O/o JS & CAO (respondent no. 4) for the service rendered up to

06.06.2004, that is for the period prior to his absorption in CERC on 07.06.2004.



2. His pension and other benefits were calculated and were fixed as per PPO No. C/MISC/18105/2005 dated 09.09.2005.

Subsequently it was discovered by the department concerned that his pension and other benefits were wrongly fixed and they were ordered to be revised downwards in the year 2018. However, while doing so, he was not issued any show cause notice.

3. The applicant approached this Tribunal through OA No. 4705/2018 which was disposed of on 27.09.2019 with a direction to the respondents to issue show cause notice of 30 days, in terms of Rule 70 of CCS (Pension) Rules, 1972.

“6. Having heard learned counsel for the parties and perused the pleadings on record, it is observed that although the respondents contended that the case of the applicant has been processed strictly as per the provisions of Rule 70 of the CCS (Pension) Rules, 1972, but despite the representations in the form of letters dated 12.11.2018 and 8.12.2018 as well as email dated 8.12.2018 addressed to the respondents by the applicant, they have chosen not to issue any show cause notice before issuing the order dated 10.12.2018 communicating the downward revision of his pension vide Corrigendum PPO No. CCORMISC001692018 dated 6.12.2018. The aforesaid action of the Respondents is not in compliance of sub-rule (1) Rule 70 of the CCS(Pension) Rules, 1972 as under the said Rules, ‘once authorized after final assessment shall not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of detection of a clerical error’.



It is further to be noted that even in cases of clerical errors where pension has to be revised under sub-rule (2) of Rule 70 *ibid*, the applicant is entitled for a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him. Admittedly, the impugned letter dated 10.12.2018 reducing his pension was issued to him without any notice. It is pertinent to mention that the Hon'ble Supreme Court of India in the case of ***M. Gopalkrishna Naidu Vs. State of M.P.*** AIR 1968 SC 240 held that 'if an opportunity to show cause is not afforded, the order is liable to be struck down as invalid on the ground that it is one in breach of principles of natural justice'. Hence, the impugned order is quashed. However, in the facts and circumstances of this case, the respondents are directed to issue a show cause notice to the applicant in terms of provisions of Rule 70 of the Rules *ibid* and give him 30 days' time to respond to the same and pass a reasoned and speaking order within three months thereafter. In case the applicant does not submit his reply within the period as stipulated above, they shall pass speaking order within the period as stipulated above.

7. In the result, the present OA is disposed of in above terms. There shall be no order as to costs."

4. Consequent to the order of this Tribunal dated 27.09.2019, the applicant was issued a show cause notice dated 17.10.2019 to which he replied on 16.11.2019. The respondents considered the reply to the Show Cause Notice and a detailed order dated 05.03.2020 (Annexure A/1) was passed revising his PPO and fixing his pension at Rs.10321/-, from the date of his retirement i.e. 06.06.2004, as determined by the date of his absorption in CERC. It was stipulated that subsequent revision of pension would be as per Government's decisions on the recommendations of 6th and 7th



CPCs per relevant Rules. It was also directed that the excess amount paid to the applicant be recovered from him from the date of retirement up to the date of the order. Aggrieved by the said order, the applicant has filed the present OA seeking the following reliefs:

- “(a) set aside the impugned order (Annexure A-1), impugned PPO (Annexure A-1A) and the Show Cause Notice (Annexure A-2),
- (b) hold that the Applicant’s pension was correctly fixed under PPO No C/MISC/18105/2005 dated 09.09.2005 (Annexure A-17) and revised vide Corrigendum PPO No. C/Corr/6thCPC/056137/2015 dated 26.08.2015 (Annexure A-19),
- (c) further hold that pension of Rs. 74250/- and family pension of Rs. 44550/-as per 7th Pay Commission were correctly fixed under New PPO dated 24.04.2019 (Annexure A-39), or, alternatively, direct that New PPO dated 29.07.2019(Annexure A-41), after necessary corrections, be realigned with Concordance Table No 51 of DOP&PW OM dated 06.07.2017 (Annexure A-42),
- (d) direct to implement New PPO dated 24.04.2019 or, alternatively, New PPO dated 29.07.2019, as corrected and realigned as aforesaid, and make payment of arrears of pension since October 2019,
- (e) direct Respondent No 1 to get investigated the conduct of the officials in JS & CAO’s office who acted malafidely and repeatedly made false notings to the Applicant’s detriment,
- (f) award the cost of the proceedings to the Applicant, and
- (g) pass such other order as this Hon’ble Tribunal considers appropriate in the facts and circumstances of the case.”



5. Shri D.S. Mahendru, learned counsel for the applicant, contends that the matter relating to the pension and other benefits of his client, needs to be dealt with under Note-10, appended to Rule 33 of CCS Pension (Rules) 1972, (hereinafter referred to as Rules), and not as per Note 7 thereof. It is also submitted that the pensionary benefits cannot be revised after such long gap. According to him, Rule 70 is not attracted as it is not a case of clerical error. Certain administrative issues as to whether Joint Secretary & Chief Administrative Officer (JA & CAO) and Principal Controller of Defence Accounts (PCDA) were competent to take the impugned action and whether the concurrence of Department of Pension and Pensioners' Welfare was taken at the required time or not, have also been raised.

6. Shri Y.P. Singh, learned counsel for the respondents, on the other hand, submits that the matter has been dealt with, duly taking into account, the Rules concerned after due approvals and detailed consultation with the concerned departments. He contends that the incorrect fixation of pension and other benefits was due to wrong application of Rules, and in such cases, the department is fully entitled to correct the error as provided for under Rule 70 of the Rules. He also submits that as per Sub Rule (1-A) of Rule 70, it is

amply clear that whether a case of revision is on account of clerical error or not shall be decided by the administrative Ministry or Department.



7. We have gone through the pleadings on record and took into account, the submissions made by the learned counsel for the two sides. It is abundantly clear that the situation, as contemplated and envisioned for the application of Note-10 below Rule 33 of the Rules does not exist in the present case. Note-10 reads as under:

“When a Government servant has been transferred to an autonomous body consequent on the conversion of a Department of the Government so transferred opts to retain the pensionary benefits under the rules of the Governments, the emoluments drawn under the autonomous body shall be treated as emoluments for the purpose of this rule.”

The applicant was on deputation to CERC till the time of his absorption on 07.06.2004. It was the CERC, that was converted into an autonomous body and funded from Grants-in-aid w.e.f 01.04.2004. Thus, by no stretch of imagination it can be said that any change took place in the nature of the body or organisation, where the applicant was in the substantive capacity, i.e. JS & CAO in the Ministry of Defence. No change took place in the nature of this office. As such, no benefit can accrue on account of provisions of Note-10 of Rule 33 of the Rules. It is also not contested and is



totally clear that the applicant had given the option to receive pro rata retirement benefits for the service rendered under the Central Government. Having done that, he does not have any right to go back and claim a higher package. The higher fixation of pensionary benefits given to him was definitely not on account of his entitlement. It was clearly an error in terms of application of Rule 70, and hence, needed to be corrected.

8. Regarding the issue of applicability of Rule 70, for clarity the rule is reproduced as below:

“(1) Subject to the revisions of Rules 8 and 9, pension once authorised after final assessment shall not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of detection of a clerical error subsequently;

Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the Head of Office without the concurrence of the Department of Personnel and Administrative Reform if the clerical error is detected after a period of two years from the date of authorisation of pension.

[(1-A) the question whether the revision has become necessary on account of a clerical error or not shall be decided by the administrative Ministry of Department.]

2) For the purpose of sub-rule-1, the retired Government servant concerned shall be served with a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him.

3) In case the Government servant fails to comply with the notice, the Head of Office shall, by order in writing, direct that such excess payment, shall be adjusted in instalments by short

payments of pension in future, in one or more instalments, as the Head of Office may direct.”



(Emphasis Supplied)

9. Sub Rule (1-A) is categorical in its purport that the question whether an error is clerical or otherwise; is to be decided by the concerned Ministry or the Department concerned. The Rule is not under challenge. Hence, there is no scope for agitating the issue as to whether it was a case of clerical error or not.
10. On the point of delay in making the correction, the applicant has failed to draw our attention to any provision of law which prescribes limitation in such matters. Hence, no plea can be raised by the applicant on this account.
11. The issues relating to the concurrence as required under the Rules and the administrative competence of the authorities involved, have been asserted alleging some deficiencies. We do not find any force in them on the face of the record. Moreover, the statements are nebulous in nature.
12. On the issue relating to Foreign Service, it has been contended that Rule 3(g) does not apply to the applicant. Rule 3(g) defines Foreign Service as follows:



“Foreign Service means service in which a Government servant receives his pay with the sanction of the Government from any source other than the Consolidated Fund of India or [the Consolidated Fund of a State or the Consolidated Fund of a Union Territory].”

And in the event of anyone being in the Foreign Service, Note-7 of Rule 33 gets attracted. It reads as under:

“Pay drawn by a Government servant while on Foreign Service shall not be treated as emoluments, but the pay which he would have drawn under the Government had he not been on foreign service shall alone be treated as emoluments.”

13. The letter of CERC dated 11.01.2005 makes it clear that the salaries and the emoluments in the said organisation upto 31/3/2004 were charged to the Consolidated Fund of India. Thereafter, they have been receiving budgetary support in the form of Grant-in-Aid. Thus, at the time of his absorption in CERC with effect from 07.06.2004, the applicant was not receiving his salary from the Consolidated Fund of India and his case clearly falls within the ambit of Note 7 of Rule 33 read with Rule 3 (g).



14. The applicant has referred to a large number of precedents in the form of a compilation, without reference to any specific portions which in entirety apply to the present case. They relate to principles of law in specific areas and the applicant has failed to point any instance in which any benefit can accrue to him, on their account, in the facts and circumstances of the present adjudication.

15. In view of the discussion as above, we find that the OA is devoid of merit and is, accordingly, dismissed.

Pending MAs, if any, also stand disposed of.

There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

Ns/jyoti/rks