

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 691 1986
T.A. No.

DATE OF DECISION 5.9.1988

Shri Hirdey Nath, Petitioner

Shri R.L.Sethi, Advocate for the Petitioner(s)

Versus

Union of India & others Respondents

Shrimati Raj Kumari Chopra, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, 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

MGIPRRND-12 CAT/86-3-12-86-15,000

(KAUSHAL KUMAR)
MEMBER

(K. MADHAVA REDDY)
CHAIRMAN

5.9.1988

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

REGN.NO. OA 691/86

Date of decision: 5.9.1988

Shri Hirdey Nath Applicant

Vs.

Union of India & others Respondents

Coram: Hon'ble Mr. Justice K. Madhava Reddy, Chairman
Hon'ble Mr. Kaushal Kumar, Member

For the Applicant Shri R. L. Sethi, Counsel

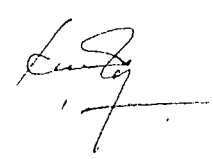
For the Respondents Mrs. Raj Kumari Chopra,
Counsel.

(Judgement of the Bench delivered by
Hon'ble Mr. Justice K. Madhava Reddy, Chairman)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 by a retired Controller of Imports and Exports in the Office of the Chief Controller of Imports and Exports, Ministry of Commerce, New Delhi. The facts leading to the filing of this application may be briefly noticed. The applicant was appointed as Junior Analyst in the scale of Rs. 650-1200 on deputation basis in the Internal Work Study Unit of the Department of Irrigation from the date he took over the charge under the Office Order dated 24.11.1978 issued by the Under Secretary to the Government of India, Ministry of Agriculture & Irrigation (Deptt. of Irrigation). The applicant took over the charge of the post of Junior Analyst on 14.12.1978. He was repatriated to his parent department on 13.12.1983. On repatriation to his parent department he was posted as Assistant and then promoted as Section Officer



from 18.4.1984 for the reason that his juniors were then officiating as Section Officers. The applicant was regularised in the post of Controller of Imports & Exports in September, 1985 and finally retired from service on attaining the age of superannuation on the afternoon of 28th February, 1986. While he was in his parent department he officiated as Section Officer in the grade of Rs.650-1200 from 9.1.76 to 19.1.1978 and last drew a pay of Rs.775/- in that scale. However, on the date he was sent on deputation, he was in the Grade of Rs.425-900 and was drawing the basic of pay of Rs.680/-p.m. His next increment was due on 1.3.1979. While on deputation initially he was allowed provisional pay of Rs.680/- p.m. i.e. the amount he was drawing immediately before joining as Junior Analyst. On deputation he opted for the scale and his pay was fixed at Rs.775/-per month in the post of Junior Analyst by order dated 3.3.1980. He was allowed to draw annual increments while on deputation. His deputation was terminated with effect from 13.12.1983 and he joined his parent department on 18.1.1984 after availing leave upto 17.1.1984. During the period of five years, he was on deputation, he was given increments after his pay was fixed at Rs.775/-. On repatriation to his parent department, he joined as Assistant. He was later promoted as Section Officer in the scale of Rs.650-1200 with effect from 18.4.1984 and his pay was fixed under F.R.22(c) at Rs.845/- in the above scale and he retired on attaining the age of superannuation as Controller of Imports & Exports on 28.2.1986. Three



months thereafter, the Ministry of Water Resources superseded the order dated 3.3.1980 fixing his pay at Rs.775/-p.m. on deputation and refixed his pay at Rs.680/-p.m. and allowed 10% deputation i.e. Rs.68 and on that basis calculated the excess amount paid to him and directed its recovery from the Death-Cum-Retirement Gratuity due and payable to him. It is this action of the Respondents that is called in question in this application. The facts are not in dispute except that it is not clear from the record as to when applicant's juniors were promoted as Section Officers in his parent department and whether he was given paper promotion while he was on deputation. The fact remains that until his retirement, no objection was raised with regard to fixation of his pay at Rs.775/- with effect from the date he joined as Junior Analyst on deputation. The applicant having retired, has a right to receive his Death-Cum-Retirement Gratuity. It is contended on behalf of the applicant that once his pay was fixed at Rs.775/- on deputation, that order could not have been revised without any notice to him; the impugned order grossly violates all principles of natural justice.

2. No doubt when the applicant was sent on deputation as Junior Analyst by order dated 24.11.78 he was informed that his pay will be regulated in accordance with the provisions contained in the Ministry of Finance Office Memorandum No.10(24) B-III/60 dated the 4th May, 1961 and as amended from time to time. While we express no opinion

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on the question whether present refixation of the applicant's pay is correct or not, inasmuch as it was earlier fixed at Rs.775/- and he had actually drawn that pay, any refixation of his pay specially after he retired from service could not have been done ex-parte and without giving an opportunity to him to represent against the downward revision. Admittedly no notice was given to the applicant. The impugned order dated 12.5.1986 is, therefore, quashed on the short ground that the applicant was not given an opportunity to make a representation against the refixation of his pay and recovery of the amount allegedly paid to him in excess from the Death-Cum-Retirement Gratuity which he was entitled to receive on retirement from service.

3. The Respondents will issue notice to the applicant, consider his representation in which he will be entitled to raise such objections as are open to him under law including the objection that the Respondents cannot refix his pay after his retirement. The Respondents shall dispose of the matter within a period of four months from the date of receipt of this order and accordingly release the amount of Death-Cum-Retirement Gratuity as is found due to the applicant.

4. This application is disposed of in the above terms. There shall be no order as to costs.



(KAUSHAL KUMAR)
MEMBER



(K. MADHAVA REDDY)
CHAIRMAN

5.9.1988