

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. O.A. 634/87.

DATE OF DECISION: 4.11.1992.

A.L. Saxena.

..Petitioner.

Versus

The Secretary,
Ministry of Finance,
New Delhi & Ors.

..Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Petitioner.

Shri Navin Prakash, Counsel.

For the Respondents.

Shri M.L. Verma, Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner, Shri A.L. Saxena, retired as an Accountant General on attaining the age of superannuation on 16.11.1955. He having died during the pendency of these proceedings, his legal representatives have come on record. For the sake of convenience, we shall advert hereafter to the petitioner. On the date of the retirement of the petitioner, he was drawing substantive pay of Rs. 1300/- and officiating pay of Rs.1150/-. Thus, he was drawing a total amount of Rs.2450/- on the date of his retirement. He was governed by the Liberalised Pension Rules of 1950. His emoluments were determined in accordance with the relevant provisions in force and his pension was fixed. He was granted Rs.7000/- as maximum pension permissible and Rs.2500/- as an additional pension per annum. His emoluments were determined for the purpose of calculating the pension due to him by applying Articles 486 and 487B of the Civil Service Regulations. The authorities have taken the view that the officiating pay of ^WRs.1150/- which the petitioner was drawing will not fall under

the definition of the expression emoluments under Article 486 of the Civil Service Regulations on the ground that he was holding the post of Accountant General in officiating capacity and was not substantively appointed to the said post. Article 371 provides that an officer without a substantive appointment officiating in an office which is vacant, or the permanent incumbent of which does not draw any part of the pay or count service, may, if he is confirmed without interruption in his service, count his officiating service. The authorities have taken the view that as somebody had lien on the post to which the petitioner was appointed on officiating basis, having regard to the provisions of Article 371, the officiating pay which the petitioner was drawing could not be added as emoluments falling under Article 486. It is on that basis that certain additions were made to the substantive pay of the petitioner by invoking Article 487B.

2. In this petition filed by the petitioner, he has prayed for a direction to redetermine his pension by giving the full benefits of the officiating pay which he was drawing. He has also prayed for a direction that he be accorded confirmation in the higher grade with retrospective effect as from the date on which his juniors were given such benefit prior to his retirement.

3. We shall first examine the question as to whether the petitioner is entitled to the relief of retrospective confirmation, as prayed for by him, from the date on which his juniors were given such benefit before his retirement.

4. The petitioner has not produced in support of his case copies of the orders granting retrospective confirmation to the officers who were junior to the petitioner. The petitioner has made a vague and general assertion in this behalf without giving the relevant particulars of the juniors of the petitioner and the dates of the orders on which the benefit of confirmation was

given to them. Shri Navin Prakash, learned counsel for the petitioner, submitted that these matters are well within the knowledge of the respondents and that at any rate there is information in one of the communications of the petitioner where the petitioner has adverted to the names of the juniors who were given confirmation. He invited our attention to Annexure VI which is a letter written by the petitioner to the Secretary, Department of Personnel, New Delhi. He has stated in the said letter that the policy was revised in 1958 when two officers junior to him, namely, Sarvashri P.N. Bhandari and A.K. Mukherji were confirmed w.e.f. 7.11.1955 i.e. before his date of retirement. In our opinion, this is not/ substitute for a proper averment in the pleadings. What the respondents are required is to meet his case, as pleaded by the petitioner. As against the general statement that the petitioner's juniors have been confirmed as made in the petition, the respondents have likewise made a general statement to the effect that even seniors of the petitioner have not been given confirmation. Similar assertion is also made in Annexure 'III' filed along with the petition dated 6.5.1985 which is a letter written by the Assistant Comptroller and Auditor General (Personnel) to the petitioner. In such a state of pleadings, we would not be justified in holding that there is admission by non-traverse. The petitioner not having pleaded specifically and not having placed material in support of his case and there being no material whatsoever on record before us to pronounce on this question, it is not possible to accept this contention of the petitioner's counsel. It is also necessary to bear in mind that the claim is being raised vis-a-vis the confirmation made in the year 1958 whereas the petition was filed in the year 1987. We shall, therefore, proceed on the basis that the petitioner was not confirmed in the

higher grade and that he was drawing only officiating pay of Rs.1150/- on the date of his retirement.

5. The liberalised pension formula generally known as the slab formula was sought to confer the benefit on persons who retired on or after 1.4.1989. The Supreme Court has ruled in its decision reported in AIR 1983 SC 130 D.S. Nakara and Others Vs. Union of India that the benefit of the same could not be denied to those who retired before 1.4.1979. The benefit of the liberalised pension formula was available to those who are governed by the Central Civil Services (Pension) Rules, 1972 but the Government by its order dated 22.10.1983 produced in this case as Annexure-I extended the benefit of the same to those who are governed by the Liberalised Pension Rules of 1950 like the petitioner. Petitioner's pension was revised on the strength of the said order. But what has been taken into account for the purpose of revision of the pension of the petitioner is the emoluments which were determined when his pension was determined on his retirement in the year 1955. The contention of the learned counsel for the petitioner is that consequent upon the coming into force of the Central Civil Services (Pension) Rules, 1972, the emoluments for the purpose of determining pension were required to be fixed in accordance with the provisions of the 1972 Rules. That not having been done, it was contended that an error has been committed in the matter of revising the pension table of the petitioner in accordance with the new formula. To us it appears that this question need not detain us for the question stands concluded by a decision of the Bombay Bench of the Tribunal reported in 1987(3) ATC 289 D.D. Samant Vs. Union of India & Ors. The Tribunal has held in the said decision that consequent upon the coming into force of the Central Civil Services(Pension) Rules, 1972, the emoluments are not required to be recalculated in accordance with the said provisions. We would like to advert to the observations of the Supreme Court in the

Nakara's case in paragraph 49 of the judgement which reads:

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"...In our opinion, it would make a marginal difference in the case of past pensioners because the emoluments are not revised. The last revision of emoluments was as per the recommendation of the Third Pay Commission(Raghubar Dayal Commission). If the emoluments remain the same, the computation of average emoluments under amended R.34 may raise the average emoluments, the period for averaging being reduced from last 36 months to last 10 months. The slab will provide slightly higher pension and if someone reaches the maximum the old lower ceiling will not deny him what is otherwise justly due on computation..."

6. The Supreme Court, therefore, clearly held that the new formula for revising the pension did not in any way affect the determination of the emoluments for the purpose of revising the pension. Hence, it is not possible to accept the second contention of the petitioner's counsel either.

7. For the reasons stated above, this petition fails and is accordingly dismissed. No costs.


(I.K. RASGOTRA)

MEMBER(A)

SRD
51292


(V.S. MALIMATH)

CHAIRMAN