

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

CCP-117/90 in  
OA-1969/89

Date of decision: 28.11.1990

Dr. S.L. Juneja

...Petitioner

Versus

C.S.I.R. &amp; Ors.

...Respondents

CORAM:

THE HON'BLE JUSTICE MR. AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE RESPONDENTS

MRS. SHEEL SETHI, COUNSEL

The above CCP has been filed by Dr. S.L. Juneja against Dr. A.P. Mitra, Director General, C.S.I.R. and Dr. S.K. Joshi, Director, National Physical Laboratory, Pusa, New Delhi for their failure in carrying out the orders of the Tribunal within a period of three months from the date of the judgement viz. 24.11.1989. The said period expired on 24.2.1990. The Tribunal in its judgement delivered on 24.11.1989 in the said OA had directed the respondents to pay:

- i.) The subsistence allowance to the applicant from 1.1.1986 till the date of his compulsory retirement with reference to the pay in the revised scale corresponding to the pay that the applicant was actually drawing before his suspension.
- ii.) Recalculate pension payable to him in accordance with the methodology detailed by the Tribunal in its judgement and

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iii) to pay all other retirement dues payable to him with reference to the pay in the revised pay scale applicable after 1.1.1986 corresponding to the pay actually drawn immediately prior to his suspension.

Notice was issued to the respondents on 5.9.1990, returnable within one month. While personal presence of respondents No. 1 & 2 were exempted. They were allowed to put appearance through a counsel on the date fixed.

Mrs. Sheel Sethi, the learned counsel for the respondents appeared in person and stated that she would be filing a counter reply on 9.11.1990. The CCP was finally heard on 16.11.1990 when Mrs. Sheel Sethi drew our attention to the counter reply filed by the respondents. The learned counsel submitted that the pension of the applicant has been correctly recalculated in accordance with the directions of the Tribunal contained in the judgement dated 24.11.89 and in compliance with the relevant rules. The learned counsel further submitted that the orders of the Tribunal were fully complied with by making the following payments:

- a) Cheque No. 59722 dated 18.9.1990 for Rs.11,310/-
- b) Cheque No.060021 dated 15.10.1990 for Rs.1,194/

Total Payment: Rs.12,504/

The above payments have been accepted by the applicant. The learned counsel further submitted that these calculations were furnished to the applicant to

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enable him to verify the correctness of the payment. She emphatically denied that the applicant has been visiting the office of the respondents frequently and therefore there was no occasion of slighting or insulting him by the concerned officer or staff of the respondents. The applicant had visited the respondents' office on 17.10.1989 and had spent about five hours with the concerned official when all clarifications asked for by him were furnished. The learned counsel also drew our attention to the brief summary of discussions/clarifications filed along with the counter reply at Annexure-R-3. According to the summary of discussions, the following points were raised by Dr. Juneja:-


- i) The period of suspension should be treated as qualifying service for retirement benefits.
- ii) The second point related to decrease in his total pension including the element of personal pension which was being paid to him prior to the revision of Pension as per directions of the Tribunal and the clarifications given by the respondents did not satisfy him.

The counting of period of suspension is regulated in accordance with Rule 23 of the CCS Pension Rules (Swamy's Compilation) which reads as Under:-

"Time passed by a Government servant under suspension pending inquiry into conduct shall count as qualifying service where, on conclusion of such inquiry, he has been fully exonerated or the suspension is held to be wholly unjustified ;in other cases, the period of suspension shall not count unless the authority competent to pass orders under the rule governing such cases expressly declares at the time that it shall count to such extent as the competent authority may declare."

In the circumstances of the case, Dr. Juneja is not entitled to count period of suspension as qualifying service for pension etc.

The second contention of Dr. Juneja is regarding the personal pension. The grant of personal pension is regulated by the Government of India orders dated 30th April, 1985 as modified by the Ministry of Personnel & Training OM No.27/8/84-Pension Unit dated 21st June, 1985. The question of personal pension arose when the merger of additional dearness allowance upto 568 points COI with pay was allowed by the Government for the purposes of retirement benefits w.e.f. 1.4.1985. Prior to this, the additional dearness allowance was merged with pay upto 320 points COI. It was observed that revision of pension after merger of ADA upto 568 points in some cases resulted in loss of pension as compared to the pension drawn with the ADA merger with pay upto 320 points. In such cases, the differential was allowed to be paid as personal pension. The basis of allowing personal pension has been clarified in the Department of Pension and Pension Welfare OM dated 16th September, 1985 along with appropriate illustrations. The personal pension so granted, however, lost its relevance, once the pay was fixed from 1.1.1986 in accordance with CCS Revised Pay Rules and pension recalculated in accordance with the revised pension rules.



The pensionary benefits were ordered to be paid to the petitioner reckoning the revised scale of pay for the relevant period w.e.f. 1.1.1986 by the Tribunal. Personal pension was being allowed only to those pensioners who retired between 1.1.1986 and 30.6.1987 and opted to retain the pre-revised scales of pay and for their pension and DCRG calculated under the rules in force immediately before coming into effect of the OM No. 2/1/87-PIC-II dated 14.4.1987 issued by the Department of Pension and Pensioner's Welfare. Since the applicant is to be paid pension etc. under the revised rules, he has been provided reliefs as ordered by the Tribunal vide its judgement dated 24.11.1989 correctly. The respondents have further provided him the detailed calculations giving him the rationale of the calculations.

We have also looked at the calculation sheet carefully submitted by the respondents. There appears to be an error in reckoning of average emoluments for the period as dearness pay/additional dearness allowance has been pegged at that admissible at COI 568 for the period prior to 1.1.1986 whereas as per paragraph 9 of the Department of Pension & Pensioner's OM dated 14.4.1987 read with OM dated 9.6.1987, dearness pay and additional dearness allowance actually drawn upto 31.12.1985 (i.e. level preceeding 608 COI) ought to have been taken into account. In this view of the matter the average emoluments per month for the last 10 months will work out to Rs. 3,088.08 instead of Rs. 3062.58

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as calculated by the respondents. Consequently the pension for 21½ years qualifying service shall amount to Rs. 1006.59 rounded off to Rs. 1007/- p.m. instead of Rs. 998/- per months as per respondent's calculation. Thus the applicant is due pension arrears at the rate of Rs. 9/- per month for the period in question.

It seems that the above error in calculation of pension has taken place inadvertently and not as a deliberate action on the part of the respondents. We are, therefore, satisfied that there is no case for contempt against Dr. A.P. Mitra, Director General, C.S.I.R. and Dr. S.K. Joshi, Director, National Physical Laboratory as there has been no wilful or deliberate disobedience of the orders of the Tribunal.

The CCP is accordingly disposed of with the directions to recalculate the pension of the applicant as above in accordance with the rules and make payment of the amount due within four weeks from the date of communication of this order. The notice of contempt is also discharged.

The petitioner in the CCP had also earlier moved an MP No. 2591/90 praying that the respondents be directed to file a reply to the Contempt Petition. The respondents had filed their reply on 25.10.1990 to which a rejoinder was also filed by the petitioner. All the issues raised in the MP have been considered by us along with the CCP as above. The MP, therefore, also stands disposed of.

There will be no orders as to the costs.

*(Signature)*  
(I.K. Rasgotra)  
Member (A)

*(Signature)* 26.11.90  
(Amitav Banerji)  
Chairman