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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. 1501/90

New Delhi this the 16th day of January, 95.

Hon'ble Mr. N.V. Krishnan, Vice Chairman(A).

Hon'ble Smt. Lakshmiwaminathan, Member(J).

D.P. Sharma

S/o late Shri B.L. Sharma,

R/o 117-A, GCR Enclave,

Delhi-92.

... Petitioner.

By Advocate Shri S.C. Luthra with Shri D.P. Khokha.

Versus

Union of India through

1. Secretary,  
Department of Expenditure,  
Ministry of Finance, North Block,  
N. Delhi.

2. Secretary,  
Ministry of Personnel,  
Department of Pension and  
Pensioners Welfare, North Block,  
N. Delhi.

3. The Comptroller & Auditor General of India,  
Bahadur Shah Zafar Marg,  
New Delhi.

4. The Director of Audit,  
Central Revenue II,  
AGCR Building, Indraprastha Estate,  
New Delhi.

... Respondents.

By Advocate Shri M.K. Gupta.

ORDER

Hon'ble Mr. N.V. Krishnan, Vice-Chairman(A).

The applicant retired on 31.7.1987 from the office of the 4th respondent, the Director of Audit, Central Revenues, II, New Delhi, as a Deputy Director of Commercial Audit. He filed this application on 7-6-1990 seeking the following reliefs:

- "(i) To fix the pay in the post of Asstt. Director of Audit in the revised scale of Rs.2000-4500 at Rs.3500/- as on 1.1.1986 under FR 22(C).
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- (ii) To step up the pay as Asstt. Director of Audit to Rs.3600/- as on 1.1.1987 i.e. the date on which the pay of Shri Janardan K. Sastri a junior officer was fixed at Rs.3600/- on his promotion to I.A. & A.S.
- (iii) To fix pension and other pensionary benefits on the pay as fixed in (i) and (ii) above plus special pay of Rs.300/- p.m. by working out the average emoluments at Rs.3870/-.
- (iv) To pay all arrears due on the basis of above reliefs requested in sub-paras (i), (ii) and (iii) above by way of salary, pension and other pensionary benefits.
- (v) To direct the authorities to pay a sum of Rs.5000/- (Rupees five thousand only) being the cost of legal suit defrayed by me.

2. During the pendency of this application, the applicant filed M.A. 2291/94 requesting that the reliefs sought in paras (i) and (ii) above be deleted. That M.A. was allowed on 15.11.1994. Accordingly, it is only the other prayers that have to be considered in this O.A.

3. It will be seen that the main grievance of the applicant is that, on his retirement, his pension has been determined without taking into account the special pay of Rs.300/- which he was drawing on the date of retirement, as well as for quite some time before that date, allegedly because this was not permissible under the rules governing pension.

4. The brief facts are as follows:

4.1 The applicant was a permanent Audit Officer under the 4th respondent in the pay-scale of Rs.800-1200. While so, he was promoted to the Indian Audit and Accounts Service and appointed as Assistant Director Audit in the junior time scale of I.A.A.S (Rs700-1300) on 15.4.1985 on probation and his pay was fixed at Rs.1250/-.

4.2 On 16.8.1985, he was posted on the senior time scale post of Deputy Director Audit (Rs.1100-1600), on an ad hoc basis, by the letter dated 16.8.1985 (Annexure-2). He was

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informed that he would, nevertheless, continue to be on probation as mentioned in the Annexure-I letter relating to his appointment as Assistant Director (Audit) and that it would not confer on him any right for regular promotion to the senior time scale.

4.3. Admittedly, the applicant was paid a special pay of Rs.150/- on holding the post of Deputy Director, while his counter parts were paid on the pay-scale of Rs.1100-1800 of that post.

4.4 The junior time-scale of Rs.700-1300 applicable to the post of Assistant Director and the senior time-scale applicable to the post of Deputy Director Audit were respectively revised to Rs.2200-4000 and Rs.3000-4500 as a result of the implementation of the recommendations of the 4th Pay Commission. The special pay of Rs.150/- was also doubled to Rs.300/- w.e.f. 1.1.1986 in terms of the recommendations of that Commission.

4.5 On the revision of pay scales, the applicant's pay on 1.1.1986 in the substantive post of Audit Officer was fixed at Rs.3300/- in the pay scale of Rs.2375-3500, while his pay on the officiating post of Assistant Director was fixed at Rs.3200/- in the pay scale of Rs.2200-4000. As the pay on the officiating post was less, the difference was made good by giving him a personal pay of Rs.100/-. In addition, the applicant was allowed a special pay of Rs.300/- for working as Deputy Director, for which the revised pay scale was Rs.3000-4500.

4.6 The applicant retired on 31.7.1987 before his regular promotion to the senior time scale of Rs.3000-4500. He was drawing the special pay of Rs.300/- on the date of retirement also.

4.7 For the purpose of his pension, the special pay of Rs.300/- was excluded while reckoning his emoluments on the date of retirement. This was done under Rule 33 of the CCS (Pension) Rules, 1972.

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4.8 His representations did not bear any fruit.  
Accordingly, he<sup>has</sup> filed this O.A. and sought the reliefs mentioned in sub-paras (iii) referred to in para 1 above.

5. The respondents have filed a reply contesting this claim. It is stated that the pension of the applicant has been fixed taking into account his 'emoluments' as determined, in accordance with Rule 33 of the Pension Rules. Attention is also drawn to the decision rendered by the Principal Bench on 23.5.1990 in O.A. 771/1988 S.M. Ghosh Dastidar and Ors. Vs. Union of India and Ors. in which a similar claim was turned down.

6. We have heard the learned counsel for the parties.

7. Shri S.C. Luthra, learned counsel for the applicant, submitted that the special pay granted to the applicant was in lieu of a higher time scale of pay for the post of Deputy Director held by him. He contended that, in the circumstance, this special pay should be treated as an integral part of his pay and, therefore, it should be taken into account, while fixing his pension. He has also relied on the judgement rendered by one of us (Hon'ble Smt. Lakshmi Swaminathan, Member (J)) sitting as a Single Member Bench, in Rajaram Shanker Gawade Vs. Union of India, 1994(1) ATJ 249, wherein a direction was given to the respondents to refix the pay of the applicant treating the special pay as part of his pay from 1.1.1986.

8. It would be useful to extract the rules that are applicable for a proper consideration of the applicant's claim:

- (i) Rule 33 of the Pension Rules, as substituted by the Notification dated 28.7.1988 w.e.f. 1.1.1986, reads as follows:

"The expression 'emoluments' means basic pay as defined in Rule 9(21)(a)(i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement or on the date of his death; and will also include non-practising allowance granted to medical officer in lieu of private practice".

(ii) Rule 9(21)(a) of the Fundamental Rules defines

'Pay' as follows:

"(21) (a) Pay means the amount drawn monthly by a Government servant as -

- (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and
- (ii) overseas pay, special pay and personal pay; and
- (iii) any other emoluments which may be specially classed as pay by the President".

This definition of 'pay' particularly the exclusion of special ✓ in para (a)(i) pay, has been in existence for a long time. In particular, it is not a result of the Fourth Pay Commission recommendations as will be shown later.

9. Reading Rule 33 of the Pension Rules and the ✓ (a)(i) definition of pay in FR 9(21), it is clear that the emoluments which have to be taken into account in fixing the pension will not include special pay. It is, therefore, clear that the decision of the respondents in this behalf is in accordance with this rule.

10. The learned counsel for the applicant, however, contended that this Bench is bound by the decision rendered by the learned Single Member in Rajaram Shanker Gawade's case (Supra) and that, therefore, a direction should be issued to the respondent to include his special pay also in emoluments.

11. His second line of argument is based on an interpretation of FR 9(21) (a) defining the expression 'Pay'. He

points out that special pay has been excluded from the purview of pay as is clear from clause (i) of the definition. The special pay referred to herein necessarily refers to the special pay as defined in FR 9(25) as follows:

- Pay
- "(25) Special/means an addition, of the nature of pay, to the emoluments of a post or of a Government servant, granted in consideration of-
- (a) the specially arduous nature of the duties;
  - or
  - (b) a specific addition to the work or responsibility."

Special pay, as so defined, is a specific addition in the nature of pay to the emoluments of a post or of a Government servant, and is given only for two reasons mentioned therein. In the case of the applicant, the special pay was not given for either of these two reasons. It was given in lieu of the higher time scale of pay attached to the post held i.e. the post of Deputy Director. His argument, therefore, is that such a special pay does not stand excluded from the purview of 'Pay' as defined in FR 9(21)(a)(i) because the special pay referred to therein and excluded by it is the special pay as defined in FR 9(25).

12. The learned counsel for the respondents contended that both these arguments are devoid of merits. He stated that the decision of the Principal Bench in Ghosh Desai & Ors. (Supra) was rendered on 23.5.1990 and by that judgement both the points now taken up by the learned counsel for the applicant have been disposed of. It is that judgement which will be binding on the Bench and not the decision of the learned Single Member in Rajaram Shanker Gawde's case which was rendered much later on 13.12.1993 and that too without referring to the judgement of the Division Bench.

13. I have carefully considered the rival contentions. In para 1 of the O.A. it is stated that the Rule 33 of the Pension Rules is one of the orders against which the O.A. is made. Therefore, we take it that this Rule has been challenged even though there is no specific prayer in this behalf either in para 8 of the O.A. seeking reliefs or in Appendix 'A' to the O.A., which gives the facts of the case, which, in the normal course, should have been given in para 4 of the O.A.

14. The learned counsel for the applicant has not been able to explain to us the grounds on which he seeks to quash Rule 33 of the Pension Rules. There is a special reason why special pay has been excluded for reckoning pension. This has been done consciously as a result of the recommendations of the 4th Pay Commission in para 5.21 of its report, extracted in para 9 of the judgement of the Tribunal in Ghosh Dastidar (Supra). That para reads as under:

"5.21. We have recommended improved pay scales in Part I of our report as a result of which pensionary benefits should improve for all categories of employees. We have also recommended that various allowances and benefits to employees should generally be related to basic pay only. We are of the view that pension which confers a long term benefit to government employees should also be related to basic pay. We, therefore, recommend that the reckonable emoluments for purposes of retirement benefits should be the basic pay which may have the meaning given in F.R.9(21)(a)(i) and may not include any addition to pay under any other nomenclature."

(Emphasis supplied)

15. It may thus be seen that the Pay Commission took advantage of the definition of 'Pay' contained in the FR to indicate what, in its view, should be taken as basic pay for the purposes of pension. It reiterated by adding that it should not include any other addition to pay. It is for this

reason that Rule 33 of the Pension Rules was substituted w.e.f. 1.1.1986. It provides that the expression "emoluments" means basic pay. It further provides that such basic pay should be understood as defined in Rule 9(21)(a)(i) of the Fundamental Rules which excludes special pay. Thus, it is Rule 33 of the Pension Rules which gives a definition of basic pay for the purpose of Pension Rules by stating that it shall have the same content as mentioned in para 1 of clause (a) of FR 9(21).

16. I am of the view that this is purely a policy matter. Grant of special pay may be justified while an official is in service depending on the circumstances when it was given. If a view is taken that this incidental payment related to a particular circumstance should not justify its being made the basis for pension, after retirement, but that only basic pay should be taken into account, the competent authority cannot be faulted. It has not been shown that the applicant has a right to have the special pay reckoned in the calculations. It has also not been shown that Rule 33 of the Pension Rules violates the provisions of the Constitution. This is purely in the realm of policy and this Tribunal cannot grant any relief in this regard.

17. I have seen the judgement rendered in Rajaram Shanker Gawde's case (Supra) by my learned colleague sitting as a Single Member Bench. The question considered therein was entirely different. That was a dispute relating to fixation of pay on 1.1.1986 in the revised pay-scale in respect of a person who was getting a special pay of Rs.100/-, admittedly in lieu of a higher time scale. It was noted that, before 1.1.1986, this special pay of Rs.100/- was treated as basic pay for all purposes including TA/DA/Pension/Gratuity and House Rent Allowances. Reference was also made to O.M. dated 25.2.65

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of the Ministry of Finance relating to treatment of special pay in lieu of a higher time scale for the purpose of boosting of pay. It was, therefore, held that there was no reason why in the absence of any specific provision the special pay should not be considered as part of basic pay and accordingly it was directed that the special pay should be treated as part of his basic pay for calculating the revised pay w.e.f. 1.1.1986.

18. The Central Civil Service (Revised) Pay Rules, 1986 were made to give effect to the decisions of Government on the Fourth Pay Commission's recommendations in respect of persons paid from civil estimates. The rules are at Annexure R-1 of the reply. The corresponding rules must have been framed for the defence employees paid from the defence estimates. The manner in which the initial pay in the revised pay should be fixed is provided in Rule 7. In general terms, it requires adding certain specified amounts to the "existing emoluments", before pay is fixed in the revised scale. The explanation to Rule 7 indicates what are included in "existing emoluments". Para (B) of that explanation clarifies that, in respect of an employee who is in receipt of a special pay in addition to pay in the existing scale, which is replaced by a scale of pay without special pay, the "existing emoluments" shall include the special pay also. In my view, it would have been appropriate to invoke this provision in Gawde's case (Supra).

19. In the circumstance, that decision has no relevance to the present case, merely because it also refers to FR 9(21) (a)(i) regarding pay. For, in the present case, a specific rule i.e. Rule 33 of the Pension Rules, excludes the special pay for purposes of pension, by reference to FR 9(21)(a)(i).

The  
20. /argument that 'special pay' referred to in FR 21(a)(i) refers to only the special pay mentioned in Rule 25 has been referred to in para 3 of the judgement in Ghosh Dasidhar's case


62

- (ii) Secondly, the assumption that the expression 'special pay' used in para (1) of FR 9(21)(a) has to be construed only in terms of FR 9(25) also has no basis. I do not wish to go into the question whether a special pay granted in lieu of a higher time scale can be fitted into the definition of the term 'special pay' given in FR 9(25). Assuming that it is a different class of special pay, it cannot be argued, it is outside the purview of 'Pay' as defined in FR 9(21)(a). Pay is first defined to mean the amounts drawn monthly under various heads. The definition then proceeds to enumerate the heads. The first (para i) is pay proper sanctioned for the post held by a Government Servant, which explicitly excludes special pay and personal pay. The second (para ii) head is overseas pay, special pay and personal pay. The third head, para (iii), is other emoluments specially classified as pay by the President. We are not concerned with clauses (b) and (c) which refer to military officers. The structure of the definition makes it clear that under para (i) of FR 9(21)(a) only pay in the time scale of the post held is included and nothing else. If any special pay or overseas pay is attached to the post or is given to a government servant, that is made part of pay by including it in para (ii) thereto, which also includes personal pay. There is no justification to import the definition of 'special pay' as given in FR 9(25) to interpret the expression 'special

pay' used in FR 9(21)(a). In the context of the definition of 'pay', the expression 'special pay' has to be given a wider meaning and it will also include any special pay drawn monthly by a government servant even if it is not considered by the definition given in FR 9(25).

22. In regard to other issue about exclusion of 'special pay', the provisions of Rule 33 of the Pension Rules read with FR 9(21)(a) are too clear to require any interpretation. I respectfully agree with the conclusion reached in this behalf by the Principal Bench in Ghosh Dastidar's case (Supra). Therefore, the computation of pension after excluding the 'special pay' cannot be faulted.

23. Therefore, I do not find any merit in the O.A. in so far as it concerns the fixation of applicant's pension which is the only issue raised for decision. Accordingly, the O.A. is dismissed. No costs.

  
(N.V. KRISHNAN)  
VICE CHAIRMAN(A)

Hon'ble Mrs Lakshmi Swaminathan

24. I agree. However, I would like to add the following:-

The contention of the learned counsel for the applicant in this case that we are bound by the decision in Rajaram Shanker Gawade v. UOI & Ors. [1994(1)ATC 249 Bombay Bench (SB)] is not tenable because firstly this is a Division Bench and secondly the facts in that case and the question considered therein were totally different. The dispute in Gawade's case (Supra) was with regard to fixation of pay on 1.1.1986 in the revised payscale