

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 293/1990
T.A. No.

199

DATE OF DECISION 09.08.1991

<u>Shri M.S. Singhal</u>	Petitioner
<u>Shri B.K. Aggarwal</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Others</u>	Respondent
<u>Shri V.K. Jain</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
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*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The services of the applicant who has worked as an Assistant Communication Officer in the office of respondent No.2 (The Director General of Civil Aviation) in the grade of Rs.2000-3500 were placed at the disposal of respondent No.3 (National Airport Authority) with effect from 1.6.1986 on deputation. ~~He~~ *She* has filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking ^{the} following reliefs:-

(i) To issue directions to the respondents to fix the pension of the applicant in accordance with the rules, i.e., on the basis of average of last 10 months pay drawn by the applicant;

- (ii) to make payment of interest @ 12% on the outstanding amount due to the applicant from the date it falls due till the date of payment; and
- (iii) to make payment of the due amount along with interest within a period of two months from the date of the order of this Hon'ble Tribunal.

2. The facts of the case are as follows. On 30.5.1986, respondent No.2 issued an order which, inter alia, reads as follows:-

" By virtue of provisions contained in sub-section(3) of Section 13 of the National Airports Authority Act, 1985, the Central Government hereby places the services of (24) Assistant Communication Officers as in the list enclosed at the disposal of the National Airports Authority with effect from June 01, 1986 Forenoon. They shall hold office in the Authority as Assistant Communication Officers on deputation by the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement or other terminal benefits as they would have held such an office, if the Authority had not been constituted and shall continue to do so until the Authority duly absorbs them in its regular service."

3. After joining the office of respondent No.3 in compliance of the above order/notification, the applicant was promoted as 'Communication Officer' in the grade of Rs.2200-4000 with effect from 27.12.1986 in a clear vacancy and was retired on superannuation on 31.12.1987.

4. At the time of his retirement, the applicant was drawing the basis pay of Rs.3000/- but the pension of the

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applicant on his retirement was fixed at the basic pay of Rs.2750/- drawn by ~~him~~ ^{as} on 30.5.1986 before joining the Authority, respondent No.3, though the pension should have been fixed on the basis of average pay of last ten months in accordance with the Pension Rules.

5. The applicant has stated that the pension of another officer Shri G.L. Khera, who retired as Senior Communication Officer in November, 1987 was fixed at Rs.1813/- on the basis of his last 10 months average pay of Rs.3625/- last drawn by him. He has contended that the action of the respondents in fixing the pension of the applicant on the basis of Rs.2750/- as basic is arbitrary, illegal, wrong, contrary to the pension rules and the condition contained in the notification and are liable to be set aside.

6. The respondents have stated in their counter-affidavit that the applicant was promoted on ad hoc basis as Communications Officer but his posting as Communications Officer was never regularised by the DGCA till his retirement. The holding of the post by the applicant as Communications Officer, therefore, with the National Airports Authority does not in any way confer any additional rights or pensionary benefits on the petitioner since the same was not regularised for the ^{said} purposes by the DGCA. They have not denied that at the time of his

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retirement the petitioner was drawing basic pay of Rs.3000/-. They have admitted that the applicant was promoted as Communications Officer on ad hoc basis with effect from 27.12.1986 to 26.12.1987 for one year, but the entry in the service book was not duly attested by the competent authority. The pension of the applicant was fixed at Rs.2750/- after taking into account the average basic pay for the last 10 months in the regular post of the Assistant Communications Officer.

7. The respondents have submitted that Shri C.L. Khara was put on deputation with the National Airports Authority on 1.6.1986 as Communications Officer in the scale of Rs.2200-4000 and he had been promoted by the Authority as Senior Communications Officer on 2.1.1987 in the scale of Rs.3000-4500 fixing his pay at Rs.3625/-p.m. He was retired from the Government service on 30.11.1987 and the pension was accordingly fixed at Rs.1813/-p.m. on the basis of his last 10 months' average emoluments by the Central Pay & Accounts Officer. According to them, the case of fixation of pension of Shri Khara is not relevant in the present context. The ad hoc promotion given to the applicant for the period 26.12.1986 to 31.12.1986 by respondent No.3 has not been regularised by respondent No.2 for pensionary benefits.

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8. We have carefully gone through the records of the case and have heard the learned counsel of both parties. The basic contention of the applicant is that his pension and other pensionary benefits should be computed on the basis of the last ten months average pay drawn by him at the time of his retirement. He was drawing a sum of Rs.3000/- in the month of December, 1987. According to the Office Memorandum issued by the Department of Pension and Pensioner' Welfare on 5.7.1989, the Government servants who opt to be governed by the pensionary benefits available under the Government, shall at the time of their retirement, be entitled to pension etc. in accordance with the Central Government rules in force at that time.

9. We see merit in the above contention. The action of the respondents in fixing his basic of Rs.2750/- in the lower post of Assistant Communication Officer and taking the average of such basic pay for the last 10 months for the purpose of pension and other pensionary benefits is legally untenable. The fact that a Government servant was holding a post on ad hoc basis during the last ten months of his career in Government is not a relevant criterion for the purpose of fixing the pay.

10. We, therefore, allow the application and direct the respondents to fix the pension and other retirement

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benefits of the applicant on the basis of the average of
pay drawn by him during the last ten months[✓]; regardless
of the fact that he was holding the post on an ad hoc
basis. The pension and other retirement benefits shall
be computed on the above basis. The applicant would also
be entitled to interest at the rate of 12% on the
outstanding amount due to him from the date of retirement
to the date of payment. The respondents shall comply
with the above directions within a period of three months
from the date of receipt of this order.

There will be no order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL) 3/8/81
MEMBER (A)

P.K. Kartha
9/8/81
(P.K. KARTHA)
VICE CHAIRMAN (J)