

96

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 548/90

NEW DELHI THIS THE 17TH DAY OF JANUARY, 1995

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

Shri S.S. Bansal, (deceased)
Legal Representatives

1. Mrs Pushpa Devi
2. Shri Raj Kumar
3. Miss Yamini
4. Mrs Manorma
5. Mrs Uma Naugia
6. Mrs Usha Kataria
C/o A5/21 Krishna Nagar,
Delhi 51. Applicants

(Sh. R.P. Oberoi) VERSUS
UNION OF INDIA, THROUGH

1. The Secretary,
Ministry of Communications,
Dept of Tele-communication
Sanchar Bhavan,
Ashoka Road, New Delhi.
2. The Chairman & Managing Director,
Videsh Sanchar Nigam Ltd.,
Videsh Sanchar Bhavan, M.C. Road,
Fort, Bombay-400001.
3. The General Manager (NB)
Videsh Sanchar Nigam Ltd
N.I.C. Building (First Floor),
5, Parliament Street,
New Delhi-110001.
4. The Dy Secretary,
Ministry of Personnel,
Public Grievances and Pension,
Dept of Pension & Pensioners' Welfare,
6th Floor, Nirvachan Sadan
Ashoka Road,
NEW DELHI-110001. ... Respondents

(By Advocate : Shri Shyam Babu

JUDGEMENT (ORAL)

Hon'ble Shri J.P. Sharma, Member (J)

The applicant retired from the post of
Deputy Engineer from Videsh Sanchar Nigam Ltd.,
formerly known as Overseas Communication Services,
on 31.7.86 on his superannuation. The applicant
got the retirement and pensionary benefits on

21

the basis of the then existing scales of pay.

Here it may be recalled that unrevised pay scales for the post of Assistant Engineer and the promotional post of Dy Engineer were in the scale of Rs.650-1200 and Rs.700-1300 respectively.

It is undisputed that the applicant was given officiating promotion to the post of Dy Engineer w.e.f. 1st May, 1985. The applicant reached maximum of this scale, in the post of Assistant Engineer at the stage of Rs.1200 on 1.01.82.

As per the extant rules the applicant after reaching the maximum scale of pay and was stagnating at that time for 2 years he was granted the adhoc increment i.e. stagnation increment on 1.1.1984. The stagnation increment was given as Rs.40/- and the pay of the applicant was raised to Rs.1240/-. The applicant being promoted on officiating basis his pay was fixed at the stage of Rs.1250/- in the scale of Rs.700-1300/-.

2. The Fourth Pay Commission revised the pay scale and laid down the formula for revision of the pay scale in the Central Services Revised Rules 1986. This notification was brought about on 13th March, 1987. The applicant was given fixation of pay by the Delhi Office at the stage of Rs.3400/- on 1.1.1986. However, the Head Office situated at Bombay, Vidas Sanchar, for

the said fixation of pay took the step by revising of the pay of the applicant which was fixed in the revised pay scale of Assistant Engineer Rs.2000-3500 and subsequently on the post of Dy Engineer in the scale of Rs.2200-4000/-.

On this revised fixation of pay, the pay of the applicant has been fixed as per note 3 of Rule 8. The applicant made representation regarding his revised fixation of pay at the stage of Rs.3300/- which according to the applicant was earlier rightly fixed at the stage of Rs.3400/-. The applicant was not given the revised benefits in the settlement dues of retirement and he, therefore, filed a writ petition before the Delhi High Court but what happened to the said writ petition is not known. However, any such writ petition before the High Court was filed after the commencement of the CAT Act, 1985 where the jurisdiction of the High Court ceased, if the Videsh Sanchar is not notified under of Section 14 CAT Act, 1985 even though the applicant is now dead and legal representatives have pressed their claim in this application so the decision in this case cannot be said to be a decision by the Tribunal without the jurisdiction. Since the application has been admitted and the applicant submitted application to the jurisdiction of the Tribunal, and that this fact is not taken

objection to by the respondents, so we are disposing of this application as having jurisdiction but not laying down as the precedent. It is also because of fact that the applicant is since dead and his legal representatives have been brought in the application on record. The writ petition before the High Court in our opinion would stand abated.

3. The learned counsel for the applicant has taken us to the Page-10 as well as page-25 of the averments made in the Original Application and illustrated by reading out Rule 7 (2) and Rule 8 Note 3 of C.C.S. (Revised Pay) Rules of 196. He highlighted that Rule 8 cannot be applied in the case of the applicant. The heading of this Rule is with respect to the date of next increment in the revised scale. The contention of the learned counsel is that the pay of the applicant was earlier fixed under Rule 7 of the Pay rules i.e. the first pay was first fixed in the revised pay scale on the substantive post of Assistant Engineer and after giving 2 stagnation increments the pay of the applicant has to be fixed on the promotional post of Dy Engineer. The learned counsel for the applicant has also referred to the fact in the fixation of pay, the personal pay as

defined under F.R.9 (23) cannot come within the scope of this rule in this case.

4. We have ^{also} heard Shri Shyam Babu, counsel for respondents and given a careful thought to the various points raised by the learned counsel of the parties.

5. The Rule 8 in itself visualises the fixation of pay particularly elucidating as and when additional increment benefit could be given while fixing the pay under Rule 7. In case, if person has been stagnating on the maximum of scale on unrevised pay for one year or more, one additional increment has to be added. And in the case where he has been in receipt of stagnation increment and has stagnated for 2 years or more in that event, in addition to the one increment already given one more increment shall be given while fixing the pay in the revised pay scale. Now applying this formula we have seen the model 22 where the maximum pay was Rs.1200/- and the fixation at this stage in the revised pay ¹ would be Rs.3125/-.

Now giving the benefit of two increments of Rs.75+100 the pay of the employee comes to Rs.3300/-. Now when the deceased employee was promoted as Dy Engineer, his pay was Rs.1250/- in the scale of Rs.700-1300. According to the

Model 23 his pay is to be fixed at the stage of Rs.3200/-. Now giving the additional two increment his pay is to be fixed at the stage of Rs.3400/-. Now Note 3 of Rule 8 lays down that where-by the grant of 2 additional increments in terms of the 3 and 4th proviso in the revised scale applicable to the substantive post, the substantive pay of a government servant exceeds as officiating pay which any time the government servant may be allowed in addition to officiating pay, the difference between the officiating pay and substantive pay will be personal pay to be absorbed in future increments for the periods during which the substantive pay exceeds officiating pay. In view of the above, the fixation of pay done by the respondents at Rs.3200+100 with effect from 1.1.1986 cannot be faulted with.

6. We have considered this formula at another angle also. The deceased employee was not a confirmed Dy Engineer. If he is given the pay of Rs.3400/- while officiating as Dy Engineer then those who are promoted on 1.1.1986 would be drawing less and the applicant who had not been regularised on that post would be drawing more. The person who is regularised earlier is normally made senior to persons who is to be regularised, yet

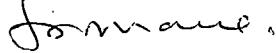
and
Lis working on the officiating basis. Thus the contention of the learned counsel for the applicant that the revised pay scale at the stage of Rs.3400/- is faulty . . . cannot be accepted.

7. The learned counsel for the applicant also fervently argued that there has been certain delay in the settlement of the revised benefits to be given to the applicant. On the basis of revised pension benefits we do find that the respondents have not been prompt but we also cannot condone the act of the applicant in pursuing the matter in legal forum by filing Writ Petition before the High Court and earlier also raising an issue for the fixation of pay by the Bombay Office. An interest is awarded when there is administrative lapse on the part of the administration. This is not such a case where we can attribute Administrative lapse on the part of the respondents. An interest cannot be awarded for unnecessary enrichment at the cost of State Exchequer. Moreover, the applicant is dead. The beneficiaries are his legal representatives and they have already been getting the family pension according to the rules. In this case, thus, we do not find any case for grant of interest on the delayed

settlement of pensionary benefits on account of revision of pay.

8. In view of above conspectus of facts and circumstances of the case, we do not find any merit in the application and the same is, therefore dismissed, leaving the parties to bear their own costs.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

sss