

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO.2145/1991

DATE OF DECISION : 01.05.92

Smt. I.Indira Menon

...Applicant

vs.

Union of India

...Respondent

Coram

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

For the Applicant

...Shri D.P.Malhotra

For the Respondents

...Shri P.H.Ramchandani

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ys*
2. To be referred to the Reporter or not? *Ys.*

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant, retired officer of IAA~~2~~ assailed the order dt.27.2.1991 informing her that cash equivalent to leave is not a pensionary benefit. Further she has also assailed non payment of interest on the delayed payment of pensionary benefits. She has claimed the relief that the difference of leave encashment to the applicant based on her notional pay of Rs.7300 and the pay of Rs.6500 on which the same has already been paid to her, interest on the balance of leave encashment at 18% p.a. from June, 1987 upto date; interest also on the enhanced amount of commuted value of pension from June, 1987 to December, 1990 and

(16) (SA)

interest also at the same rate of enhanced amount of pension and D.A. on pension from June, 1987 to January, 1991.

2. The facts of the case are that the applicant earlier filed OA 2431/1988 which was decided by the Principal Bench on 29.9.1989. At the time of filing that application, the applicant was working as Director of Audit, Southern Railway, Nagpur. She retired from service on 30.9.1986 on superannuation. She claimed the relief in that OA that she was within the zone of consideration of promotion to the post of Principal Accountant General on 1.1.1986. Her case should also be considered in the same manner as asked for by Shri J.D. Sood in the OA 1519/1989 and the same order be passed in her case. A direction was issued to the respondents ^{✓ the} in ~~that~~ OA that her case be considered for promotion to the post of Principal Accountant General w.e.f. 1.1.1986 in the pay scale of Rs.7300-7600 and if she is found fit, she be allowed the benefits of fixation of notional pay of Rs.7300 w.e.f. 1.1.1986 and revise her pension and pensionary benefits without paying any arrears of pay on that ground. In fact, the claim for interest has not been pressed in the earlier OA on the pension and pensionary benefits and so the same has not been considered and now the applicant cannot agitate

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that again of payment of interest on the pension and pensionary benefits which have been enhanced on account of notional fixation of pay of the applicant on promotion to the post of Principal Accountant General in the pay scale of Rs.7300-7600. Thus the applicant cannot claim any interest on that amount and if there was any delay in the payment of the same, the applicant should have assailed in the UCP in the earlier OA No.2431/88 which was decided in September, 1989. The respondents also in their counter have stated that the applicant is not entitled to any interest on the benefits. It is also so because the respondents have also assailed the judgement dt.29.9.1989 before the Hon'ble Supreme Court and on 13.8.1990, the Hon'ble Supreme Court decided the matter upholding the judgement of the Tribunal. The applicant herself has written to the C.A.G. vide Annexure 7 to the application about the payment of certain dues and did not claim any interest.

3. The claim of the applicant for enhancement of the amount equivalent to leave encashment of 240 days is opposed by the respondents on the ground that the salary of the applicant was notionally fixed in the grade of Rs.7300-7600 on

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1.1.1986. It is further stated that in terms of Rule 3(i)(r) of CCS(Pension) Rules, pensionary benefits include pension or service gratuity and DCRG. Further it is stated that the pensionary benefits are those contained in the CCS(Pension) Rules applicable to various services/personnel. The benefits contained in other rules such as leave rules, though payable at the time of retirement cannot be termed as pensionary benefits. Encashment of earned leave is regulated under CCS(Leave) Rules, and it is neither an allowance nor a stipend in consideration of the past service. The payment of cash equivalent to leave salary admissible is provided under Rule 39(2) of CCS (Leave) Rules, 1972 and is not a pensionary benefit. In the order. dt.29.9.1989, it has not been ordered that the leave encashment of Earned leave should be revised and paid on the basis of notional pay fixed.

4. On the other hand, the learned counsel stressed that the leave encashment has to be paid according to the notional pay fixed in pursuance of the aforesaid judgement of the Central Administrative Tribunal. The learned counsel for the applicant referred to the fact that

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in the case of K.Palanvelu vs. UOI & Anr., reported in SLJ Volume-I 1991 Page-398, retirement benefits include leave encashment also. The finding in the said judgement has been arrived at as follows :-

"In regard to the denial of the encashment of leave at credit on the date of the applicant's retirement at the revised rate of pay, the contention of the respondents is that in the judgement dt.4.11.1988 in OA 531/1987, there was a direction to give notional promotion to the applicant without payment of any arrears of pay till his retirement on 28.2.1987, and that this will be only for the purpose of calculation of applicant's pension and death-cum-retirement gratuity. The respondents have pointed out that there is no mention of leave encashment in this part of the judgement. We are unable to agree with the contention of the respondents in this respect. The judgement has to be read as a whole. If we do so, it is clear that the judgement allowed the prayer of the applicant in that case that his retirement benefits should be based on the proforma promotion to the grade of Chief Engineer (Bridges) Level-II. What was directed to be not payable was payment of arrears of his pay till his retirement on 28.2.1987. The words "retirement benefits" would certainly include encashment of leave at credit on the date of the applicant's retirement. It could not have been at all the intention of this Bench in the above judgement to deny the retirement benefits of encashment of leave to the applicant and to restrict the relief only to pension and DCRG. There can be no rationale for such a restriction. We are, therefore, of the opinion that the applicant ought to be paid the encashment of leave at his credit on the date of his retirement according to the extant rules in terms of this Bench judgement dated 4.11.1988 in O.A.531/87."

The learned counsel for the respondents, however, referred to the CCS(Pension) Rules, 1972 and also the fact that in the case of the judgement of the applicant dt.29.9.1989, the word 'retirement benefits' has not been used. However, Rule 39(2) of the CCS(Leave) Rules, 1972 clearly goes to show that the calculation of leave encashment is to be done as follows :-

Pay admissible on the date of retirement+Dearness allowance admissible on the date, is to be divided by 30 and multiplied by the number of days of leave.

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Thus the pay admissible in the case of the applicant is the notional pay which has been fixed by the respondents after the promotion of the applicant to the post of Principal Accountant General in the pay scale of Rs.7300-7600. What the judgement envisaged was that the applicant be given the pensionary benefits as per revised pay. Actually the pension to a person is paid on the basis of the average pay drawn on the last ten months and in the case of the applicant, actually she has not been paid the revised pay which has been fixed on account of her promotion w.e.f. 1.1.1986 to the post of Principal Accountant General, but yet she has been allowed to draw pensionary benefits on that. By this, it is evident that the applicant was entitled to a scale of Rs.7300-7600 on 1.1.1986 and on the date of the retirement, she was drawing the notional pay which shall now be called as pay admissible to her. Thus according to the Rule 39(2) of the CCS (Leave) Rules, 1972, she has to be paid according to the revised pay. It goes to show that the admissible pay on a particular date of retirement has to be taken into account while paying cash equivalent and the respondents cannot take the stand that in the judgement of September, 1989, it was only the pensionary benefits which have to be paid according to the revised pay after the promotion of the applicant.

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5. From another angle also, it is evident that the retirement of a person also gives her a name of a pensioner and after retirement for all purposes, the person is called a pensioner and all the benefits which are given to such person are benefits which are given to a pensioner. So the words 'retirement benefits' and 'pensionary benefits' are almost synonymous terms and are interchangeable. Thus the authority relief^d by the applicant of Madras, C.A.T. also applied to the present case.

6. In view of the above discussion, the present application² is partly allowed and the respondents are directed to pay¹ cash equivalent to Earned leave to the credit of the applicant on the date of retirement on the basis of revised pay fixed on her promotion as Principal Accountant General. The other reliefs of interest claimed by the applicant are far fetched and are, therefore, disallowed. The respondents to comply with the above directions within a period of three months from the date of receipt of a copy of this order. In the circumstances, the parties to bear their own costs.

AKS

J. P. Sharma
(J.P. SHARMA) 1.5.92
MEMBER(J)