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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2424/2004
with
OAs No.2422/2004, 2423/2004, 2425/2004,
2432/2004, 2433/2004 and 2434/2004

New Delhi, this the 28th day of April, 2006

HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

OA No.2424/2004

O.P. Taryon
S/o Late Diwan Chand Taryon
(Retired Accounts Officer O/o CAG)
R/o 26, East End Enclave)
New Delhi – 110 092.
(By Advocate Shri S.N. Anand)

...Applicant.

Versus

1. Controller General of Accounts
Ministry of Finance
Department of Expenditure
Lok Nayak Bhawan,
7th Floor, Khan Market,
New Delhi – 110 003.
2. The Comptroller & Auditor General of India
10, Bahadur Shah Zafar Marg,
New Delhi.
(By Advocate Shri H.K. Gangwani)

... Respondents.

OA No.2422/2004

K.R. Khanna
(Retired Administrative Officer O/o CAG)
R/o N-160, Greater Kailash Part-I
New Delhi – 110 048.
(By Advocate Shri S.N. Anand)

... Applicant

Versus

The Comptroller & Auditor General of India
10, Bahadur Shah Zafar Marg,
New Delhi – 110 002.
(By Advocate Shri H.K. Gangwani)

... Respondent.

OA 2423/2004

O.P. Vig
S/o Late G.R. Vig
(Retired Supervisor O/o CAG)

R/o 62, East End Enclave,
New Delhi – 110 092.
(By Advocate Shri S.N. Anand)

...Applicant.

Versus

The Comptroller & Auditor General of India
10, Bahadur Shah Zafar Marg,
New Delhi – 110 002.
(By Advocate Shri H.K. Gangwani)

... Respondent.

OA 2425/2004

R.K. Mathur
S/o Shri Kishan Chand Mathur
(Retired Administrative Officer O/o CAG)
R/o 23, East End Enclave,
New Delhi – 110 092.
(By Advocate Shri S.N. Anand)

...Applicant.

Versus

The Comptroller & Auditor General of India
10, Bahadur Shah Zafar Marg,
New Delhi – 110 002.
(By Advocate Shri H.K. Gangwani)

... Respondent.

OA 2432/2004

O.P. Bhatia,
S/o Late Laxmi Das Bhatia,
(Retired Section Grade Auditor O/o CAG),
R/o 54, East End Enclave,
New Delhi – 110 092
(By Advocate : Shri S.N. Anand)

...Applicant

Versus

The Comptroller & Auditor General of India
10, Bahadur Shah Zafar Marg,
New Delhi-110002
(By Advocate : Shri H.K. Gangwani)

...Respondents

OA 2433/2004

N.S. Chopra S/o Shri Waryam Singh Chopra
(Retired Administrative Officer O/o CAG)
R/o 24, East End Enclave,
New Delhi – 110 092.
(By Advocate Shri S.N. Anand)

...Applicant.

Versus

The Comptroller & Auditor General of India
10, Bahadur Shah Zafar Marg,
New Delhi – 110 002.
(By Advocate Shri H.K. Gangwani)

... Respondent.

OA 2434/2004

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Harbans Lal Sharma
S/o Late Pandit Jagan Nath
R/o F-47, Green Park Main
New Delhi
(Retired from the office of CAG)

(By Advocate Shri S.N. Anand)

... Applicant.

The Comptroller & Auditor General of India
10, Bahadur Shah Zafar Marg,
New Delhi – 110 002.

(By Advocate Shri H.K. Gangwani)

... Respondent.

Versus

O R D E R (Oral)

Whether special pay granted to applicants be reckoned as pay with consequential benefits including retirement benefits flowing from such fixation of pay, is the issue raised in this batch of cases.

2. Since question of law is common in all these cases, the same were heard together and are disposed of by the present common order. For sake of convenience, facts as stated in OA No.2424/2004 are delineated hereinafter.

3. On attaining the age of superannuation, applicant (Accounts Officer) retired from the Office of Controller General of Accounts, Department of Expenditure, on 31.12.1985. He was initially appointed in the year 1944 and thereafter earned many promotions, lastly as Accounts Officer. As per terms and conditions of appointment on transfer basis, he was entitled to his basic pay and other allowances from time to time and Headquarter Special Pay of Rs.150/- attached to the said post. He joined said Office on 01.09.1980. His substantive pay on date of retirement was Rs.1200 plus special pay of Rs.150/- plus personal pay of Rs.40/- in pay scale of Rs.840-4-1200/-. He stagnated at maximum of said scale of pay for more than 7 years. The said scale was revised to Rs.2375-3500/- plus special

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pay of Rs.300/- w.e.f. 1.1.1986. On implementation of recommendations of 5th CPC w.e.f. 01.01.1996, special pay was treated as "allowance", not counting for pension. Later, its nomenclature was changed to "Headquarter Special Allowance" w.e.f. 1.8.1997. His notional pay in the aforesaid scale was fixed at Rs.3300/- from 1.1.1986 after according benefit of one stagnation increment and accordingly his pension was fixed at Rs.5007/-.

He was also granted one additional stagnation increment (ad hoc) from 1.7.1983, i.e. before his retirement. While notional fixation, determining special pay of Rs.150/- was not taken into account. Had the same been taken into account, his notional pay would have been fixed at Rs.3500/- and pension at Rs.5305/-. Under these circumstances, he incurred a recurring monthly loss of Rs.298/- in pension plus dearness relief thereon.

It is contended that he was granted special pay in lieu of a higher pay scale. The special pay drawn by Accounts Officer, was allowed to count towards pay for purpose of pension prior to 01.01.1986 in terms of Rule 33 of CCS (Pension) Rules, 1972. The special pay so granted in lieu of higher pay scale is part of pay in terms of FR 9(21). His pension ought to have been fixed taking into account special pay of Rs.150/- drawn by him.

He submitted representations to concerned authorities from June 1998 onwards for fixation of notional pay at Rs.3500/- and also prayed that pension be calculated on said amount after taking into account special pay of Rs.150/-, which had been rejected by Respondents vide communication dated 24.06.2004 stating that Hon'ble High Court of Delhi in its order dated 22.1.2004 in CW No.96/2003, upholding this Tribunal's judgment dated 28.8.2002 in OA No.1331/2002 (**B.R. Agnihotri vs. C.A.G.**), had made it clear that the said Judgment "shall not be construed as any pronouncement on the interpretation of Rule 7 (C) of Revised Pays Rules

or Department of Pension & Pensioners Welfare O.M. dated 19.12.2000 or as precedent for any other case".

4. Shri S.N. Anand, learned counsel appearing for applicants contended that the issue raised in present batch of cases is no more res-integra as earlier judgment pronounced by co-ordinate Bench of this Tribunal, as reported in (1994) 27 ATC 329 (Bombay) **Rajaram Shankar Gawade vs. Union of India**, wherein, after noticing facts of case as well as FR 9 (21) (a)(i) and FR 9(25), it was held that special pay had been taken into consideration by the Government for all other purposes, like HRA, DA and interim relief as part of pay and, therefore, the Tribunal observed that it did not, see any reason why, in the absence of any specific provision, special pay cannot be considered as part of basic pay. Ultimately, the claim of applicant therein was allowed and Respondents were directed to re-fix pay, treating it as part of basic pay for calculating his revised pay with consequential benefits including retirement benefits. Similarly, through OA No. 2253/1997, (**Shri Raj Kumar & Others vs. Union of India**), 7 officials who retired as Additional Chief Engineers in MES, approached this Tribunal with the prayer that special pay of Rs.400/- granted to them on their promotion be counted as part of basic pay for purposes of calculation of pensionary and other terminal benefits. After noticing FR 9 (21) (a)(ii), Division Bench of this Tribunal held that pay means the amount drawn monthly by a Government servant as the pay plus overseas pay, special pay and personal pay and other emoluments which may be specifically classified as pay by the President. Noticing that such issue has been decided by the Bangalore Bench as well as Principal Bench vide Judgments dated 15.7.1996 in OA No.2112/1995 and dated 30.5.1997 in OA No.2139/1996 as well as Bangalore Bench Judgment dated 23.1.1995 in OA No.1335/1994 and No.1581/1994, it was observed

that similar pleas raised were rejected by different Benches of the Tribunal and accordingly Respondents were directed to count special pay received by them as part of basic pay for purposes of pay fixation, pension and other retiral benefits and the OA was allowed with costs. Subsequently, Shri B.R. Agnihotri, who retired as Administrative Officer on 31.12.1981 from Office of Comptroller & Auditor General of India, and had been drawing the scale of Rs.840-40-1200 plus special pay of Rs.150/- per month, approached this Tribunal vide OA No.1331/2002 with the grievance that while fixing his notional pay in revised pay scale of Rs.2370-3500/-, Respondents ignored special pay drawn by him and, therefore, his pension was not fixed properly. It was also alleged that exclusion of special pay while fixing notional pay resulted in a recurring monthly loss of Rs.298/- in pension plus dearness relief thereon. The said OA was allowed following the ratio as laid in **Rajaram Shankar Gawade (supra)** with direction to Respondents to fix his pension w.e.f. 1.1.1996 taking into consideration the special pay of Rs.150/- which he was drawing upto 1.1.1986. Shri S.N. Anand, learned counsel further relied upon the Judgment & Order dated 19.07.2001, **S.K. Jain vs. Union of India & Ors.**, reported in 2001 (3) ATJ 270 to the same effect. In such circumstances, it was contended that applicants being similarly placed to said officials, are entitled to extension of benefit of aforesaid Judgments.

5. Respondents, on the other hand, contested the claim laid stating that special pay was not attached to the revised scale of pay w.e.f. 1.1.1986. Furthermore, as per rule 7 (1)(C) of CCS (Revised Pay) Rules, 1986 and Department of Pension & Pensioners Welfare OM dated 10.2.1998, special pay cannot be taken into consideration for fixation of pay w.e.f. 1.1.1996. Further, the OAs are liable to be rejected, as the same were not filed within the period of limitation prescribed under Section

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21 of the Administrative Tribunals Act, 1985. They have also not filed any application for condonation of delay. Placing reliance on **Rattan Chandra Samanta & Ors vs. Union of India & Ors** (JT 1999 (3) SC 418), **P.K. Ramachandran vs. State of Kerala & Anr.** (JT 1997 (8) SC 189), **Ramesh Chand Sharma vs. Udhamp Singh Kamal & Ors** (1999 (8) SCC 304) and **State of Karnataka vs. S.M. Kotrayya**, (996 (6) SCC 267), wherein it was held that filing of belated application immediately after coming to know that similar claim has been allowed in other cases is no ground for condonation of delay. Reliance was also placed on Delhi High Court judgment dated 22.1.2004 in Civil Writ Petition No. 96 of 2003 **Comptroller & Auditor General vs. Central Administrative Tribunal & Ors**, wherein Respondents had challenged judgment of this Tribunal in **B.R. Agnihotri vs. UOI** (supra), particularly Para-8, and it was observed that upholding the said view: "shall not, however, be construed as any pronouncement on the interpretation of Rule 7(C) of Revised Pay Rules or OM dated 19.12.2000 or as precedent for any other case". Strong reliance was also placed on Department of Pension & Pensioners' Welfare OM dated 10.02.1998, particularly para-2, which prescribed formula for notional fixation of pay of those who were pre-1986 retirees. Shri H.K. Gangwani, learned counsel appearing for Respondents, under these circumstances, vehemently contended that applicants are not entitled to any relief.

6. Applicants controverted Respondents' plea by filing rejoinder and reiterating their submissions made in respective OAs.

7. I have heard the learned counsel for parties at length and perused the pleadings on record.

JF

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8. At the outset, I may note that despite specific query raised as to whether the provision of CCS (Revised Pay) Rules are applicable to pensioners, no reply was offered. Much emphasis was laid by Respondents on the observations made by the Hon'ble Delhi High Court under Para-8 in Civil Writ Petition No.96/2003 decided on 22.1.2004, which, in my respectful view, is exaggerated, as the said observation has to be read with earlier observations as made in para No.7, which is detailed analysis of the Tribunal's order, particularly of Bombay Bench of this Tribunal, which reads as follows:

"It appears to us in the first brush that the issue is rather unimportant and the rule position so conflicting and confusing. Both sides have referred to some rules and the OMs which favour them at one stage or the other and if these were to be adverted to and examined in detail, the debate may go on and the issue may still remain unresolved. Moreover reference to all those rules and OMs was not required because the issue of special pay of Rs.150/- was liable to be decided on the peculiar facts of the case. There is no dispute on facts that second respondent was receiving special pay of Rs.150/- in lieu of higher pay prior to his retirement. He was not getting it for any specialized service or any extraordinary work done by him as Admin. Officer. It is also admitted that this paltry amount was calculated for purposes of his pension and that he was getting its benefit after his retirement till his pension was required to be updated pursuant to Fifth Pay Commission recommendations. We fail to appreciate how he could be deprived of this small benefit upon the revision of his pay scale, which necessitated updating of his pension. What seems to have gone unnoticed, is that he was getting Rs.150/- in lieu of higher pay and therefore it was not a special pay as commonly understood or as contemplated by Govt.'s OM dated 19.12.2000. That is how the Bombay C.A.T. had held it to be an integral part of the basic pay scale in R.S. Gawade's case and we find nothing wrong with the view followed by the C.A.T. Delhi in the impugned order. It may as well be that Rule 7(C) of (Revised Pay) rules of 1986 or for that matter OM dated 19.12.2000 exclude calculation of special pay for re-fixation of pay in the revised pay scale but that would not include the special pay granted in lieu of a higher pay scale which has been received and acted upon for years on and which in the process had become integral part of respondent's basic pay scale of 840-1200. There is no way he could be deprived of this benefit in the peculiar circumstances of the case. Tribunal, therefore, was justified in upholding his claim by placing reliance on its Bombay Judgment which had gone unchallenged and which held the field." (emphasis added)

9. A bare perusal of above discussion and observation would make it clear that the Hon'ble High Court has found nothing wrong with the stand taken by the Bombay Bench as well as Principal Bench of this Tribunal. Special pay has been held to be an integral part of pay and the findings recorded found to be just and in order, were upheld. We may note, at this stage, that para-5 of Judgment in **S.K. Jain vs. Union of India & Ors** (supra) also noted that similar matter had been decided by the Bombay Bench in OA No.227/1995 **P.D. Bansode & Anr. vs. Union of India & Anr.** vide order dated 27.7.1999 and the said order was the subject matter of Writ Petition No.6654 of 2000 filed by Union of India, which was rejected by Hon'ble High Court of Mumbai. As such, it would be clear that on merits applicants have a solid case and their claim cannot be rejected.

10. Coming to the objection raised by Respondents that OAs are not maintainable inasmuch as they were barred by limitation, I am of the considered view, and it is no longer in dispute that claim for pensionary benefit is a continuous cause of action. Moreover, in **M.R. Gupta vs. Union of India**, 1995 (5) SCC 628, it has been held that pay fixation is a continuous cause of action. On perusal of **S.K. Jain's** case (supra), I may note that the question of limitation raised therein by Respondents was also negatived by this Tribunal. It has been repeatedly held by Hon'ble Supreme Court that the Government and its instrumentalities should not raise technical plea of limitation, particularly when the claims are well founded, yet no heed has been paid by Respondents to the said settled aspect of law. In my considered view, the judgments rendered by this Tribunal, as relied upon by applicants are judgments in rem and not in personam, and the Respondents being a model employer ought not to

have dragged these applicants to litigation and the relief claimed should have been extended to them on their own.

11. In view of the discussion made hereinabove, I have no hesitation to conclude that applicants are entitled to relief, as special pay is part of pay and ratio laid down in **Rajaram Shankar Gawade vs. Union of India** (supra) is squarely applicable to the facts of present cases. Accordingly, OAs are allowed. Respondents are directed to re-fix applicants' pension w.e.f. 1.1.1996 taking into consideration the special pay of Rs.150/- per month, which they had been drawing prior to attaining the age of superannuation. Such upgradation / refixation of pension shall be computed by the Respondents within a period of two months from the date of communication of this order, alongwith consequential arrears. No costs.

(Mukesh Kumar Gupta)
Member (J)

/PKR/