

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1118/2004

9

New Delhi this the 9th day of November, 2004.

Hon'ble Shri Shanker Raju, Member(J)

Shri Raghunath Raina,
S/o late sh. P.N. Raina,
R/o D-3, Press Enclave,
New Delhi-17.

.... Applicant

(through Sh. R. Doraiswamy, Advocate)

Versus

Union of India through

1. Secretary to the Govt. of India
Ministry of Information & Broadcasting,
Room 654, 'A' Wing, Shastri Bhawan,
New Delhi-1.

2. The Chief Controller of Accounts,
Ministry of Information & Broadcasting,
Room No. 759, 'A' Wing, Shastri Bhawan,
New Delhi-1.

3. The Secretary to the Govt. of India,
Dept. of Pension & Pensioners' Welfare,
Lok Nayak Bhawan,
Khan Market,
New Delhi-2.

.... Respondents

(through Sh. J.B. Mudgil, Advocate)

Order (Oral)

Heard the counsel.

2. In view of dismissal of S.L.P. in the case of S.C. Parashar Vs. U.O.I. & Ors. (109(4)DLT ATC 86(DB)), it is no more res integra that as per Memorandum dated 17.12.1998, while revising the pension the pay scale attached to the post w.e.f. 1.1.1996 as recommended by Vth C.P.C. would determine the pensionary benefits i.e. upto 50% of the minimum scale of pay last drawn. Clarification dated 11.5.2001 which has clarified Memorandum dated 17.12.1998 has been held ultra vires.

3. Applicant impugns wrong fixation of revision of pension of Rs. 7150/- w.e.f. 1.1.1996 and also recovery proposed amounting to Rs. 1,39,133/-.

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4. Applicant, who superannuated on 30.9.1982, was holding the post of Director of Head of News Service Division, All India Radio. In pursuance of Vth C.P.C. recommendations, pension of the applicant was fixed at Rs. 6902/- in accordance with the Memorandum dated 17.12.1998, which was effective from 1.1.1996.

5. Prasar Bharti vide letter dated 6.5.1996 in the wake of restructuring of cadre, the post of applicant has been designated as Head of News Service Division, the pay scale attached Rs. 22400-24500/-. In this wake, applicant's pension was revised. Accordingly, recovery of Rs. 1,39,133/- has been ordered.

6. Learned counsel of the applicant contended that import of OM dated 17.12.1998, which has been incorporated in the case of S.C. Parashar (supra), is that the revision of pension would take place in the scale of the pay as revised one w.e.f. 1.1.1996 and not the replacement scale. In this view of the matter, it is contended that the controversy has been put at rest by declaring clarificatory Memorandum dated 11.5.2001 as illegal. It is contended that ratio of S.C. Parashar's case (supra) covers the present case. As such, pension of the applicant should have been fixed at 50% of the minimum scale of Rs. 22400-24500 and the recovery now proposed is not sustained in law.

7. On the other hand, respondents' counsel contended that an SLP has been preferred against the order passed in Parashar's case but he fairly conceded that the same has been dismissed and a review is being filed. It is further stated that the pay scale of the applicant was to be further revised to Rs. 7150/- w.e.f. 1.1.1996 but has erroneously been fixed as Rs. 9200/- on the wrong facts given in News Service Division. As such, the corrective steps have been taken and nothing prevents the respondents to correct the mistake.

8. On careful consideration of the rival contentions of the parties, I am of the considered view that re-fixation of the pension of the applicant on 17.6.1999 at Rs. 9200/- was in accordance with OM dated 17.12.1998 and in consonance with the decision in S.C. Prashar which fully covers the dispute in the present case. Accordingly, as the applicant's pension has been reduced to the pay scale, which is a replacement scale and not pay scale of the post as on 1.1.1996, the same cannot be sustained in law. Moreover, action of the respondents is not in consonance with the principles of natural justice. Before revising the pension of a government servant as a sine qua non, reasonable

11

opportunity to show cause is must. As the same has not been adhered to, the action of the respondents cannot be sustained and in this view of the matter, I am fortified by the decision of the Hon'ble Supreme Court in the case of Chandrashwar Prasad Sinha Vs. State of Bihar & Ors. (2002 SC(L&S)200).

9. In the result, OA succeeds for the reasons recorded above. Impugned orders are set aside. Respondents are directed to fix the pension of the applicant at 50% of the minimum of the pay scale last drawn in the pay scale of Rs.22400-24500/- w.e.f. 1.1.1996. He shall be entitled to all consequential benefits. In case the excess pension has already been recovered, the same has to be restored to him within a period of two months from the date of receipt of a copy of this order. This would entail simple interest @ 9%. No costs.

S. Raju
(Shanker Raju)
Member(J)

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