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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.2293/93

New Delhi, This the 23rd day of September, 1994

Hon'ble Shri P.T.Thiruvenqadam, Member(A)

Shri Birkha Ram Garg
s/o Late Shri Panna Lal
r/o 2907/215, Vishram Nagar
Trinagar Delhi.

...Applicant

(By Advocate Shri M L Chawla)

Vs

1. Union of India, Through:
The Secretary
Ministry of Defence, South Block
New Delhi.
2. Controller General of Defence Accounts
West Block V, RK Puram
New Delhi.
3. Controller of Defence Accounts
(Pension) Allahabad(U.P)
4. The Secretary to the Govt of India

...Respondents

(By Shri M.S. Ramalingam, Departmental Officer)

D R D E R(Drsl)

Hon'ble Shri P.T.Thiruvenqadam, Member(A)

1. The applicant retired on superannuation on 30.9.77 from the post of Assistant Civilian Staff Officer from the Army Headquarters, Ministry of Defence, New Delhi. In this DR he has prayed for applying in his case the benefits of the scheme of merger of Dearness Allowance(DA) as per relevant office memoranda of Ministry of Finance issued in 1982, 1983 and 1985 for the purpose of retirement benefits.
2. Brief background to the issues raised is as under: After introduction of the new pay scales with effect from

1.1.1973, periodically D.A. was being sanctioned, which allowance had a nexus with the cost of living index and beyond a particular level the allowance was termed as additional dearness allowance(ADA) and at a later stage was termed as ad hoc dearness allowance (adhoc DA). The pensioners were also sanctioned dearness allowance/ pensioners relief in addition to the pension on account of the rise in the price index level.

3. On 25-5-1979 instructions were issued for treating a portion of dearness allowance as pay and calling the same as dearness pay for the purpose of pension and gratuity. Further instructions were issued in 1982,1983 and 1985 bringing in higher components of DA/ADA/Adhoc DA as dearness pay for retirement purposes. These instructions applied only to those pensioners who had retired/to retire on/or after the specified dates.

4. Hon'ble Supreme Court in writ petition filed by Action Committee South Eastern Railway Pensioner ' another Vs Union of India & Others(1991 Supp(2) SCC 544) decided on 5.9.90 dealt with the issue of extension of the benefits of the 1985 scheme to those who had retired earlier to 1985 and decided that the pre-1985 pensioners were not entitled to such benefits.

5. In civil appeal No.517 of 1987 decided on 17.3.94 (JT 1994(3) SC 26) in the case of Union of India Vs. PN Menon & Ors, the Hon'ble Supreme Court had decided that the benefit of the scheme of 25-5-79 by which part of the dearness allowance was treated as dearness pay for the first time and extending the benefits to only those retiring on or after a particular date, need not be extended to those who had already retired prior to this date.

6. In view of the ratios in the above judgements, the relief claimed in this OA has to be straightaway rejected. At this stage, the learned counsel for the applicant

mentioned that he presses for the relief arising only out of the orders of 1982, based on certain judicial pronouncements.

7. The Presenting Officer of the department pointed out that the benefits of D.M. of 1982 had already figured in the reliefs claimed by the same applicant in T.A.19/86 decided on 25.10.90 and this relief was disallowed and hence the extension of the scheme of 1982 cannot now be re-agitated as it has become res judicata. After perusing the orders in TA 19/86 (Annexure A4 to DA), I am in agreement with the plea taken by the respondents.

8. The plea of limitation was also raised by the respondent as the applicant cannot question the orders of 1982, 1983 and 1985 at this late stage, after a decade. The argument of the learned counsel for the applicant is that the pension accrual is a continuous cause of action is not valid in this case since the non-coverage in a scheme should be challenged within the period allowed as per the Central Administrative Tribunals Act. Hon'ble Supreme Court while dismissing the writ petition in Ex-Capt Harish Uppal Vs U.C.I (J.T 1994(3) SC 126) observed that parties should pursue their rights and remedies promptly and not sleep over their rights. Thus, on the ground of limitation also this DA is not maintainable.

9. The learned counsel for the applicant referred to the orders passed in TA 19/1986 filed by the same applicant as in this DA and claimed that the benefit of extension of the 1982 DM were denied since the Tribunal assumed that the applicant was not eligible for additional DA. Whereas, the facts are that the applicant was getting some additional DA at the time of his retirement and this aspect could not be projected in TA 19/1986 since the applicant came to know of the additional DA component only when he was issued

the last Pay certificate (LPC) sometime in Feb 1991. I am not convinced that the so called receipt of LPC in Feb 91 can give rise to a fresh OA on the same old relief, in the year 1994. The petitioner ought to have filed a review application, against the order passed in TA 19/1986 and cannot resort to this roving litigation of filing a fresh OA at this stage.

10. The learned counsel for the applicant then tried to justify the maintainability of the OA by referring to the orders passed by the Bangalore Bench of this Tribunal (1988(1) CAT page 85) B Ranga Joshi and Others Vs. Union of India and others on 30.10.86 with reference to the 1982 OM. It was argued that as per these orders the pensioners irrespective of the date of retirement, are eligible for the benefits envisaged in the 1982 OM. Para 2 of this OM reads as under:-

"Para 2. There will be no change in the scale of pay attached to the various posts and the basis on which dearness allowance is calculated. Out of the additional dearness allowance now admissible, the following amount shall also be treated as 'dearness pay' in different pay ranges for the purpose of retirement benefits:

Pay range	Amount of Dearness Pay
1. Upto Rs.300-00	21% of pay, subject to a minimum of Rs.42/- and a maximum of Rs.60/-
2. Above Rs.300/- and upto Rs.2037	15% of pay subject to a minimum of Rs.60/- and a maximum of Rs.120/-
3. Above Rs.2037	Rs.363/- (including the amount of dearness allowance treated as dearness pay in terms of para 2 of this Office Memorandum No.F-19 (4)EV/79 dated the 25th May, 1979)

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11. I do not propose to go into the scope of the orders dated 30.10.86 as to whether the order merely did away with the distinction between those retiring between 31.1.82 and 29.6.82 and those who retired after 29.6.82 or whether the orders envisaged a wider scope encompassing all pensioners irrespective of the date of retirement and if so, how to interpret the orders with regard to those who received at the time of retirement additional DA less than the amounts mentioned in para 2 of the OM. Once an order was passed in TA 19/1986, any evidence gathered later can be adduced only in a Review Petition.

12. Thus, viewed from every angle, the DA is liable to be dismissed and is accordingly summarily dismissed. No costs.

P. T. T.

(P.T. THIRUVENGADAM)
Member (A)

LCP