

(18)

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.700/1993

New Delhi, This the 24th Day of March 1994

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

Shri Nathi Ram Bhardwaj
821, Mehtab Bhawan
Chirag Delhi
New Delhi.

r/o 66, Babar Road, New Delhi-110001.

...Applicant

By Advocate M's Nitya Ramakrishnan

Versus

1. Union of India
Ministry of Defence
Through its Secretary
Department of Pension and Finances,
New Delhi.
2. The Director of Accounts(Posts)
New Delhi.
3. The Director of Accounts(Postal)
Nagpur
4. The Senior Post Master,
Parliament Street Head Office
Accounts Section
New Delhi.

By Advocate Shri PP Khurana
with Shri George Parickan

O R D E R

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

1. The applicant was a Class IV employee of the Railway Mail Service who was sent on deputation to the Army Postal Service on 27.12.68. Subsequently, he qualified for promotion to Class III. On 31.12.68, he was returned to his parent unit on the ground that he was not fit for military duty. The Army Medical Board on 1.1.69 assessed him to have 30% disability, and reviewing him after two years held this disability to be 20%. After periodic reviews with effect from 7.1.83, the Army Medical Board declared that he had permanent disability of 20%. Hence for 20% disability, Rs.7.00 per month as disability monthly pension

...2/-

was fixed. This disability pension was given in terms of Army Instructions No.229/73 to persons who have performed military duty. The disability pension was fixed at a minimum of Rs.40.00 per month in 1986. Hence, instructions for payment of disability pension at the minimum of Rs.40.00 per month were issued by Respondent No.3 to Respondent No.2 with retrospective effect from 1970. Respondent No.1 issued a letter to the applicant dated 17.5.88 revising the disability pension to Rs.90/- per month with effect from 1.1.86 for the 20% disability. The applicant was advised that payment authority had been issued to Director of Accounts Postal, Delhi ^{by} ~~to~~ Director of Accounts, Postal Nagpur. However, the applicant was being paid Rs. ^{375/-} ~~320~~ per month as disability pension from 1.1.86 based on certain orders regarding minimum pension issued in the context of implementation of Fourth Pay Commission recommendations. Subsequently, by a letter dated 6.7.1991 Respondent No.4 informed the applicant that he was required to deposit an amount of Rs.15960/- being overpayment of pension for the period 1.1.1986 to 31.8.90. The applicant represented against the reduction of his disability pension from Rs.375 to Rs.90/- vide his representation dated 10.7.91 and 12.7.92⁹¹. On these representations, not having been disposed of the applicant filed OA No.1778/91 in this Bench of this Tribunal which was disposed of on 2.6.92 as under:-

"2. Respondents on notice appeared and filed their return in which they have justified the impugned orders passed by them. The learned counsel for the applicant Mrs. Nitya Ramakrishnan, contended that the impugned orders were passed behind the applicant's back; that if the respondents wanted to revise their order, they should have afforded him an opportunity of being heard and no order could be passed behind the applicant's back to his disadvantage. Shri M.L. Verma, learned counsel for the respondents, contended that the order of grant of disability pension of Rs.375/- per month was a mistake on the

part of the Department and when the mistake came to its notice, it was corrected. Therefore, no cannons of natural justice or procedure laid down under Article 311 of the Constitution are attracted. He placed reliance upon the case of Ram Autar Prasad Vs. U.O.I(1986(6) A.T.C. 220) in which it has been held that an administrative order can be corrected without affording an opportunity of show cause to the other party. We have no dispute with this proposition, but the real question is that the impugned order of reduction in the amount of disability pension was passed by the respondents without intimating the applicant and without permitting him to justify the receipt of the previous pension. It is also observed that the Pass Book on Pension was issued to the applicant by the Defence authorities and two Ministries, i.e. The Ministry of Defence and Department of Pension are involved alongwith the answering respondents so far as the impugned order is concerned. Hence, it cannot be said that it was a clerical mistake or there was any mistake in passing the order for the disability pension at the rate of Rs.375.00. Subsequently, when the impugned order was passed, the amount was reduced to mere Rs.90.00. It was definitely to the disadvantage of the applicant because revision of pension amount can be done only after authorisation. Rule 70 of the CCS(Pension) Rules of 1972 are very clear because once a pension is authorised after final assessment, it cannot be revised to the disadvantage of the Govt servant, unless such revision becomes necessary on account of detection of a clerical error subsequently. As held by us, while granting the pension it was not a clerical error because the applicant has drawn the previous pension continuously for several years. It is also borne that the revision of the pension was done with the concurrence of the Department of Personnel and the Pension Section of the Ministry of Defence. At least the respondents should have given an opportunity to the applicant or they should have passed appropriate and speaking orders on the applicant's representation, which has not been done. This view of ours also stands strengthened by the principles laid down in the case of Deoki Nandan Prasad Vs. State of Bihar(AIR-1971-SC 409).

3. We, therefore, in the light of the above discussion allow this O.A. and quash the impugned orders of reduction in the amount of disability pension to the applicant and direct the respondents to dispose of the representation of the applicant and also issue a notice as to why the pension should not be reduced to Rs.90, as early as possible, preferably within a period of 4 months from the date of receipt of a copy of this judgement. It is entirely the jurisdiction of the respondents to determine the amount of disability pension, but only after affording an opportunity to the applicants of being heard. We, therefore, allow this OA with the above directions with no order as to costs."

2. Subsequently, the respondents issued various letters/show cause notices to the applicant vide their letters dated 24.9.92, 9.10.92 and 20/28.11.92. To the first two letters/show cause notices the applicant gave a reply in Oct 92 advancing his case. The further show cause notice dated 20/28-11-92 reiterated the case of the respondents and added in case no reply is received from the applicant within 15 days from the date of receipt of this notice a decision would be taken ex-parte and recovery would commence with immediate effect. It is the case of the applicant that he is not being paid any disability pension after the last show cause notice and whenever he went to collect the pension he was repeatedly informed by the disbursing officer that there are no orders to give him his pension. Aggrieved by this action of the respondents, this DA has been filed praying for the quashing of the impugned letters of the respondents and for a direction to the respondents to continue to pay the applicant the disability pension at the rate of Rs.375/- per month subject to any upward revision in the amount by due process.

3. The learned counsel for the applicant advanced a number of grounds as under:-

(a) As per rule 70 of the CCS Pension Rules 1972 pension once granted cannot be altered to the disadvantages of the pensioner unless it is discovered to have been on account of a clerical error. While disposing of DA 1778/91 this tribunal has held that there is no clerical error/mistake in this case. Hence the respondents are precluded from advancing this ground in the show cause notice served subsequent to the order of this tribunal in 1778/91 dated 2.6.92.

(b) In the impugned orders(show cause notices)

no fresh grounds have been advanced and it is immissible to serve yet another notice on the same grounds which were considered by the Tribunal on the earlier occasion.

(c) The earlier representations submitted on 10.7.91 and 12.7.91 by the applicant have not been disposed of despite a specific direction to this effect in earlier OA.

(d) In the case of some other pensioners similarly placed a minimum pension of Rs.375/- per month has been allowed.

4. The learned counsel for the respondent reiterated the position that subsequent to the acceptance of the Fourth Pay Commission recommendations the minimum amount of disability pension was raised to Rs.375 per month. But this amount has to be reduced pro-rata depending upon the percentage disability. ^{From} Various averments and ~~and from~~ reply it is noted that there was a separate OM dated 5.3.87 issued by Department of Pension and Pensioners Welfare which prescribed minimum of Rs. ³⁷⁵ ~~325~~ per month but such minimum is applicable, only with regard to total amount of pension or family pension drawn under the CCS Pension Rules 1972 or for family pension ^{under} Central Civil Service (extraordinary pension) rules. The applicant was not covered by either of these rules but was drawing disability pension under Military Rules. With regard to such disability pension from Army Sources relevant instructions were issued by the Ministry of Defence on 27.7.87 as per which the minimum disability pension would be Rs.450 per month with effect from 1.1.86 and ^{where} ~~whether~~ the disability of a pensioner is less than 100 per cent but not less than 20 per cent the rates of disability element would be proportionately reduced. The learned counsel for the respondent also mentioned that at the

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time of revision of minimum pension the applicant ~~was~~
not ~~the~~ pensioner but was serving in the Postal Department
and by 30.6.93 the applicant has retired on superannuation
and started receiving superannuation pension of Rs.640
per month in addition to the disability pension. It was
pleaded that the payment of any amount in excess of
Rs.90 per month is against the spirit of the rules and
regulations and would cause loss to Government.

5. Having heard both the counsels I note that the
order passed by this Tribunal on 2.6.92 comprises the
following directions:-

- (a) Impugned orders of reduction in the amount of
disability pension to the applicant were set aside.
- (b) The representations of the applicant were to
be disposed of and issue ~~of~~ notice as to why the
pension should not be reduced to Rs.90/-.

While passing the above order the Tribunal has further
held that it is entirely in the jurisdiction of the
respondents to determine the amount of disability pension,
but only after affording an opportunity to the applicant
for being heard.

6. The respondents have followed up the order of this
Tribunal by issuing letters/show cause notices dated
24.9.92, 9.10.92 and 20/28.11.92 to the applicant. The
last show cause notice 20/28.11.92 has been issued after
taking into account the applicant's representation dated
17.7.92. which representation was given by the applicant
requesting for implementation of the orders of CAT dated
2.6.92. But I note that in none of the three letters ^{/made}
issued by the respondents referred above ~~no~~ reference has been [/]
to the disposal of the representations submitted by
the applicant i.e. representations dated 10.7.91 and
12.7.91 already pending at the time of disposal of OA
No.1778/91 and the latest representation of Oct 92 in
reply to the first two letters of respondents dated

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24.9.92 and 9.10.92 issued after the earlier OA was disposed of. There is nothing on record to show that these representations of the applicant have been considered by the respondents. There ^{is} no evidence to show that there ~~has~~ been any application of mind on the points raised by the applicant.

7. In the circumstances of the case and keeping in view the orders already passed by this Tribunal In OA 1778/91 dated 2.6.92 it is directed that the contents of the show cause notices dated 24.9.92, 9.10.92 and 20/28.11.92 shall not be acted upon pending disposal of the representations of the applicant mentioned in the previous paragraphs. The orders already passed on 2.6.92 should be implemented within three months. The OA is disposed of accordingly. No costs.

P.T. Thiruvengadam

(P.T.Thiruvengadam)
Member(A)

LCP