

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

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T.A. No. 1530 of 1987 (T)

( Writ petition No. 5375 of 1984)

Bhagwati Prasad . . . . . Petitioner

Versus

Union of India and Others . . . . . Opposite parties

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, Member Administrative.

The above transferred petition is before us on transfer under section 29 of the Administrative Tribunals Act, 1985. The petitioner is a pensioner from the postal Department and his grievance is that his pension has not been fixed correctly under the liberalised pension formula introduced in 1979.

2. The petitioner retired from service on 12.2.1962 after more than 30 years of service, and at the time of retirement he was holding a class-I post (Rs. 400-1250) and his pension was fixed in accordance with rules applicable in 1962, by taking 36 months average emoluments as the base figure. With the introduction of liberalised pension formula the basis of working out pension was reduced to 10 months average emoluments. Accordingly the petitioner's monthly pension was re-fixed at Rs. 329 + 25 A.D.A.

3. The case of the petitioner is that his pay was Rs. 780/- at the time of retirement. Prior to that he was drawing Rs. 740 from 13.4.1961 to 1.7.1961, the average emoluments for 10 months work out to Rs. 771, as such his pension entitlement would be Rs. 386 taking into consideration, 50% of the average emoluments and not Rs. 329 as fixed by the respondents.

4. The stand of the respondents in their counter-affidavit is that Government orders contained in O.N. No. F-1(3)EV/83 dated 22.10.1983 were applied to the case of the petitioner giving benefit of 10 months average emoluments drawn, and

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there was no error in calculation of the pension due to the petitioner. The pension was correctly fixed at Rs. 329 per month.

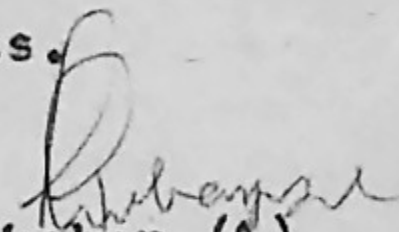
5. We have heard the counsels of the parties and perused the record. The controversy is limited to the question whether the pension has been fixed correctly following the instructions contained in the order dated 22.10.1983. A copy of this order as also the calculation sheet are annexed to the supplementary counter-affidavit. In para 3.2 of the order referred to above, there is clear indication that "benefits of computation of average emoluments drawn during the last complete 10 months immediately preceeding, the date of retirement may be allowed, wherever the average emoluments were earlier computed on the basis of 36 year emoluments.

6. Para 3(3) is about the actual computation of qualifying service to be taken into consideration for fixing the pension. The calculation sheet filed by the respondents shows that average emoluments for the period of 3.4.1961 to 12.2.1961 has been arrived at Rs. 687.58 on the basis of which his pension has been fixed with Rs. 329. We fail to understand how the average emoluments came to Rs. 687.58 when the pay of the petitioner's was Rs. 740 and Rs. 780 during the above period. Evidently, there is a mistake in arriving at average emoluments. The Government's order referred to above clearly lays down that the average emoluments drawn during the last 10 months should be taken to arrive at the average. In the circumstances we are very clear in our mind that the respondents have committed an error in fixing the pension of the petitioner by adopting the average emoluments which are lesser than the actual average of the emoluments drawn by the petitioner. The orders of the respondents dated 1.4.1979, 27.2.1984 and 19.7.1984 which relate to fixation of the

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Pension of the petitioner, are liable to be set aside accordingly they are set aside. The respondents are directed to re-fix the pension of the petitioner on the basis of the average emoluments actually drawn by the petitioner during the period of 13.4.1961 to 12.2.1962. As the petitioner was admittedly on pay of Rs. 740 from 13.4 1961 to 1.7.1961 and Rs. 780 from 2.7.1961 to 12.2.1962, The average emoluments will be definitely higher than what the department has fixed i.e. 687.58. The average emoluments would work out to a figure higher than Rs. 740 and below Rs. 780/-, however this has to be calculated correctly. Respondents are further directed to finalise the pension emoluments of the petitioner, in terms of the above direction and settle all claims including arrears, within a period of 3 months from the date of receipt of a copy of this order. The petition is allowed as above. parties to bear their costs.

  
Member (A)

  
Vice-Chairman.

Allahabad 18<sup>th</sup>, November, 1991.

(RKA)