

In The Central Administrative Tribunal
Calcutta Bench

OA.1352 of 1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member
Hon'ble Mr. B.P. Singh, Administrative Member

Dulal Chandra Halder

.... Applicant

- VS -

- 1) Union of India, service through the Secretary, M/o Industry, Uddyog Bhawan, New Delhi.
- 2) Controller General of Patents, Designs & Trade Marks, Maharshi Karve Road, Bombay.
- 3) Joint Controller of Patent & Designs, Nizam Palace, Calcutta-20.

.... Respondents

For the Applicant : Mr. Samir Ghosh, Counsel

For the Respondents: Mr. B. Mukherjee, Counsel

Heard on : 05-01-2000

Date of Order : 05-01-2000

C R D E R

D. PURKAYASTHA, JM

Applicant vide this application has challenged the order of fixation of pension passed by the authority vide letter dated 15.10.96 by which applicant's pension has been reduced. According to the applicant, he was appointed as IDC on 13.2.1961 in the Department. Thereafter, he was promoted to the post of U.D.C. w.e.f. 11.10.82 on regular basis. Thereafter, he was given promotion to the post of Assistant on 14.10.91 and to the post of Superintendent w.e.f. 15.2.93 on ad-hoc basis and was regularised w.e.f. 24.1.96 i.e. on the verge of his retirement, and the said promotions since belated, also deprived him of legal and constitutional entitlement. It is

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stated by the applicant that after retirement he was paid Rs.4,996/- for the months of February, March, April and May, 1996 followed by drafts dated 18.7.96 and dated 20.8.96 Rs.2,381/- and Rs.2,381/- respectively and thereafter nothing has been paid to him save and except as above viz. for the months of February, March, April, May, June and July, 1996. ^{It is alleged that the} Respondents vide Memo. dated 15.10.96 informed the applicant that the basic pension has been computed and fixed at Rs.960/- without considering his representations made praying for extension of service benefits with pay as per the constitutional provisions. But the same also falls short of the amount, the applicant is entitled to as per the rules for computation of pension i.e. 50% of 10 months average of last pay drawn. Incidentally it is mentioned by the applicant that for the last 10 months he had drawn the basic pay of Rs.2000/- in the scale of Rs.1600-2660/- ~~and his~~ ^{when} retirement falls/fell due. ~~fixation of pay~~ ^{any} ~~fixation of pay~~ Consequently upon his promotion to the post of Superintendent w.e.f. 15.2.93, ~~the~~ applicant was denied benefits of the promotion on the basis of wrong fixation made by the respondents at the time of granting retirement benefits to him.

2. Respondents denied the allegations of the applicant. It is stated by the respondents that applicant was authorised for final pension, DCRG and CVP based on the pay as Superintendent. Subsequently, Principal Accounts Office, Ministry of Industry vide letters dated 1.3.96 ~~and dated 21.5.96~~ instructed PAO to pay provisional pension based on pay as Assistant/Assistant Superintendent. Hence, originally PPO issued to CPAO was withdrawn and the department was authorised to prepare bill for provisional pension based on pay as Assistant Superintendent for four months from 2/96 to 5/96 vide letter dated 9.5.96. They were also informed that DCRG and CVP pension has to be revised based on the pay as Assistant/Assistant Superintendent. Accordingly, excess DCRG, CVP pay was adjusted from provisional pension bill for Rs.8244/- and balance Rs.4986/- was paid to him. It is also stated by the respondents that ad-hoc promotion to the post of Assistant was regularised w.e.f. 14.10.91 vide office order dated 6.4.95 and this regularisation was, however, subject to

out-come of the case pending in the Delhi Bench of CAT. The ad-hoc promotion of the applicant to the post of Superintendent was also regularised w.e.f. 15.2.93 vide letter dated 29.1.96 subject to out-come of the case pending at CAT, Delhi. Reason for denying the benefit of pension as stated by the respondents is as follows :

"As the department of Personnel have categorically stated that 2nd ad-hoc promotion is not in order and fixation of 22(a)(i) cannot be made unless the earlier promotion is regularised and as both the promotions are conditional based on the out-come of the CAT case the Principal Accounts Office, Ministry of Industry has no option except granting of final pension based on the pay as Assistant/Assistant Superintendent".

So, application is devoid of merit and is liable to be dismissed.

3. We have considered the submissions of Id. Counsel for both the parties. We find from the record that promotion of the applicant on ad-hoc basis has subsequently been regularised by the respondents. Since promotion of the applicant was regularised by the respondents subsequently, thereby question of not granting benefit of promotion does not arise. Since promotion of the applicant has subsequently been regularised; thereby applicant is entitled to get benefit of promotion in the matter of fixation for the purpose of granting pension to the applicant on his retirement on superannuation. Thereby we allow the application with direction upon the respondents to grant benefit of promotion in the post of Superintendent in accordance with the rules and to refix the pension of the applicant after considering the promotion to the post of Superintendent as regularised. Respondents are also directed to pay the arrears to the applicant within 3 months from the date of communication of this order. Final pension be fixed accordingly. Applicant shall be paid all the benefits as admissible under the Rules, if not paid earlier. Accordingly, application is disposed of awarding no costs.

2nd Apr
(B.P. Singh)
Member(A)

11/04/2000
(D. Furkayastha)
Member(J)