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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 10/2009

Date of decision: 17th August, 2011.

**CORAM: HON'BLE DR. K.B. SURESH, MEMBER (J) &
HON'BLE MR. SUDHIR KUMAR, MEMBER (A)**

Lajpat Rai Bhatia son of Shri Khem Chand, aged 63 years, retired Assistant Accountant, State Farms Corporation o India Ltd. Jetsar. District Shri Ganganagar, R/o 2/386, Rajasthan Housing Board Colony, Suratgarh, District Shri Ganganagar.

..... Applicant

Mr. Vijay Mehta , Counsel for the applicant.

Versus

1. Union of India through the Secretary to Government, Ministry of Agriculture, Krishi Bhawan, New Delhi.
2. Pay & Accounts Officer (Section-III), Department of Agriculture & Cooperation, 16-A, Akbar Road Hutmants, New Delhi.
3. State Farm Corporation of India Ltd., Jetsar Farm, District Shri Ganganagar.

..... Respondents

Mr. M.S. Godara proxy for Mr. Vinit Mathur ,counsel for the respondents 1 & 2.

Mr. Sanjay Johari, counsel for respondent no.3.

ORDER

Per Sudhir Kumar, Member (Administrative)

The applicant was appointed as Lower Division Clerk (LDC) on 31.3.1966 in the erstwhile Central Mechanized Farm, Jetsar, District Sri Ganganagar, which was owned and run by the Central Government. Later on the Government of India

(23)

transferred the farm to the newly constituted State Farms Corporation of India (SCFI, in short), and the Farm came to be known as Central State Farm, Jetsar.

2. The applicant has submitted that at the time of transfer of the farm from the Central Government to the Corporation (SCFI), the employees were called upon to submit their options with regard to their retiral benefits, and were asked to opt for pension+ GPF retiral benefits of the Central Govt., or to opt for the Contributory Provident Fund benefits of the Corporation (SCFI). The applicant has submitted that he had opted for the benefits as available to the employees of the Central Government, which option of his was accepted. He has also submitted that all those employees who had opted for the benefits of Central Government retiral benefits were considered as permanent Central Govt. employees, and were entitled to all privileges, including that of pension and other retiral benefits, which are available to Central Government employees. The applicant later became an Assistant Accountant and retired from that post on 31.8.2005.

3. The applicant has approached this Tribunal because of the wrong fixation of his pension, commutation of pension and other retiral benefits and has prayed for following reliefs:-

RL. "That from the facts and grounds mentioned herein above the applicant prays that the respondents may kindly

(24)

be directed to calculate pension, commutation, earned leave, gratuity and other benefits by taking into consideration DP to be calculated as provided in Ann A 5 and be further directed to amend orders Ann A 1 to Ann A 3 accordingly. The respondents may kindly be directed to make payment of Rs. 197207.00 as detailed in Ann A 6. It is further prayed that interest at the rate of 12% thereon be granted to the applicant till the payment as directed by this Hon'ble Tribunal is made to the applicant. Any other order giving relief may also be passed. Costs may also be awarded to the applicant."

4. The case of the applicant is that when the Central Govt. ordered for merger of 50% of D.A./Dearness Relief with the basic pay/pension payable to employees of the autonomous bodies following Central Govt. pattern of pay scales through their order dated 26.5.2004 (copy produced at Annexure A/5), which was to be made effective from 1.4.2004, with reference to the Govt. order in this regard dated 1.3.2004 applicable to Central Govt. servants, in his case also on his retirement 50% of the D.A. as on 1.4.2004 ought to have been merged as basic pay for computation of the eligible pension, and the commutation of pension. He has complained that while issuing the impugned Pension Payment Order (PPO) Annexure A/1 dated 4.8.2005 prior to his retirement dated 31.8.2005, it was issued without taking into account the merger of 50% of Dearness Pay, which was mentioned in the impugned PPO itself. On the same ground, he has assailed the order for payment of commutation of pension Annexure A/2 dated 4.8.2005, and also the authorization of gratuity at the time of his retirement issued through Annexure A/3 dated 29.7.2005.

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5. He has further submitted that despite the fact that the impugned order Annexure A/1, A/2 and A/3 were issued prior to his date of his retirement on 31.8.2005, the payment against the same was made after a lapse of several months. In between this period, he had made a representation dated 30.12.2005, Annexure A/4, requesting for Dearness Pay to be taken into account while working his DCRG payment, as well as the Commutation of Pension, but the respondents failed to act upon any of these prayers. The applicant has also filed ~~in~~ in a tabular form Annexure A/6 the actual amount paid to him as retiral benefits, and the amounts which according to him were due to him if 50% of the D.A. had been merged as Dearness Pay to correctly arrive at his pension and other retiral benefits. He had submitted further representations in this regard on 25.11.2008 through Annexure A/7 and A/8, before filing the present O.A. on 13.1.2009.

6. The applicant had initially named as respondents only the Union of India through the Secretary, Ministry of Agriculture, Krishi Bhawan, New Delhi, as 1st Respondent, and the Pay & Accounts Officer (Section-III), Department of Agriculture & Cooperation, as the 2nd Respondent. Soon thereafter, the applicant's employer, the State Farm Corporation of India Ltd. (SCFI) was allowed to be impleaded as Respondent no.3 in the O.A. vide order dated 10.12.2009 passed in M.A. No.

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149/2009, and respondents were allowed to file their reply. M.A. No. 3/2009 seeking condonation of delay was also allowed vide order dated 10.12.2009.

7. Through an order dated 4.6.2010, the O.A. was allowed ex-parte since the respondents had not filed any reply, with costs of Rs. 5000/- imposed on the respondents.

8. Thereafter the SFCI (Respondent no.3) filed a Review Application No. 6/2010, praying for restoration of the O.A. to its original position and recalling the ex-parte order. That R.A. was allowed on 27.8.2010 and the O.A. was restored to its original position.

9. After the restoration of the O.A. fresh notices were ordered to be issued and the reply on behalf of Respondents 1 & 2 was filed on 10.1.2011. Finally the case came to be heard by the D.B. on 5.8.2011 and reserved for orders.

10. The reply of Respondent no.3 was filed on 1.11.2010 and on behalf of Respondents 1 & 2 was filed on 10.1.2011. In their reply respondent no.3 the (SFCI) submitted that after the transfer of the concerned farm to the Corporation (SFCI) on 23.6.1969, the Staff Regulations of the Corporation had came into force w.e.f. 1.8.1971. It was submitted that because of the



(27)

Corporation being in heavy loss, the Department of Public Enterprises, Govt. of India, vide its letter dated 24.5.2005, had made it clear that the orders for merger of 50% D.A. with pay w.e.f. 1.4.2004 shall not be applicable to the loss making corporations like the (SFCI).

11. It was submitted that only much subsequently, on 26.3.2007, the Board of Directors of the Corporation (SFCI), in the meeting of their Board of Directors held on 15.3.2007, approved for the merger of 50% D.A. with the salary in respect of its employees having CDA pattern pay scale, w.e.f. 01.4.2006 only. It was submitted that since the applicant had retired much earlier to that, on 31.8.2005, this benefit was not allowed to him, as the merger was allowed only w.e.f. 01.04.2006 and it reproduced their office order dated 26.5.2007 in para 3 of their reply written statement. It was further submitted that the Govt. of India letter dated 23.6.1969, which had allowed the transfer of the Administrative Control of the Farm, at Jetsar, to the Corporation (SFCI), had itself stated that the grant of pay, leave travel and other allowances and other service conditions of the staff shall be governed Mutatis Mutandis by the existing Govt. of India Rules and Regulations applicable to them as amended by the Govt. of India from time to time, till these are replaced by Rules framed by the Corporation, which ultimately came into

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force on 1.8.1971, and replaced the applicability of the Govt. of India Rules to its employees.

12. It was therefore submitted by Respondent no.3 that since 50% D.A. merger became effective only from 1.4.2006, much after the applicant's retirement on 31.8.2005, the applicant cannot be accorded that benefit of merger and the 50% D.A. merger was rightly not taken into account. The payment of Gratuity was also explained to have been delayed on account of pendency of some vigilance case, but it was submitted that payment has been made before the filing of the reply. It was therefore prayed by respondent no.3 that the O.A. lacks merit, and is liable to be dismissed.

13. In the reply written statement dated 10.01.2011 the respondents 1 & 2 submitted that with the absorption of the applicant after the transfer of the Farm to the Corporation, the applicant had ceased to be a Government employee. It was clarified that he had continued to be governed with the Govt. Rules temporarily till the coming into effect of the Staff Regulation/governing the service conditions of the staff of the SFCI in the farm w.e.f. 1.8.1971, and therefore no relief can be sought by the applicant from them.



14. It was further clarified that in the instant case the pension of the applicant has been fixed on the basis of last pay drawn by him, and no fixation for enhanced pension of the applicant can be made unless the pay of the applicant is refixed and enhanced by the SFCI. It was further submitted that there was no delay in the payment of DCRG and Commutation Value, and that within one month of his retirement from 31.8.2005 a cheque dated 28.9.2005 amounting to Rs. 3,85,705/- had been issued to him.

15. It was further clarified that at the time of introduction of the policy of merger of 50% D.A. of the basic pay w.e.f. 10.4.2004 introduced by the Govt. of India, certain exceptions were made in respect of the sick Public Sector Units, stating that if the sick Units are not in a position to bear the excess burden, they were left with liberty to take their own decision for implementation of the recommendations of the High Power Pay Committee. It was submitted that the principle of merger was accepted by the SFCI, as sick Unit, much later, in its Board meeting held on 15.3.2007, and was given effect to from 1.4.2006, instead of from 01.04.2004, which it was within its powers to do, and since the principle of merger was given effect to by SFCI after retirement of the applicant from service, no cause of action now survives in favour of the applicant and it was prayed that the O.A. may be dismissed.

16. The applicant thereafter filed a rejoinder on 25.3.2011 more or less reiterating his points as made in the O.A. and denied that SFCI is a sick unit, and stated that no material had been submitted by the respondents in support of their averments. He had also contested that there was any provision for exempting the sick Public Sector units from the merger of 50% of DA w.e.f. 1.4.2004, as no documentary evidence has been produced by the respondents in support of this argument.

17. The respondents 1 & 2 filed an additional affidavit thereafter on 10.05.2011, through which it was submitted that SFCI was indeed a sick unit upto the financial year ending on 31.3.2005, and that only subsequently, through orders dated 17.8.2005 and 6.3.2006, Govt. of India had granted liberty to such sick units also to merge 50% of the DA with basic pay, and they were still left with liberty to decide the criteria of implementation of Department of Public Enterprises O.M. dated 24.5.2005. It was submitted that due to poor financial conditions, it was decided by SFCI not to implement the merger with effect from 1.4.2004, and to implement only w.e.f. 01.06.2006, and the applicant is not entitled to any benefit of such merger as it took place many months after his retirement on 31.8.2005.

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18. Heard. During the course of arguments the learned counsels for the parties argued the case vehemently and also submitted written submissions subsequently.

19. The learned counsel for the applicant submitted through his written submission that the respondents have admitted that the applicant is entitled to retiral benefits after adding 50% dearness pay, but they have not given any cogent reason as to why pension has not been released after taking into account 50% dearness pay. It was further submitted that the applicant has no dispute with the Govt. of India and since the respondent no.3 has no role in the matter of sanction and payment of retiral benefits to the applicant, he is entitled to get the enhanced retiral benefits with interest.

20. Through their written submissions, Respondent no.2 again reiterated that after the absorption of the services of the applicant with Respondent no.3 Corporation w.e.f. 31.3.1966 , and subsequently the coming into ~~the~~ effect of the new Rules formulated by Respondent no.3 w.e.f. 01.08.1971, the applicability of the earlier service conditions of the applicant under the Government came to an end altogether. It was further submitted that since the new employer of the applicant had ,as a sick unit, been permitted to fix its own date for giving effect to the merger of D.A. with pay, which it has decided to give effect

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to from 01.04.2006, the applicant having retired earlier to that date, he is not entitled to the benefits of merger of D.A. with basic pay. It was, therefore, again prayed that the O.A. is liable to be dismissed qua the answering respondent.

21. In its written arguments Respondent no.3 reiterated the points as per the reply written statement as already enumerated above. It was reiterated that the Respondent no.3 Corporation cannot be said to have any liability whatsoever, since the Govt. of India had given liberty to sick units to decide their own eligibility criteria for implementation of DA merger, and since such merger was given effect to by the Corporation w.e.f. 1.4.2006 only, the claim of the applicant does not lie.

22. We have given our anxious consideration to the facts of the case. The case of the applicant rests on Annexure A/1, in which the following endorsement has been made:-

"* Pension has been authorized less; i.e. without taking into account merger of 50% DP as per Department's reference dated 06.10.04 Hence Full DR admissible (copy duly attested for ready reference)."'

23. The instructions regarding take over of the Central State Farm, Jetsar, notified on 23.6.1969, were produced by Respondent no.3 as exhibit R-3/2. From the terms and conditions of taking over all the employees of these Farms, para (viii), may be reproduced herein below:

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"(viii) On employment by Corporation, the said staff shall cease to be in Government service. Their past services in the Government will, however, be taken into account by the Corporation for all purposes. Their present status as permanent, quasi-permanent or temporary will also remain unaffected."

24. It is clear therefore that on employment by the Corporation, the said staff ceased to be in Government service even though the past service in the Government was to be taken into account by the Corporation for all purposes.

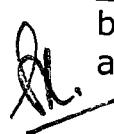
25. The respondent No. 3 had also produced a copy of the Govt. of India O.M. No. F.2(6)/E.V.(A)/62 dated the 5th November, 1964 from Ministry of Finance (Department of Expenditure) which may be reproduced as follows:-

"Copy of the Govt. of India O.M. No. F.2(6)/E.V.(A)/62 dated the 5th November, 1964 from Ministry of Finance (Department of Expenditure).

Sub:- Settlement of pensionary terms in respect of Government Employees transferred to an autonomous organizations Consequent on the conversion of a Govt. Department into an autonomous body.

The Government of India have had under consideration for some time past the question regarding settlement of pensionary terms in respect of Government employees who are transferred to an autonomous organization consequent on the conversion of a Govt. Department into such a body. The following decisions have been taken in this connection in consultation with the Comptroller and Auditor General:-

2. (i) Permanent Government servants so transferred will be given the option to either retain the pensionary benefits available to them under the Government Rules or be governed by the rules of the autonomous body. In case of exercising the former option, they will be entitled to the benefits of the liberalizations in pension rules introduced on Government side subsequent to their transfer. The option will also be available to quasipermanent and temporary employees after they have been confirmed in the autonomous body.



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(ii) Where a Government servant has opted to retain the service conditions as under Government which provide for pensionary benefits and the autonomous body has no pension scheme on their side, Government would undertake to pay them pension but will recover the capitalized value (commuted value of pension plus the proportions death-cum-retirement gratuity) of autonomous body's share of pension from that body on the retirement of the individual concerned determined on the basis of service rendered with that body.

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26. Therefore, it is clear that even though the respondents, particularly Respondent no.3, have very strongly contested the eligibility of the applicant to claim merger of 50% of Dearness Allowance for the purpose of Dearness Pay, which would count for commutation of Pension also, on the basis of last basic pay drawn, it is clear from the above cited paragraph 2(i) of the Govt. of India O.M. dated 5.11.1964 that those Govt. servants, who had opted to retain the pensionary benefits available to them under Govt. Rules, will be automatically entitled to the benefits of all the liberalizations in pension Rules introduced on the Govt. side subsequent to their transfer. Thus, it is very clear that even though the applicant had become an employee of the Respondent no.3 Corporation by virtue of the Govt. order dated 23.6.1969, but, having opted for the Govt. Rules to govern his pensionary benefits, he continued to be entitled to the benefits of the liberalizations in pension Rules

introduced on the Govt. side from time to time, without being at the mercy of his new employer, the Corporation (SFCI).

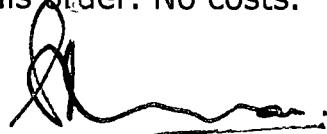
27. It was only because of this rider that paragraph 2(ii) of the O.M. dated 5.11.1964 cited above stipulated that in the case of such Govt. servants who opt to retain service conditions as under the Govt. even if they are transferred to an autonomous body which has no pension scheme at all, the Govt. would still undertake to pay them pension, but will recover the capitalized value of the autonomous body's share of pension from that autonomous body on the retirement of the individual concerned, determined on the basis of the length of service rendered with that body.

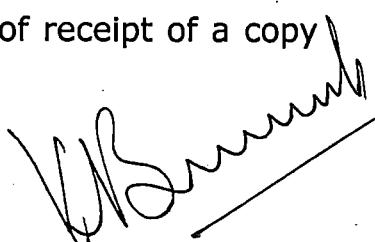
28. Even though the applicant retired from the employment under Respondent no.3, but, his Pension Payment Order has not been issued by Respondent no.3, but has been issued by the AAO of the Respondent no.1 Ministry of Agriculture, to which his services earlier belonged, and his pension has been ordered to be paid by the PAO, Central Pension Accounting Officer, Ministry of Finance, Govt. of India, New Delhi.

29. It is, therefore, held that neither the Respondents 1 & 2, representing Union of India, and nor Respondent no.3, the Corporation (SFCI), can take shelter behind ^{the} delayed ~~the~~ decision SL.

on the part of the Board of SFCI to grant the benefits of merger of 50% of DA to the Corporation employees only w.e.f. 1.4.2006, even if they were still following CDA pattern pay scales. The Board of Directors of the Respondent Corporation had no power to pass any such resolution, contrary to the contents of Govt. of India O.M. dated 5.11.1964, and the solemn commitment of the Sovereign given by the Union of India to its employees at the time of transfer of their services to the Respondent Corporation.

30. Therefore, the O.A. is allowed, and it is directed that the Officers who issued the PPO, Annexure A/1, and other related orders concerning retiral benefits of the applicant, through Annexure A/2 and A/3 shall issue modified orders, under the provisions of paragraph 2(i) of the Govt. of India O.M. dated 5.11.64, within three months from the date of receipt of a copy of this order. No costs.


(SUDHIR KUMAR)
MEMBER(A)


(DR. K.B. SURESH)
MEMBER (J)

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