

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.449/93

DATE OF DECISION:20.8.1993

M.Govindan Kutty Nair .. Applicant
(In Person)

vs.

1. The Secretary to the Government of India,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.
2. Pay and Accounts Officer,
Directorate General of Inspection,
Customs and Central Excise,
'D' Block, I.P.Bhavan,
I.P.Marg, New Delhi-110002.
3. The Chief Controller of Accounts,
Central Board of Excise & Customs,
First Floor,
A.G.C.R Building, New Delhi-110002. .. Respondents

Mr.George Poothottam, ACGSC .. Advocate for the Respondents

CORAM:

THE HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

JUDGMENT

Applicant seeks to quash Annexure A.7 order by which a personal pension of Rs.40/- granted to him, was withdrawn. He seeks restoration of that benefit.

2. Applicant retired as a Superintendent (Inspecting Officer Grade B) on 30.6.86. His pension was fixed at Rs.1152/-(basic) and personal pension of Rs.40/- was also sanctioned. The personal pension was sanctioned to certain officials, who would suffer a loss on account of fortuitous circumstances. By Annexure A.2 employees who retired between 1.1.86 and 30.6.87, were permitted to opt for pension in accordance with the Rules in force immediately before 1.1.86. Under those Rules, personal pension of Rs.40/- was admissible to the applicant. He opted for it. There is no dispute to this extent.

3. However, Additional Standing Counsel would submit that applicant would suffer no 'loss', after the recommendations of the Fourth Pay

Commission were implemented. When the index went up from point 320 to 568 the applicant would get more and thus he would not suffer 'loss' , Rs.40/- granted to him to compensate a 'loss' would not be available, according to counsel. He relies on Annexure R.1 to support his contention.

4. There has been a misunderstanding as to the meaning of the expression 'loss'. It is not the financial loss in the long run which was in contemplation. 'Loss' which was sought to be compensated, is a loss which the pensioner would have sustained by reason of fortuitous circumstances at the time of his retirement. The 'loss' is limited in time and space to the point of retirement. It is not an elastic notion, projecting into future. At any rate the expression is not defined. A fiscal enactment or provision must receive an interpretation in favour of the subject. Inflation, rise in Dearness Allowance, and such future events cannot wipe out a right that had crystallised in the applicant by the option exercised under Annexure A.2 . Therefore, there is no justification for the respondents to take away the personal pay by Annexure A.7. For another reason also, what had become a vested right in the nature of propriety, cannot be taken away by a retrospective executive fiat. Yet, for third reason without the applicant making an untenable claim and when the Department themselves had granted the personal pay of 40/-, principles of estoppel or equitable estoppel stand in the way of the Department from taking away a pittance that a retired employee had gained. This is not an instance of correcting a mistake, but an instance of finding an untenable meaning for the expression 'loss'.

5. Application is allowed and Annexure A.7 is quashed. Applicant

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will be entitled to receive the pension that was sanctioned to him as also periodical increases, which law grant. The Respondents will also pay Rs.500/- as costs to the applicant.

Dated the 20th August,1993.

Chettur Sankaran Nair
CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

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List of Annexures:

1. Annexure A.2 Relevant extract from G.I. Dept. of Pen. & Pen.Welfare O.M No.2/1/87-PIC-II dated 14.4.1987.
2. Annexure A.7 Attested copy of Order No.F.G-19013/14/92 Ad.II-A dated 23.9.1992 of the Govt. of India , Department of Revenue, New Delhi.
3. Annexure.RI True extract of OM No.GI M.Lr. & Trg. O.M No.27/8/84 Pension Unit dt. 21.6.85.