

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.149/04

Friday this the 15th day of July, 2005

C O R A M :

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

Mannatil Kumar,
S/o.late A Parameswaran Nair,
Retired Additional Private Secretary to the Union Minister
of State for Works, Housing & Parliamentary Affairs.
Residing at : Mannatil, 89 Jawahar Nagar,
Kochi - 20.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the Secretary
to the Government of India,
Ministry of Surface Transport (ESTT-I Section),
Transport Bhavan, New Delhi.
2. The Pay & Accounts Officer (Sectt),
Ministry of Surface & Transport,
Transport Bhavan, New Delhi - 1.
3. The Secretary to the Government of India,
Ministry of Shipping (ESTT-I Section),
Transport Bhavan, New Delhi.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

ORDER

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant initially joined the service of the Government (Union) as a member of a Central Secretariat Service (Central Secretariat Stenographers Service) in April 1956 and served in various Ministries of the Union Govt. in different capacities during the period between 1956 and



1973 which included assignment as a member of the Central Union Services, Additional Private Secretary and Private Secretary to the Union Ministers etc. From 1969 onwards he was working as an Additional Private Secretary in the scale of pay of Rs.840-1200/- (3rd CPC) with effect from 1.1.1973. While so, he was selected as an Executive Assistant to the Chairman and Managing Director, Cochin Shipyard in the pay scale of Rs.700-1250 on deputation basis. He was therefore relieved by the Government of India to take up the aforesaid post on "Foreign Service Terms" and he joined the said post in October 1973. While continuing as an Executive Assistant he was regularly absorbed in the Cochin Shipyard Limited with effect from 1.3.1975. He was thereby deemed to have retired from Government Service with effect from 28.2.1975. When the applicant was deemed to have retired from Govt. service he had about 19 years of Govt. service and therefore, he was entitled for grant of pension. Under the rules in force, he had commuted his entire pension (100%) and accordingly received 100% commuted value of pension during January 1978. As per Hon'ble Supreme Court's direction 1/3rd commuted value of the applicant's pension was restored with effect from 1.3.1990 and accordingly he has been receiving 1/3rd commuted value of pension since 1.3.1990. According to the pension rules in force during 1975, the pension was to be calculated based on the average of the emoluments which the applicant had drawn or would have drawn, had he continued in Govt. service for the three years preceding date of retirement. Thereafter several issues came up for consideration before the Hon'ble Supreme Court regarding the various entitlements of pensioners, who were absorbed in Public Sector Undertakings and who had opted to commute 100% pension.


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While so the Vth CPC submitted its report regarding the grant of pension for pre 1986 and pre 1996 pensioners. Thereafter vide Annexure A-3 the method of fixation of the restored $1/3^{\text{rd}}$ commuted portion of pension in respect of Govt. employees who had received lump sum payment of pension and got absorbed in Public Sector Undertakings/Autonomous Bodies were finalised. In terms of Annexure A-2 as regards the pre 1.1.1996 pensioners, it was stated that, pay of all those Govt. servant who retired prior to 1.1.1986 and were in receipt of pension as on 1.1.1986 will be fixed on notional basis in the revised scale of pay as on 1.1.1986, for the post held by the pensioner at the time of retirement/death. The pay would be treated as average emolument and applying the rule as applicable as on 1.1.1986 the notional pension would be arrived at. The pension so calculated would be reckoned notionally as the pension drawn on 31.12.1995 and applying the formula as regards pre 1996 pensioners, the pension would be consolidated and refixed with effect from 1.1.1996. In terms of Note 7 below Rule 33 of CCS (Pension) Rules, 1972, "pay drawn by a Govt. servant while on foreign service should not be treated as emoluments but the pay which he would have drawn under the Govt. had he not been on foreign service shall alone be treated as emolument." Accordingly, the applicant would have drawn the basic pay of Rs.920/- as on 1.1.1975 and therefore he would have drawn the same pay as on 1975. Counting so, as on 1.1.1986 his pay in revised scale of pay of Rs.2375-3500/- is to be arrived at Rs.2675/- and applying the pension rule as on 1.1.1986 the applicant was entitled to notional pension of Rs.770/- as on 1.1.1986. Treating this as notional pension as on 31.12.1995, the pension due to the applicant as on 1.1.1996 is to be arrived at as Rs.2345/- and


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1/3rd of the said amount is Rs.782/-. This should be the restored 1/3rd commuted value of pension with effect from 1.1.1996 as regards the applicant. However, on 7.9.1999 the applicant received a letter (Annexure A-4) from the respondents advising the applicant to fill and return the pro-forma enclosed therein. The applicant filled up the said pro-forma and returned the same along with a letter dated 17.9.1999 (Annexure A-5). However the applicant received a letter (Annexure A-6) dated 17.2.2000 wherein the respondents raised certain objections with reference to the contentions of the applicant on para 6 of the pro-forma. He with due remarks returned the pro-forma along with a letter dated 20.3.2000 (Annexure A-7). In response to Annexure A-7 he received a letter dated 23.11.2000 (Annexure A-8) wherein it was stated that the pension of the applicant has not been calculated based on the pay, while the applicant would have drawn had he continued in Govt. service as on date of his retirement. On the contrary the same is fixed as if the applicant was in scale Rs.425-800/-. The pension arrived at as on 1.1.1996 is only Rs.1822/- as against Rs.2345/-. 1/3rd restored pension shown is only Rs.608/- as against Rs.770/-. The applicant submitted a representation dated 26.12.2002 (Annexure A-9) and sent reminders too but nothing has been done so far. Hence this O.A.

2. The respondents have filed a detailed reply statement contending that the applicant is a retired Steno Gr.II (Rs.425-800) of the erstwhile Ministry of Shipping & Transport. He was on deputation to Cochin Shipyard Ltd. from 22.9.1973. As an Executive Assistant (Rs.700-1250), he was permanently absorbed in CSL with effect from 1.3.1975 and he was



thereby deemed to have retired from Govt. service with effect from 28.2.1975 as Steno Gr.II as per Annexure R-1. When the applicant was selected for the post of Executive Assistant in CSL on deputation basis, he was holding the post of Additional Private Secretary (Rs.840-1200) to the former Union Minister which is also a deputation post and co-terminus in nature (Annexure R-2). According to the Rules an officer who is holding a higher post on deputation basis in ex-cadre post at the time of proceeding on subsequent deputation/foreign service, he would be considered to have vacated the post held on previous deputation post and proceeded on deputation/foreign service from his regular cadre post. As such, the applicant when selected for the post of Executive Assistant in CSL, he was relieved by the erstwhile M/o. S & T to take up his new assignment in CSL and he was deemed to have been relieved as Steno Gr.II and not Additional Private Secretary to Minister. He was subsequently absorbed permanently in CSL and the terms and conditions issued by the erstwhile M/o. S & T clearly indicates the applicant as Steno Gr.II of the Ministry is allowed permanent absorption in CSL with effect from 1.3.1975. He had received lumpsum payment on absorption in CSL. In pursuance of M/o. Personnel, Public Grievances & Pensions, D/o. Pension & Pensioner's Welfare OM dated 14.7.1998 & 28.12.1998, the 1/3rd commuted portion of pension was restored and the revised amount of commuted value of 1/3rd pension & dearness relief was sanctioned by the Ministry as per Annexure R-3 and Annexure R-4. Payment of dearness relief on full pension instead of DR on revised amount of 1/3rd commuted portion of pension has also been made vide Annexure R-5. To process the case all relevant documents were called for from CSL and an application from the applicant.



Accordingly, fresh Pension Payment Order dated 12.2.2001 & 11.4.2002 were issued by the Pay & Accounts Officer (Annexure R-6 and Annexure R-7). The applicant was selected for the post of Executive Assistant in CSL on deputation basis while he was holding the post of Additional Private Secretary to the former Union Minister which is also a deputation post and co-terminus. As per rules, an officer who is holding a higher post on deputation basis in ex-cadre post, at the time of proceeding on subsequent deputation/foreign service, he would be considered to have vacated the post held on previous deputation post and proceeded on deputation/foreign service from his regular cadre post. In the case of appointment from one ex-cadre post to another ex-cadre post where the official opts to draw pay in the scale of ex-cadre post, the pay in the second ex-cadre post should be fixed under normal rules with reference to his presumptive pay in the cadre post which he would have held but for his holding an ex-cadre post and not with reference to the ex-cadre post. Note 7 below Rule 33 of CCS (Pension) Rules states that , "pay drawn by a Govt. servant while on foreign service shall not be treated as emoluments". Accordingly when the applicant joined the CSL on deputation basis his pay was Rs.700/- in the pay scale of Rs.425-800 which was revised to Rs.2060 as per 4th Central Pay Commission. Finally when an official once appointed on the personal staff of Minister is repatriated to his parent department, his pay will get fixed with reference to the presumptive pay he would have drawn in the cadre post and not with reference to the pay drawn by him in the ex-cadre (deputation) post. If an employee on appointment or transfer to an ex-cadre post had opted to draw pay in the scale of the ex-cadre post, his pay in the second or subsequent ex-cadre

posts will be fixed under normal rules with reference to his presumptive pay in the parent cadre post which he would have held but for his holding an ex-cadre post and not with reference to his pay in the ex-cadre post.

3. The applicant has filed a rejoinder reiterating his contentions in the OA and further submitting that the contention regarding the applicant being deemed to have relieved as Steno Gr.II, and not as Additional Private Secretary to the Minister, are all matters of little significance because every person officiating on a higher post will only be deemed to have relieved from the substantive post. For the purpose of absorption in a Public Sector Undertaking that is not relevant because irrespective of the substantive post held by the Govt. servant the emoluments to be determined must be the emoluments actually drawn by the Govt. servant or the emoluments which he would have drawn from the Government had he continued in Govt. service irrespective of the substantive position which the Govt. servant would have held at the time of retirement. The applicant's service as Additional Private Secretary to the Minister was not a "foreign service", whereas, the same was a service under the Central Government.

4. I have heard Shri.T.C.Govindaswamy learned counsel for the applicant and Shri.T.P.M.Ibrahim Khan,SCGSC learned counsel for the respondents and have given due consideration to the pleadings and materials on record. Learned counsel for the applicant argued that the applicant is entitled to have the pension taking into consideration the pay had he continued in Govt. service. Learned counsel for the respondents, on the other hand, persuasively argued that the post of Additional Private

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Secretary was a deputation post and co-terminus in nature and the applicant is not entitled to any relief. It is an admitted fact that the applicant was working in the pay scale of Rs.840-1200/- as Additional Private Secretary at the time of his transfer on deputation/foreign service to the CSL. It is also not in dispute that the applicant was deemed to have retired from Government service with effect from 28.2.1975 and that he was absorbed in the CSL with effect from 1.3.1975. The pleadings of the applicant is that the pay he would have drawn had he continued to be in Government service would be Rs.920/- in the pay scale of Rs.840-1200/- as on 28.2.1975 has not been disputed by the respondents. Both the parties are relying upon Note (7) below Rule 33 of the CCS (Pension) Rules 1972. It is profitable to extract Note (7) below Rule 33 of the Rules :

"Note 7 : Pay drawn by a Government servant while on foreign service shall not be treated as emolument, but the pay which he would have drawn under the Government had he not been on foreign service shall alone be treated as emoluments."

5. Annexure A-1 order dated 20.5.1976 issued by the Ministry of Shipping and Transport fixing the applicant's pay at the stage of Rs.840/- in the pay scale of Rs.840-1200/- with effect from 1.1.1973 to 4.2.1973 shows that the applicant was posted as Additional Private Secretary in his parent Ministry of Shipping and Transport itself. It does not show that the applicant's appointment was on foreign service or even on deputation basis. Annexure R-2 office order dated 20.3.1973 reads as follows :

"The services of Shri.Mannatil Kumar, an officer permanent in Grade II of C.S.S.S on the cadre of the Ministry of Shipping and Transport and officiating as Additional Private Secretary on the Personal staff of Shri.OM Mehta, formerly Minister of State in this Ministry are placed at the disposal of Ministry of Works & Housing for appointment as

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Additional Private Secretary to the M.S in that Ministry with effect from the forenoon of 5th February 1973."

6. Annexure R-2 is an order by which the applicant took up the post in the Ministry of Works and Housing with effect from 5.2.1973 and the said post he was holding in the parent Ministry at the time of his transfer to the Ministry of Works and Housing. Therefore it clearly shows that his appointment in the Ministry of Works and Housing was on the same post which he was already holding and it was not on deputation on foreign service but on officiating basis. It appears that it is a simple transfer on the same post without any rights or privileges or with any corresponding liabilities applicable to appointment on deputation basis. In the absence of any condition in Annexure R-2 to the effect that the applicant's appointment was on deputation terms, there is nothing to construe that the applicant's appointment was on deputation on foreign service terms as contended by the respondents. Then the question comes that under Note (7) below Rule 33 of the CCS (Pension) Rules what would be the pay which the applicant would have drawn in the Government had he not been in foreign service shall alone be treated as emoluments. Since applicant's appointment to the CSL was on foreign service terms the pay which the applicant had drawn in CSL cannot be taken as pay for the purpose of reckoning the average emoluments.

7. Counsel for the respondents filed a statement on 21.1.2005 admitting that the salary of the Additional Private Secretary is paid from the Consolidated Fund of India. It is pertinent to see what is meant by "Foreign Service". FR 9(7) defines the term Foreign Service as follows :

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"Foreign service means service in which a Government servant receives his pay with the sanction of government from any source other than the consolidated fund of India or the consolidated fund of a State or the consolidated fund of a Union Territory."

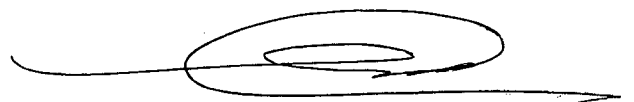
8. Therefore the contention of the respondents that the applicant's appointment as Additional Private Secretary was on co-terminus cannot be accepted in the light of Annexure R-2 and also in the light of the admission that the applicant was being paid from the consolidated fund of India while working as Additional Private Secretary. On a perusal of Annexure R-11 I find that it deals with the fixation of pay upon transfer on deputation while holding a post on deputation. Considering the entire facts and circumstances of the case the basic pay that the applicant would have (presumptive pay) drawn under the Government as on 28.2.1975 is to be accepted as Rs.920/- in the scale of Rs.840-1200/- and in terms of Annexure A-3 1/3rd of the commuted portion of pension in respect of government employees who had drawn lumpsum payment on absorption in Public Sector Undertakings/Autonomous Bodies is to be fixed as indicated in the same and the pension finally revised and restored to the pensioner. As per Annexure A-2 dated 10.2.1998 notional pension has to be arrived at as indicated in Annexure A-2 i.e. "The pension so worked out shall be consolidated as on 1.1.1996 in accordance with the provisions contained in Paragraph 4.1 of this Department's Office Memorandum No.45/86/97-P&PW (A) Part II dated 27th October 1997 and shall be treated as basic pension for the purpose of grant of Dearness Relief in future."

9. In view of the detailed discussion above I am of the view that the



applicant's pension has to be revised and $\frac{1}{3}^{\text{rd}}$ of the commuted portion of the same be restored based on the basic pay of Rs.920/- which the applicant would have drawn in the pay scale of Rs.840-1200/-. The revised scale of pay replacing Rs.840-1200/- is Rs.2375-3500/-. Accordingly the respondents should have fixed the applicant's pension as on 1.1.1996 as Rs.2345/- and $\frac{1}{3}^{\text{rd}}$ of the commuted portion of which amounting to Rs.782/- should have been restored to the applicant. The orders fixing the applicant's pay at a lower stage and the communications are made without application of mind. The same are therefore set aside. I direct that applicant's pension be calculated on the pay which he would have drawn had he continued to be in the pay scale of Rs.840-1200/- i.e. Rs.920/-. I further direct the respondents to recalculate the pension as on 1.1.1996 with all consequential benefits arising therefrom notionally and without any monetary benefits prior to filing the O.A. In other words, the arrears will be calculated from the date of filing of the O.A i.e. 14.2.2004. Respondents are directed to carry out the entire exercise of granting the benefits within a time frame of four months from the date of receipt of a copy of this order. O.A is allowed as above. In the circumstances, no order as to costs.

(Dated the 15th day of July 2005)



K.V.SACHIDANANDAN
JUDICIAL MEMBER