

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

O.A. No. 287/05
Lucknow this the 30th day of Sep., 2005.

Hon. Shri S.P. Arya, Member (A)
Hon. Shri M.L. Sahni, Member (J)

Satya Narain Shukla, IAS (Retd.), aged 62 years, son of late Shri R.D. Shukla, r/o B-7, Nirala Nagar, Lucknow.

Applicant.

By Advocate: Applicant. I person.

Vs.

1. State of U.P. through the Chief Secretary, Govt. of U.P., Sachivalaya Annexee, Lucknow.
2. Principal Secretary, Finance Deptt. U.P. Govt, Sachivalaya, Lucknow.
3. Union of India through Secretary, Deptt. of Personnel, North Block, New Delhi.

Respondents

By Advocate Shri Raj Singh for Shri A.K. Chaturvedi.

Order

By Hon. Shri M.L. Sahni, Member (J)

1. Applicant is a retired I.A.S. Officer. He seeks immediate compliance of All India Services (Dearness Allowance) Rules, 1972, read with G.O.I. instructions as contained in DOPT letter dated 31.3.2004 which is Annexure A-2 appended to the O.A. besides directions to respondent No. 1 to issue general standing order to the effect that the orders issued by the GOI from time to time regarding payment of Dearness Allowance to the members of All India Services to apply automatically ipso facto borne on the State Cadres, without requiring separate orders by the State Govt. for this purpose. Further, the applicant prays for payment of interest @ 12% on the delayed payment of benefits under the Govt. of India orders in DOPT letter dated 31.3.2004 (Annexure A-2) and release of installments of DA sanctioned by the GOI from time to time and to recover the amount of interest from those responsible for such delayed payments. It is also requested that system of payment of pension to be paid to the members of the All.

India service borne on the State Cadre through the banks should be restored.

2. We have heard the applicant in person and the learned counsel for respondent No. 1 and 2. Respondent No.3 though put -in appearance through their counsel, yet they neither filed any counter reply, nor their counsel advanced any arguments at the time of hearing. We have carefully gone-through the pleadings on record.

3. Case of the applicant precisely stated is that he belonged to 1967 batch of the Indian Administrative Service (IAS) and retired on 28.2.2003 on attaining the age of superannuation. Referring to The All India Services (Dearness Allowance) Rules, 1972 (Annexure A-1), he submitted that these rules were framed by the Central Govt. after consultation with the Governments of the States concerned. Rules 3 of these Rules provide: "Every member of the Service and every officer, whose initial basic pay is fixed in accordance with sub rule (5) or sub rule (6A) of rule 4 of the Indian Administrative Service (Pay) Rules, 1954 or rule 4 of the Indian Police Service (Pay) Rules, 1954 or sub-rule 4 of the Indian Forest Service (Pay) Rules, 1968, shall be entitled to draw dearness allowance at such rates, and subject to such conditions as may be specified by the Central Government, from time to time, in respect of the officers, of Central Civil Service, Class I" Applicant then relied upon the Central Govt. decisions taken under the above rule, which, interalia provide that all the members of All India Services irrespective of their place of postings, are entitled to get Dearness Allowance at the rates and subject to the same conditions which are laid down from time to time in respect of the Group 'A' Central Services Officers. The State Governments and the Accountants General concerned need not therefore, wait for further

communications, forwarding therewith the Ministry of Finance's orders issued in this regard to release further installments of Dearness Allowance as and when the same are announced by the Central Government for its Group 'A' officers.

4. Applicant further submitted that GOI vide Annexure A-2 desired the State Govts. And Union Territories to grant the benefit of merger of 50% Dearness Allowance/Dearness Relief with Basic pay pension to Central Govt. employees/pensioners w.e.f. 1.4.2004, but the Govt. of State of U.P. is delaying the payment till date without any justification. It is also stated that delay in extending the benefit to pensioners like the applicant is causing great hardship to him and deprivation to those, who retired after 1.4.2004 but have breathed their last before the implementation of the orders dated 31.3.2004 (Annexure 2). He has vehemently argued that any further delay caused in this direction may amount to denial of rightful claim of those like him. The applicant has also appealed fervently for directions to the respondents No. 1 and 2 for taking immediate necessary action in the matter of extending the benefit of merger of D.A./D.R. with basic pay/Pension in the case of Central Govt. employees/Pensioners w.e.f. 1.4.2004 as provided under Rule 3 of Rules, 1972 and Rule 18(1) of the AIS (DCRB) Rules, 1958. In this respect applicant referred to Annexure A-4 which is a communication from G.O.I. to the Chief Secretary Govt. of Uttar Pradesh Lucknow. Paras 3 and 4 thereof are reproduced as follows:

"3. The above provisions of Rule 3 ibid were reiterated to the State Governments/A.Gs vide our letter dated 2.7.1997. It is, therefore, obvious that the State Governments are bound to allow dearness allowance to the AIS officers under their control as per the rates of DA for Central Civil Service Group 'A' Officers of the Central Government. The rates of DA for AIS officers in the State Government would only be in conformity with the rates of DA for the Central Civil Services



-4-

Group 'A' officers of the Central Government when the same are merged as in the case of the latter.

4. Attention is also invited to provisions of Rule 18(1) of the AIS (DCRB) Rules, 1958 which forms dearness relief, granted by the Central Government from time to time as part of the pension of the members of the All India Services."

5. Besides challenging the locus standi of the applicant to maintain the present O.A. it has been submitted on behalf of respondents that no dearness allowance is payable on pension because, only dearness relief is payable to the applicant to whom All India Services (Dearness Allowance) Rules, 1972 are not applicable because after retirement he is governed by All India Service DCRB Rules, 1958. It is also contended by the respondents that the applicant has not claimed relief of implementation of the order dated 31.3.04 (Annexure A-2) so far as it relates to the applicant with regard to dearness relief; that Annexure A-2 is already under consideration before the sub-committee of the State Cabinet and, therefore, there is no delay on the part of respondent No. 1 and 2 in implementing the Government of India instructions as contained in Annexure A-2. It is also submitted that since the validity of order dated 19.7.2001 of the State Government, copy of which is Annexure CR-3 appended to the Counter reply is not challenged, therefore, relief regarding payment of pension directly through the Banks cannot be taken into consideration in this O.A.

6. It has also been pointed out that other State Governments have yet not implemented the decision of the Central Government regarding merger of 50% D.A. with basic pay, nor they have extended the benefit of merger of 50% D.A. with the basic pay in respect of All India Service Officers while the respondent No. 1 and 2 are already considering to do the needful by appointing the sub committee of the Cabinet to whom the matter has been referred. Reference in this

respect has been made to Annexure No.1 filed alongwith the objections to the Rejoinder Affidavit filed by the applicant and to CR-2 filed alongwith Counter reply by the respondents. From the perusal of these two documents it is apparent that a Committee was constituted vide CR-2 for considering merger of 50% of dearness allowance in the State of Uttar Pradesh, while Annexure No. 1 is a letter written by Special Secretary to the Government of Orissa, Finance Department, the Principal Secretary, Department of Finance, U.P. stating therein that the Central Government decision regarding merger is still not implemented. According to the respondents, the Committee constituted vide order dated 15.12.04 submitted recommendations on 20.2.05 which were placed before the competent authority who has further constituted a Sub-Committee of the Cabinet to consider the recommendations of the Committee but the report is still awaited ~~only~~ whereafter State Government, would take the decision. Thus , according to them, letter dated 31.3.2004 (Annexure A-2) is still under consideration of the State Government, to take a decision regarding merger of DA/DP.

7. From the rival contentions of the contending parties it *prima facie* appears that O.A. suffers from certain technical infirmities. However, sole aim and object of the applicant is directions to the respondents 1 and 2 to implement the decision of the Central Government as contained in Annexure A-2, also reiterated vide Annexure A-4. According to the respondents implementation thereof is under consideration of the State Government who is awaiting for the recommendations of the sub- committee of the State Cabinet. They appear to be inclined to implement the decision of the Central Government ^{but} ~~yet~~, the delay is occurring due to non-submission of

recommendations by the Cabinet sub- committee. According to their admitted stand the decision of the Central Government letter Annexure A-2 would be taken "at the earliest within reasonable time". What could be the reasonable time, is, however, unspecified. The recommendations of the sub committee constituted on 15.12.2004, was conveyed on 20.2.2005 for which the sub committee was constituted, meaning thereby that the period of 7 months has already elapsed but no decision has been taken with regard to implementation of the decision of the Govt. of India as communicated vide letter dated 31.3.2004 (AnnexureA-2). It is, therefore, desirable that the State Government being model employer ensures obtaining the recommendations of the sub committee within one month and implement the decision of the Govt. of India forthwith in the light of reminder dated 15.9.2004 (Annexure A-4) written to the Chief Secretary Govt. of U.P. Lucknow.

8. "All- India Services" finds place at entry 70 of Seventh Schedule (under Article 246) of the Constitution of India. The Parliament has exclusive power to make laws in respect of all India Services. The Parliament enacted the All India Services Act 1951 to regulate the recruitment and the conditions of service of persons appointed to the All India Services common to the Union and States. It is provided in section 3 that the Central Govt. may after consultation with the Governments of the States (including States of Jammu and Kashmir) and by notification in the Official Gazette make rules for the regulations of recruitment and conditions of services of persons appointed to an All India Service. In exercise of the powers conferred by sub Section (1) of Section 3 of All India Services Act, 1951, the Central Government after consultation with the Governments of the States concerned made the All India



Services (Death-cum-Retirement Benefits) Rules, 1958 and the All India Services (Dearness Allowance) Rules, 1972. D.C.R.B. Rules, 1958 specifically provided in the Rule 17 extracted below:

"17. Retiring Pension and Gratuity:-

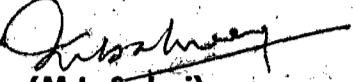
17(1) A retiring pension and death-cum-retirement gratuity shall be granted to a member of the Service who retires or is required to retire under Rule 16.

17(2) Notwithstanding anything contained in sub rule (1), relief against rise in the cost of living index shall be granted to every such member of the Service at such scale and in such manner as may be prescribed by the Central Government from the Central Civil Services, Class I."

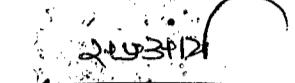
9. Government of India decision conveyed through DOPT's letter No. 11014/1/97-AIS(II) dated 2nd July, 1997 unequivocally provided that "Rule 3 of All India Services (Dearness Allowance) Rules, 1972 stipulates that every member of the All India Services is entitled to draw Dearness Allowance at such rates and subject to such conditions as may be specified by the Central Government from time to time in respect of the officers of the Central Civil Services, Group 'A'. This is irrespective of whether the officer concerned is working in the State Government or is outside his cadre.
10. It would thus be abundantly clear that only Central Government is empowered by law to regulate the service conditions of All India Services. The instructions, clarification and decisions taken/issued are statutory in nature. State Governments are not empowered to review, modify or reconsider such decisions. The orders issued by Central Government in respect of Central Civil Service, Group 'A' are ipso facto applicable to all the Members of the All India Services. This leaves no scope for State Government to reconsider the same.
11. As a result of the above discussions, it is held that Rule making power in respect of conditions of service of All India Service Officers is vested in Central Government and State Governments have no power to review

- 8 -

or modify the rules or decisions of Central Government. Allowing the O.A. Respondent No.1 and 2 are directed to implement Annexures A-2 and A-4 in letter and spirit within a period of one month from the date of communication of these orders. No order as to costs.


(M.L. Sahni)

Member (J)


(S.P. Arya)

Member (A)

S.A.