

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

O.A. No. 125/06

Lucknow this the day of October 2006

Hon. Mr. Justice Khem Karan, Vice Chairman.

Dr. B.N. Tiwari, aged about 68 years, son of late Shri Amba Parsed Tiwari, resident of B-51/A, Sector-B, Aliganj, Lucknow (lastly worked as Special Secretary Hill Development, Government of Uttar Pradesh, Civil Secretariat, Lucknow).

Applicant.

By Advocate Shri R.C. Singh and Shri Vagesh Tewari.

Vs.

- 1. Union of India, through the Secretary, Department of Pension and Pensioner's Welfare, New Delhi.**
- 2. State of U.P., through the Secretary, Appointment Department, Govt. of U.P., Civil Secretariat, Lucknow.**
- 3. Secretary, Finance, Govt. of U.P., Civil Secretariat, Lucknow.**
- 4. Deputy Secretary, IRLA Pay Slip Cell, Govt. of U.P., Civil Secretariat, Lucknow.**
- 5. Director Pension Directorate of Pension, 8th Floor, Indira Bhawan, Lucknow.**

Respondents.

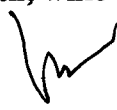
By Advocate Shri P.K. Srivastava for Shri A.K. Chaturvedi and Shri S.P. Singh.

Order

By Hon. Mr. Justice Khem Karan, Vice Chairman

- 1. Retired on 30.1.1996 as a member of Indian Administrative Service, after putting in total service of 32 years, 7 months 15 days (out of this 23 years as member of Provincial Civil Service E), the applicant has filed this O.A. for (a) quashing order dated 31.5.200 (A-1) passed by the Govt. of U.P. turning down his request to revise his pension as if his pay was in the scale of Rs. 1800-22400 on 31.1.06, on the ground that he was not promoted to that scale and (b) for directing the respondents to revise his pension to Rs. 3085/- a month w.e.f. 1.1.96 in place of Rs. 1200/- a month, in terms of O.M. dated 17.12.98 (A-8) read with Rule 18 of All India Services (Death cum Retirement Benefits) Rules 1958 as amended and the Govt. orders dated 1.4.98 and 13.6.2000 (A-5 and A-13) together with interest @ 18% per annum from 1.2.06 till the date of payment.**
- 2. The brief facts giving rise to this O.A. are as under:**
- 3. The applicant joined on 16.3.1963, as a member of Provincial Civil Service (Executive Branch) in the State of U.P. and in due course, was**

promoted to Indian Administrative Service in 1985. Vide order dated 6.7.91, the Govt. of India, granted him, Junior Administrative Grade of Rs. 3950-5000. While working as a member of Indian Administrative Service, he was given pay scale of Rs. 5900-6700, the highest scale of pay admissible to a member of Provincial Civil Service, vide order dated 28.12.92 (A-3). As the promotee officers such as the applicant, were at disadvantageous position in matter of pay, vis a vis their brothers in P.C.S. cadre, so the Govt. of U.P. protected their pay in the highest pay scale of PCS, by issuing an order dated 1.12.94 (A-4). On the date of retirement i.e. on 31.1.96, the applicant was drawing basic pay of Rs. 6900 (including the stagnation increment) in the pay scale of Rs. 5900-6700). On implementation of the recommendations of Central Vth Pay Commission, w.e.f. 1.1.96 old pay scale of Rs. 5900-6700 stood revised to Rs. 18,400-22,400 and in this revised scale, applicant's basic pay was fixed at Rs. 18,900. The Govt. order dated 1.4.98 (A-5) provided interalia that other conditions will remain the same as given in earlier Govt. order dated 1.12.94 and 6.2.95. Vide Pension Payment order (PPO) dated 4.6.98 (A-7), the applicant's pension was fixed at Rs. 6981/- a month only, as in his case 9 months salary was taken into account @ Rs. 6900/- a month, whereas in the case of persons who retired after 10 months of the introduction of this revised scale, monthly pension was much more. To remove this anomaly, the Govt. of India issued a circular on 17.12.98 (A-8), providing that the pension of all the pensioners shall not be less than 50% of the minimum of the revised pay scale, and thereafter made necessary amendments in All India Services (Death-cum-Retirement Benefits) Rules, 1958 vide notification dated 14.1.99 (A-9). Rule 18 (b) (ii) of these Rules of 1958 made clear that this 50% pension was admissible to the persons, who retired after putting in 33 years of service and in case of others, it was to be reduced proportionately. Armed with this circular dated 17.12.98, the applicant represented to the State Govt. for re-fixation of his pension accordingly at Rs. 9085/- a month, which the Govt. turned down vide order



dated 31.5.2000 (A-1) saying that since he was not promoted to the scale of Rs/ 18400-22400 and so was not entitled to get the pension fixed treating him to have retired in the revised scale of Rs. 18400-22400. He gave other several representations, copies of which are annexed to this O.A. He ^{also} filed a writ petition. No. 1558 (S/B) of 2003, before Lucknow Bench of Allahabad High Court, but the same was dismissed on the ground of alternative remedy. Thereafter, ~~he filed~~ this O.A. ^{was filed}

3. Unfortunately, the respondents could not file reply, though reasonable opportunity was given to them ~~to do so~~. I heard Shri R.C. Singh and Vagesh Tewari for the applicant, Shri P.K. Srivastava holding brief of Shri A.K. Chaturvedi and Shri S.P. Singh for the respondents.

4. There is no dispute that in view of circular dated 17.12.98, followed by necessary amendments in the Rules of 1958, full pension of all pensioners, irrespective of the dates of their retirement, is to be not less than 50% of the minimum pay in the revised scale of pay as introduced w.e.f. 1.1.96, of the post last held by them. Such pension is to be suitably reduced pro-rata where the pensioner has less than the maximum required service for full pension as per Rule applicable to the pensioner. This stands clarified by subsequent orders of the Govt. placed on record.

5. A-7 issued by Director Pension reveals that on the date of retirement i.e. on 13.1.1996, the applicant's basic pay was Rs. 6900/- in the old scale and after revision it was Rs. 18,900/-. He says that this stage was in the scale of Rs. 18400-22400 and he was paid arrear of pay for the month ^{for} January, 1996 accordingly. The respondents have not controverted his assertion by filing reply. They could have shown by filing relevant papers, that his pay at the stage of Rs. 18900/- was in the scale of Rs. 15100-400-18300, as mentioned in Annexure-1, dated 31.5.2000. His basic pay in the scale of Rs. 15100-18300 could not have been at the stage of Rs. 18900/- a month as last limit of that scale was Rs. 18300/-. I am of the view that the applicant is perfectly justified in demanding re-fixation of his pension, in

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the revised pay scale of Rs. 18400-22400, in terms of office Memo dated 17.12.98 (A-8), Rule 18 of Rules of 1958 (as amended) and order dated 13.6.2000 (A-13), issued by Govt. of U.P. Even if it is assumed for the sake of arguments, that compensatory pay, in terms of order dated 1.12.94 (A-4) and order dated 29.5.98(A-6) was being given as suggested in A-1, even then the applicant is entitled to get its benefit in the pension, in terms of para 1 of the order dated 1.12.94 (A-4). It is clearly promised/provided in the above mentioned para-1 that the officer concerned shall be entitled to get D.A., Pension and other retrial benefits, on this compensatory pay. So from this point of view also, the applicant has a case for re-fixation of pension.

6. Shri R.C. Singh has cited decision dated 5.7.06 in Civil Misc. writ petition No. 15109 of 2002 Chaudhary Shanker Singh vs. State of U.P. of High Court at Allahabad to support his contention that after 1.1.96 full pension has to be not less than 50% of the minimum of the corresponding revised pay scale. The same decision is being cited to claim interest on difference of pension.

7. So, the Govt. order dated 31.5.2000 (A-1) is quashed, with a direction to the respondents to re-fix/revise applicant's pension w.e.f. 1.2.1996 to Rs. 9085/0 a month in terms of O.M. dated 17.12.98 of the Central Govt. and Rule 18 (as amended) of the Rules of 1958 and order dated 13.6.2000 issued by Govt. of U.P. and to pay arrears together with interest @ 12% per annum w.e.f. 1.2.1996 till the date of actual payment to him. The applicant shall get Rs. 2000/- as costs from respondents No. 1 & 2.

[Signature]
20.10.08
Vice Chairman