

Central Administrative Tribunal, Lucknow Bench,

Lucknow

Original Application No. 226/2009

This the 9th day of August, 2010

Hon'ble Dr. A.K. Mishra, Member(A)

Anand Prasad Gupta, Aged about 77 years, S/o late Thakur Das Agarwal, R/o M-1/418-C/68, D-I, LDA Colony, Kanpur Road, Lucknow.

.....Applicant

By Advocate: Sri P.S. Pandey.

Versus

1. Union of India through the Director General of Civil Aviation, Technical Centre, Safdarjung Airport, New Delhi.
2. The Central Pay & Accounts Officer, Director General of Civil Aviation, Ministry of Civil Aviation, Safdarjung Airport, New Delhi.
3. The Director Airport Amausi Airport, Lucknow.

.....Respondents

By Advocate: Sri Ashish Agnihotri and Sri DPS Chauhan for Dr. S. Kumar.

ORDER

Heard both sides.

2. Learned counsel for the applicant submits that the applicant retired from Air Port Authority of India on 30.9.1990 as Office Superintendent, but the regular pension which was sanctioned to him was on the basis of pay scale applicable to a Senior Clerk, although he was holding the post of Office Superintendent and drawing salary for the post of Office Superintendent w.e.f. 1.12.1989. He made several representations supported by entry in his service book that his last pay drawn was Rs. 2125/-. His request to respondent-authorities was to

calculate pension on the basis of last pay drawn or on the basis of average of last 10 months' pay, which ever was applicable to him on the date of his retirement. His advocate Sri P.S. Pandey issued a legal notice on 17.7.2008 demanding payment of pension according to his last pay. In response to this legal notice, the Headquarters of Air Port authority of India requisitioned the service book of the applicant in their letter dated 4.8.2005 (Annexure-5). In the clarificatory letter dated 29.8.2008 (Annexure-6) it was stated that the applicant had retired on the post of Office Superintendent and his pension had been sanctioned on the basis of last pay drawn as Office Superintendent. Sri P.S. Pandey, Advocate, replied to this letter by specifically pointing out that though the respondent-authorities have considered the pension of the applicant on the basis of last pay drawn on the post of Office Superintendent, but the sanction had been otherwise. He pointed out that as per service book entry, the last pay drawn by the applicant was Rs. 2125/- not Rs. 1850 as was relied on to calculate the pension. He requested that the applicant's pension should be rectified accordingly. This representation was endorsed and forwarded to the Director of Airworthiness in the office of Civil Aviation, New Delhi on 8.10.2008 by the Senior Manager (P&A) New Delhi, (Annexure-8 to the O.A.)

3. It was further contended that the very fact that the Airport Authority of India recommended to revise his pension on the basis of average pay during the last 10 months preceding his retirement went to show that they agreed with the contention of the applicant. Attached to Annexure-8 to the O.A. is a calculation sheet which shows the pensionable average pay of the applicant on the date of his superannuation as Rs. 2057/- and the revised pension payable to him w.e.f. 1.10.1996 and 1.1.2006 was Rs.

1029/-and Rs. 3058 respectively. In spite of such specific recommendations, his prayer for revision of pension was rejected by the Ministry of Civil Aviation on 6.2.2009 saying that the claim of revised pay of Sri A.P. Gupta (applicant) as Rs. 2125/- was under IDA scale, which is not permissible for Central Government pensionary benefits (Annexure-2). On the basis of this decision of the respondent-ministry, the representation of the applicant as contained in legal notice issued on his behalf was rejected by the Air Port Authority of India in their letter dated 16.3.2009 (Annexure-1). These two letters have been impugned in the present O.A.

4. Learned counsel for respondent no.1 brought to my notice paragraphs 4, 5, 6 and 7 of Counter Reply in which difference between pay with Industrial Dearness Allowance (IDA) and pay with Central Government Dearness Allowance (CDA) has been explained. The Counter reply also makes reference to the O.M. dated 27.10.1997 and O.M. dated 19.9.2003. While the former relates to consolidation of pension of employees of Government department and those of PSUs/autonomous bodies who adopted to draw pension separately from the Government, the latter deals with the methodology to be adopted in respect of employees who were absorbed in Public Sector Undertakings/autonomous bodies and adopted to draw pension from autonomous bodies, but opted to be guided by CCS (Pension) Rules. Copies of these memoranda were furnished at the time of hearing.

5. It goes without saying that the representation of the applicant had been rejected without detailed consideration and without stating how he was granted pension on the basis of Rs. 1850/-and why the specific recommendations

of Senior Manager P&A of Air Port Authority of India as contained in letter dated 8.10.08 was brushed aside. The applicant is not claiming any relief either on the basis of CDA calculation or IDA calculation. His simple prayer is that he was drawing salary at Rs. 2125/- on the date of his superannuation, but he has been sanctioned pension on the basis of average pay of Rs. 1850/- without any justification. He further claims that the recommendation of Air Port Authority of India as contained in Annexure-8 should have been accepted by the authorities and no reason has been given in the impugned order of the Government, while rejecting it.

6. The learned counsel for the respondents submits that as per entry in the service book at page 4 dated 27.3.1990 the employee had given option for getting pension under Central Government Rules. Since the applicant was an absorbee in Airport Authority of India and had given option to be guided by CCS Pension Rules consolidation, of his pension was to be guided by O.M. dated 19.9.2003. At this stage, the learned counsel for the applicant brings to my notice the judgment of this Tribunal (PB) in O.A. no. 577 of 2005 in which a view was taken that the O.M. dated 19.9.2003 could not have been made applicable in that case because of the reasons given in that judgment, particularly in the contest that the O.M. was already available with the respondent-authorities at the time the matter was considered by Delhi High Court, but was not placed before it. I find that in the concluding part of the judgment, it was mentioned that the order should not be used as a precedent in other cases as it had been decided in the peculiar facts of the case. It is the case of the applicant that following this judgment, a number of judicial orders have been pronounced by CAT granting the benefit of this judgment to

other applicants. He has filed a copy of judgment in O.A. no. 1561 of 2008 in which CAT (PB) had given the same benefit to others on the ground that persons similarly circumstanced should not be denied the benefit of the decision.

7. Be that as it may, I find that the applicant has not specifically challenged the O.M. dated 19.9.2003. His prayer is that a mistake had crept in the calculation of eligible pay for sanction of pension. As per Annexure-8, it was calculated as Rs. 2057/- by the Senior Manager (P&A) of Air Port Authority of India. Surely, this calculation had been made on the basis of instructions as contained in the Government Memorandum; but without giving any reason to the contrary, the representation of the applicant as formulated in the notice of the Advocate was turned down by simply stating that the revised pay Rs. 2125/- was under IDA scale of Airport Authority of India. The pensionable pay of Rs. 1850/- as claimed by the applicant was also under Airport Authority of India IDA scale, but relating to the post of Senior Clerk. Admittedly, the applicant was promoted to the post of Office Superintendent, which carried a higher pay scale from 1.12.1989 onwards.

8. On going through the impugned orders, I find that no discussion has been made on merits of the claim of the applicant. It is not clear how the pension in respect of the applicant was sanctioned treating the pensionable pay as Rs. 1850/-, although admittedly last 10 months' average pay came to Rs. 2057/-. It is not the case of the respondents that the equivalent pay in government pay scale for an Office Superintendent was Rs. 1850/- during the corresponding period. When the representation of the applicant was to correct an apparent mistake, and when the

position was endorsed by the recommendations of Airport Authority of India, it is not understood how it could be brushed aside by bringing in concept of IDA/CDA pay scales without discussing the detailed reasoning. In the circumstances, it is difficult to sustain the impugned orders as contained in Annexure nos. 1 & 2; therefore, these two orders are set-aside. The matter is remanded to the Ministry of Civil Aviation to reconsider the issue on the basis of relevant facts/Government instructions on the subject and in the light of relevant case law. The review order shall be passed by way of a speaking order within a period of two months from the date of receipt of a copy of this order. It is also directed that the respondent-authorities should treat the aforesaid O.A. as additional representation. The applicant, if so advised, may file an additional representation alongwith a copy of this order to the Ministry concerned.

8. With the aforesaid observations, the O.A. is allowed.
No costs.


(Dr. A.K. Mishra)
Member-A

Girish/-