

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 374/2000

Date of Decision : 9th March 2001

A.K.Gupte Applicant.

Shri S.P.Saxena Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents.

Shri R.K.Shetty Advocate for the
Respondents.

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the Reporter or not ? **Yes**
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? **No**
- (iii) Library **yes**

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.374/2000

Dated this the 9th day of March 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

A.K.Gupte,
34, Vijay Appts.,
Shivprasad Housing Society,
Vitthalwadi Road, Panmala,
Pune.

...Applicant

By Advocate Shri S.P.Saxena

V/S.

1. The Union of India through
the Secretary,
Ministry of Defence,
DHQ P.O.New Delhi.
2. The Engineer-in-chief,
Army Headquarter,
Kashmir House, New Delhi.
3. The Chief Engineer,
Southern Command,
Pune.
4. The Controller General
of Defence Accounts,
West Block No. 5,
R.K.Puram, New Delhi.
5. The Chief Controller of
Defence Accounts (Pension),
Draupadi Ghat,
Allahabad.

...Respondents

By Advocate Shri R.K.Shetty

..2/-

P.S.



O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking to quash and set aside pensionary award by the Respondent No. 5 by P.P.O. dated 27.11.1987 adversely affecting the applicant which is illegal and contrary to CCS (Pension) Rules, with a direction to the respondents to refund the amount of Rs.14,237/recovered by them on 25.2.1988 along with the interest at the rate of 12% p.a. w.e.f. 25.2.1988 till refund is actually made and to pay the pension to the applicant in accordance with the details contained in PPO dated 22.7.1985.

2. The applicant retired from MES Department w.e.f. 31.5.1984 from the Office of Chief Engineer (P), Port Blair(A&N). He was in receipt of Andaman Nicobar Compensatory allowance when he was serving there. On his retirement, the Respondent No. 5 issued a Pension Payment order dated 22.7.1985 (Annexure-'A-4'), his basic pension was calculated to Rs.587/w.e.f. 1.6.1984. The other retirement benefits were also sanctioned by Respondent No. 5 to the applicant mentioned in Annexure-4. The applicant continued to receive pension as per above P.P.O. dated 22.7.1985 through Bank till January, 1988.

S. Jain

..3/-

3. The grievance of the applicant is that the Respondent No. 5 suddenly and without any show cause notice issued a fresh P.P.O. on 27.11.1987 whereby the applicant's basic pension was reduced to Rs.483/- p.m. from the earlier sanctioned basic pension of Rs.587/-p.m. which was w.e.f. 1.6.1984. On the basis of above lowered basic pension, the Respondent No. 5 also reduced his DCRG from Rs.20,050.55 to Rs.16,221.30, commutation value from Rs.34,257.60 to Rs.28,786.80, an amount of Rs.14,237.05 was recovered by the respondents on 25.2.1988 from applicant's Bank Account without any notice and affording an opportunity to show cause. The applicant submitted several representations to the respondents and ultimately the Respondent No. 5 sent the impugned letter dated 9.6.1999 stating that applicant's basic pension was revised and reduced as the Andaman Nicobar compensatory allowance admissible during his stay there was erroneously taken into account while calculating the pensionary benefits vide P.P.O. No. C/Eng/1285/85 and that since the ACA does not form part of emoluments for pensionary benefits, the pensionary award were revised vide P.P.O.No. C/Eng/Cor/1220/8. The applicant being not satisfied by the above reply, sent a letter dated 23.7.1999 to Respondent No. 4 which was forwarded to Respondent No. 5 vide letter dated 20.9.1999 (Exh.'A-15') and an appeal is also preferred which is rejected on 10.12.1999. Hence, this OA.

J. S. M. /

..4/-

4. The respondents have resisted the claim and alleged that the cause of action is a money claim of Rs.14,237/- which cannot be agitated before this Tribunal after a period of 13 years as the recovery was complete in the year 1987. Regarding re-fixation of pension, it is stated that the respondents are within their powers under Rule 70 of CCS (Pension) Rules, 1972 to amend the P.P.O. in case of errors and the error was the Andaman & Nicobar Compensatory Allowance which is not a part of emoluments under the Rules for the purpose of calculating the pensionary benefits which was detected later on and sought to be corrected. The OA. is also alleged to be barred by time.

5. As the respondents themselves admit the fact that the applicant made several representations to find out as to what is the reason for recovery, the respondents informed the applicant vide order dated 9.6.1999 that the recovery from his pension was ordered on account of the fact that the Andaman Nicobar Compensatory Allowance was erroneously included for the purpose of pensionary benefits. After the said intimation, the applicant preferred an appeal which was rejected on 10.12.1999 and then the applicant filed the OA. on 28.4.2000.

6. Though the recovery was complete in the year 1987, but the said recovery was without any notice/show cause notice, the applicant was not aware of the reasons therefor and the reasons were intimated to the applicant only on 9.6.1999. The applicant

Page 1/-

pursued the remedy of appeal which was rejected on 10.12.1999. Hence, the cause of action accrued to the applicant only on 10.12.1999 - the date of rejection of the appeal. Hence, the OA. is well in time and not barred by limitation as filed within one year from the date of accrual of cause of action.

7. Rule 70 of CCS (Pension) Rules is worth mentioning which is as under :-

"70. Revision of pension after authorisation

(1) Subject to the provisions of Rules 8 and 9 pension once authorised after final assessment shall not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of detection of a clerical error subsequently :

Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the Head of Office without the concurrence of the Department of Personnel and Administrative Reforms if the clerical error is detected after a period of two years from the date of authorisation of pension.

(2) For the purpose of sub-rule (1), the retired Government servant concerned shall be served with a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him.

(3) In case the Government servant fails to comply with the notice, the Head of Office, shall by order in writing, direct that such excess payment, shall be adjusted in instalments by short payments of pension in future, in one or more instalments, as the Head of Office may direct."

..6/-

P. V. M. / -

8. Admittedly, the respondents have not complied with Rule 70 (2) (3) of CCS(Pension) Rules.

Not only this, as the first P.P.O. was issued on 22.7.1985 and the impugned P.P.O. was issued on 27.11.1997, beyond a period of two years, in view of Rule 70 (1) proviso, it was the duty of the respondents to secure the concurrence of the Department of Personnel & Administrative Reforms, as the error is detected after a period of two years which has also been not done by the respondents.

9. In view of the fact that the respondents failed to comply provisions contained in Rule 70 of CCS (Pension) Rules and abruptly without notice and affording an opportunity of being heard, revised the P.P.O. recovered the excess retirement awards, the act of the respondents is violative of Rule 70 of CCS (Pension) Rules. Such an action cannot be endorsed, which is illegal.

10. The learned counsel for the respondents argued on the basis of 2000 SCC (L&S) 882, Union of India & Ors. vs. Sujatha Vedachalam (Smt.) & Anr. that recovery of excess payment on account of wrong fixation of pay can be made. I agree with the learned counsel for the respondents but the said case relates to recovery of excess payment on account of wrong fixation of pay and not recovery of excess payment on account of wrong fixation of pension. Hence, the said authority does not help to the respondents.

Sd/-

..7/-

11. In the result, OA. is allowed, P.P.O. dated 27.11.1987 is quashed and set aside, the respondents are ordered to refund the amount of Rs.14,237.05 to the applicant with interest w.e.f. 25.2.1988 till actual payment is made along with interest at the rate of 12% p.a. and to pay pension to the applicant in accordance with the P.P.O. dated 22.7.1985 till further order, if any. No order as to costs.

P.L. Jain
(S.L.JAIN)

MEMBER (J)

mrj.