

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.218/2001

Date of Decision: 31.05.2002

Shri Raghunath Damodar Pradhan.

Applicant(s)

Shri S.P. Saxena.

Advocate for applicants

Versus

Union of India & others

Respondents

Shri S.S. Karkera for Shri P.M. Pradhan. Advocate for Respondents

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT. VICE
CHAIRMAN
HON'BLE SMT. SHANTA SHAstry. . . MEMBER (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

(3) Library

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(SMT. SHANTA SHAstry)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 218/2001

THIS THE 31ST DAY OF MAY, 2002

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT. VICE
CHAIRMAN
HON'BLE SMT. SHANTA SHAstry . MEMBER (A)

Shri Raghunath Damodar Pradhan,
Age 77 years, Occupation Retired
from Civil Aviation Deptt. Govt.
of India, residing at "Ramya" Prashant
Housing Society, Plot No.7
Lane No.6, Paud Road, Kothrud,
Pune-411 029. Applicant

By Advocate Shri S.P. Saxena.

Versus

1. Union of India
Represented by the Secretary,
Civil Aviation Department,
Govt. of India, New Delhi
Sardar Patel Bhavan,
Parliament Street, New Delhi.
2. International Airport Authority
of India, Yashwant, Palace,
Chanakyapuri, New Delhi-110 021.
3. Director General of Civil
Aviation, (Technical Centre),
Opp. Safdarjung Airport,
New Delhi-3.
4. The Regional Executive Director
Western Region, Airports
Authority of India, (International
Wing), Mumbai-99.
5. The Director (Civil Aviation
Department) Airworthiness, Airports
Authority of India, Juhu Aerodrome,
Mumbai, Kalina Bombay.
6. The Pay & Accounts Officer,
Government of India
Ministry of Civil Aviation
and Tourism, Juhu Aerodrome,
Mumbai-400 054. Respondents

By Advocate Shri S.S. Karkera for Shri P.M. Pradhan

O R D E R
Hon'ble Smt. Shanta Shastry. Member (A)

The applicant is claiming that his pension should have been fixed taking into consideration the pay scale of Rs.1800-2000 in the Department of Civil Aviation at the time of his retirement from that department. The applicant served in the Indian Navy between 1942 and 1946. Thereafter, he entered the Central Government service in 1946 in the Civil Aviation Department and worked there upto 30.4.1974. He went on deputation to the International Airports Authority of India (IAAI) and was treated on deputation from 15.8.1972. He was permanently absorbed from there and retired with effect from 31.3.1983 on superannuation in the capacity of General manager. On his absorption in the IAAI he claimed lump sum amount i.e. he commuted 100% of pension. The pension was sanctioned on 22.7.1996 vide PPO C/CA/6. His pension was fixed at Rs.524/after revising the same.

2. Thereafter, as a result of the judgment of the Supreme Court, 1/3rd of the commuted value of pension was allowed to be restored after 15 years. Therefore, the applicant applied on 10.01.1997 and 26.3.1997 for restoration of 1/3rd pension of commuted pension after 15 years. His 1/3rd pension was accordingly restored by the respondents and the pension came to be fixed at Rs.479/- payable from 06.9.1991. It was later on revised to Rs.525/- per month. He was also paid arrears

for the period from 06.9.1991. Therefore, in view of the instructions regarding revision of pay of retired government servants, who retired prior to 1986 and 1996 the applicant's pension was also revised.

3. The grievance of the applicant is that his entire service including the service in the Navy from 1942 to 1946 after omitting the period from 01.3.1942 to 30.4.1942 as he was minor at that time, should be counted as qualifying service for commutation of his pension which has not been done by the respondents. If that is added, his total qualifying service would come to 31 years three months and 25 days. It is the contention of the applicant that the AGCR had revised the applicant's said service in Navy in the revised PPO/C/CA/6.

4. The other grievance of the applicant is that he was on deputation from his post as Senior Aerodrome Officer (SAO) at Nagpur in Civil Aviation Department (CAD) to the post of Deputy Director in the IAAI from 15.8.1972. He was promoted as Director on adhoc basis by the Ministry of Civil Aviation letter dated 28.3.1974 in his parent department and his pay was raised to Rs.1800 per month in the scale of Rs.1800-2000. However, his pension had been calculated on the basis of the pay drawn by him in the post of SAO. Thus according to the applicant erroneous application of pension rules

deserves to be corrected. Even the gratuity amount would undergo change if the pay in the post of Director were to be taken into account. According to the applicant, because of his pension was fixed on the basis of erroneous pay fixation by the respondents he was a loser to the extent of approximately Rs.50,000/- and above. From 01.01.1996 the pay scale of the post of Director has been raised to Rs.14300-2000. Therefore, national fixation of pay of the applicant ought to have been done on the basis of Director's pay scale and the pension should also have been fixed on the basis of such pay scale. But the respondents have restored 1/3rd of his commuted pension on the basis of pay in the substantive post of SAO. His further grievance is that having been absorbed in IAAI from 01.5.1974 the applicant's 1/3rd commuted pension should have been restored from 01.5.1989 instead it was made payable from 06.9.1991 without any valid reason.

5. The respondents have taken the preliminary objection that the application is time barred in so far as it relates to fixation of his pay. His pension was fixed on the basis of pay last drawn by him in 1974 when he retired. His pension case has been finalised at the time of his absorption and the PPO was issued on 22nd July, 1974, the pension was paid with effect from 01.5.1974. The applicant had commuted 100% pension on 06th September, 1976. What the department has done now

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...5.

is only to restore the 1/3rd commuted pension as 15 years have elapsed since his commutation. The applicant had drawn the lump sum amount on his absorption in the IAAI.

6. When the applicant was absorbed in IAAI there were two options before him, either to draw prorata pension or to draw lump sum in lieu of pension. The applicant had opted to draw lump sum amount.

7. The respondents submit that the applicant had rendered service in CAD for the period from 20.12.1946 to 30.4.1976. The qualifying service was taken into account for calculation of pension at the time of his retirement i.e. upto 30th April, 1974. He was holding the post of SAO and therefore got all pensionary benefits as per the pay drawn as SAO and not as Director as claimed by the applicant in his application. The promotion to the grades of Deputy Director and Director were given to him on proforma basis by the CAD. He never drew salary in those grades as he was not entitled for benefit of pay scale of Director while retiring from CAD. He has been granted all the benefit of the revised pay scales.

8. In regard to the counting of service in Navy it is stated that the applicant was required to give option within a period of one year after joining civil service

and then he ~~is~~ ceased to draw pension and refund the benefits received from military service along with the interest thereon till he refunds the same to Government. According to the respondents it is difficult to state whether the applicant had applied for counting of his military service rendered by him in the Navy within the stipulated period of one year or at a later date, because it would be difficult to establish it at this belated stage. As per statement recorded by the applicant he was a minor at that time, the respondents have therefore presumed that he never exercised any option and therefore, it could not be counted towards qualifying service for pension.

9. We have carefully heard the learned counsel for the applicant as well as the respondents. It is obvious that the applicant is agitating the cause of action which arose way back in 1976 when his pension was fixed with effect from 1974. Thus, definitely the application is hit by limitation, delay and laches. The applicant has claimed that the cause of action arose only because of the Supreme Court judgment and the instructions issued in pursuance thereof to restore 1/3rd portion of the pension commuted by the applicant after a period of 15 years. But according to us that is not the case. The real cause has arisen only when he retired in 1974 and accepted the lump sum amount towards pension. He did not question his pay fixation at that relevant time

and continued to draw the pension accordingly for the past 25 years. It is only now he is challenging his pay fixation in the post of SAO instead of being fixed in the post of Director. The learned counsel once again however pleaded that this being a matter of pay fixation, limitation would not apply as has been held in the case of M.R. Gupta Vs. Union of India 1995 (5) SCALE 29 (SC) and therefore, the delay needs to be condoned.

10. On merits, we find that the applicant was no doubt promoted as Director vide letter dated 28.3.19⁷⁴ in the Civil Aviation Department. The applicant retired from the Department of Civil Aviation from 30th April, 1974. However, the applicant was also on deputation from 1972 with the IAAI. Thereafter, he was granted proforma promotion to the post of Director. He had never worked in the parent department in the post of Director. His substantive post in the parent department was that of SAO only. Since he had never drawn emoluments in the pay of Director or Deputy Director in his parent department, the question of considering the pay in those posts for purposes of fixation of pension does not arise at all. In our considered opinion therefore, the respondents rightly fixed his pension on the basis of average emoluments of 10 months in the post of SAO in the CAD. The applicant has contended that according to the revised pay rules and the instructions

regarding drawal of pension issued on 17th December, 1998 and earlier on 27th October, 1997 it was made clear that pension shall continue to be calculated at 50% of the average emoluments in all cases and shall be subject to a minimum of Rs.1275/- per month and a maximum of upto 50% of the highest pay applicable in the Central Government. But the full pension in no case shall be less than 50% of minimum of revised scale of pay introduced with effect from 01st January, 1996 for the post held by the employee at the time of his retirement. Applicant says that irrespective of the designation of the post what mattered is the pay scale and since the applicant was in the pay scale of Rs.1800-2000 his pension ought to have been fixed based on the pay of Rs.1800/- per month that is the pay of the Director. As already pointed out the applicant never worked as Deputy Director or Director in his parent department of Civil Aviation. He was on deputation and as per rule, he was granted proforma promotion. We therefore, do not find any reason to interfere with the fixation of pension of the applicant as on the date of his retirement from 30.4.1974. Accordingly, the OA is dismissed. No costs.

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(SMT. SHANTA SHAstry)
MEMBER (A)

B. Dikshit

(BIRENDRA DIKSHIT)
VICE CHAIRMAN

Gajan

*Order/Judgement d/13/8/2
to Applicant/Respondent(s)
on 25/8/81*