

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Wednesday the 14th day of August, 2002

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)

O.A.393 of 2001

Srinivas Vishnu Kelkar,
Ex-Foreman (Tech.)
Ammunition Factory, Kirkee,
Pune.

R/o Plot No.5, Mahalaxmi Housing Society,
Anandnagar, Hinghe Khurd, Pune.
(By Advocate Shri J.M.Tanpure)

- Applicant

Versus

1. Union of India
through the General Manager,
Ammunition Factory, Kirkee,
Pune.
2. The Chief Controller of Defence
Accounts (Pensions),
Allahabad.
3. The Secretary,
Government of India,
Ministry of Personnel,
Public Grievances and Pensions,
Department of Pension & Pensioners'
Welfare, Lok Nayak Bhawan, Khan Market,
New Delhi.
(By Advocate Shri R.R.Shetty for
Shri R.K.Shetty)

- Respondents

ORAL ORDER

By Hon'ble Mr.B.N.Bahadur, Member (A) -

The Applicant in this OA comes up to the Tribunal as he is aggrieved in the fact that he is getting less pension than two persons by name Shri S.R.Limaye and Shri J.A. Gulanikar, who were junior to him. He seeks relief as described in Para 8 of the OA.

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2. The applicant retired from service on 1.2.1986, as Foreman, from the organisation of respondent no.2. He describes as to how this has come about, and takes the plea that he cannot receive less pension than those persons who were junior to him and whose pay was lower than his at the time of retirement.

3. The Respondents have filed a written statement of reply where the averments of applicant in OA are made parawise, and basic factual details provided. The calculation has been described in detail and it is stated, in the additional reply statement, that the Applicant was provided with an option for fixation of pension based on the pay drawn in CDS (Revised Pay) Rules, 1986 or based on pay drawn by him in the pre-revised scale. The option was exercised by Applicant on 4.7.1987. The consequences of the different options taken are sought to be illustrated in the calculation sheet which is annexed at Exhibit AF-1 on page 41 of Paper Book. In fact, this is the main stand that has been taken by the Respondents' learned counsel while arguing his case.

4. I have heard both learned counsel and have seen all papers in the case. In fact arguments were heard in this case at length over more than a day, and the Respondents were asked to prepare a comparative statement to assist the Tribunal in assessing the arguments taken by both sides. Copies of a comparative statement was provided on the last occasion by



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Respondents learned counsel to the Tribunal as also to the learned counsel of the Applicant. This is taken on record and we have gone over it with the assistance of both counsel today. After perusing the papers in the case and hearing the arguments made by both sides, the question that arises basically in this case is as to whether the drawing of lower pension by the applicant as compared to the other two persons comes as a result of option exercised by him. This is the main question that I have sought to examine because it is an accepted principle that if a consequence comes as a result of an option exercised then it has to be presumed in law that option was exercised with full knowledge of consequences, and grievances cannot be later made, if adverse consequence/s follows.

5. It is admitted (as stated by the Respondents in their additional written statement) that the applicant exercised the option in respect of his pensionary benefits being based on pay drawn in the CDS (Revised Pay) Rules, 1986. I, therefore proceed straight to the calculation sheet which is annexed at page 41. The point that was made by learned counsel for Respondents was that in case of option (a) the Applicant would have got more pension but would have got merely Rs.9,000/- to




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Rs.10,000/- less in gratuity. The point made was that this is a plus/minus situation in options and that it was upto the Applicant to take his choices which were to be final in any case.

6. The learned counsel for the Applicant Shri Tanpure took me to an Office Circular/Memorandum dated 18.10.1999 (Page 21), a copy of which is annexed at Exhibit-A-6. This OM issued by the Department of Personnel & Training, according to him, makes it clear that such type of anomalies do occur. I have gone through the OM with the assistance of both counsel. It must be stated that this OM contains the title of subject as follows:-

"Implementation of Governments decisions on the recommendations of the Vth Central Pay Commission Revision relating to pension/commutation of pension."

It is clear from the subject matter that it relates to the Fifth Pay Commission's recommendations and problems relating thereto. The arguments made by the learned counsel Shri Tanpure to the effect that this O.M. should apply mutatis-mutandis to anomalies out of Fourth Pay Commission report cannot be accepted. It is not as if that O.M.contains basic principle of rules which can be applied mutatis-mutandis. Recommendations of Fourth Pay Commission and Fifth Pay Commission refer to specific facts in respect of pay scales and it is not as though it is a principle enunciated for all pay scale calculations. We therefore cannot



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accept the contention that this circular of 18.10.1999 will apply to the Applicant's case mutatis-mutandis, as it were. Reference was also sought to be drawn to another OM/circular of 17.12.1998 where it is stated that the pensioner must draw pension not less than 50% of minimum of pay scales of the post held with reference to the pay scales as on 1.1.1996. It is clear from the figures given in respect of pay scales and actual pension drawn by Applicant that the Applicant is already drawing pension higher than 50% of the minimum of Post V CPC pay scale. Hence, the argument does not subsist.

7. Learned counsel also referred to the general point on discrimination stating that it was unfair and violative of Article 14 of the Constitution that a senior should draw less pension. On the one hand an option governs consequences as already dismissed, and on the other hand there is no provision brought to my notice that notwithstanding any other factor such protection is available to seniors. Hence, in this respect the rules will need to be followed and no discrimination is said to be involved especially when an option has been exercised voluntarily. It has to be concluded that when an option is exercised it has been exercised in full knowledge of all pros and cons.

8. In view of the above discussions, this OA is hereby dismissed. No orders as to costs.

B. N. Bahadur

(B.N. Bahadur)
Member (A)