

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 117/2001

Date of Decision : 19th July 2001

S.K.Jain

Applicant

Shri M.S.Ramamurthy

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri R.R.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 ?
- (iii) Library Yes

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

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO. 117/2001

Dated this the 19th day of July 2001.

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

S.K.Jain,
R/o 502, West End Apartment,
Sector 19A, Nerul,
Navi Mumbai.

...Applicant

By Advocate Shri M.S.Ramamurthy

V/s.

1. Union of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi.

2. Engineer-in-Chief,
Kashmir House,
Army Head Quarters,
DHQ PO New Delhi.

3. Chief Engineer (Navy),
26, Assaye Building,
Colaba, Mumbai.

...Respondents

By Advocate Shri R.R.Shetty

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 for a direction to the respondents to count the Special Pay of Rs.400/- drawn by the applicant at the time of his retirement as Additional Chief Engineer as part of basic pay and refix/revise the pension and

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post retiral dues on that basis and pay the arrears along with interest at the rate of 18% p.a. till payment. The order conveyed vide letter dated 15.11.2000 is also sought to be quashed and set aside.

2. The applicant was promoted as Additional Chief Engineer and was directed to join the post from 1.6.1992 vide order dated 6.5.1992 (Exhibit-'C'). The scale of pay of the post of Additional Chief Engineer is Rs.4500-5700 + Rs.400/- as a Special Pay. The applicant's, who is superannuated on 30.6.1993, retiral dues and pensionary benefits were worked out on the basis of the last pay drawn by the applicant without taking into account the Special Pay of Rs.400/-. The applicant filed a representation dated 7.6.1999 addressed to the Secretary, Ministry of Defence (Exhibit-'D') was replied by Respondent No. 2 stating that his request was under consideration. He further represented the matter by letter dated 23.2.2000 vide Exhibit-'F' which is replied vide letter dated 3.3.2000 and a further reply dated 3.11.2000. On 15.11.2000 the claim of the applicant was rejected on the ground that he was not party to the OA. in which the identical relief to the one claimed by the applicant was granted. Hence, this OA. for the above said reliefs.

0.01 L. E. .3/-

3. The claim of the applicant is being resisted by the respondents on the ground that the applicant has filed this application after a lapse of 8 years from the date of his retirement, hence claim is barred by time. It is further alleged that there is no question of considering the special pay for the purpose of fixation of the pension as it is very clear under Rule 33 of the CCS (Pension) Rules which defines the emoluments, which are taken into account for the fixation of the pension. As per Rule 33 of CCS (Pension) Rules, the emoluments means basic pay as defined in Rule 9 (21) (a) (i) of the F.R. Rule 21 (a) (i) of F.R. is as follows :-

"Pay means the amount drawn monthly by a Government servant as the pay other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in officiating capacity, or to which he is entitled by reasons of his position in a cadre."

Accordingly, the respondents have rejected the applicant's demand for consideration of special pay for the purpose of fixation of pension. It is claimed that the Central Government is the sole competent authority to decide on the issues concerning pay, special pay and allowances of posts under its jurisdiction and no other authority will have the locus standi in interfering in these matters. The application is therefore not maintainable in law. Hence payed for dismissal of the OA:

S.Y. -

4. The applicant has claimed the above said reliefs on the basis of the judgement dated 1.7.1998 in OA.NO.2253/97 Raj Kumar & Ors. vs. Union of India & Ors. decided by the Principal Bench, New Delhi on 1.7.1998. On perusal of the same, I am of the considered opinion that the defence of the respondents is similar one and after considering the defence and the earlier precedents, the Tribunal has allowed the claim of the applicants with a direction to count the special pay of Rs.400/- as a part of basic pay received by the applicants at the time of his retirement as Additional Chief Engineer and to refix/revise the pension and other post retiral dues accordingly.

5. A similar matter was also decided by this bench in OA.No. 227/95 P.D.Bansode & Anr. vs. Union of India & Anr. vide order dated 27.7.1999 and following the same proposition of law, the claim of the applicant was allowed. The said order was the subject of Writ Petition No. 6654/2000 which was also rejected by the Hon'ble High Court of Mumbai. Thus, I find that the question is no longer res-integra and is covered by number of judgements, out of which some are referred above.

6. The pensionary benefit is a continuing cause of action, hence the OA. is maintainable for actual benefits for one year prior to the filing of the OA.

B.S.N./

7. In the result, the claim of the applicant deserves to be allowed and is allowed. The respondents are hereby directed to count the Special Pay of Rs.400/- drawn by the applicant at the time of his retirement as Additional Chief Engineer as part of basic pay and refix/revise the pension and after fixing the pension, the applicant must be given higher pension and consequential pensionary benefits as per rules. As the applicant has moved this Tribunal on 6.2.2001, the actual monetary claim of the applicant is restricted to one year prior to the filing of the OA. The said exercise be completed within a period of three months from the date of receipt of a copy of this order. No order as to costs.

S.L.JAIN
(S.L.JAIN)

MEMBER (J)

mrj.