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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
(CAMP: NAGPUR)

Original Application No: 229/92.

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DATE OF DECISION: DECEMBER 12, 1994.

Shri Madhusudan Dinkar Joshi, Petitioner

Applicant in person, Advocate for the Petitioners

Versus

Union Of India & Others, Respondents

Shri R. P. Darda, Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M. S. Deshpande, Vice-Chairman.

The Hon'ble Shri M. R. Kolhatkar, Member (A).

1. To be referred to the Reporter or not? NO
2. Whether it needs to be circulated to other Benches of the Tribunal? NO


(M. S. DESHPANDE)
VICE-CHAIRMAN.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NAGPUR CIRCUIT BENCH, NAGPUR.

O.A. NO.: 229/92.

Madhusudan Dinkar Joshi ... Applicant
Versus
Union Of India & Others ... Respondents.

CORAM :

Hon'ble Shri Justice M. S. Deshpande, Vice-Chairman.

Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCE :

1. Applicant in person.
2. Shri R. P. Darda,
Advocate for the Respondents.

ORAL JUDGEMENT : DATED : 12.12.1994.

¶ Per. Shri M. S. Deshpande, Vice-Chairman. ¶

1. The applicant by this petition, seeks a direction to the Respondents for payment of the commuted value of personal pension of Rs. 51/- per month plus interest on it @ 18% per annum from 13.02.1986 till the date of its actual drawal plus legal fee of Rs. 2000/- or a direction to grant personal pension at Rs. 51/- per month plus relief on Rs. 1,181/- per month for the period from 13.02.1986 till the date of actual drawal plus grant of personal pension at Rs. 51/- per month.

2. The applicant, who was working as an Accounts Officer in the Accountant General's Office, was sent on deputation on 03.08.1985 to Bharat Heavy Electrical Limited. He was deemed to have retired from Government service on 03.08.1985 and absorbed as a Senior Accounts Officer with

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Bharat Heavy Electricals Limited. The applicant was granted Rs. 1,130/- as Pension and Rs. 51/- as personal pension, on the basis of letter dated 21.06.1985. Para 2 of that letter reads as follows :-

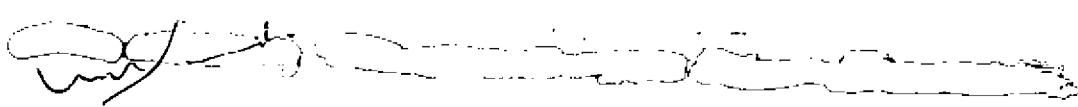
"It has further been decided, in modification of paras 4 and 7 of the Ministry of Finance Office Memorandum of 30th April, 1985 that the benefit of dearness pay as mentioned in para 1 above would be automatically given, both for pension/service gratuity and DCRG to all Central Govt. servants retiring on or after 31.03.1985. However, where the amount of pension so calculated results in less as compared to the total amount of pension plus relief of pension, admissible at the average index level 320, the loss will be made up by the grant of personal pension to the individual concerned. It may be clarified that the amount of personal pension will not be taken into account for the purpose of determining the commuted value of pension and relief on pension."

3. In a communication sent to the applicant on 16.12.1985, an option was given to the applicant. Para 5 reads as follows :-

"He will exercise an option, within June 4, 1986 for either of the alternatives indicated below :

- a) Receiving the pro-rata monthly pension and death-cum-retirement gratuity as admissible under Clauses (2), (3) and (4) above, under the usual Government of India Rules and
- b) Receiving the pro-rata Gratuity and lumpsum amount in lieu of pension worked out with reference to commutation tables obtaining on the date from which pension will be admissible and payable under option orders."

4. The contention of the applicant is that, option (a) will not apply to him and since he exercised option (b), the personal pension should have been calculated



while determining the lumpsum amount in lieu of pension. This argument sounds attractive but considering the contents of the letter dated 21.06.1985, to which we have referred, the amount of personal pension is not required to be taken into account for the purpose of determining commuted value of pension. The applicant's contention is that, the last portion of the letter would apply, if he was to exercise option (a) and in the circumstances in which he was placed, because of his switching over to Bharat Heavy Electricals Limited, the lumpsum amount in lieu of pension, should also include the personal pay of Rs. 51/- which was being paid to him. It is however apparent from page 28 of Swamy's Brochure on Revision of Pension Benefits where the recommendations of the Fourth Pay Commission have been mentioned, that the position was as follows :-

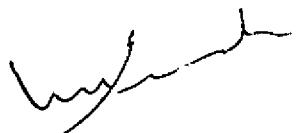
"In the case of pensioners who retired on or after 31.03.1985 and who have been granted personal pension in terms of Department of Pension and Pensioners' Welfare O.M. dated 21.06.1985, Government may consider paying a lumpsum amount in lieu of the personal pension on the basis considered appropriate so that this does not continue as a separate element in the rationalised pension structure suggested by the Commission. The decision of the Government was that, this was not accepted. Personal pension shall continue to be paid monthly. It will also not qualify for dearness relief beyond CPI 608."

5. It is therefore clear that, the Pay Commission's recommendation was not accepted by the Government and the Government had taken a conscious decision, not to include the personal pension in the term 'Pension', as used in clause (b) of para 5 of the letter dated 16.12.1985. If this was the decision so far as the instructions and rules are concerned, the personal pay could not have been included while determining the lumpsum amount in lieu of pension.

We must make it clear that, there is no challenge before us to any of the rules and all that we are called upon to do is, to interpret the rules and the instructions. As we interpret the rules, we find that the rules do not provide for payment of either pension when option is given in terms of para 5(b) or taking the personal pension into consideration, while determining the lumpsum amount in lieu of pension. In view of this position, we see no merit in the application and it is dismissed.

M. R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).



(M. S. DESHPANDE)
VICE-CHAIRMAN.

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