

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 834/92

Transfer Application No:

DATE OF DECISION 7-1-94

Shri R.C.Ravalani Petitioner

Applicant in person Advocate for the Petitioners

Versus

Union of India Through the Respondent

Secretary Ministry of Defence South Block
New Delhi and Ors.

Shri R.K.Shetty Advocate for the Respondent(s)

CORAM:

The Hon'ble ~~Smt.~~ Smt. Lakshmi Swaminathan, Member(J)

The Hon'ble Shri

1. ~~Whether Reporters of local papers may be allowed to see the Judgement ?~~
2. To be referred to the Reporter or not ? *yes*
3. ~~Whether their Lordships wish to see the fair copy of the Judgement ?~~
4. Whether it needs to be circulated to other Benches of the Tribunal ? *NO*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(6)

O.A.834/92

Shri R.C.Ravalani .. Applicant

vs

Union of India .. Respondents.
Through the Secretary
Ministry of Defence
South Block New Delhi-110011
and Ors.

Coram: Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Appearance:

Applicant in person.

Shri R.K.Shetty, Advocate
for the respondents.

Dated: 7-1-94

Oral Judgement

(Per: Hon'ble Smt.Lakshmi Swaminathan, Member(J))

This application has been filed under section 19 of the Administrative Tribunal's Act. In this application the applicant has sought revision of pension consequent upon the Ministry of Defence (Ammunition Factory Orders) dated 27-9-89.

2. The facts of the case are that at the relevant time, namely, on 1-1-73, the applicant was holding the post of Supervisor 'A' Grade in the Ammunition Factory at Khadki, Pune. He had been promoted from the post of Supervisor 'A' grade to Chargeman Grade I on 20-6-80 and has later on taken voluntary retirement on 31-3-85.

3. As per the Ammunition Factory Orders dated 27-9-89, which was passed in pursuance of certain judgements of this Tribunal, persons in this grade were eligible for notional fixation of pay in the scale of Rs.425-700 with effect from 1-1-73 or the actual date of their holding the post of Supervisor 'A' Grade (Technical). The order further provided that these persons will not be eligible for any arrears of pay and allowances upto 6-5-88, their pay will be refixed notionally in the revised pay scale w.e.f. 1.1.86 but that they will be eligible for arrears with effect only

from 7-5-88 on the revised pay. The respondents vide letter dated 13-12-91, quoting C.D.A.(P) Allahabad letter, rejected the claim of the applicant for refixation of his pension in the Grade of Supervisor 'A' Grade with effect from 1-1-73 on the grounds that since no arrears of pay accrued to the individual ^{pay not drawn} /will not be taken into consideration for calculation of his pension. Being aggrieved by this order dated 13-12-91 the applicant has approached this Tribunal for the following reliefs :-

- (i) revision of his pension based on the refixation of pay in terms of Ministry of Defence order referred to above.
- (ii) Pay the arrears of pension w.e.f. 1-4-1985 or alternatively
- (iii) Pay the difference in other retirement benefits like gratuity, commutation etc.

4. The applicant has referred to the defination of 'pay' in FR 9 (21)(i) (a) and F.R.17(i). His claim is that since he was actually holding the post of Supervisor 'A' Grade (Technical) at the relevant time when the Ministry of Defence order regarding refixation of pay was passed, he was entitled to be paid this amount or atleast the amount should have been taken into consideration for revision of pension. He also drew my attention to the Controller General of Defence Accounts letter No.2412-AT-P(PCC) dated 14-9-78 which reads as follows:-

"Controller General of Defence Accounts Decision:-
The question whether the notional increase in pay granted to Senior Officers as a result of stepping up of pay with reference to the higher pay of junior officers granted under the provisions of Ministry of Defence OM No.2(24)/74/D (Civ-I) dated 27-9-74 should count for reckoning the average emoluments for determining their pension/gratuity was taken up with the Administrative and Financial authorities at the Headquarters.

In this context they have stated that as far as the rule position is concerned only the emoluments actually drawn can be taken into account for purpose of pension vide Note 1 below Rule 33 of the CCS (pension) Rules, 1972. However, in cases where pay has been revised from a retrospective date but the arrears arising out of such revision are not actually paid, the notional emolument may be allowed to count for pensionary benefits as a special case in relaxation of rules. Each such case will, however, be referred to Government by the appropriate administrative authority together with an audit report for consideration on its merits and issue of necessary orders."

5. In view of the aforesaid letter of the C.G.D.A., Ministry of Defence, the reasons given by C.D.A.(P) Allahabad in his letter dated 13-12-91 are clearly ultra vires and invalid. The CGDA's letter provides that the notional emolument may be allowed to count for pensionary benefits as a special case in relaxation of rules. For this purpose the C.D.A.(P) Allahabad who has dealt with the case of the applicant should have referred the matter, alongwith all the relevant papers to the Government i.e. the Minister of Defence for decision on merits and necessary orders. Obviously the CDA (P) has failed to do this. Such lapses on the part of departmental officers shows lack of application of mind which has resulted in this litigation which could have been possibly avoided if the relevant instructions had been followed.

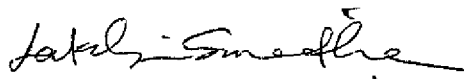
6. The applicant also relied on a number of decisions of this Tribunal in the cases of Santosh Ch. Majumdar vs UOI (1993 25 ATC P. 297); Kishanlal Kalal vs State of Bihar/for (1990 14 ATC 822); and T.N. Barghava vs UOI (1992 (2)) through Secretary Ministry of Home Affairs, ATJ 527 CAT Jabalpur Bench (1992 (2)); and R.P. Manchanda vs Union of India and Ors 1989 ATC 551.) In these cases the Tribunals have allowed the claims for retirement benefits based on notional fixation of pay.

7. In view of the facts and circumstances the following order is passed:-

⑦

Order:

The respondents are directed to consider the case of the applicant for revision of pension and other benefits as a result of the notional revision of his pay with retrospective effect vide order dated 27-9-89 in terms of the Controller General of Defence Accounts decision dated 14-9-78 and pay the revised pensionary benefits within a period of two months from the date of receipt of the copy of this order. There will be no order as to costs.


(Smt. Lakshmi Swaminathan)
Member (J)

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