

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 945/93

Gawanlal Dongarchand Bhandari,
 EME Colony, Bunglow No.43,
 Bhingar,
 Ahmednagar - 414 002.

.. Applicant

-versus-

1. The Secretary
 to the Govt. of India,
 Ministry of Defence,
 Engineer Branch,
 New Delhi - 1.
2. Chief Engineer,
 Engineer Branch
 HQ Southern Command,
 Pune - 411 001.
3. The Garrison Engineer
 GE(Indep)(Dockyard Maintenance)
 Naval Dockyard,
 Vishakhapatnam - 530 014.
4. Area Accounts Officer,
 Staff Road,
 Secunderabad.
5. The Controller,
 Controllerate of Defence
 Accounts(Pension)
 Allahabad.

.. Respondents

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

Appearances:

1. None for the applicant.
2. Mr.Raviv Shetty
 Counsel for the Respondents.

JUDGMENT:

(Per M.R.Kolhatkar, Member(A))

Date: 28/2/95

In this O.A. the facts are
 as below :

The applicant was employed in the office of the respondent No;3 w.e.f. 14-6-1961 and served upto 31-8-1986. He was on Extra Ordinary Leave w.e.f. 2-9-1985 to 31-8-86 i.e. till the date of his voluntary retirement.

The respondents have fixed his pension on the basis of last drawn pay Rs.500/-p.m. in the pre-revised scale which was Rs.425-700. Consequent on the recommendations of IVth Pay Commission this scale has been revised to 1200-2.40 and if the pay of the applicant is fixed in the revised pay it is contended by the applicant that scale it would have been Rs.1500/-p.m. at the time of retirement. The grievance of the applicant is that since he retired after the effect was given to the recommendations of IVth Pay Commission his pension should have been fixed on the basis of his notional pay in the revised scale as per the IVth Pay Commission. It is this action of the respondents in fixing his pension on the basis of last pay drawn in the unrevised scale that is impugned by the applicant.

2. The respondents have stated that the pension has been correctly fixed as per rules viz. Rule 33 and 34 of C.C.S.(Pension)Rules,1972. Rule 33 deals with emoluments and Rule 34 deals with average emoluments. Note 3 below Rule 33 states as below :

"Note 3: If a Government servant immediately before his retirement or death while in service had been absent from duty on extraordinary leave, or had been under suspension, the period whereof does not count as service, the emoluments which he drew ^{before} immediately proceeding on such leave or being placed under suspension shall be the emoluments for the purposes of this rule."

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Note 2 below Rule 34 states as below:

"Note 2. If, during the last ten months of his service Government servant had been absent from duty on extraordinary leave, or had been under suspension the period where of does not count as service the aforesaid period of leave or suspension shall be disregarded in the calculation of the average emoluments and equal period before the ten months shall be included."

According to the respondents since the applicant was on Extra Ordinary Leave at the time of retirement and since the date of revised pay scale fell during the period of 10 months the question of giving any notional pay fixation when he had not actually drawn pay in the revised pay scale does not arise. The applicant, however, relies on Rule 21 which reads as below:

"21. Counting of periods spent on leave
All leave during service for which leave salary is payable and all extraordinary leave granted on medical certificate shall count as qualifying service:
Provided that in the case of extraordinary leave other than extraordinary leave granted on medical certificate the appointing authority may, at the time of granting such leave, allow the period of that leave to count as qualifying service if such leave is granted to a Government servant."

According to the applicant who had filed the points of argument in writing the effect of Rule 21 was not taken into account in Rule 34 as nobody had noted for the same till date.

Thus the applicant wants us to read in Rule 34

something which is not there.

3. It is well settled that the pension is valuable property right of a retired Govt. employee but that right is essentially governed by Rules. A government employee cannot claim pension d'hors the rules. The claim of the applicant amounts to claiming into pension by reading ~~17~~ Rules 33 and 34; material which is not there. We are unable to go along with the applicant in this line of reasoning. We do not find any merit in this application which is liable to be dismissed which we dismiss. There will be no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)

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