

(P)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1961/93

Transfer Application No:

DATE OF DECISION: 24/10/94

Shri. D.G. Baindoor Petitioner

Shri. V.M. Bendre Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

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

CORAM :

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

The Hon'ble Shri

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(11)

O.A. 961 of 1993

Shri. D.G. Baindoor

... Applicant

Vs.

1. Union of India

2. Director of Supplies &
Disposals,
Bombay - 400 038.

3. Deputy Controller of Accounts,
Bombay 400 038.

4. The Branch Manager,
Union Bank of India
• Goregaon West Branch
Bombay - 400 062.

... Respondents

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

APPEARANCES

1. Shri. V.M. Bendre, Counsel
for applicant
2. Shri. R.K. Shetty, Counsel
for respondents

JUDGMENT

DATED : 29-10-94

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

The applicant retired on 11/10/1968 and is drawing pension as per Pension Payment Order vide Exhibit 'A2'. The amount of pension of the applicant is shown as Rs. 140/- per month. It is the case of the applicant that the Central Government by O.M. No. F1(3)-EV/83 dated 22nd October 1983 on the subject of "Application of Liberalised Pension Formula to pre-31.3.79 - Pensioners - Implementation of the judgment of the Supreme Court," issued orders implementing the judgment of the Supreme Court in relation to

liberalised pension formula which was introduced on 25.5.79. In part B, Annexure to the Memorandum, instructions have been given regarding calculation of arrears due - preparation of calculation-sheet. In Para B of Part B of Annexure, particulars to be noted from Ready Reckoners (Table1) have been given, which is reproduced below :

"The sheet must indicate -

- (1) the amount of revised pension
- (2) the amount of difference in the existing and revised rates of pension
- (3) revised total rate of TI/AHI/AHR and
- (4) the amount of difference in existing and revised rate of TI/AHI/AHR.

While the amount for items (1), (2) and (4) can be taken from the ready-reckoner (Table 1) the amount for item (3) may be determined by adding/subtracting the difference referred to in (4) from the existing rates of these elements "

2. It is the case of the applicant that the calculation has not been done properly by the Department as a result of which the applicant has been put to substantial loss, in particular, the applicant stated in para 4.12 that

" 4.12 Applicant states, in terms of the foregoing guidelines, the revision of pension should have been as follows, in terms of ready reckoner table 1 (S.B. 15/16) calculation sheet (S.B.11)

Name of item	Existing Rate	Revised Rate	Difference
9(a) Pension before computation	140	177	37
9(b) Total of TI/AHI/AHR	115	147	32
TOTAL	255	324	69

(13)

3. The applicant therefore prays to declare that the applicant is entitled to receive revised monthly pension of Rs.324/- with effect from 1.4.79 and consolidated pension of Rs.849/- monthly with effect from 1.1.1986 and for consequential benefits.

4. The respondents have resisted the claim of the applicant. In the first instance, they have argued that the O.A is liable to be dismissed on the ground of being time-barred. They have stated that the amount of pension taken as Rs.324/- for working out consolidated pension in terms of OM No. 2.1.87-PCI-1 dated 16.4.87 is not correct. The correct revised rate of pension should be Rs.218, as given by the respondents in the following table.

Name of item	Existing rate	Revised rate	Difference
a. pension (before commutation)	140	177	37
b. Total of T1, AHI and AHR if any	T1 - NIL AHI - 20 AHR - 21	T1 - NIL AHI - 20 AHR - 21	NIL
Total	181	218	37

5. We had heard the counsel for the parties on 8.9.94 and on that day we had passed the following order :

" Heard Shri.V.M. Bendre, counsel for the applicant and Shri.R.K.Shetty, counsel for respondents.

The issue is regarding the calculation of revised pension in terms of liberalised pension formula vide Ministry of Finance O.M dated 22.8.83. There is no dispute that the existing rate of pension is Rs.140/- and that according to the Ready Reckoner revised pension will be Rs.177/-. To this revised rate of pension, three allowances : TI, AHI, AHR are to be added. According to the respondents, TI-Nil, AHI-20 and AHR - 21 totalling Rs.41/-. All these amounts add up to the revised pension of Rs.177/- to which DA is also added to arrive at the total amount payable. According to the applicant, he was drawing Rs.255/- from the Bank as on 1.4.79. Deducting Rs.140 the basic pension, we get a figure of Rs.115/-. According to the Applicant, Ready Reckoner is also to apply to

this figure of Rs.115/- which yields the figure at Rs.147. The question is whether the Ready Reckoner is taken as a basis for revised pension as well as the total of the amount of TI, AHI and AHR or the same is to be computed as in O.M dated 22.10.83. This is explained in Part B(4). It is necessary for us to know how the amount of TI-Nil, AHI-20 and AHR-21 are arrived at in terms of above O.M. For this purpose the personal presence of Dy. Controller of Accounts is necessary. "

6. Accordingly, Dy. Controller of Accounts was present in Court on 6.10.1994 and we have considered the submissions made by the Dy. Controller of Accounts and heard the counsel for the parties. It was explained to us that the applicant was not entitled to any difference of TI (temporary increase) because of non-admissibility of ad-hoc increase in pension. In this connection, our attention was invited to the following paragraph in Swamy's Pension Compilation (APP.15) Para (2.2) which is as under :

" (2.2) Non-admissibility of ad hoc increase in pension - The ad hoc increase in pension as sanctioned in G.I., M.F., O.M No. 18(3)-E.V/69, dated 1.9.1969 shall not be admissible to Government servants retiring from service on or after 1.1.1973. "

7. This does not help the respondents since it says nothing about pre-~~73~~ retirees but respondents went on to argue that so far as ad hoc relief and other reliefs are concerned, our attention may be drawn to the following para (3-A Swamy's Pension Compilation (App. 15) - Grant of reliefs to pensioners) which is reproduced below :

(3A) Ad hoc relief and relief to Government servants who retired from service prior to 1.1.1973

(a) Government servants who retired prior to 1.1.1973 will be eligible to the ad hoc relief at the rates mentioned below with effect from 1.1.1973.

Pension range	Amount of Ad hoc Relief in Pension
(Based on the original pension or on Rs. 40 p.m where the original pension is less than Rs. 40 p.m)	
below Rs. 85	Rs. 15 p.m
Rs. 85 and above but below Rs. 210	Rs. 21 p.m
Rs. 210 and above but below Rs. 500	Rs. 25 p.m
Rs. 500 and above	Rs. 35 p.m

NOTE : The term 'original pension' including the 'Compassionate Allowance' for the purpose of calculation of ad hoc relief does not include the temporary/ad hoc increases in pension granted prior to 1.1.1973 or the pension equivalent of death-cum-retirement gratuity but includes the commuted portion of pension, if any.

8. [REDACTED] The Note appears to clarify the situation. From all this, it is evident how the respondents have calculated the existing rate of Rs. 181 and the revised rate of Rs. 218/-.

9. The averment of the applicant, however, is that the respondents have been fundamentally misguided in as much as they have not applied the ready-reckoner to the difference between the basic pension drawn by the applicant at the time of retirement and the actual pension drawn by the applicant at the time the liberalised pension formula became applicable. We have this figure of Rs. 115 as calculated by the applicant and as mentioned in our order dated 08/09/1994. If the Ready Reckoner is applied to this figure, separately, then we get a figure of Rs. 147/- for an employee who retired between 01/07/1959 and 31/12/1972. If the contention of the applicant is accepted, then the applicant can be said to have some case. However, this contention must be supported by the relevant rules. We have already quoted the relevant rules in the earlier

part of the order. This rule nowhere indicates that Ready Reckoner is also to be used for calculating the amount of difference in existing and revised rate of the TI, AHI & AHR. What rule envisages is that the difference is to be determined by adding/subtracting the difference referred to in (4) from the existing rates of these elements. The contention of the applicant therefore is not supported by rules.

10. The counsel for applicant invited our attention to O.M dated 16th April 1987 in which the term existing pension has been defined to mean that in the case of pre-1.1.1973 retirees, existing pension will also include Temporary Increase, Ad hoc increase and Ad hoc Relief. We note that order dated 16th April 1987 has been issued Central in the context of IVth Pay Commission and has nothing to do with the liberalisation of pension formula implemented initially on 15.5.79 and implemented in terms of Supreme Court judgment on 22nd October, 1983. The calculation of liberalised pension must therefore follow the clear enunciation made in the relevant Memorandum and not the definition which appears in the subsequent office memorandum in a different context. In any case, reading both these memoranda together harmoniously, we consider that the mode of calculation of pre-1.1.73 retirees has to be as laid down in O.M dated 22nd October, 1983.

11. The counsel for the applicant has also tried to argue that pension for maximum of 33 years of qualifying service is calculated @ 50% for the first Rs.1,000 of average emoluments reckonable for pension, as mentioned in the O.M dated 22nd October 1983 and on this basis also it is reasonable that the applicant should receive the pension claimed by him which works out to about 50% of what employees in comparable stage are drawing at present. This is however, an argument by analogy and we do not consider that such general considerations in any way help the applicant in the face of the fact that the Department has calculated the revised pension correctly as per the office memorandum dated 25/10/1983. ^(12.) We therefore do not consider that there is any merit in the application, which we dispose of by passing the following order :

O R D E R

O.A. is dismissed. No order as to costs.

M.R.Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

18

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No.10/95
in
Original Application No.961/93

Devidas Ganpat Baindoor .. Applicant
-versus-
Union of India & Ors. .. Respondents

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

Tribunal's order on Review

Petition by circulation : Date:24-1-95
(Per M.R.Kolhatkar, Member(A))

This is an review petition against the judgment dated 24-10-94 dismissing the O.A. of the applicant in which the relief of re-calculation of the pension amount was sought by the applicant.

2. The main grounds urged by the applicant for review of our judgment is that any fixation of pay which awards less than 50% as pension to the employee is ultra vires to the objectives and the intention of the pension scheme and violative of articles 14 and 16, that further the ready reckoner table is in violation of articles 14 and 16.

3. That the ready reckoner table is in violation of articles 14 and 16 is a new plea which we are not in a position to consider. The rest of the pleas are regarding details of calculation of pension by different authorities which were urged in the O.A. and have been considered in the judgment.