

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 643/95

Date of Decision 15/3/96

L.G.Vaishampayan

Petitioner

Shri S.P.Kulkarni

Advocate for the Petitioner.

Versus

Union of India

Respondent

Shri S.S.Karkera for

Advocate for the Respondents.

Shri P.M.Pradhan

Coram:

The Hon'ble Mr. V.Ramakrishnan, Member (A).

The Hon'ble Mr.

1. To be referred to the Reporter or not? NO

2. Whether it needs to be circulated to other
Benches of the Tribunal? NO

abp.


(V.RAMAKRISHNAN)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
GULESTAN BLDG. NO. 6, 3RD/4TH FLOOR
PRESOT ROAD, FORT, BOMBAY - 400001.

ORIGINAL APPLICATION NO.: 643/95.

Dated, this Friday, the 15th of March, 1996.

CORAM : Hon'ble Shri V. Ramakrishnan, Member (A).

L. G. Vaishampayan ... Applicant
(Advocate by Shri S.P. Kulkarni
alongwith Shri B. Dattamurthy).

Versus

Union Of India Respondents.
(Advocate by Shri S.S. Karkera
for Shri P.M. Pradhan).

: ORDER :

[PER.: SHRI V. RAMAKRISHNAN, MEMBER (A)]

The applicant who was an employee under the Department of Posts, retired from service with effect from 01.06.1985. His grievance in the present O.A. is that, as a retiree during the period from 31.03.1985 to 31.12.1985, the case has been dealt with in a manner which is less advantageous as compared to those who retired after 31.12.1985 as also those who retired before 01.04.1985.

2. The grievance of the applicant can be traced to the fact that the scheme for consolidation of pension in respect of officials who retired prior to 01.01.1986 is contained in the Ministry of Personnel ^{Public} Grievances and Pension O.M. dated 16.04.1987 which is enclosed as Annexure A-6 to the application. In particular, the consolidation of pension is spelt out in para 6 of the O.M. Para 6.2. specifically refers to the category of people who retired between 31.3.1985

and 31.12.1985 and states personal pension will be continued to be treated as separate element and will not be merged into the pension as consolidated. As this personal pension has been kept as a separate element, Dearness Relief which has been released from time to time is admissible only on basic pay and is not admissible so far as personal pension is concerned. His pension was fixed as per the rules at Rs. 981/- + personal pension of Rs. 109/-. The applicant has been receiving the benefit of Dearness Relief on pension only on Rs. 981/- and not on the element of personal pension of Rs. 109/-. In view of the increased percentage of the Dearness Reliefs which has been released by Government from time to time, a situation has cropped up where persons who retire prior to 31.03.1985 are in receipt of more pension including dearness relief than what the applicant receives.

3. I have heard Shri S.P. Kulkarni alongwith Shri B. Dattamurthy for the applicant and Shri S.S. Karkera for Shri P.M. Pradhan for the respondents. The Learned Counsel for the applicant submits that the scheme of consolidation of Pension has resulted in a situation where a block of people who retired between 31.03.1985 and 31.12.1985 are in a position which is less advantageous not only to those who retired after 01.01.1986 but also to those who retired before 31.03.1985. He refers to the submissions of the applicant in para 4.11 of the O.A., where a comparative statement has been given in respect of one Shri Huprikar who retired on 01.10.1984 and who was drawing infact lower pay than the applicant. Shri Huprikar was getting as on 01.07.1994 a sum of Rs. 2,382.00 whereas the gross pension + dearness allowance in respect of the applicant was only Rs. 2,209/-. This difference has widened with further release of dearness relief by the Government. He also argues that the

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4th Pay Commission had suggested in para 10(20) of their report on pension that the Personal Pension introduced may not be continued as a separate pension for few retirees only. Government however, have not accepted this recommendation and they have not granted any lumpsum but has continued personal pension in respect of these retirees.

4. On behalf of respondents, the counsel contends that the comparison sought to be made is purely hypothetical and in any process of rationalisation, it is not always possible to perpetuate old relativities. He also states that while the applicant may be drawing less by way of pension and dearness relief, he did get certain benefits by way of more gratuity and commutation, as compared to those who retired prior to 01.04.1985. Shri Karkera also brings out that this issue is no longer res-integra since it is covered by the decision of the Principal Bench in O.A. No. 1248 of 1988 disposed of on 17.04.1993 where the principle followed by the Government in such matters was upheld.

5. As regards the grievance of the applicant that he is drawing lesser pension than those who retired after 01.01.1986, this has no merit as there has to be a cut-off date in such cases and people who were in ~~this~~ position on a certain day will get certain benefits without the same being extended to those who retired earlier. This position is now well settled by various court decisions. His second contention is that, he is drawing even less than what he would have got if he had retired on 31.03.1985. In this connection, he has referred to the case of Shri Huprikar, who was drawing less pay than the applicant but Shri Huprikar is getting about more than Rs. 170/- by way of pension and relief on

01.07.1994 which disparity has since widened. However, the comparison has to be of the total package and cannot be restricted only to pension and dearness relief. It would be seen from the statement as at para 4.11 of the application that the applicant got more than Rs. 12,000/- etc. by way of gratuity. After his retirement, he has over a period of time started drawing less pension than the compared official. The fact that he got sizeable increase on gratuity and commutation on the account of scheme adopted by the Government cannot be ignored. In view of this position, the contention that the impugned orders and memorandums freezing the portion of pension as Personal Pension and denial of dearness relief on such Personal Pension should be quashed is without merit. The claim that the Personal Pension should be directed to be merged with normal pension and dearness relief allowed on ~~that account~~ cannot be ~~admissible~~ ^{justified}. As per the Government instructions, dearness relief is admissible only on basic pension and not on personal pension. It is no doubt true that 4th Pay Commission had made a recommendation that instead of having personal pension as a separate element, a lumpsum may be given. It is not quite clear whether lumpsum would have been more beneficial in the present situation, as the dearness relief keeps on increasing substantially every six months. As such, I find no merit in the relief prayed for in para 8(a), (b) and (c).

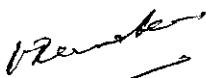
6. The applicant has also made ^{an} alternative prayer that the subject matter may be referred to any expert body and the result declared within one year.

7. In respect of this, Shri Karkera draws my attention to para 15 of the Written Statement where it has been brought out that this issue is already under 

consideration of 5th Pay Commission whose terms of reference include having a proper pension structure. He is however not aware as to whether the particular category of people who retired between 31.03.1985 and 31.12.1985 where certain distortion have occurred which have been specifically referred.

8. Shri Dattamurthy draws my attention to the letter of Department of Pension & Pensioners' Welfare dated 03.01.1992 at Annexure A-3 where the department of Union Ministry of Personnel Public Grievances and Pensions had accepted that in fact this is an anomaly but it does not occur at all stages and is confined to few stages and that too only marginally. In view of this, he submits that this specific question should be referred to an expert body and prays that this matter may be gone into by the 5th Pay Commission or by an expert committee. On this alternative prayer, all I would say is that this *prima facie* is a matter which deserves careful consideration and if there is still time to do so, Government in the Department of Pension and Pensioners' Welfare may refer this matter to the Fifth Pay Commission, otherwise, this matter can be gone into by an expert body like Anomalies Committee, which is generally set up after the receipt of Pay Commission recommendation.

9. With the above direction/observations, this O.A. is finally disposed of with no order as to costs.


(V. RAMAKRISHNAN)
MEMBER (A).

abp

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