

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 1097/95

Date of Decision 05-09-96

A. Parthasarathy

Petitioner

Mr. G. K. Masand

Advocate for the Petitioner.

Versus

U.O.I. & Ors.

Respondent

Mr. Suresh Kumar for Mr. M. I. Sethna

Advocate for the Respondents.

Coram:

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

The Hon'ble Mr.

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

M.R. Kolhatkar
(M.R. KOLHATKAR.)
M(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.NO:1097/95

Pronounced, this the 5th day of Sept 1996.

CORAM: HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

A.Parthasarathy,
16/400, C.G.S.Qtrs.,
Sector-7, Antop Hill,
Mumbai - 400 0037.

(By Advocate Shri G.K.Masand)

.. Applicant

-versus-

1. Union of India
through
Secretary,
Ministry of Finance,
Dept. of Revenue,
New Delhi.
2. Pay & Accounts Officer,
Central Excise, 8th Floor,
Piramal Chambers, Jijibhoy Lane,
Lalbaug, Bombay - 400 012.
3. Chief Accounts Officer,
Central Excise, 8th Floor,
Piramal Chambers, Jijibhoy Lane,
Parel, Bombay - 400 012.
4. Asstt. Collector of Customs(P)
Alibag.

(By Counsel Mr. Sureshkumar for
Mr. M.I. Sethna)

.. Respondents

ORDER

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

The applicant after rendering service in the Army joined the Customs Preventive Department as Communication Assistant in July, 1978 in the pay scale of Rs.425-700. The pay of the applicant was fixed at Rs.425/- i.e. the minimum of the pay scale.

The applicant states that this pay fixation was done as per the rules which provided that a re-employed pensioner cannot draw basic pay more than last basic pay drawn in the past service, after taking into consideration the pension and pension equivalent of gratuity, drawn by such employee. The rules further provided that an amount of Rs.125/- per month from the pension drawn from the past service is required to be ignored while computing the pay to be fixed. According to the applicant, the last basic pay drawn by him in the military service was Rs.605/- The monthly pension of the applicant plus pension equivalent of gratuity amounted to Rs.302/- of which Rs.125/- is to be ignored leaving a balance of Rs.177/-. Deducting Rs.177/- from Rs.605/- the last pay drawn in military service, the applicant's pay was fixed at Rs.425/- which was also the minimum in the pay scale of Rs.425-700.

2. The applicant states that in 1986, upon the recommendations of the 4th Pay Commission being accepted, the pay scale of the post of Communication Asstt. was fixed at Rs.1400-2600 and the applicant's pay was fixed at Rs.1923/-. The applicant states that in June, 1992 he was promoted as Superintendent - Communication and he retired as Superintendent in the pay scale of Rs.2,000 - 3,500 He was drawing Rs.2573/- as last pay at the time of retirement. The applicant submits that just five days prior to his retirement i.e. on 25-4-1995 the Pay and Accounts Officer, Central Excise asked

sent a letter stating that the applicant's pay was wrongly fixed at Rs.1923/- on 1-1-1986 instead of being at Rs.1560/-. Hence there had been an over payment. Therefore his pension was directed to be fixed on the basis of Rs.2120/- as the last pay drawn and the excess pay already drawn was also directed to be recovered. This letter of 25-4-95 has been followed by ^afurther letter dt. 13-6-95 at Ex.A-1 from the Office of the Chief Accounts Office Central Excise addressed to the applicant informing him that the pay fixation done by Pay & Accounts Officer appears to be correct. The applicant has impugned these two letters viz. 25-4-95 and letter dt. 13-6-1995. The applicant has sought the relief of payment of all his retiral dues including DCRG, Pension, commuted value of pension etc. on the basis of applicant's last pay drawn being Rs.2573/- together with interest thereon @ 21% p.a. w.e.f. 6-5-1995. The applicant has also sought the relief of restraining the respondent from making any recovery from the applicant's retiral benefits.

3. The grounds taken by the applicant for seeking this relief is that respondents have sought to re-fix his pay w.e.f. 1978 after a lapse of 17 years without giving the applicant an opportunity of making his submissions, that the applicant is entitled to as a matter of rules to draw the DCRG and commuted value of pension on the basis of the last pay drawn by the applicant being Rs.2573, that the contention of respondents that the applicant is

not entitled to D.A. and other allowances on unignored portion of pension is also liable to be rejected and that there has been a discrimination practised in the case of the applicant vis-a-vis similarly placed employees and that the action in any case is bad in law, arbitrary and therefore liable to be set aside.

4. The respondents have contended that the pay fixation of the applicant has not been sought to be revised from 1978 but only from 1986. The pay fixation is not in terms of Govt. of India, Ministry of Finance letter No.19012/22/86-Ad.II(A) dt. 14-7-88. This is at Ex.1 to the additional written statement dt. 7-2-1996 and reads as below:

"vi) Doubt - How fixation of pay in the revised scale of pay with effect from 1st January, 1986, is to be done ?

Clarification - The CCS(RP) Rules, 1986 has been made applicable to the re-employed pensioners with effect from the 1st January, 1986, vide Department of Personnel and Training's O.M. No.3(7)-86-Estt.(Pay-II), dated the 9th December, 1986. The pay of the re-employed pensioners as admissible on the 1st January, 1986, without taking into account the unignored components of Pension and PEG and DA, ADA, Interim relief, etc. admissible on that pay has to be taken as emoluments for the purpose of Rule 7 of CCS(RP) Rules, 1986. After fixing this pay at the appropriate stage in the revised scale, the unignored portion of pension and PEG which was hitherto being deducted from his pay shall be deducted from the revised pay also. For the purpose of grant of

allowances etc, however, the pay fixed in the revised scale prior to reduction of the unignored Pension and PEG be taken. Increase in pension with effect from the 1st January, 1986 is also to be taken into reckoning in fixing pay with effect from the 1st January, 1986, in accordance with the Department of Personnel and Training's O.M. No.3/9/87-Estt(Pay-II) dated 11th September, 1987 and overpayments made if any, may be recovered. "

5. According to the respondents the pay fixed in 1978 was done correctly, but the pay fixation in 1986 was erroneous inasmuch as on 1-1-86, on converting the old pay scale into 4th Pay Commission pay scale, an amount of Rs.1560/- was arrived at. To this amount Rs.177/- was ^{mistakenly} added and 20% of the sum of the amount was added to the amount and the new stage of Rs.2,120/- in the pay scale of Rs.1400-2600 was arrived at from which Rs.177/- was further deducted to arrive the figure of Rs.1923/- as the basic pay of the applicant which was patently incorrect in accordance with the Govt. of India, Ministry of Finance notification dt. 14-7-88 reproduced above. Since the pay fixed was erroneous in law the department was entitled to correct the mistake and refix ~~the~~ the pay and on that basis the department ~~has~~ arrived at an approximate overpayment of Rs.80,000/- and this overpayment has to be recovered by way of adjustment.

6. As regards D.A. relief (on pension the department relies on the Supreme Court judgment in ^{G.} Union of India vs. Vasudevan Pillay in Civil Appeal

Nos. 3543-46 of 1990 decided on 8th December, 1994.

7. At the argument stage the counsel for the applicant relied on the case of J.H.Rao vs. U.O.I. & Ors. O.A. 83/91 decided by this Tribunal on 30-4-96. I have perused the judgment. That judgment has no application to the present case because in that case recovery was due to the failure of the respondents to fix the notional pay of the applicant for the past service. In this case this issue does not arise. The issue is more straight forward viz. that correct fixation of pay in terms of IVth Pay Commission recommendation w.e.f. 1-1-86. Counsel for the applicant next relies on the judgment of this Tribunal in O.A. 395/91 Chamel Singh vs. U.O.I. decided on 18-10-1991. This is a division bench judgment. In that judgment a recovery of Rs.76,535/- was sought to be made from the applicant. This recovery was sought to be made on the ground that his initial pay fixation in 1974 was not correct after a lapse of 16 years i.e. in 1990 at the time of retirement. The Tribunal granted relief of restraining the respondents from making the recovery on the ground of violation of principles of natural justice and on the ground of delay for which proposition it referred to the case of G.S.Bedi v. Union of India and another, AIR 1983(2)CAT 510. That judgment also referred to the case of Nilkantha Shah vs. U.O.I. where the delay was only seven years as against the 15 years in the present case. The Tribunal therefore granted the relief.

8. In the instant case the recovery is sought to be made after a period of 9 years and the recovery ^{is} sought to be made on the ground ~~of~~ the mistake committed by the respondents in the matter of pay fixation and not on account of ^{any} mistake committed by the applicant. Both on the ground of delay as well as violation of principles of natural justice ~~therefore~~ ^{I am} of the view that the ratio in Chamel Singh's case in O.A. 395/91 applies to the facts of the present case and therefore the applicant is entitled to the relief of restraining the respondents from making the recovery of overpayment on account of wrong fixation of pay.

9. The next question is, however, whether apart from relief of restraining from recovery of overpayment the applicant is entitled to fixation of his pension on the basis of last pay drawn of Rs.2573/- instead of Rs.2120/- which is the last pay drawn as per the correction made. The counsel for the respondents has invited my attention to an earlier decision of the Tribunal in which it has been held that it is open to the respondent Govt. department to make a correct fixation of pay or pension after giving an opportunity to the applicant Govt. employee. In such a situation in the facts of the case ~~the~~ ^{of delay} factor ~~does~~ not operate because the mistake came to light prior to the retirement of the applicant and the applicant was well aware of the mistake and in fact he made a representation on 29-5-95 i.e. even prior to his retirement and this representation has been taken into account by the department. I am,

therefore, of the view that the applicant is not entitled to the relief of fixation of his pension on the basis of wrong last pay drawn of Rs.2573/- rather than Rs.2120/-

10. In the light of above discussion, the O.A. is disposed of in above terms. Respondents are directed to make payment of pensionary benefits to the applicants if not already done, of course on the basis of Rs.2120/- as the last pay drawn. If there is delay in the payment of pension and pensionary benefits the respondents should also make payment of interest to the applicant as permissible under the rules. However, respondents are restrained from making recovery of overpayment amounting to Rs.80,000/-

11. There will be no order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

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