

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 750/98

Dated this Monday the 8th day of January 2001.

V.V. Sreenivasan

Applicant

Mr.S.S. Karkera

Advocate for the
Applicant.

VERSUS

Union of India & Others

Respondents.

Mr.M.I. Sethna

Advocate for the
Respondents.

CORAM :

Hon'ble Shri S.L. Jain, Member (J)
Hon'ble Smt. Shanta Shastry, Member (A).

- (i) To be referred to the Reporter or not ? yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? no
- (iii) Library. yes

S.L. Jain
(S.L. Jain)
Member (J).

H.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.750/98

Dated this Monday the 8 th Day of January, 2001.

Coram : Hon'ble Shri S.L. Jain, Member (J)
Hon'ble Smt. Shanta Shastry, Member (A)

V.V. Sreenivasan,
Retired Assistant Registrar
of Income Tax Appellate Tribunal,
Amritsar, residing at
B-401, Cottage Land, Sector 19A,
Nerul (East), Navi Mumbai-400706.

.. Applicant.

(By Shri S.S. Karkera, Advocate)

Vs.

1. Union of India, through the
Secretary, Ministry of Law and
Justice, Shastri Bhavan,
New Delhi - 110 001.
2. Controller of Accounts,
Ministry of Law & Justice,
3rd Floor, C-Wing, Lok Nayak Bhavan,
Khan Market, New Delhi-110 003.
3. The President,
Income Tax Appellate Tribunal,
Old CGO Bldgs., 101, M.K. Road,
Mumbai-400 020.
4. The Assistant Registrar,
Income Tax Appellate Tribunal,
Aayakar Bhavan, C-Block,
Maqbool Road, Amritsar-143001.

.. Respondents.

(By Shri M.I. Sethna, Advocate).

O R D E R
[Per : S.L. Jain, Member (J)]

The applicant originally filed the O.A. challenging the inaction of the respondents. The narration of para 1 of the O.A. is as under:-

"(i) The applicant in the present application is challenging the inaction on the part of the Respondents in not granting / releasing the revised pension, gratuity, commutation of pension and resultant arrears fixed by the Respondent No.5, vide No.F.184-Ad(ATASR)/97, dated 17th December, 1997, addressed to the Pay & Accounts Officer, Ministry of Law & Justice, Department of Legal Affairs, New Delhi, working under the Respondent No.2 herein, with a copy to the

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applicant. A copy of the said communication dated 17th December, 1997 is hereto annexed and marked as Exhibit 'A'.

(ii) The applicant is also challenging the inaction on the part of the Respondent No.5 herein in not releasing the second instalment of pay arrears accrued to him as a result of fixation of his pay in revised scale of pay at Rs.9,300 p.m. w.e.f. 01.01.1996 and at Rs.9,500 p.m. w.e.f. 15.11.1996 (DNI), in the grade of Assistant Registrar as per the Fifth Central Pay Commission's Report".

2. By way of an amendment, he has further challenged the action of the respondent i.e. order dated 8.9.98 - Ex.'AA'.

3. As O.A. was filed ~~filed~~ on 1.9.98 earlier to the passing of the order dated 8.9.98 Ex.'AA' the order Ex-'AA' was not communicated by the respondents to the applicant, the applicant came to know of the same only on filing the sur-rejoinder by the respondents on 22.9.99, hence he sought the amendment, and challenged the same.

4. The pension of the applicant was fixed vide order dated 14.8.97 Annexure 'H', which is revised vide order dated 8.9.98 on the basis of revision of pay to the disadvantage of the applicant without notice with retrospective effect.

5. After a careful consideration of the pleadings of the parties, we are of the considered opinion that the dispute between the parties is whether the applicant, who was appointed as Senior Personal Assistant with effect from 1.9.90, is entitled to get his pay fixed in view of Fundamental Rule 22.C.

6. The learned Counsel for the applicant raised the objections regarding revision of pay and consequent to it the revision of pension as under:-

"(a) The applicant whose pay was fix^{ed} in view of Rule 22.C, has sought voluntary retirement, his pension was fixed on 14.8.97 ordered. Hence in view of Rule 70 of CCS(CCA) Rules, 1965 his pension cannot be revised.

(b) The respondents have revised the pay of the applicant with retrospective effect to his
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disadvantage without following the principles of natural justice.

(c) The disbursal of retiral benefits cannot be withheld, hence the applicant is entitled to interest and compensation for the delayed payments".

7. The learned Counsel for the applicant relied on A.I.R. 1994 SC 2480 Bhagwan Shukla vs. Union of India & Others and argued that applicant is entitled to show cause notice when his basic pay is reduced with retrospective effect.

8. The learned Counsel for the applicant relied on 1990 Lab.IC.28 Vithal Dagdeo Marathe vs. The General Manager, Central Railway, Bombay and argued that if recovery is to be made in respect of some over payment, notice is necessary.

9. The learned Counsel for the applicant relied on (1994) 2 SCC 521 (1996) Shyam Babu Verma & Others vs. Union of India & Others, 33 ATC 683 Mahavir Singh Vs. Union of India and Others and argued that the respondents are not entitled to recover the same.

10. The learned Counsel for the applicant relied on A.I.R. 1994 SC 1560 Deo Kinandan Prasad Vs. State of Bihar & Others, AIR 1965 SC 356, State of Kerala & Others Vs. M.Padmanathan Nair, Eurico Santana DeSilva vs. State of Maharashtra & Others and 1997 Lab IC 487 Shyama Prasad Mukherji vs. State of West Bengal & Others and argued that delay in payment of retiral benefits, gives a right to the applicant to claim interest.

11. The learned Counsel for the applicant relied on 1996(2) SC SLJ 362 S.R. Bhanrate Vs. Union of India and argued that apart from interest the applicant is also entitled to compensation.

12. Regarding the applicability of FR 22-C, he relied on 1993 S L J 95 Ramesh Chand VS Union of India and another (2) while the learned Counsel for the respondents relied on an order passed by the Principal Bench in O.A. 1652/98 on 18.11.1999 and argued that FR 22-C is not applicable to the present case.

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13. As the applicant is not served with a show cause notice to revise his pay, to his disadvantage, principles of natural justice not followed by the respondents, hence in view of the law laid down in para 5 to 12 of the order the matter deserves to be remitted back to the respondents to afford an opportunity to the applicant and decide the matter afresh in accordance with law within 3 months from the date of receipt of the copy of the order.

14. The applicant voluntarily retired on 26.8.97. The recommendation of the Vth Central Pay Commission which is effective since 1.1.1996 is to be followed in words and spirit. Any delay in payment of the admitted dues to the applicant, which ought to have been made timely and failure to pay the same shall carry interest but as there was no admitted dues in view of revision of pay resulting ⁱⁿ revision of pension, hence question of payment of interest does not arise.

15. O.A. is disposed of with the above direction. The applicant shall be at liberty to challenge the respondents decision, if an occasion arises therefor, on merits. No order as to costs.

Smt. Shanta Shastri

(Smt. Shanta Shastri)
Member (A)

S.L. Jain

(S.L. Jain)
Member (J).

H.