

(15)

# Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

R.P.No.9/92

in

O.A.No. 62/91.

Date of Decision: 20.1.92

~~T.A.No.:-~~

S.V.Subba Ramaiah

Petitioner.

Shri C.Suryanarayana

Advocate for the  
petitioner (s)

Versus

Union of India, Rep. by the  
Director-General, Posts, New Delhi-110001  
& another  
Shri N.R.Devaraj, Addl. CGSC

Respondent.

Advocate for the  
Respondent (s)

CORAM :

THE HON'BLE MR. R.Balasubramanian : Member(A)

THE HON'BLE MR. T.Chandrasekhar Reddy : Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4  
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

HRBS  
M(A).

HTCR  
M(J).

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD.

R.P.No.9/92  
in  
O.A.No.62/91.

Date of Judgment 20.1.1992

S.V.Subba Ramaiah

.. Petitioner/Applicant

Vs.

1. Union of India,  
Rep. by the  
Director-General, Posts,  
New Delhi-110001.

2. The Postmaster-General,  
Vijaywada-520002.

.. Respondents/Respondents

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Counsel for the Petitioner/  
Applicant

: Shri C.Suryanarayana

Counsel for the Respondents/  
Respondents

: Shri N.R.Devaraj, Addl. CGSC

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CORAM:

Hon'ble Shri R.Balasubramanian : Member(A)

Hon'ble Shri T.Chandrasekhar Reddy : Member(J)

I Judgment as per Hon'ble Shri R.Balasubramanian, Member(A)

(In circulation)

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This review petition has been filed by Shri  
S.V.Subba Ramaiah (applicant in O.A.No.62/91) seeking  
a review of the judgment dated 9.12.91 in O.A.No.62/91.

2. In the said judgment, the prayer of the applicant,  
seeking a direction to the respondents to refix the pay  
of the applicant on his promotion as L.S.G. w.e.f. 2.1.82  
by taking into account the special pay drawn by him  
as U.D.C. till his promotion and consequently to revise  
his pensionary benefits such as pension, gratuity,  
commuted value of pension etc., w.e.f. 1.9.85 without any  
arrears upto 1.9.85, was dismissed.

3. The application was dismissed on the ground that  
pensionary benefits depend on the emoluments actually dra  
at the time of retirement (emphasis supplied). The Bench

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22

P.A.

held that otherwise it would violate the Note 1 below Rule 33 of the C.C.S.(Pension) Rules, 1972. The Bench also relied on a judgment of the Hon'ble Supreme Court wherein it was held that the reckonable emoluments which are the basis for computation of pension are to be taken on the basis of emoluments payable at the time of retirement.

4. In this review petition, the applicant attempts to distinguish between the words "payable" and "actually paid". It is also contended that the Note 1 below Rule 33 of the C.C.S.(Pension) Rules, 1972 is not applicable to the applicant. Rule 33 of the C.C.S.(Pension) Rules, 1972 states:

"The expression 'emoluments' means basic pay as defined in Rule 9(21)(a)(i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement or on the date of his death; and will also include non-practising allowance granted to medical officer in lieu of private practice."

The second portion of Note 1 further restricts such a provision only to normal increments by stating:

"Provided that any increase in pay (other than the increment referred to in Note 4) which is not actually drawn shall not form part of his emoluments."

Note 4 allows any increment that becomes due to a Government servant before retirement forming part of his emoluments. What these notes amount to is that besides what is actually paid to a person immediately before his retirement, additions like normal increment which are legitimately due to him may also be added even though not paid to him before retirement. Such additions are generally decided later on after retirement either by the administration or by courts. The term "payable" in the judgment of the Supreme Court extracted in the judgment also means what is legitimately due to a person at the time of retirement. In the case before us, the benefit of the Govt. of India order commences only from 1.9.85. No payment on this score is payable before 1.9.85. The applicant had retired much before this date. Hence he cannot get the benefit enjoined in the order.

P-242

- 3 -

5. It is alleged that the "further notes" submitted by the counsel on 4.12.91 were not taken into account before pronouncing the judgment. The "further notes" had not been recorded in the office as alleged but find a place in the O.A. at pages 32 and 33. The so-called "further notes" simply give the illustration that his pension should be fixed based on Rs.700/- p.m. as on 1.1.85 instead of Rs.660/- p.m. The so-called "further notes" had already been taken into account before pronouncing the judgment.

6. The applicant is also referring to Nakara's case (AIR 1983 SC 130). The Nakara's case relates to classification of people into those who retired before or after a certain date, in the matter of conferring benefits of any pension scheme. That is not the case here. What is involved is a mere case of pay fixation <sup>of an individual.</sup> It is well known that different people draw different pay on different dates. What matters is the pay one draws immediately before retirement. The Nakara case has no relevance in this case.

7. The applicant also challenges Rule 17(iii) of the Central Administrative Tribunal (Procedure) Rules, 1987 stating that it is violative of principles of natural justice. He contrasts this with Rule 17(ii) from where he had picked up the word "heard". Rule 17(ii) only states that a review petition shall be heard by the same Bench which passed the original order unless ordered by the Hon'ble Chairman to be heard by any other Bench. Rule 17(iii) states that unless ordered otherwise by the Bench a review petition shall be disposed of by circulation thereby leaving the decision whether or not to hear to the Bench which considers

.....4

the review petition. There is no confusion on this score. Moreover, the Central Administrative Tribunal (Procedure) Rules, 1987 are framed under the provisions of Administrative Tribunals Act, 1985 under which this Tribunal is functioning. It is not open to this Tribunal to review the rules and procedures governing its functioning.

8. In view of the above, we dismiss the review petition with no order as to costs.

*R. Balasubramanian*  
( R. Balasubramanian )  
Member(A).

*T. Chandrasekhar Reddy*  
( T. Chandrasekhar Reddy )  
Member(J).

Dated 20<sup>th</sup> January, 1992.

*[Signature]*  
Deputy Registrar(J)

To

1. The Director-General, Union of India,  
Posts, New Delhi-1.
2. The Postmaster-General, Vijayawada. -2
3. One copy to Mr. C. Suryanarayana, Advocate, CAT. Hyd.
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5. One spare copy.
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*24/1/92*

*[Signature]*  
*24/1/92*

ASR  
23/1/92  
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TYPED BY  
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. ✓ V.C.  
THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)  
AND  
THE HON'BLE MR. T. CHANDRASEKHAR REDDY :  
M(JUDL)  
AND  
THE HON'BLE MR. C. J. ROY : MEMBER (JUDL)

DATED: 20-1-1992 ✓

~~ORDER~~ JUDGMENT:

R.A./C.A./M.A. No. 9/92 ✓  
in

O.A. No. 62/91

T.A. No. (W.P. No. )

Admitted and interim directions  
issued.

Allowed

Disposed of with directions.

RA Dismissed

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/ Rejected

No order as to costs.

