

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

DA 1349/93.

Dt. of Order: 9-3-94.

P. Kamal Das

...Applicant

Vs.

1. The Chief General Manager,
Telecommunications, North Eastern
Circle, Shillong, Assam.
2. The Director General, Telecommunications,
Sanchar Bhavan, New Delhi.
3. The Govt., of India, rep. by its
Secretary to the Ministry of
Finance, New Delhi.

.....Respondents

Counsel for the Applicant : Shri K. Venkateshwar Rao

CORAM:

THE HON'BLE SHRI T. CHANDRASEKHAR REDDY : MEMBER (J)

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ORDER

[As per Hon'ble Shri T. Chandrasekhara Reddy, Member(J)]

This is an application filed under Section 19 of the Administrative Tribunals Act, to direct the respondents to fix the pension of the applicant, w.e.f. 1.3.1986 on the basis of the average emoluments for the last ten months prior to his retirement including the special duty allowance drawn by him from May, 1985 to December, 1985 with all consequential benefits and to pass such other order or orders as may deem fit and proper in the circumstances of the case.

2. The facts so far necessary to adjudicate this OA in brief, are as follows:

3. The applicant joined in the year 1951 as Clerk in Visakhapatnam Postal Division. In the year 1972, he was promoted as Junior Accounts Officer. The applicant retired as Accounts Officer on 28.2.1986 on attaining the age of superannuation. The applicant, while working in the North Eastern Circle, Dimapur in Nagaland, was paid special duty allowance at the rate of 25% of the basic pay. At the time of retirement of the applicant, while calculating the average emoluments of the applicant, for the purpose of pension, the respondents had not taken into consideration, the special duty allowance which was paid to the applicant from the month of May, 1985 to December 1985. So as special duty allowance had not been taken into consideration for the said period, according to the applicant, he is receiving less pension. So, the present OA is filed by the applicant for the relief as already indicated above.

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4. Counter is filed by the respondents opposing this OA.

5. In the counter of the respondents, it is maintained that, short duty allowance ~~was~~ shall be treated as special pay for retirement benefits in respect of those officials who have retired prior to 1.1.1986 and special pay does not count for retirement benefits w.e.f. 1.1.1986. So, it is the ~~the~~ contention of the respondents that the special duty allowance had not been taken into consideration as per the OM No.20014/15/86-E-IV dated 5.10.1988.

6. We have heard today Mr K. Venkateswara Rao counsel for the applicant and Mr NR Devraj, Standing counsel for the respondents.

that a
~~the~~ retired prior to 1.1.1986 had a right for the purpose of calculating pensionary benefits, to take into consideration the
But as the applicant retired from service w.e.f. 28.2.1986 after the revised pay scale came into effect, it is the case of the respondents, as already pointed out, that the special duty allowance cannot be taken into consideration for the purpose of calculating the pensionary benefits ~~for~~ of the applicant. Admittedly, for calculating the pensionary benefits, 10 months average pay prior to the retirement of a Government servant has not to be taken into consideration. It is on the basis of 10 months average pay that the pensionary benefits are calculated. It is not in dispute that prior to 1.1.1986, the special duty allowance formed part of the pay for calculating the pensionary benefits. So, that being the case, we see no reason, why for 8 months i.e. from the month of May, 1985 upto December, 1985 the special duty allowance that was paid to the applicant should not be ~~taken into consideration for calculating the pensionary benefits,~~ of the applicant. Unless the special duty allowance that was drawn by the applicant prior to 1.1.1986 is included in the 10 months average pay for a Central Government servant who retired after

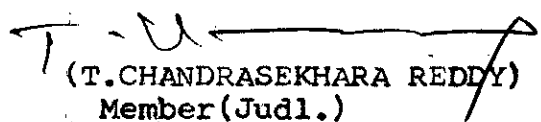
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1.1.1986, that will amount to discrimination. For example, two Central Government employees who had joined in service in the same cadre at one and the same time and retire in the same cadre at the same place, he who retires on 31.12.1985 gets more pension as special duty allowance is taken into consideration and if the other retires on 31.1.1986, he gets less pension if the special duty allowance that had been paid to him prior to 31.12.1985 is not taken into consideration. It is evident that such a treatment as already pointed out, is discriminatory. The said treatment offends Articles 14 and 16 of the Constitution of India. So, this discrimination can be removed by taking into consideration the special duty allowance also, that was drawn by the applicant in the year 1985 for the relevant period for the purpose of calculating pensionary benefits for 10 months prior to retirement. The respondents' action in not taking into consideration the special duty allowance which the applicant had been paid from May, 1985 to December, 1985 does not appear to be valid. The Govt. of India OM No.20014/15/86-E-IV dated 5.10.1988. The said OM is not applicable to the facts of this OA, and so, cannot be given effect to so far this OA is concerned. So, the OA is liable to be disposed of by giving appropriate orders to the respondents.

8. In the result, the respondents are directed to re-calculate the pensionary benefits of the applicant, taking into consideration the special duty allowance which the applicant had drawn from May, 1985 to December, 1985 and issue revised pension payment order. Further, the respondents are directed to pay the applicant, the difference of commuted value of pension on the basis of the revised pension payment order. So far the arrears of pension are concerned, the respondents to pay the said arrears w.e.f. 27.10.1992 on the basis of the revised pension payment order i.e. from one year prior to the filing of this OA. The respondents

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shall continue to pay the pension as per the revised pension order in accordance with rules and regulations. The directions in the above order shall be implemented within 4 months from the date of communication of this order. Parties shall bear their own costs.

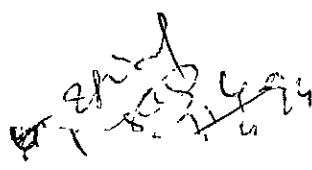

(T.CHANDRASEKHARA REDDY)
Member (Judl.)

2004. The 9th March, 1994
(Dictated in the open court, )

To

1. The Chief General Manager, Telecommunications,
North Eastern Circle, Shillong, Assam.
2. ~~THE DIRECTOR~~
Sanchar Bhavan, New Delhi.
3. ~~THE SECRETARY~~
The Secretary to the Ministry of Finance,
4. One copy to Mr.K.Venkateswar Rao, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.

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2004. 11.11.94

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHY : MEMBER (AD)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. R. RANGARAJAN : M (ADMN)

Dated 9-3-1994

ORDER/JUDGMENT

M.A./R.A./C.A./No.

in

O.A.No.

1309/3

T.A.No.

(w.p.)

Admitted and Interim Directions
Issued.

Allowed

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

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