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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. NO.896/1995 Dated, the 11th June, 1999

BETWEEN :

E. Krishna Swamy ... Applicant

A N D

1. The Principal Accountant General, Audit I, AP Hyderabad

2. The Union of India, represented by the Secretary to Govt. of India, Ministry of Finance, Department of Expenditure, New Delhi.

... Respondents

COUNSELS :

For the Applicant : Mr. E Krishna Swamy (Party-in-Person)

For the Respondents : Mr. B.N. Sarma

CORAM :

THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMIN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL)

O.A.896/95

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O R D E R

(PER: HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (J)

1. Heard the applicant in person and Mr. M.C. Jacob for Mr. B.N.Sarma Learned Counsel for the respondents.

2. Both the parties have submitted written briefs and we have perused the same.

3. This is an application under Section 19 of the Administrative Tribunals Act.

4. The application was filed on 19.7.1997.

5. The applicant was working in the post of Senior Audit Officer, O/o the Principal Accountant General, Audit, A.P., Hyderabad.

6. On 27.9.93, the respondent No.2 sanctioned an Interim Relief of Rs.100/- to all its employees.

7. The applicant retired from service w.e.f. 28.2.95 on attaining the age of superannuation.

8. While determining the pension and pensionary benefits of the applicant, the respondent No.1 failed to take into consideration the Interim Relief of Rs.100 and also while sanctioning the cash equivalent of earned leave at his credit the respondent No.1 failed to take into consideration the House Rent Allowance that was being drawn.

9. The applicant feels aggrieved by the manner in which his pension and pensionary benefits were calculated.

10. As regards the Interim Relief sanctioned by the Ministry of Finance, Department of Expenditure O.M. No.7(26) E-III/93 dt. 27.9.93, the applicant submits that Interim Relief is always granted as an 'ad hoc' increase in pay or emoluments of the Govt. Servants to be adjusted or telescoped into the final fixation of the pay of the Govt. servant at the time of the final fixation of pay in the revised scale of pay

or at the time of implementation of the Pay Commission. The Interim Relief granted prior to 1.1.86 was merged with the pay while fixing the pay of the Govt. servant in the revised scales of pay. The Interim Relief now granted will also be merged with pay of the Govt. servant while fixing the pay in the revised scales of pay to be implemented on the recommendations of the Vth Pay Commission. The Interim Relief granted is an ad noc increase of pay subject to adjustment and the character of the Interim Relief does not change merely because it is termed as 'sui generis'. The exclusion of the Interim Relief from the payment of cash equivalent of earned leave at credit of the retiring Govt. servant is a contradiction and negation of the character of that payment. Such exclusion is arbitrary, illegal and violative of Article 14 of the Constitution of India.

11. As regards the HRA, the applicant submits that the allowances like HRA/CCA are paid to a Govt. servant at slab rates, depending on the pay drawn. Dearness Allowance is paid as a percentage of pay to neutralise the cost of living index increase. If the 'Interim Relief' was to be treated as 'Pay', it would bring in additional benefits in all these payments and also in pension and gratuity in case of persons retiring from service. As any change in the substantive structure of the 'pay' of Central Govt. Employees is the subject matter of reference to the Vth Pay Commission, it is understandable that the 'ad hoc' increase by way of 'Interim Relief' is termed as 'sui generis' and declared as not countable for any of these service benefits. But 'Interim Relief' is treated as part of the 'leave salary' of a Govt. servant. As such it cannot be excluded from the 'cash equivalent of leave at credit' of a retiring Govt. Servant. In para 1 of the Govt. of India OM dt. 27.9.93, it is made abundantly clear that the Staff Side of the National Council (JCM) was demanding increase in

'pay' of Govt. Servants and this demand was accepted by granting the 'Interim Relief'. The applicant submits that the 'Interim Relief' granted, though may not have the attributes of 'Pay', nonetheless forms part of the 'leave salary' of the serving as well as the retiring Govt. servant.

12. He submits that in the absence of definition of 'Interim Relief', its characteristics are to be identified with any existing precedents. Thus he submits that prior to 1.1.86, the date from which the recommendations of IV Pay Commission were implemented, there were two instalments of 'Interim Relief' granted to Central Govt. Servants, before the Commission submitted its final report. The said interim relief was included in the value of cash equivalent of leave at credit at the time of retirement. In the instant case, in the OM it is clearly mentioned that the interim relief will not count for any service benefit i.e. computation of overtime allowance, cash equivalent of leave at credit of the Govt. servant, pension or gratuity.

13. The applicant feels aggrieved cf para 2 of the OM dt. 27.9.93. Further, he feels aggrieved for not including HRA while calculating the cash equivalent of the earned leave of the Govt. servants. Thus he submits that his pensionary benefits like leave encashment and others were paid less substantially.

Hence, he has filed this O.A. for the following reliefs :

"order deletion of the words "Cash Compensation, Encashment of Leave" appearing in para 2 of the

Govt. of India, Ministry of Finance, Department of Expenditure, OM No.7(26)/Finan E.III/93 dated 27.9.93 and quash these orders in so far as they deny the payment of 'Interim Relief' as part of the Cash Equivalent of the Earned Leave at Credit of a retiring Govt. servant, as arbitrary, illegal, discriminary and violative of Art 14 of the Consxitution of India and order Respondent No.1 to pay the Applicant, the amounts payable consequent on such orders with interest at 15% p.a., from the date of the payment was due; and

Order deletion of the words "House Rent Allowance' whereever occuring under Rule 39(2)(b) of the CCS(Leave) Rules, 1972, and order addition of the words "House Rent Allowance" in the formula thereunder,

$$\frac{\text{Pay admissible on the date of retirement plus dearness allowance "plus house rent allowance" admissible on that date}}{30} \times \text{Number of days of unutilised earned leave at credit on the date of retirement subject to the maximum of 240 days.}$$

and quash Rule 39 ofthe Central Civil Services(Leave) Rules, 1972, in so far as they deny payment of House Rent Allowance as part of 'Cash Equivalent of Earned Leave at Credit' of a retiring Govt. servant, as arbitrary, illegal, discriminatory and violative of Article 14 of the Constitution of India and direct Respondent No.1, to pay the Applicant, amounts due payable on such orders with interest at 15% from the date they were due payable.

15. The respondents have filed a counter stating that as per orders under Rule 39(2)(b) of the CCS(Leave) Rules, 1972, the cash equivalent of leave at credit is paid to the Central Govt. employees on the formula prescribed i.e. -

$$\frac{\text{pay + D.A}}{30} \times \text{No. of days of unutilised EL at credit subject to the maximum of 240 days.}$$

The said orders specifically stated that no HRA or CCA shall be included. Further, the Govt. of India, Ministry of Finance, Deptt. of Expenditure in their O.M. dt. 27.9.93 (Annexure-I to the O.A. has explicitly stated that the Interim Relief would not be termed as 'pay' or Allowances' or 'wage' and will not count for any service benefit, including encashment of leave. It is also declared by the Govt. of India that the interim relief is termed as 'sui generis' and, therefore, it cannot be taken into consideration for payment of cash equivalent of leave at credit of the retiring Govt. servant. The contention of the applicant that the interim relief granted, though may not have the attributes of 'pay' nonethless forms part of the 'leave salary' of the serving as well as the retiring Govt. servants, is devoid of merits. It is stated that the interim relief granted prior to the introduction of the revised pay scales in 1986 included for calculation of cash equivalent of leave at credit of the retiring Govt. servants because the order obtaining then contained such a provision. However, the O.M. dt. 27.9.93 and 14.8.95 on interim relief clearly mention that the interim relief will be 'sui generis'. They submit that the interim relief granted is paid as part of leave salary of a Govt. servant who is in service but it cannot be included for payment of cash equivalent to leave at credit of the retiring Govt. servants. Further, the respondents submit that the HRA granted to the Central Govt. employees seeks to compensate partly the expenditure incurred by them for providing accommodation which is admissible

only during the period of service and not beyond and as such once the Govt. employee retires from service, the responsibility of the Government ceases. However, on retirement of an employee the Govt. provides non-recurring financial assistance in the form of Gratuity and encashment of leave, etc and recurring assistance in the form of pension along with dearness relief. The non-financial recurring assistance is a welfare measure, as one time settlement and the object behind the concession of retention of Govt. accommodation for a period of 4 months after retirement is to enable the retired Govt. servant to arrange for an alternate accommodation. The concession does not exist in the case of those employees who are in private rented/owned accommodation and have no obligation to vacate the accommodation after retirement. Further, the HRA is a compensatory allowance. According to FR(9)(5) a compensatory allowance means an allowance granted to meet personal expenditure necessitated by the special circumstances in which duty is performed i.e. to meet the personal expenditure on housing by that he could have a suitable accommodation at the place of the posting to enable him to perform duties. However, after retirement, the employee has no official duties to perform and as such, there is no need for grant of HRA thereafter.

16. Thus the respondents submit that there are no merits in the O.A. and the O.A. is liable to be dismissed.

17. The applicant during the course of his arguments mainly relied upon the decisions of the Hon'ble Supreme Court in the case of D.S. Nakara Vs. Union of India (reported AIR 1983 SC 130 and also relied upon the case of S. P. Gupta and Others Vs. President of India and Others (reported in AIR (1982) SC page 149).

18. The points for our consideration are :

i) whether the provisions of the OM dt. 27.9.93 are contrary to Article 14 of the Constitution of India; and

ii) whether the applicant is entitled to get the HRA computed while calculating the cash equivalent of leave at his credit, under Rule 39(2)(b) of the CCS(Leave) Rules, 1972.

Point No.(i)

19. As regards the Interim Relief is concerned the Govt. may sanction Interim Relief to its employees pending submission of the recommendations of the Pay Commission. The Interim Relief is liable to be adjusted while fixing the pay of the Govt. employees in the revised scales of pay as recommended by the Pay Commission. However, it is to be noted that the Interim Relief sanctioned vide OM dt. 27.9.93 was not included for fixation of pay while determining the pay of the employees as per the recommendations of the Vth Pay Commission.

19(a).In para 2 of the OM it is clearly stated that this Interim Relief of Rs.100/- is not 'pay' and as such the same shall not be counted for any service benefit such as Cash equivalent of leave at credit of the Govt. employees, Pay fixation, Pension or Gratuity, etc. The contention of the applicant that this Interim Relief was liable to be adjusted at the time of fixation of pay is ~~not~~ accepted. This Interim Relief was ~~not~~ taken into consideration for fixation of pay of the Govt. employees as per the recommendations of the Vth Pay Commission. When that is so, the Govt. of India at the time of sanction of this Interim Relief itself had unequivocally indicated that this Interim Relief should not count as pay or for any other service benefits. When that is so, the applicant

cannot have any grievance for non-inclusion of the same while calculating and determining the cash equivalent of earned leave at his credit and also his pension and pensionary benefits.

20. The other contention of the applicant is that this Interim Relief possesses all the characteristics of pay and therefore, it should be taken into consideration. The respondents contend that Interim Relief is applicable to those employees who are in service. They further submit that it is for the respondent No.2 to decide whether the Interim Relief has all the characteristics of of pay and whether it could be taken into consideration for the purpose of extending the same to service benefits or not. They submit that in the case of subsequent 2 instalments of Interim Reliefs sanctioned by the Govt. they were included for the purpose of fixation of pay extending the service benefits to the Govt. employees. Therefore, the applicant cannot make any case of distinction in calculating his cash equivalent of earned leave at his credit by not taking the first instalment of interim relief of Rs.100/-.

21. It is for the Union of India to decide whether the Interim Relief granted to the employees can be taken into consideration for their service benefits, pension, gratuity, etc. It is a policy decision. The Court or Tribunal can have no power to interfere with the policy matters. Those matters are within the prerogative of the executive.

22. Hence point No.(i) is held against the applicant.

Point No.(ii)

23. The other grievance of the applicant is that while determining his leave encashment salary the respondents took into consideration only the element of pay and D.A. and failed to take into consideration the HRA drawn by him. According to him, the HRA is a compensatory allowance and that this allowance should have been taken into consideration by the respondents while determining the cash equivalent of earned leave at his credit.

24. The respondents have specifically stated that HRA is granted to those persons who are in service with a view to compensate the expenditure incurred by them in the performance of their duties. Therefore, the persons who retired from service cannot have the same benefit.

25. No doubt, the Govt. is permitting retention of Govt. accommodation by the employees after their retirement for 4 months. This is only to facilitate the ~~Govt~~ retired Govt. servant to arrange for an alternative accommodation on his retirement. But this does not mean that during that period the employee is not paying any rent, if he over stays in the Govt. accommodation the Govt. servant is liable to pay damages for the period he overstayed in the Govt. accommodation. When that is so merely because the Govt. permit the Occupants of the Govt. accommodation, it does not mean that such Govt. servants can be compared with those retired Govt. servants who are not in occupation of Govt. accommodation at the time of their retirement. Therefore, we find no merits in the contention of the applicant.

26. As already observed Rule 39(2)(b) of the CCS (Leave) Rules, 1972 clearly state as follows :

"(b) The cash equivalent under clause (a) shall be calculated as follows and shall be payable in one lump sum as a one-time settlement. No House Rent Allowance or City Compensatory Allowance shall be payable :

$$\text{Cash equivalent} = \frac{\text{Pay admissible on the date of retirement plus dearness allowance admissible on that date}}{30} \times \text{Number of unutilised earned leave at credit on the date of retirement subject to a maximum of *180 days.}$$

*Increased to 240 days w.e.f. 1.7.1986."

The cash equivalent of the earned leave at credit of the Govt. servant has to be determined only after taking into consideration the pay and DA of the Govt. employee/30 multiplied by the number

of days of earned leave at credit subject to a maximum of 240 days. The formula adopted by the Govt. in calculating the cash equivalent of the cash equivalent of the earned leave at credit has not been found irregular during all these years. This formula is in operation for more than a decade. When that is so, it is impossible now to contend that non-inclusion of HRA in the said formula is either arbitrary or illegal.

27. In that view of the matter, the O.A. has no merits and liable to be dismissed.

28. The O.A. is accordingly dismissed. No order as to costs.

(B.S. JAI PARAMESHAR)
MEMBER(JUDL)

11.6.99

(H. RAJENDRA PRASAD)
MEMBER(ADMIN)

Dated, the 11th June, '99.

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