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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. 1110/99

Date: 30.6.2000

Between:

S.A.Razak

.. Applicant

A N D

1. The Union of India
Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Scientific Advisor to
Raksha Mantri &
Director General, DRDO
Ministry of Defence,
New Delhi.
3. The Director,
Defence Electronics Research
Laboratory,
Kanchanbagh,
Hyderabad.

.. Respondents

Counsel for the applicant : Mr. K. Sudhakar Reddy

Counsel for the respondents: Mr. V. Rajeshwar Rao

Coram:

Hon. Shri B. S. Jai Parameshwar, Member (J)



(Per Hon. Shri B.S. Jai Parameshwar, Member(J))

Heard Mr. K. Sudhakar Reddy, learned counsel for the applicant and Mr. V. Rajeshwar Rao, learned counsel for the respondents.

2. The applicant worked in the Army for a period of 4 years and 176 days. After his discharge from the Army service he was re-employed under the control of the respondent no.3. While he was working on re-employment he had registered his name with the Employment Exchange for better prospects. However, he submitted his candidature for a post of Watchman-cum-Peon in M/s. State Bank of Hyderabad through proper channel. He was selected for the said post. He tendered his resignation for the post he held with the 3rd respondent. The resignation was effective from 11-4-72. By then he had completed 10 years one month and 18 days of service in the Laboratory.

3. He had made representations to the Laboratory for sanctioning him pro-rata pension for the services rendered by him to the Laboratory. The same was turned down by the Laboratory on the pretext that resignation had the effect of forfeiture of his entire service in the Laboratory.

4. He approached this Tribunal in OA 1009/94. The said OA was decided on 13-9-95 with the following relevant direction:

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(i) The applicant is entitled for pro-rata pension for the period of service he had rendered in DLRL if a provision for grant of pro-rata pensionary benefits exists;

(ii) Arrears due to pro-rata pension if granted will be given only from 5-8-1998 i.e. one year prior to the date of filing of this OA. (this OA was filed on 5-8-1994)

(iii)

(iv)

5. AS per these directions the respondents passed an order bearing No. RD/PERS-10/PRO-RATA/SAR/O.A.1009/94/25802/1356/D(R&D) dt. 17-4-97 sanctioning pro-rata pension of Rs.40/- per month and gratuity of Rs.8,025/- It is stated that the said order was issued keeping in mind the instructions contained in OM No.26(18)/E.V.(B)/75 dt. 8-4-76.

6. The applicant relying upon the recommendations of the IV Pay Commission and V Pay Commission wherein it was recommended that the minimum pension must be Rs.375/- per month w.e.f. 1-1-86 and Rs.1275/- per month w.e.f. 1-1-96 feels that the grant of pension by order dt. 17-4-97 at Rs.40/- per month is too meagre. Hence he has filed this OA to call for the records pertaining to fixation of the applicant's ^{pro-rata} pension vide No. PPO/C/222/98 dt. 18-6-98 and for further direction to the respondent authorities to fix the pro-rata

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pension of the applicant as Rs.375/- per month as the minimum for the period prior to 1996 and Rs.1275/- per month as the minimum with effect from 1-1-96 and to direct the respondents to pay the arrears with interest.

7. The respondents have filed their reply. The factual aspects are not in dispute. They submit that the letter dt. 17-4-97 contained a clause in para (ix) stating that any further liberalisation of pension/gratuity rules decided upon by Government of India in respect of officers of the Central Civil Services, after the permanent absorption of the applicant in State Bank of Hyderabad will not be extended to him, and this stipulation has been clearly mentioned in the Pension Payment Order dt. 18-6-98. This is a general rule applicable to all permanent absorption cases. The contention of the applicant that he has not paid the minimum pension admissible on the basis of the recommendation of the IV and V Pay Commission is not correct because the said benefit of minimum pension was raised from 1-1-86 and 1-1-96 and can be extended to those permanently absorbed cases on or after 1-1-86 and 1-1-96 only. Since the applicant was absorbed permanently in State Bank of Hyderabad w.e.f. 11-4-1972 he is not entitled for the said benefit of minimum pension. The service book and personal file containing the resignation letter and the approval of the

competent authority are not available with them.

The certificate No.DLRL/PERS/SAR /134 dt. 14-2-1972 and letter dt. 7-3-72 quoted by the applicant also not available for verification. The pro-rata pension was sanctioned to him in accordance with the directions given by this Tribunal in OA 1009/94

As per the calculation sheet (Annexure-II) the minimum pro-rata pension was worked out to Rs.11.96 per month but the applicant ^{was} granted pro rata pension at Rs.40/- per month i.e. the minimum pension admissible as on 11-4-1972 the date on which the permanent absorption ^{of the applicant was} approved by CCDA(P) Allahabad.

This basic rule cannot be changed as this was made applicable even to normal retirement cases on superannuation. They have fixed the pro rata pension of the applicant in accordance with the rules. The applicant had exercised his option in terms of para V(b) of the Min. of Defence letter dt. 17-4-97 to receive pro-rata gratuity and a lumpsum amount in lieu of pension worked out with reference to the commutation table. Accordingly, on request from the CCDA(Pension)Allahabad, the Director of Medical Education, Hyderabad requested the Superintendent Osmania General Hospital, Hyderabad to constitute a Medical Board to examine the applicant and to forward the medical report to enable them to sanction lumpsum payment in lieu of pro-rata pension.

8. The applicant has not submitted any representation claiming the reliefs as claimed in this OA

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The applicant is not entitled to the reliefs claimed in this OA. Thus they pray for the dismissal of the OA.

9. On 11-2-2000 the respondents were directed to produce the order of the Govt. with regard to effective date of Pay revision made in accordance with recommendations of the IV and V Pay Commission. Accordingly the learned counsel for the respondents has produced O.M No.2/14/87-PIC dt. 5-3-1987, F.No.45/86/97-P&PW(A)-Part I dt. 27-10-1997 and a copy of the Ministry of Finance Department of Expenditure OM No. 26(18)-E.V.(B)/75 dt. 8-4-76.

10. The grievance of the applicant is that the pro-rata pension fixed at Rs.40/- is too meagre. The learned counsel for the applicant submitted that this paltry sum of Rs.40/- sanctioned by the respondents is not sufficient even for a meal considering the present day prices of the essential commodities. He vehemently contended that the pro-rata pension shall not be less than the minimum pension recommended by the Pay Commission. Thus he attempted to convince me that the respondent authorities are bound to pay the pro-rata pension atleast at the minimum pension fixed by ^{the} IV Pay Commission and V Pay Commission. With effect from 1-1-86 the minimum pension has been fixed at Rs.375/- per month and w.e.f. 1-1-96 the minimum pension fixed is Rs.1,275/- per month.



11. The respondent authorities on the basis of the directions given by this Tribunal calculated the pro-rata pension of the applicant by order dt. 17-4-97.

12. The respondent authorities in their order dt. 17-4-97 have more or less incorporated the guidelines contained in the OM dt. 8-4-76. Para 4(vii) of the OM dt. 8-4-76 is reproduced herein below :

"(vii) Non admissibility of liberalisations of pension Rules after absorption.

Any further liberalisation of pension rules decided upon by Government after the permanent absorption of a Government servant in a public undertaking/autonomous body would not be extended to him. However, the benefit of further liberalisation in pension shall also be allowed to a Government servant after his permanent absorption if, in any case, such liberalisation is sanctioned retrospectively w.e.f. a date prior to the date of such absorption. "

However, the respondents while passing the order dt. 17-4-97 left out the last sentence in the above para.

Para (ix) of the OM dated 17-4-97 reads as follows :

"(ix) Effect of Liberalisation of pension/ gratuity rules after absorption:

Any further liberalisation of pension/ gratuity rules decided upon by Govt. of India in respect of officers of the Central Civil Services, after the permanent absorption of Shri S.A.Razak in State Bank of Hyderabad will not be extended to him."

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From that it is clear that the benefit of further liberalisation in pension has to be allowed to a Govt. servant after his permanent absorption if in any case such liberalisation is sanctioned retrospectively w.e.f. a date prior to the date of such absorption. That means pro-rata pension sanctioned to a Govt. servant is liable to be varied when liberalisation takes effect from a retrospective date prior to the date of absorption.

13. On account of omission of last sentence of para (vii) of the OM dt. 8-4-76 in the order dt. 17-4-97 the respondent authorities inserted a note on the PPO dt. 18-6-98 to the effect that the liberalisation of pension is not extended to the applicant. The note made on the PPO reads as under :

"Further liberalisation of pension not applicable vide G.O.I. M.O.D. New Delhi letter dt. 17-4-97. "

Further it is to be noted that the PPO does not contain the scale of pay of the post held by the applicant in the respondent Laboratory.

14. It is not known on what date the applicant submitted his option when he was paid pro-rata pension at Rs.40/- and gratuity of Rs.8,025/- Be that as it may ~~if~~ I feel that omission of the important sentence in the order dt. 17-4-97 (as contained in OM dt. 8-4-1976) gives an impression that the applicant has to draw pro-rata pension of

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Rs.40/- p.m. only throughout his life time.

15. As already noted the applicant got a post of Watchman-cum-Peon in the State Bank of Hyderabad through proper channel. The respondent authorities accepted the resignation of the applicant on 11-4-72. It is on this ground in the order dt. 17-4-97 they stated that the date of absorption is 11-4-1972. If any liberalisation in pension has taken retrospectively from a date prior to 11-4-72 the applicant is legitimately entitled to the said liberalised pension.

16. The notification dt. 5-3-87 was issued accepting the recommendations of IV Pay Commission. Para-4 of the OM is reproduced below :

"4. These orders take effect from January 1, 1986 and will extend to all pensioners/family pensioners irrespective of the date of retirement of the Government servant or sanction of family pension."

From this para it is clear that the minimum pension payable at Rs.375/- per month is extended to all pensioners irrespective of the date of retirement of the Govt. servant. In the instant case the date of resignation of the applicant is 11-4-72. The applicant can only be considered to have retired voluntarily from service w.e.f. 11-4-72. The respondent authorities have not taken this into consideration while passing the order dt. 17-4-97.

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17. On the basis of the recommendations of the V Pay Commission a separate order was issued with respect to the employees who retired before 1-1-96 because the OM dt. 27-10-97 is applicable to those officials who retire on or ~~after~~ 1-1-96. The applicant has produced the Text of Ministry of Finance Resolution dt. 30-9-1997 regarding pensionary benefits. It is at page 20 Annexure A-3 to the OA. The relevant portion is reproduced below :

<p>"(iii) Pending revision of the pension of pre 1-1-86 retirees, the pensioners should be provided immediate relief by authorising pension disbursing authorities to consolidate the pension by adding basic pension, personal pension wherever admissible, darness relief as on 1-1-96 on basic pension only, interim relief(I&II) and 20% basic pension. The consolidated pension shall not be less than 50% of the minimum revised pay in the pay scale recommended by the Fifth Central Pay Commission of the post held by the pensioner at the time of retirement (137.15)</p>	<p>Accepted with the modification that 40% of the basic pension shall be added while consolidating the pension as on 1-1-1996 but the pension consolidated as on 1-1-1996 shall not be raised to 50% of the minimum of the revised pay of the post held by the pensioner at the time of retirement.</p>
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18. The applicant has not challenged the order dt.17-4-97 by which the respondent authorities had fixed the pro-rata pension of the applicant at Rs.40/- per month.

19. The contentions advanced by the learned counsel for the applicant are valid and acceptable.

20. The respondent authorities while passing the order dt. 17-4-97 have indicated only

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to the effect that liberalisation of pension cannot be extended to the applicant. But the said clause incorporated in the order dt. 18-4-97 is contrary to the instructions contained in the OM dt. 8-4-76.

21. It is for the authorities to reconsider the whole issue of determining the pro-rata pension of the applicant in the light of the observations made hereinabove.

22. In fact the respondent authorities fixed pro-rata pension only on 17-4-97. It is not that they were not aware of the recommendations of the IV and V Pay Commissions.

23. Besides on receipt of the order dt. 17-4-97 the applicant had submitted a representation a copy of which is at Annexure A-5 (page 26). This representation does not help the applicant to get the reliefs he want. Hence he may submit a detailed representation bringing out the authorities para-vii of the OM dt. 8-4-76 which has been extracted above.

24. Hence the following directions are given :

- (a) The applicant may, if so, advised submit a detailed representation against the order dt. 17-4-97 and PPO order dt. 18-6-98 within one month from the date of receipt of a copy of this order;
- (b) The competent ~~an~~ respondent authority shall on receipt of such a representation consider and decide the pro-rata pension payable to the applicant in accordance with the rules taking due note of the recommendations of the IV and V Pay Commission;

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(c) Time for compliance is 4 months from the date of receipt of the representation from the applicant.

25. The OA is disposed of. W. carb.

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(B.S. JAI PARAMESHWAR)

Member (J)

MD

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

COPY TO

1. HDHND
2. HBRN (ADMN.) MEMBER
3. HBSJP (JUDL.) MEMBER
4. D.R. (ADMN.)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

1ST AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE-CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMN.)

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

DATE OF ORDER 30/6/2000

MA/RA/CP. NO.

IN

CA. NO. 1110/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

C.P. CLOSED

R.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
दस्तावेज / DESPATCH

- 6 JUL 2000

हैदराबाद न्यायपीठ
HYDERABAD BENCH