

Central Administrative Tribunal
Jabalpur Bench

OA No.68/06

Jabalpur, this the 28th day of November 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.A.K.Gaur, Judicial Member

Dr.G. Jaiswal
S/o late Shri Lala Ram Prasad Jaiswal
Retired Divisional Medical Officer
Central Railway Jabalpur.
R/o 1100 "Kalptaru"
South Civil Lines
Pachpedi, Jabalpur.

Applicant

(By advocate Shri L. S.Rajput)

Versus

1. Union of India through
Its Secretary
Ministry of Railways
Rail Bhawan
New Delhi.
2. The General Manager
West Central Railway
Indira market, Near Railway Station
Jabalpur.
3. The Divisional Railway Manager
West Central Railway
Jabalpur.

Respondents

(By advocate Shri H.B.Shrivastava)

O R D E R

By A.K.Gaur, Judicial Member

The Original application has been filed seeking the following reliefs:

- (i) Direct the respondents to refix the monthly pension of the applicant w.e.f.1.1.96 (minimum at 50% of the revised senior scale of pay introduced as per recommendations of the 5th C.P.C.) vide Railway Board's letters dated 13.4.98 & 15.1.99 including the non-practicing allowance in the

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basic pay. The pension may be further revised w.e.f. 1.4.2004 taking 50% dearness relief as dearness pension.

- (ii) Direct the respondents to make payment of arrears of pension w.e.f. 1.1.96 with interest flowing from such revision.
- (iii) Quash the part of impugned letter dated 25.8.05 (A-1) to the extent it direct the respondents to implement the orders of Delhi High Court dated 18.5.02 in respect of the petitioners only by further directing the respondents to implement the said order in the case of the applicant who is a similarly situated retired doctor of the Railways.

2. The applicant retired as Divisional Medical officer from railway Hospital, Jabalpur on 31.1.1986. The case of the applicant is that while working as Assistant Surgeon/Divisional Medical officer, he was getting Non-Practicing Allowance (NPA) in certain percentage of basic pay. According to the applicant, he was getting pay scale of Rs.3000-4500/- at the time of retirement. The equivalent senior scale prescribed by the 5th C.P.C w.e.f. 1.1.96 was Rs.10000-15200/-. As per Railway Board's policy decision dated 15.1.99 (A-3), the minimum monthly pension of the applicant should not be less than Rs.6250/- as on 1.1.96, instead of Rs.5563/- which was fixed as per the 5th C.P.C recommendations. As per the applicant, he is entitled to count NPA in pension at the rate of 25% of basic pay as laid down by the 5th CPC. The Railway Board's letter dated 13.4.98 in this regard has been quoted by the applicant. The letter reads as under:

"R.B.E.No.74/98

Subject: Recommendations of the Fifth Central Pay Commission-grant of Non-practicing allowance to IRMS officers.

(No.PC-V/97/1/7/15 dated 13.4.98)

Please refer to letter of even number dated 31.3.98 issued by the Ministry of Railways on the above noted subject. The issue as to whether Non Practicing Allowance (NPA) will count for various service benefits has been examined. The President is now pleased to decide that in line with the position prevailing before 1.1.96, NPA will count as 'Pay' for all service benefits including retirement benefits.

The benefit of NPA at revised rates contained in this Ministry's letter dated 31.3.98 will be admissible from 1.1.96 or from the date the officer elects for the revised scale of pay, whichever is later."

The applicant made a representation dated 29.11.05 (A-6) for inclusion of NPA in the basic pay and for re-fixation of his pension accordingly, in view of the judgement of the Delhi High Court dated 18.2.2002 and of the Supreme Court dated 13.5.2005. The representation, according to the applicant, was rejected by the respondents, in the light of the impugned order.

3. Opposing the case, the respondents have contended that the applicant was not a party to the cases before the Delhi High Court and the Supreme Court; hence the judgements quoted by him are not applicable to him. The Railway Board had issued instructions specifically in regard to the litigants in WP No.7820/01 filed before the Delhi High Court and the applicant cannot take advantage of these instructions. The representation of the applicant had been addressed to Chief Personal Officer, WCR, Jabalpur, who has not been impleaded as a party in the OA. The original application is also premature as the applicant did not wait for six months to get a reply to his representation. The respondents have further contended that the applicant had applied for revision of pension on 17.2.99 and his pension was revised w.e.f. 1.1.96 and a new PPO issued on 28.7.99. The applicant did not make any protest all these years and appears to be satisfied with the revised pension as re-fixed w.e.f. 1.1.96. The filing of Original Application is an after thought. On the question of NPA, the respondents have contended that the contents of A-3 viz. Railway Board's letter dated 15.1.99 does not mention any thing about NPA (Non-Practicing Allowance). What has been emphasized in the letter is that the pension should not be less than 50% of new scale of pay as introduced from 1.1.96. The pension of the applicant which is not less than 50% of the revised grade applicable from 1.1.96 has been re-fixed in terms of Board's instructions dated 15.1.99 without giving weightage of NPA in the revised grade of R.10,000-15200/- as per revised PPO issued on 28.7.1999. The Railway Board had never issued clarification in general that NPA has to be counted as pay for the purpose of revision of pension for pre 1.1.96 retirees also.

4. We have heard Shri L.S.Rajput, learned counsel for the applicant and Shri H.B.Shrivastava, learned counsel for the respondents.

5. Learned counsel for the applicant has placed reliance on the decision rendered by the Delhi High Court in the case of Dr.K.C.Garg and others vs. Union of India and others and other connected cases (C.W.P.No.7322 of 2001), with a view to buttress the contention that the applicant is also entitled to get the same benefit as has been granted to the petitioners in the aforesaid Writ Petitions. The applicant has also placed reliance on the decision rendered in W.P.No.2539 of 2003 - Union of India and others vs. Dr.G.D.Hoonka, with a view to suggest that in a similar situation, the Union of India approached the Supreme Court against the judgement of the High Court and the SLP filed by the Union of India was dismissed and the decision rendered by this Tribunal in OA No.499/2000 was maintained.

6. Learned counsel for the respondents has placed reliance on a letter dated 13.9.2006 issued from the FA&CAO's Office, Civic Centre, Jabalpur and also placed reliance on Railway Board's letter dated 4.9.2006 and argued that in addition to what has been clarified vide letter dated 13.9.06, the case of the applicant when compared to Dr.Hoonka is different, in the sense that the applicant is a pre 1.1.96 retiree and Dr.Hoonka is post 1.1.96 retiree. The applicant retired on 31.1.86 and was in receipt of NPA between Rs.600/- and Rs.1000/-. His pension was fixed taking into account the NPA received by him on 1.1.86. On the basis of the recommendation of 5th Pay Commission applied from 1.1.96, his pension was stepped up to the extent of 50% of the revised grade introduced from 1.1.96. If the pension of the applicant is stepped up again by including NPA payable from 1.1.96, it will amount to double payment of NPA. His pension has already been stepped upto 50% of revised scale of pay and is not less than 50% of revised new scale.

7. We have also seen very carefully the latest decision of Supreme Court in the case of Col.(Retd) B.J.Akkara vs. Govt. of India and others - 2006 (10) Scale 206. The Supreme Court has considered the

question of grant of NPA to all Army Medical Corps officers irrespective of the rank. The Apex Court had occasion to discuss the decision of the Delhi High Court wherein the Delhi High Court had struck down a similar clarificatory circular dated 19.10.99 relating to Civilian Medical officers by judgement dated 18.5.2002. That decision has attained finality and the Union of India has implemented it by reverting back to addition to NPA to minimum pay, for purposes of stepping up the pension in regard to pre 1996 civilian Medical Officers. The Supreme Court has formulated four questions arising for decision. These questions are reproduced hereunder:

- (i) Whether the Circular dated 11.9.2001, is only a clarification or an amendment to the circular dated 7.6.99.
- (ii) whether the circular dated 7.6.99 as clarified by circular dated 11.9.2001 leads to unequal treatment of those who retired prior to 1.1.96 and those who retired after 1.1.96 solely with reference to date of retirement.
- (iii) Whether the respondents having accepted and implemented the decision of the Delhi High Court (in Dr.K.C.Garg vs. Union of India – C.M.P.No.7322/2001 and connected cases decided on 18.5.2002) on a similar issue, are required to extend a similar treatment to Defence Service Medical officers also, by canceling the circular dated 11.9.2001.
- (iv) Even if the circular dated 11.9.2001 is found to be valid, whether respondents are not entitled to recover the excess payments made.

8. After analyzing the whole case, the Supreme Court observed that "as a result, if the pension of a retiree is determined by taking into account NPA as part of 'pay' and the pension so determined is more than 50% of minimum pay in the revised scale of pay, he would continue to get such higher pension. This would happen in the case of all those who retired on or after 1.1.96. If the pension determined by taking into account NPA as part of pay, is less than 50% of the minimum pay in the revised scale of pay, his pension would be stepped up to 50% of the minimum pay in the revised scale of pay. This would happen in the case of pre 1996 retirees." The Apex Court has clearly observed in para 16 of the judgement that "the petitioners want to read the words, "not less than 50% of the minimum pay in the

revised scale of pay" in the Circular dated 7.6.99, as "not less than 50% of the minimum pay in the revised scale of pay plus NPA". When the language used is clear and unambiguous and the intention is also clear, it is not permissible to add words to the Circular dated 7.6.99 to satisfy what petitioners consider to be just and reasonable". "Minimum pay in the revised scale of Pay" refers only to the initial pay in the revised scale of pay and not anything more".

9. The apex court has also considered the impact of the decision of the Delhi High Court, rendered in Dr.K.C.Garg's case which was allowed vide judgement dated 18.5.2002 and the said judgement was not challenged by the Union of India, but on the other hand, it was implemented by adding NPA in the pension in the case of civilian medical officers who retired prior to 1.1.96. The arguments of the counsel for the applicant is that the respondents having accepted and implemented the decision of the Delhi High Court in the case of civilian medical officers, the benefit extended to them in pursuance of the aforesaid decision should also be extended to the applicant. The apex court while dealing with the case of Col (Retd) B.J.Akkara (supra), came to the conclusion that "a particular judgement of the High Court may not be challenged by the State, where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realized, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgement in a case involving similar issue was allowed to reach finality in the case of others. Of course, the position would be viewed differently, if petitioners plead and prove that the State had adopted a 'pick and choose' method only to exclude petitioners on account of malafides or ulterior motives. Be that as it may. On the facts and circumstances, neither the principle of res-judicata nor the

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principle of estoppel is attracted". The Supreme Court finally came to the conclusion in answer to question No.(iii) by holding that "in some cases the validity of the circular dated 29.10.99 has been upheld and that decision has attained finality will not come in the way of State defending or enforcing its circular dated 11.9.2001". The challenge to the validity of the circular dated 11.9.2001 was accordingly rejected by the Apex Court.

10. In view of the aforesaid decision of the Supreme Court, we are of the view that the respondents have rightly denied to the applicant the benefit of the decision of the Delhi High Court in Dr.K.C.Garg's case, treating it as a judgement in persona. The benefit of a judgement in persona cannot be extended to others except those who are party to the case.

11. In view of the aforesaid discussion, and in view of the facts and circumstances of the case, we do not find any merit in the OA. Accordingly, the OA is dismissed. No costs.

A.K.Gaur
(A.K.Gaur)
Judicial Member

Gaur
(Dr.G.C.Srivastava)
Vice Chairman

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प्रतिलिपि.....
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सूचना एवं अनुसन्धान कार्यालय, जवलपुर

6/12/2006
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H.B.Srivastava
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