

12/03/2014
O.A. No 135/2010

Mr. Anupam Agarwal, learned counsel for applicant
Mr. Mukesh Agarwal, learned counsel for the respondent

Heard the learned counsel for the parties.

Order Reserved

(M. Nagarajan)
Member (S)

Anil Kumar
(Anil Kumar)
Member (A)

Date - 14-3-2014

Order pronounced today for the open
Court, by the aforesaid Bench:

14/3/14

For CO

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 135/2010

ORDER RESERVED ON 12.03.2014

DATE OF ORDER: 14.3.2014

CORAM :

**HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER**

Dr. Bimla Jain, wife of Shri Rajendra Jain, aged about 73 years, resident of A-6, Mahavir Nagar, Tonk Road, Jaipur and presently retired as Additional Director, CGHS, Jaipur.

... Applicant
(By Advocate: Mr. Anupam Agarwal)

Versus

1. Union of India, through its Secretary, Ministry of Health and Family Welfare (Dept. of Health), Nirman Bhawan, New Delhi.
2. The Director of General of Health Services, Ministry of Health and Family Welfare, Govt. of India, Nirman Bhawan, New Delhi.
3. The Pay & Accounts Officer, Ministry of Health and Family Welfare, Lady harding Medical College and Hospital, Opp. Shivaji Stadium, New Delhi.
4. Additional Director, Central Government Health Scheme, Kendriya Sadan Parisar, Block B, Ground Floor, Sector 10, Vidhyadhar Nagar, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The applicant has filed this OA praying for the following reliefs:-

"(A) By an appropriate direction/order, the respondents be directed to revise the pension of the applicant w.e.f. 01.01.1996 i.e. from the date of implementation of 5th CPC to Rs.8938/- from Rs.8255/- and to pay the

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pension. He further submitted that controversy has now been settled by the Hon'ble Supreme Court of India in the case of **K.C. Bajaj and others vs. Union of India (Civil Appeal NO. 10640-46 of 2013) with other connected matters on 27.11.2013.**

The question before the Hon'ble Supreme Court was whether Non Practicing Allowance (NPA) payable to the Doctors employee in the Central Health Services, Railways and other Departments of the Government, who retired from service prior to 01.01.1996 is added to their basic pay for calculation of pension payable to them. The learned counsel for the applicant submitted that the Hon'ble Supreme Court has allowed the NPA to be added to the basic pay for the purpose of calculation of pension payable to the appellants of that SLP. Therefore, the applicant being the similarly situated person should also be allowed the same relief.

4. The learned counsel for the respondents admitted that the controversy involved in the present OA has been decided by the Hon'ble Supreme Court in the case of **K.C. Bajaj and others vs. Union of India (supra).**

5. Heard the learned counsel for the parties, perused the documents on record and the judgment referred to by the learned counsel for the applicant. Para No. 29 to 33 of the judgment in the case of **K.C. Bajaj and others vs. Union of India (supra)** are quoted below:-

"29. In view of the above discussion, we hold that the ratio of Digambar's case cannot be invoked to justify the pick and

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choose methodology adopted by the Union of India in resisting the claim of similarly situated doctors that NPA payable to them shall be taken into consideration for calculating the pension. Such an approach by the Union of India is ex-facie arbitrary, unjust and has resulted in violation of Article 14 of the Constitution.

30. The judgment of Col. B.J. Akkara's case cannot be applied to the appellant's case because the circulars, which fell for interpretation in that case and those under consideration in these appeals are different in material aspect. By circular dated 7.6.1999, the Ministry of Defence conveyed the decision of President that "with effect from 1.1.1996, pension of all armed forces pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced with effect from 1.1.1996 of the rank, held by the pensioner". The circular provided that the revision of pension should be undertaken as follows in case of commissioned officers (both post-and pre-1.1.1996 retirees):

"(i) Pension shall continue to be calculated at 50% of the average emoluments in all cases and shall be subject to a minimum of Rs.1275 p.m. and a maximum of upto 50% of the highest pay applicable to armed forces personnel but the full pension is no case shall be less than 50% of the minimum of the revised scale of pay introduced w.e.f. 1.1.1996 for the rank held by the commissioned officer at the time of his/her retirement. However, such pension shall be reduced pro rata, where the pensioner has less than the maximum required service for full pension [Vide clause 2.1(a)].

(ii) Where the revised and consolidated pension of pre 1.1.1996 pensioners are not beneficial to him/her under these orders and is either equal to or less than existing consolidated pension under this Ministry's letters dated 24.11.1997, 27.5.1998 and 14.7.1998, as the case may be, his/her pension will not be revised to the disadvantage of the pensioner (vide clause 4)."

31. When the implementing departments sought clarification on the issue whether NPA admissible as on 1.1.1986 is to be taken into consideration after re-fixation of pay on notional basis as on 1.1.1986 and the same is to be added to the minimum of the revised scale while stepping up the consolidated pension on 1.1.1996, the Ministry issued clarification vide circular dated 11.9.2001 in the following terms:

"The undersigned is directed to refer to Ministry of Defence Letter No. 1(1)/99/D(Pension/Services) dated 7.6.1999, wherein decision of the Government that

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pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum of the revised scale of pay introduced with effect from 1.1.1996 of the post last held by the pensioner was communicated.....

NPA granted to medical officers does not form part of the scales of pay. It is a separate element, although it is taken into account for the purpose of computation of pension.

This has been examined in consultation with the Department of Pension and Pensioners' Welfare and the Department of Expenditure and it is clarified that NPA is not to be taken into consideration after refixation of pay on notional basis on 1.1.1986. It is also not to be added to the minimum of the revised scale of pay as on 1.1.1996 in cases where consolidated pension is to be stepped up to 50%, in terms of Ministry of Defence Letter No. 1(1)/99/D (Pension/Services) dated 7.6.1999."

32. This Court treated circular dated 11.9.2001 as clarificatory in nature and held that it neither amends nor modifies circular dated 7.6.1999. This most striking difference between O.M. dated 7.4.1998 issued by Department of Pension and Pensioners' Welfare, Ministry of Personnel (Public Grievances and Pension) and circular dated 7.6.1999 issued by the Defence Ministry is that the decision of the President conveyed vide OM dated 7.4.1998 was that NPA shall count as pay for all service benefits including retirement benefits but no such decision was contained in circular dated 7.6.1999. Therefore, the clarification issued by the Ministry of Defence vide circular dated 11.9.2001 cannot be equated with O.M. dated 29.10.1999 which had the effect of modifying the decision of the President but was issued without his approval. Unfortunately, the Tribunal and the Division Bench of the High Court overlooked this vital distinction between O.M. dated 7.4.1998 issued by the Ministry of Personnel (Public Grievances and Pension), Department of Pension and Pensions' Welfare and Circular dated 7.6.1999 issued by the Ministry of Defence and mechanically applied the ratio of Col. B.J. Akkara's case for deciding the case of the doctors, who served in Central Health Services, the Railways and other departments of the Government. Therefore, the impugned order is legally unsustainable.

33. In the result, the appeal are allowed, the impugned order of the High Court as also the one passed by the Tribunal are set aside and the applications filed by the appellants before the Tribunal are allowed in terms of the prayer made. The respondents shall re-calculate the pension payable to the appellants by adding the element of NPA. This

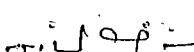
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exercise shall be undertaken and completed by the concerned authorities within a period of three months from today."

6. It is not disputed by the learned counsel for the respondents that the applicant is also similarly situated person and the ratio decide by the Hon'ble Supreme Court in the case of **K.C. Bajaj and others vs. Union of India (supra)** would be applicable to the applicant.

7. In view of the above discussion, the respondents are directed to add the element of Non Practicing Allowance to the basic pay of the applicant for the purpose of calculating the pension payable to the applicant and to re-calculate the pension payable to the applicant. The applicant shall also be entitled for arrears from the date of her superannuation. However, we are not granting any relief with regard to interest since the controversy involved in this OA has been settled recently by the Hon'ble Supreme Court vide its judgment dated 27.11.2013 in the case of K.C. Bajaj and Others vs. Union of India (supra). This exercise shall be undertaken and completed by the respondents within a period of three months from the date of receipt of a copy of this order.

8. With these directions, the OA is disposed of with no order as to costs.


(M. NAGARAJAN)
MEMBER (J)

AHQ


(ANIL KUMAR)
MEMBER (A)