

**Central Administrative Tribunal
Chandigarh Bench**

OA No.060/00059/2014

Pronounced on: 3.11.2014

Coram:

Hon'ble Mr. Sanjeev Kaushik, Member (J)

Hon'ble Mrs. Rajwant Sandhu, Member (A)

Ashok Kumar S/o Sh. Siri Krishan, age 60 years, Ex-Superintendent, Central Excise Commissionerate, Chandigarh-II, Resident of House no.1202, Sector 21, Panchkula, Haryana.

-Applicant

(By Advocate Shri Rohit Sharma)

-Versus-

1. Union of India through Secretary, Govt. of India, Ministry of Finance, New Delhi.
2. Chief Commissioner of Central Excise & Customs, Central Zone, Chandigarh Commissionerate, C.R. Building, Sector 17, Chandigarh.
3. Commissioner, Chandigarh Commissionerate, Chandigarh-II, C.R. Building, Sector-17, Chandigarh.

(By Advocate Shri Sanjay Goyal)

-Respondents

ORDER

Per Mr. Sanjeev Kaushik, Member (J):

By means of this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged an order

dated 31.12.2013 whereby the claim of the applicant for including the "special way" drawn by him for calculation of his pension has been rejected. The applicant has also sought issuance of direction to the respondents to grant him the benefits in terms of decision in CWP no.8058 of 2009, decided on 25.02.2010 by the Hon'ble High Court of Punjab and Haryana as similar benefits have been given to the similarly situated persons, therefore, no discrimination can be carved out between the similarly situated persons.

2. The facts, which led to the filing of the present Original Application in brief are that the applicant joined the respondent department as Inspector on 9.9.1991 and was promoted as Superintendent on 30.6.2009. The applicant was drawing a sum of Rs.250/- per month as special pay on account of adopting small family planning under the Central Government Scheme. On his retirement the said special pay was not included while calculating his pension. After coming to know of a decision of the Hon'ble Punjab & Haryana High Court in CWP no.8058/2009, decided on 25.02.2010 in which special was taken into consideration for fixation of pension, the applicant submitted a representation on 03.09.2013 requesting therein to revise his pension by including his personal pay as part of last pay drawn for the purpose of payment of retiral benefits. However, by the impugned order dated 31.12.2013 (Annexure A-1) his request has been rejected by the respondents. Hence the Original Application.

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3. On notice the respondents resisted the claim of the applicant by filing a detailed written statement wherein they admitted this fact that the applicant was drawing a sum of Rs.250/- as personal pay on account of adopting small family planning under the Central Government Scheme. When he retired on 28.02.2013 the said personal pay was not included while calculating his pensionary benefits. It is submitted that in terms of Rule 33 of the Central Civil Services (Pension) Rules, 1972 (for brevity, Pension Rules) the emoluments means basic pay and do not include special pay as under Rule 9 (21)(a)(i) of FR SR Part-I General Rules where the pay has been defined, does not include any special pay or personal pay granted to a person while calculating pensionary benefits. It is further submitted that the judgment relied upon by the applicant is also not applicable because the rules interpreted by the Court are different and the Pension Rules applicable to the applicant are entirely different. Thus, the benefit cannot be granted and, therefore, the respondents have rightly rejected the request of the applicant through the impugned order.

The applicant has filed replication wherein he has reiterated what has been stated in the OA.

4. We have heard Shri Rohit Sharma, learned counsel for the applicant and Shri Sanjay Goyal, learned counsel for the respondents. For better appreciation of the controversy involved in this Original Application the relevant Rule, i.e., Rule 9 (21) (a) (i) of FR SR Part-I and Rule 33 of the Pension Rules read as under:

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"9(21)(a)(i)

Pay means the amount drawn monthly by a Government servant as-

**(1) The pay, other than Special Pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre'*

**Basic Pay in the revised pay structure means the pay drawn in the prescribed pay band plus the Grade Pay but does not include any other type of pay like Special Pay, etc – Rule 3 (8) of CCS (RP) Rules, 2008."*

33. *'Emoluments' means Basic Pay as defined in Rule 9 (21)(a)(i) of the F.R. which a Government Servant was receiving immediately before his retirement or on the death; and will also include Non-Practicing Allowance granted to Medical Officer in lieu of Private practice.*

As per Govt. of India Ministry of Health and F.W.O.M. No.Z/28016/14/90-PMS dated 20.07.1992, it is clarified that as per the Pension Rules, the term 'emoluments' for the purpose of calculating various retirement and death benefits shall mean Basic Pay as defined in F.R. 9 (21)(a)(i) which the Government Servant was receiving immediately before his retirement or on the date of his death, i.e., it includes only Basic Pay (Substantive or Officiating) drawn by him but does not include Special Pay, Personal Pay Deputation (Duty) Allowances, etc. However, Non-Practicing Allowance and Stagnation Increments count as 'Emoluments'.

5. Perusal of the above extraction makes it clear that the emoluments do not mean the basic pay and do not include special pay or personal pay and pay defined under Rule-9 also talks of that it does not include special pay or pay granted in view of personal qualification. It also makes it clear that the rules applicable to the Central Government employees do not talk of adding special pay or personal pay in basic pay while calculating the retiral benefits. Till it finds place in the rules the prayer of the applicant

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cannot be acceded to. There is no challenge to the above rules. The judgment relied upon by the applicant also does not help him because it deals with the Punjab Civil Services Rules applicable to the employees working in the State of Haryana, Punjab and UT of Chandigarh. In absence of the striking down of these rules, which are applicable to the applicant, he cannot be able to succeed in the matter as on date as per Rule 9 (21). The applicant is not entitled for including special pay in basic pay while calculating the retiral benefits. Accordingly the OA is dismissed being devoid of merit. No costs.

(Rajwant Sandhu)
Member (A)

(Sanjéev Kaushik)
Member (J)

Place: Chandigarh

Dated: 03.11.2014

'San.'