

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

M.A. No. 648/2007 in
O.A. No. 577/2005
with
O.A. No.4309/2010

New Delhi, this the 25th day of October, 2016.

HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. P.K. BASU, MEMBER (A)

MA No.648/2007 in OA No.577/2005

Union of India & Ors. through:

1. The Director General,
Civil Aviation Tech. Center,
Safdarjang Airport,
New Delhi-110003.
2. The Central Pay & Accounts Officer,
Director General, Civil Aviation,
Ministry of Civil Aviation,
Safdarjung Airport,
New Delhi-110003.

.. Misc. applicants/
Respondents

(By Advocate : Shri M.K. Ghosh with Shri Rohit Dutta)

Versus

D.L. Khillan,
L-1/126 B, DDA Flats,
Kalkaji, New Delhi-110019.

.. Respondent/
Original Applicant

(By Advocate : Shri M.K. Bhardwaj)

O.A. No.4309/2010

Mohan Singh,
S/o Late Shri Jagat Singh,
R/o Vill. & P.O.-Jandour,
Tehsil – Dasuya, Distt. Hoshiarpur.

.. Applicant

(By Advocate : Shri M.K. Bhardwaj)

Versus

Union of India & Ors. through:

1. The Secretary,
Ministry of Civil Aviation,
Safdarjung Airport,
New Delhi.
2. The Director General of Civil Aviation
Technical Centre,
Safdarjung Airport,
New Delhi.
3. The Central Pay & Accounts Officer,
Director General of Civil Aviation,
Ministry of Civil Aviation,
Safdarjung Airport,
New Delhi.
4. The Director of Airworthiness,
Civil Aviation Department,
Delhi Region,
Safdarjung Airport,
New Delhi.
5. The Regional Executive Director,
Northern Region, Head Quarter,
Indira Gandhi International Airport,
Airport Authority of India,
New Delhi.

.. Respondents

(By Advocate : Shri M.K. Ghosh with Shri Rohit Dutta)

O R D E R (ORAL)

By Mr. P.K. Basu, Member (A)

MA 648/2007 filed in OA No.577/2005 and OA No.4309/2010 pertains to the same issue and, therefore, both are being disposed of by this common order.

2. The background of the case is that National Airports Authority (NAA), now Airports Authority of India (AAI), came into existence w.e.f. 01.06.1986. The Govt. servants working in Director General of Civil Aviation/Civil Aviation Department at various Airports were transferred to NAA on 'as is where is' basis. Some of the employees of Director General of Civil Aviation (CAD) got absorbed in AAI with effect from 02.10.1989. At the time of absorption, the Govt. gave three options to the employees as regards their retirement benefits:

- (a) 100% lumpsum amount on the basis of commuted value of full pension;
- (b) Pro-rata pension;
- (c) Pension under Central Government Rules from the date of their superannuation from AAI subject to payment of capitalization value of pension and gratuity by AAI for the period of service rendered by such employees in AAI.

The applicant in O.A. 577/2005, to which M.A. No.648/2007 pertains to, opted for option (c).

3. Vide clarification dated 24.11.1997, Ministry of Civil Aviation and Tourism clarified that the emoluments drawn by the pensioners in AAI at the time of retirement would be taken for calculation of revised pension in terms of Note 10 below Rule 33 of CCS (Pension) Rules, 1972 and such pensioners would be entitled to Dearness

Relief on revised pension at the rate to be intimated by the Department of Public Enterprises.

4. On his retirement on 31.01.1994, the applicant's pension was sanctioned @ Rs.1440/- p.m. w.e.f. 01.02.1994 on the basis of pay drawn by him on the Central Dearness Allowance (CDA) pay scale existing in AAI on the date of his retirement + Dearness Relief on pension on CDA pattern.

5. The pay scales in AAI were revised to Industrial Dearness Allowance (IDA) pattern retrospectively w.e.f. 02.10.1989 and revision of pay scale was implemented from the date of retirement of Shri Khillan.

6. The applicant, Shri Khillan, along with some similarly placed pensioners filed O.A. No.480/1998 seeking revision of pension on the basis of IDA pay scales from the date of their retirement in terms of Note 10 under Rule 33 of CCS (Pension) Rules, 1972. The O.A. was disposed of vide order dated 13.11.2000 directing the respondents to fix the applicants' pension in accordance with CCS (Pension) Rules on the basis of last pay drawn and also to pay arrears from the due date upto the date of payment along with interest @ 12% as well as payments in respect of other retiral benefits on the same basis. It was clarified in the order that fixation of pension in accordance with CCS (Pension) Rules would mean

fixation of pension @ 50% of the average emoluments drawn during the last 10 months preceding to the date of retirement in each case.

7. In pursuance of this order of the Tribunal, second PPO dated 29.05.2001 was issued refixing Shri Khillan's pension as Rs.3175/- based on IDA pay scale plus dearness relief payable at IDA pattern issued by the Govt. of India from time to time applicable to the pensioners drawing pension on IDA pay scales. Further, difference of DCRG and commuted value of pension were also paid. No interest were, however, paid and a Writ Petition No.1597/2001 was filed in the Hon'ble High Court against the Tribunal's order dated 13.11.2000. Vide order dated 05.05.2006, the Hon'ble High Court upheld the Tribunal's order dated 13.11.2000 passed in O.A. No.480/1998 and directed payment of interest @ 9% instead of 12% awarded by the Tribunal. In pursuance of the Hon'ble High Court's order, interest on difference of gratuity and commutation of pension has been paid to the applicant.

8. In the meantime, the 5th Central Pay Commission gave its recommendation which were implemented w.e.f. 01.01.1996. Vide O.M. dated 19.09.2003, the Department of Pension & Pensioners' Welfare gave instructions on the methodology to be followed for revision of pension and other attendant benefits of Central Govt. employees retired/retiring on IDA pay scales and opted for pensionary benefits for combined service in Govt. and Public Sector

undertakings w.e.f. 01.01.1996. Basically, what had been done according to this O.M. is that all absorbees had to be notionally brought to CDA scales w.e.f. 01.01.1996 and, thereafter, with notional consolidation as on 01.01.1996 pension was to be calculated at 50% of the minimum of that scale. However, this O.M. contained the following provisions as well:

- “(d) In all those cases, where the pension of the absorbees have already been consolidated as per O.M. dated 27.10.1997, using DR on IDA pattern, and such consolidated pension together with IDA happens to be higher than the revised pension plus DR arrived as above, the pensioner may be allowed to draw such higher amount by allowing personal pension to the extent of the difference which shall be absorbed in subsequent increase in the future.
- (e) Provisions of this O.M. shall not apply to the past pensioners of this category who have, in the past, been given a special dispensation on account of specific orders of the Courts as accepted and implemented by the Government. Cases of this nature shall continue to be governed as per the existing provisions specifically applicable to them.”

9. Thereafter, in view of O.M. dated 19.09.2003, the pension of Rs.1440/- p.m. fixed on CDA pay scales was revised/consolidated to Rs.4342/- following the formula laid down in Department of Pension & Pensioners Welfare O.M. dated 27.10.1997 for revision/consolidation of pension on CDA pay scales.

10. In the case of the applicant, viz. Shri Khillan, the pension on CDA pay scale was already decided at Rs.1440/- on his retirement from AAI, which was further revised to Rs.3175/- on IDA pay scale, in compliance of orders of this Tribunal in O.A. No.480/1998. In

terms of para 1 (e) of O.M. dated 19.09.2003, the cases with such dispensation are to be decided with the specific order applicable to them. The respondents' stand is that the order of the Tribunal dated 13.11.2000 do not contain any specific direction to revise pension as per IDA pay scales as on 01.01.1996 and there is nothing unique to cover under sub-para (e) as this is a case similar to other employees, who have opted to draw pension in respect of service rendered in the Govt. as well as AAI.

11. The applicant had filed O.A. No.577/2005 challenging his revision of pension to Rs.4342/- w.e.f. 01.01.1996 vide order dated 17.10.2003. The matter was heard and the following are the observations and findings of the Tribunal in its order dated 10.11.2006:

"14. In any case, respondents have relied on Office Memorandum dated 19.9.2003 to state that they have now refixed the pension of the applicant as per the above said O.M. but even this O.M. makes it clear in sub-para (e) of Para 1 that provisions of this O.M. shall not apply to past pensioners of this category, who have, in the past, been given a special dispensation on account of specific orders of the Courts as accepted and implemented by the Government. Cases of this nature shall continue to be governed as per the existing provisions specifically applicable to them.

15. According to them, since specific orders were already passed in the case of applicant, which have been upheld by Hon'ble High Court, accepted and implemented by the respondents, his case would be covered under sub-para (e). As such, this O.M. would not apply in the case of applicant. Since the only defence taken by the respondents was that they have refixed his pension as per this O.M. and this O.M. is not even applicable in the case of applicant, therefore, the letter dated 17.10.2003 is not sustainable in law. The same is accordingly quashed and set aside. Moreover, if respondents feel that applicant has been given something extra wrongly or by mistake, they cannot recover it or adjust it from the arrears of pension without following due process of law i.e. without giving notice to

the applicant. In the instant case, admittedly before issuing letter dated 17.10.2003, no notice was given to the applicant. Therefore, on that account also letter dated 17.10.2003 is not sustainable in law and is liable to be quashed.

16. It is, however, made clear that if certain amounts have been given to the applicant by mistake by the bank, as suggested by the respondents, they would have liberty to recover the same from the applicant after giving him show cause notice and opportunity of being heard and after considering his reply thereon. Respondents are directed to revise the pension of applicant, as per the rules, after recommendation of the 5th Pay Commission and if any arrears become due to the applicant, on refixation, the same shall be paid to the applicant along with calculation sheet. ”

12. In the present MA No.648/2007, the following prayer has been made :

“Clarify/review the order dated 10.11.2006 to the extent that Para 1 (e) of OM dated 19.09.2003 is applicable to the Applicant herein and his pension w.e.f. 01.01.1996 has to be revised in terms of said O.M. as the Government has not issued any other guidelines/rules for the revision of the pension fixed on IDA pay scales are the recommendations of the 5th Central Pay Commission.”

13. It is clear that the Tribunal in O.A. 577/2005 had clearly decided that the applicant's pension has to be fixed as per CCS (Pension) Rules at 50% of the average emoluments drawn during the last 10 months preceding to the date of retirement and the respondents fixed his pension accordingly.

14. We have heard the learned counsel for both sides and perused the records/judgments.

15. The bone of contention primarily is that whether sub-para 'e' of Para 1 of O.M. dated 19.09.2003 will be applicable in the case of the applicant or not. This had been already gone into in O.A.

No.577/2005 that O.M. dated 19.09.2003, which has been relied upon by the respondents to refix the pension of the applicant, is not applicable in the case of the applicant in accordance with sub-para 'e' of para 1, which provides that this O.M. shall not apply to the past pensioners of this category, who have, in the past, been given a special dispensation on account of specific orders of the Courts as accepted and implemented by the Government. Cases of this nature shall continue to be governed as per the existing provisions specifically applicable to them.

16. Therefore, in our view, no more clarifications are required to the order dated 10.11.2006 and the pension already fixed by the respondents earlier shall not be disturbed. The order dated 17.10.2003 has already been set quashed and set aside vide order dated 10.11.2006. The M.A. is accordingly dismissed.

O.A. No. 4309/2010

In this O.A., the applicant has sought the following relief:

- “(i) To quash and set aside the impugned order dated 04.10.2010 and direct the respondents to extend the benefits of judgment and order dated 10.11.2006 in O.A. No.480/98, OA No.577/2005, 1640/2006, 828/2009 and 784/2009 to the applicants.
- (ii) To direct the respondents to revise the pension of the applicants as per CCS (Pension) Rules 1972 and recommendation of fifth CPC and 6th CPC in same manner in which pension of similarly placed person Shri D.L. Khillan, Sh. Iqbal Singh Vedi and Jagdish Tuli has been fixed.
- (iii) To direct the respondents to pay the arrears consequent upon revision of pension along with interest @ 18% to the applicants on delayed payment.

- (iv) To direct the respondents to pass necessary orders which are necessary.
- (v) To award exemplary costs in favour of the applicants.
- (vi) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case."

2. In view of the dismissal of M.A. 648/2007 in O.A. 577/2005, the O.A. No.4309/2010 is allowed with a direction to the respondents to give the same benefit to the applicant as is given to Shri D.L. Khillan in accordance with order dated 10.11.2006 in O.A. No.577/2005 and above order in MA 648/2007. No order as to costs.

(P.K. BASU)
Member (A)

(JUSTICE M.S. SULLAR)
Member (J)
25.10.2016

/Jyoti/