

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.3635/2012

Tuesday, this the 16th day of April 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)

Shri Balbir Singh
r/o HL-69, PHB Colony
Green Avenue, Amritsar

Presently at:

c/o Col. S S Pathania
Sainik Security Services
218, Sadar Bazar
Delhi Cantt. Delhi

..Applicant

(Mr. M K Bhardwaj, Advocate)

Versus

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 Officers
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. Airport Authority of India
Through its Chairman

Rajeev Gandhi Bhawan
Safdarjung Airport, New Delhi

6. The Regional Executive Director
Western Region Headquarter
Airport Authority of India
New Airport Colony
Vile Parle (East), Mumbai
7. Shri K S Dalal
Assistant General Manager
Airport Authority of India
New Airport Colony
Vile Parle (East), Mumbai

..Respondents

(Mr. Krishan Kumar, Advocate for respondent Nos. 1 to 4,
Mr. Shashwat Sharma and Mr. Jasbir Bidhuri, Advocates for
respondent Nos. 5 to 7)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

Howsoever advisable it may be to dispose of the cases in terms of the orders passed in earlier cases, the failure to verify the facts of each case would lead to several complications. This case provides an example in that behalf.

2. The applicant was initially in the service of Ministry of Civil Aviation. He went on deputation to Airports Authority of India (AAI) and was absorbed therein. He retired there, on attaining the age of superannuation, on 01.02.1993.

3. The Central Dearness Allowance (CDA) pattern was prevailing in AAI. The pension of the applicant was fixed accordingly. He did not have any qualms about that, till 2008.

One Mr. D L Khillan was pursuing the remedy as regards the fixation of his pension, since 1998. Initially, he filed O.A. No.480/1998 and in pursuance of the orders passed therein, his pension was fixed. That was sought to be revised in the year 2005. Thereupon, he filed O.A. No.577/2005. It was disposed of on 10.11.2006 with certain directions. The respondents were required to undertake the exercise of fixation of pension by applying the relevant provisions of law and it was also observed that in case Mr. Dhillan was paid any excess amount, it shall be open to them to recover the same.

4. The applicant herein filed O.A. No.1943/2008 claiming the reliefs almost in terms of the order passed in O.A. No.577/2005. It was disposed of on 05.09.2008, simply by observing that the respondents shall treat the O.A. as a supplementary representation and they shall fix the pension of the applicant in terms of the order in O.A. No.577/2005. It is stated that the respondents issued a revised Pension Payment Order (PPO) on 03.01.2009 enhancing the pension from ₹3266/ to ₹9783/-, w.e.f. 01.01.1996, in favour of the applicant.

5. The respondents issued a notice dated 13.06.2012 to the applicant, stating that as per the judgment rendered by the High Court of Judicature at Bombay in W.P. No.188/1999, the applicant is eligible for basic pension of ₹5000/- w.e.f.

01.01.1996 and ₹11300/- w.e.f. 01.01.2006 and excess payment paid to him will be adjusted in the future dues. The applicant was advised to refund the excess amount within 21 days. This was followed by an order dated 06.08.2012 issued in reply to a notice got issued by the applicant.

This O.A. is filed challenging the notice dated 13.06.2012 and other consequential proceedings.

6. The applicant contends that once the pension was revised in compliance of the directions issued in O.A. No.1943/2008, there was absolutely no basis for them to revise it. He submits that the respondents are not justified in applying the judgment of Bombay High Court, to which he is not a party. Other grounds are also urged.

7. The respondents filed separate counter affidavits. Thereafter, a revised counter affidavit was also filed by respondent Nos. 1 to 4. They submit that the pension of the applicant was wrongly decided in the year 2008 and on noticing the discrepancy therein, the impugned notice and orders were issued. It is also stated that the revision of pension of the applicant was done on 03.01.2009 partly by applying the CDA pattern and partly by Industrial Dearness Allowance (IDA) pattern and since that is not permissible, relevant corrective measures were taken.

8. We heard Mr. M K Bhardwaj, learned counsel for applicant, Mr. Krishna Kumar, learned counsel for respondent Nos. 1 to 4 and Mr. Shashwat Sharma, learned counsel for respondent Nos. 5 to 7, and perused not only the entire record but also the bunch of orders that were relied upon by the applicant.

9. As mentioned in the preceding paragraphs, the applicant did not have any grievance for more than a decade ever since his pension was fixed. It was only in the year 2008 that he felt that his pension needs to be revised. One aspect, which needs to be taken note of, is that there is vast difference in the context of fixation of pension under the CDA system on the one hand and IDA system on the other.

10. Under the IDA system, 50% of the last drawn salary is taken into account for determination of pension. The pension of the applicant was determined accordingly. It was in 2008, that he felt that the CDA pattern must be applied. If that were to be so, the verification of records, pertaining to the option exercised by him and the procedure that was in vogue at the time of his retirement or at the time of determination of his pension, was very much necessary. If the applicant was drawing the pension under a particular pattern, he cannot switch over to the other

pattern suddenly. Phenomenal exercise was required to be undertaken not only for determining the pension and arrears but also to examine the very permissibility. For this purpose, a finding on the facts pleaded by the applicant also became relevant.

11. Nothing of that sort was undertaken in O.A. No.1943/2008 filed by the applicant. The only order passed reads as under:-

“By way of this OA, the Applicant seeks similar benefit of refixation of pension which has been granted by this Tribunal in OA No.325/2008 wherein the following direction has been given to the respondents :-

“OA stands disposed of with a direction to the respondents to treat the present OA as a supplementary representation and decide the claim of the applicant in the light of decided case, i.e., D.L. Khillan v. Union of India & Others (OA-577/2005) decided on 10.11.2006, which stands affirmed by the High Court of Delhi. This shall be done within a period of two months from the date of receipt of a copy of this order.”

2. The present OA being of the similar nature and in the same types of reliefs for refixation of pension, the ratio of the judgment in OA No.325/2008 (supra), is applicable in the present case and with same direction to the respondents, the OA stands disposed of. However, it is clarified that the above directions shall be complied with within a period of one month from the date of receipt of a copy of this order. No costs.”

12. Except that the O.A. was directed to be treated as a supplementary representation, no finding as to the entitlement of the applicant was recorded. It was not even indicated as to

whether the pension is to be paid under the IDA pattern or CDA pattern. Indirect reference was made to the order in O.A. No.577/2005 filed by Mr. Khillan.

13. A perusal of order in O.A. No.577/2005 discloses that Mr. Khillan was pursuing the remedies from the year 1998 and in compliance with an order passed therein, his pension was fixed. When it was sought to be revised halfway through by applying the IDA pattern, he filed O.A. No.577/2005. Thereagain, no specific finding was recorded to the effect that the employees for a particular category are entitled for CDA or IDA patterns, as the case may be.

14. By its very nature, the application of the pattern, with reference to employees, depends upon the one that was in vogue in the organization, at the relevant point of time and the option, if any, exercised by the employee. It is only when such aspects are addressed fully, that a clear finding can emerge.

15. Revised PPO was issued to the applicant on 03.01.2009. Nowhere it was mentioned that it is issued in compliance with the order passed in O.A. 1943/2008 or that the applicant has been shifted from one pattern to another. Simply the figures are filled in certain blanks and the orders are given.

16. As many as eleven employees of AAI approached the Bombay High Court, claiming certain reliefs, in the context of fixation of their pension, by filing W.P. No.188/1999. Through its order dated 09.04.2010, the Bombay High Court held that service in AAI is covered by IDA pattern and the question of any component of CDA being applied to them, does not arise. It is in the light of the said judgment that the respondents issued the letter dated 13.06.2012. It reads thus:

“Reference your application dated 23.12.2012, on the above subject.

In this connection it is intimated that as per Hon’ble High Court Mumbai in writ petition No.188 of 1999 (G.D Kulkarni & Others) has issued order in super cession of earlier CAT decisions and to consider the Basic Pay of the pensioners under Central Pay scale which they would be entitled to on the date of retirement and subsequent revision if any applicable and if any of the petitioners have received any excess amount the excess amount on refixation will be adjusted from the pensionary dues which the petitioners will be entitled to in terms of law. The above judgment should be implemented as he belongs to this Region and more than 11 number of cases have been revised as per the Hon’ble High Court, Mumbai in writ petition No.188 of 1999 (G.D Kulkarni & others).

After implementation of above High Court Mumbai judgment Shri Balbir Singh is eligible for Basic Pension of Rs.5000/- w.e.f. 01.01.1996 and Rs.11300/- w.e.f. 01.01.2006 and excess amount will be adjusted from the pensioner dues which he will be entitled.

In view of the above facts, you are hereby advised to refund excess payment of pension within a period of 21 days from receipt of this letter.”

17. The record does not disclose that the applicant made a representation. However, he got issued a notice through his advocate. In reply thereto, the respondents passed order dated 06.08.2012, which reads as under:-

“As per Hon’ble High Court, Mumbai in writ petition No.188 of 1999 (G D Kulkarni & Others) has issued orders in supersession of earlier High Court Interim judgment decisions and to consider the basic pay of the pensioners under Central Pay Scale which they would be entitled to on the date of retirement and subsequent revision if any applicable and if any of the petitioners have received any excess amount the excess amount on refixation will be adjusted from the pensionary dues which the petitioners will be entitled to in terms of law. The above judgment should be implemented as he belongs to this Region and more than 11 number of cases have been revised as per the Hon’ble High Court, Mumbai in writ petition No.188 of 1999 (G.D. Kulkarni & others).”

18. If the applicant is of the view that he is governed by the CDA pattern, a detailed exercise needs to be undertaken from the date of fixation of pension. It is not in dispute that the pension of the applicant was fixed by the IDA pattern, in terms of his option.

19. The question of modifying the pension that was fixed in the IDA pattern by applying certain components of CDA pattern, does not arise. Law does not contemplate a hybrid of both; it can be one or the other. Even now, the applicant can put forward his case in a clear and categorical form, as to whether

he is governed by CDA pattern or IDA pattern by citing relevant provisions of law. If the law permitted to switch over an employee or pensioner from one pattern to another, at the relevant point of time, and there existed a valid option in that behalf, nothing stops the respondents from re-working the entire exercise. In such an event, the pension has to be worked in its entirety and it is axiomatic that (a) if any amount has been paid in excess to him, it has to be either recovered or re-adjusted; and (b) if anything is due to him, it needs be paid.

20. We, therefore, dispose of the O.A. permitting the applicant to make a detailed representation by enclosing all the relevant documents, including the option form submitted by him, at the relevant point of time. The respondents shall examine the same and pass appropriate orders, within six weeks from the date of receipt of a copy of this order.

21. The judgments of Bombay High Court in W.P. No.188/1999 and Delhi High Court in W.P. (C) No.5700/2017 shall be taken into account while passing such orders. We make it clear that if the exercise leads to conversion of pension of the applicant from IDA pattern to CDA pattern, the adjustments, as indicated above, shall be made. Till such exercise is undertaken, no recovery shall be effected from the applicant. If the exercise

results in the recovery of any amount from the applicant, it shall be done in accordance with law.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

April 16, 2019
/sunil/