

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.4309/2010

Wednesday, this the 15th day of May 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Sh. Mohan Singh
s/o late Sh. Jagat Singh
r/o Vill. & PO Jandour
Tehsil – Dasuya, distt. Hoshiarpur

..Applicant

(Mr. M K Bhardwaj, Advocate)

Versus

Union of India & others 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 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. The Regional Executive Director
Northern Region, Head Quarter
Indira Gandhi International Airport
Airport Authority of India
New Delhi

..Respondents

(Ms. Anjana Gosain and Ms. Himanshi, Advocates with
Mr. Kavinder Kr. Sulkhan, Superintendent (Legal),
Departmental Representative

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicant was initially in the service of Director General of Civil Aviation. Consequent upon the formation of the Airports Authority of India (respondent No.5) in the year 1996, he became its employee, on permanent basis. He retired from service on 31.03.1997 on attaining the age of superannuation. He was also sanctioned the pension and other emoluments.

2. The applicant filed O.A. No.577/2005 before this Tribunal complaining that he was sanctioned pension at a lesser figure compared to the one sanctioned to Mr. D L Khillon, and accordingly, prayed for revision of his pension. In compliance with the directions issued therein, the respondents passed an order dated 04.10.2010 informing the applicant that his claim cannot be accepted. Reference was made to the order passed by Hon'ble Punjab & Haryana High Court in CWP No.14201/1998 filed by the applicant. The distinguishing factors, as between the applicant on the one hand and Khillon on the other, were also pointed out. This O.A. is filed challenging the said order.

3. The applicant contends that though the pension was sanctioned to him on the basis of the directions issued by the Punjab & Haryana High Court, it emerges that the pension sanctioned to Khillon, who retired two years before him, in the same post, was substantially higher and that there was

absolutely no basis to deny him, the correct pension. It is also pleaded that the respondents applied wrong parameters in fixing the pension and the same need to be corrected.

4. The respondents filed a detailed counter affidavit opposing the O.A. It is stated that the factors for fixation of pay and pension in respect of Khillon on the one hand and the applicant on the other, is totally different. It is also mentioned that while Khillon rendered 33 years of service, enabling him to draw full pension, the applicant has rendered only 27 years, 7 months and 16 days of service, and accordingly, his pension was proportionately reduced.

5. Further contention raised by the respondents is that with effect from the year 1996, the Industrial Dearness Allowance (IDA) pattern was adopted and the applicant was extended the benefits under that, apart from fixation of pension as per the formula, whereas Khillon retired in the year 1994, much before the introduction of IDA pattern. It is also stated that the claim of the applicant for adopting the Central Dearness Allowance (CDA) pattern is not acceptable. Various grounds urged by the applicant are contradicted.

6. We heard Mr. M K Bhardwaj, learned counsel for applicant and Ms. Anjana Gosain, learned counsel for respondents, at length.

7. Earlier, the O.A. was disposed of through order dated 25.10.2016 along with O.A. No.577/2005, filed by Khillon. Relief on par with him was also granted to the applicant. The respondents filed W.P. (C) No.4073/2007 before the Hon'ble Delhi High Court. It was observed that the case of the applicant cannot be compared with that of Khillon, and accordingly set aside the order, insofar as it concerns him, and remanded the matter for fresh consideration. Extensive arguments are advanced after such remand.

8. It needs to be noted at the threshold that the applicant filed CWP No.14201/1998 before the Punjab & Haryana High Court complaining that his pensionary benefits were not released. During the pendency of the said CWP, the pension of the applicant was decided and even the amount was also released. Taking the same into account, the High Court disposed of the CWP on 11.01.2001. Direction was issued to pay interest on the belated release of pension. The applicant filed COCP No.1357/2001 before the Punjab & Haryana High Court stating that the amount released by the respondents is deficient. The High Court observed that if the applicant feels that the amount is deficient, he has to pursue the remedy before the competent Court of Law. The matter rested at that.

9. It was only in the year 2010, that the applicant made an effort to get his pension enhanced or revised. The sole basis for

him to do so was the pension said to have been sanctioned to Khillon. It is necessary to mention that Khillon retired from service in the year 1994 and he has been pursuing the remedies since then, in one form or the other. The respondents made an effort to apply the IDA pattern to him. The Courts, however, did not accept that and direction was issued to fix his pension on CDA pattern, which was applicable to him, by the time he retired from service. Accordingly, his pension was fixed.

10. In the case of the applicant, the IDA pattern was applied since 01.01.1996 and not only the monthly emoluments but also the pension was fixed on that basis. The applicant made a detailed representation mentioning the points of distinction on various aspects of similarity between him and Khillon. Through the impugned order, the respondents mentioned that two cases cannot be compared.

11. The point of distinction are, (a) the length of service of Khillon was 33 years, whereas that of the applicant was 27 years, 7 months, (b) Khillon was governed by the CDA pattern, whereas the applicant is governed by the IDA pattern; and (c) the proceedings initiated by Khillon led to determination of pension and similarly the applicant got the relief during the pendency of CWP No.14201/1998 before the Punjab & Haryana High Court. Various other points were also mentioned in the order.

12. We are of the view that the present O.A. is barred by the principle of constructive *res judicata*. Reason is that the applicant has invoked the jurisdiction of Punjab & Haryana High Court in the year 1998 after his retirement and he was required to agitate all the contentions in that CWP. If any contention was not raised or raised but not dealt with by the High Court, the same cannot be re-agitated by the applicant, at a later stage. Neither he can split the cause of action, nor can he agitate such ground in a separate set of proceedings.

13. Apart from that, the impugned order is clear in its purport, pointing out the distinction between the case of the applicant on the one hand and Khillon on the other. Secondly, the pension and other emoluments of the employee are to be fixed on the basis of Rules and he can complain if only any deviation is noticed. Even now the applicant is not able to point out that the fixation of his pension is violative of any specific provision of law. Except that he is trying to draw comparison with Khillon, he is not able to cite any provision of law, which is said to have been violated by the respondents.

14. Another important aspect is that the O.M. dated 19.09.2013 became the guiding factor in the context of determination of the pension of employees, who retired before that date. This, in turn, made a distinction between the employees, who retired before 01.01.1996 and those who retired

after that. While Khillon retired from service before 01.01.1996, the applicant retired after that date. Therefore, the effort made by him to compare with Khillon cannot be said to be proper or justified.

15. We do not find any merit in this O.A. It is accordingly dismissed.

There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

May 15, 2019
/sunil/