

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.890/2003

New Delhi, this the 13th day of August, 2004

Hon'ble Shri S.K. Naik, Member(A)

Sudershan Kumar
G-21, Paschaim Vihar, New Delhi

Applicant

(Shri K.K.Sharma, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
North Block, New Delhi
2. Under Secretary
Ministry of Home Affairs
North Block, New Delhi

Respondents

(Shri Ravinder Kumar Sharma, proxy for Shri R.P. Aggarwal, Advocate)

ORDER

By virtue of the present application,, applicant has challenged the order dated 20.5.2002 by which his request for grant of revised commutation, gratuity etc. on the basis of 5th Pay Commission's recommendations has been rejected.

2 The admitted position is that the applicant had retired voluntarily from Government service as Section Officer, Ministry of Home Affairs w.e.e. 23.11.96 AN in terms of Sub-rule 3A of Rule 48A of CCS(Pension) Rules, 1972. Prior to his retirement, he had remained absent from duty from 7.11.94 to 20.11.94, 22.11.94 to 5.3.95 and 24.8.95 till 23.11.96 and the period of his absence was treated as dies non without constituting an interruption in service. The period of dies non was not to be taken into account for any purpose including pension, increment, fixation of pay etc. On the basis of average emoluments drawn by him during the last 10 months he was authorized

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pension @ Rs.1263/- p.m. and was also allowed commutation of $1/3^{\text{rd}}$ of his pension vide PPO dated 5.3.1997. On the request of the applicant to revise his pay w.e.f. 1.1.96 to that of Rs.6500-10500, his case was examined in consultation with DoPT and Min. of Finance. According to Note 3 below Rule 7 of the Pension Rules, in cases where a Govt. servant was on leave on 1.1.96 he shall become entitled to the pay in the revised scale of pay from the date he joins duty. Since the applicant had retired voluntarily w.e.f. 23.11.96 without rejoining duty, he was not entitled to revised scale of pay as per CCS(Revised Pay) Rules, 1997 and he was accordingly informed vide letter dated 3.9.1998. In terms of the Govt. instructions issued from time to time on the subject of revision of pension, applicant preferred claim for revision of his pension/family pension. Accordingly, the basic pension of Rs.1263/- admissible to him has been consolidated to Rs.3816/- pm and revised authorization to that effect has been issued on 11.11.2001. Similarly, his family pension was also consolidated. Thereafter, on applicant's representation and in consultation with Deptt. Of Pension & Pensioners Welfare, his commuted pension has been revised to 40% of his pension and revised authorization to this effect has been issued on 21.6.2002. Prior to this, applicant made a representation for revision of commutation, gratuity etc. on 4.1.2002 which was rejected by the impugned order. Aggrieved by this, applicant is before this Tribunal.

3 Learned counsel for the applicant has supported the claim of the applicant on the basis of the pension calculation sheet (page 11 of the paper book) in which it has been indicated that the period of dies-non has been condoned for pension purposes. On the other hand, counsel for the respondents has contended that the period of dies non was condoned only for the purpose of calculation of pension based on the last ten months'

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salary drawn by the applicant upto 23.8.95. From 24.8.95 to 23.11.96, the applicant again remained absent and this period was treated as dies non but the same was condoned for the purpose of pensionary benefits only. Again since the applicant was not on duty either on 1.1.1996 when the revised pay scale came into being or on 23.11.96 when he took voluntary retirement, there is no question of revision of pension etc. as per the rule position already enumerated above. In view of this position, the applicant is not entitled for any relief and the OA be dismissed, the counsel contends.

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4 I have heard the learned counsel for the parties, considered the pleadings and material on record as also carefully gone through the rules position. As has been rightly pointed out by respondents' counsel, when the applicant remained absent from 24.8.95 till 23.11.96, i.e. the date of voluntary retirement, thereby meaning that the applicant was not on duty as on 1.1.1996 and the period of dies-non has been condoned only for the purpose of fixation of pension and not for any other purpose, the applicant's claim for revision of pension on the analogy of revised pay scale from 1.1.1996 has been rightly turned down in accordance with the provision of the rules on the subject. The gesture of compassion shown by the respondents in condoning the period of absence for the purpose of period of fixation of pension cannot be turned against them to claim revision of pay/pension.. I find both the orders dated 3.9.1998 and 20.5.2002 have been properly passed, hardly warranting any intervention by this Tribunal. In the result, I find no merit in the present and the same is accordingly dismissed. No costs.


(S.K. Naik)
Member(A)

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