

V

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 2694/2003

This the *18th* day of May, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.A. Singh, Member (A)

Sh. A.G.Bhatnagar JDLS (Retd.),
Flat No. 1393, Sector D. Pocket I,
Vasant Kunj, New Delhi-110070.

(By Advocate: Ms. Harvinder Oberoi)

Versus

Union of India through

1. The Secretary,
Ministry of Defence, New Delhi-110011.
2. The Secretary,
Dept. of Pension & Pensioners Welfare,
Ministry of Personnel, Public Grievances and Pensions,
Lok Nayak Bhawan, New Delhi.
3. The Chief of the Naval Staff,
Naval Head Quarters, New Delhi-110011.

(By Advocate: Sh. D.S.Mahendru)

ORDER

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

The short question that arises for determination in this case is whether the applicant is entitled to the revision of his pension in the upgraded post/scale of the post which was last held by him.

2. Shortly the facts are that the applicant retired as Joint Director Logistics Support on 1.12.1984. In pursuance to the recommendation of the 4th Pay Commission, the post of Senior Naval Stores Officer which was in the scale of Rs.1300-1700 and the post of Joint Director Logistics Support which was in the scale of Rs.1500-1800 were merged and were given the revised scale of Rs.3700-5000 w.e.f. 1.1.1986 vide S.R.09(E) dated 20.3.1987. Applicant's pay was accordingly fixed in the revised pay scale. It was further revised in the

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replacement scale of Rs. 12000-16000 w.e.f. 1.1.1996. The applicant has alleged that the post of Joint Director Logistic Support carried higher duties and responsibilities and the anomaly of both the feeder cadre and the promotion cadre being in the same grade was rectified by the 5th Pay Commission and the post of Joint Director Logistics Support was upgraded to the post of Rs.4300-5500 and was redesignated as Director. It is submitted that as per OM dated 11.5.2001 the pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum of the corresponding scale as on 1.1.96 of the scale of pay held by the pensioner at the time of superannuation/retirement. Applicant's pension has been revised in the scale of Rs.12000-1600 instead of Rs.14300-18300. Hence this OA.

3. The respondent, conversely, pleaded that on the recommendation of 4th Pay Commission, the pay scale of Rs.3700-5000 was allowed to the post of Joint Director Logistics Support after merging it with the scale of Senior Naval Stores Officer. There was also one post of Director in the pay scale of Rs.1800-2000. The post of Joint Director was upgraded by the 5th Pay Commission to the post of Director in the revised pay scale of Rs.14300-18300. Applicant was not holding the post of Director as on 1.1.96. Therefore, his claim for revision is not tenable. The recruitment rules of all the posts in the cadre were revised vide SRO No.47/2002. No incumbent has been given placement to the post of Director without holding the DPC and the post of Director was also filled by the promotion of SNSO in accordance with SRO 47/2002. It is further submitted that the revision of pension is with reference to the post last held as per DOP&T OM dated 17.12.1998 and 11.5.2001. The validity of these two orders has been upheld by this Hon'ble Tribunal as appeared from the orders copy of which is Annexure R-2 and R-3.

4. In the rejoinder applicant has reiterated his case and has denied the allegations.

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5. We have heard the learned counsel for the parties and have perused the relevant record.

6. Admittedly, applicant has retired from the post of Joint Director Logistics Support which was in the scale of Rs.1500-1800 prior to 1.1.1986. In accordance with 4th Pay commission the post of Senior Naval Stores Officer in the scale of Rs.1300-1700 which was a feeder grade was merged with the grade of Joint Director Logistics Support and they were placed in the common scale of Rs.3700-5000 w.e.f. 1.1.1986. Applicant's pension was also revised in that scale w.e.f. 1.1.1986. Applicant does not have grievance about it. However, in accordance with the recommendation of 5th Pay Commission the post of Joint Director Logistics Support was upgraded to the post of Director which was in the pay scale of Rs.4300-5700 and the revised scale of which is Rs.14300-18300 w.e.f. 1.1.96. The replacement scale of the pay scale of Rs.3700-5000 is Rs.12000-16000. Applicant's pension has been revised in that scale. Applicant is aggrieved and wants his pension to be revised in the upgraded scale of Rs.14300-18300.

7. Applicant has filed a copy of the Government's clarification dated 17.12.98 (Annexure A-5) which, inter alia, stated that "w.e.f. 1.1.1996, pensions of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 1.1.96 of the post last held by the pensioner". The post which was last held by the applicant is Joint Director Logistics Support. It is the admitted case of the applicant that on the recommendation of the 5th Pay Commission the post of Joint Director Logistics Support was upgraded and according to him redesignated as Director. According to the respondents the post of Joint Director Logistics Support was upgraded and the incumbent appointed to the post of Director on the basis of recommendation of the DPC. The respondent has filed the recruitment rules in support of their contention which is at Annexure R-1 to the reply which shows that there is a post of Senior Director in

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the pay scale of Rs.18400-22400, the post of Director in the scale of Rs.14300-18300 and the post of Senior Naval Stores Officer in the scale of Rs.12000-16500. There is no post of Joint Director Logistics Support any more. It is also contended by the respondents that no Senior Naval Stores Officer has been promoted and appointed to the post of Joint Director Logistics Support w.e.f. 1.1.96. As per the rules the feeder cadre to the post of Director is Senior Naval Stores Officer. It is clear from the pleadings and the documents which have been placed on record that it is not a case of revision of the pay scale of the post of Joint Director Logistics Support to the pay scale of Rs.14300-18300 w.e.f. 1.1.1996. Rather the cadre of Joint Director Logistics Support is ceased to exist and the feeder cadre of Senior Naval Stores Officer, which was earlier feeder cadre to the post of Joint Director Logistics Support, is now the feeder cadre to the post of Director. It is also stated that the appointment to the post of Director is made after recommendation of DPC. Therefore it is not a case where the pay scale of the post of Joint Director has been revised to the scale of Rs.14300-18300. As per the Government clarification which the applicant himself has filed at Annexure A-5 the pension is to be fixed at "revised scale of pay introduced w.e.f. 1.1.96 of the post last held by the pensioner". Applicant did not hold the post of Director last and the revised scale of pay of Rs.14300-18300 is also not the revised/replacement pay scale of the post of Joint Director Logistics Support which was the last post held by the applicant. The contention of the applicant that his pay should be revised and fixed in the pay scale of Rs.14300-18300, therefore, is not legally tenable.

8. Learned counsel for applicant has referred to the decision of this Tribunal in P.L.Sharma and Dr. Bhagat Singh vs. Union of India in OA-1537/2002 and OA-1556/2002 decided by a common order dated 13.5.2003. Applicants had retired as Director of Official Languages on 30.9.1989 which post belonged to Central Secretariat Official Language Service. Their plea was that the Directors were enjoying the pay scale of Rs.4500-5700 (pre-revised

Learned Counsel

whereas the applicants were in the pay scale of Rs.3700-5000. The replacement scale of pay scale of Rs.3700-5000 as a result of the 5th Pay Commission is Rs.12000-16500 w.e.f. 1.1.96 and the pension of the applicant was also revised. The Tribunal made the following observations and dismissed the OA.

“13. It is not in dispute that the applicants had been working in the pay scale of Rs.3700-5000 and corresponding scale was that of Rs.12000-16500. Simultaneously on the acceptance of the recommendations of the 5th Pay Commission their pay scales were not upgraded and they remained in the scale of Rs.12000-16500 and it is only after an order was passed on 4.1.2001 when the pay scale of these Directors were also revised though it was revised with retrospective effect w.e.f. 1.1.1996. But on the date when the Central Civil Services (Revised) Pay Rules, 1997 came into force on that day the pay scale of these Directors remained to be that of Rs.12000-16500 as they were given only corresponding pay scale that of Rs.3700-5000 and were not given the pay scale of Rs.14300-18300 which was given only vide Notification dated 4.1.2001. So as on 1.1.1996 their pay scale remained to be that of Rs.12000-18500. If a post is upgraded separately then the pay of retirees are not to be upgraded in the revised pay scale but are to be given pension on the basis of the corresponding pay scale held by them as it has been clarified in the DOP&T OM dated 11.5.2001. Thus it cannot be said that this is merely creation of bureaucracy rather the Ministry of Personnel, Public Grievances and Pension after considering various representations had come to the conclusion that the pensioners are to be given minimum of pay scale as on 1.1.1996.”

9. It is clear from the order that the Tribunal had held that the applicants would not be entitled to the pay scale of the upgraded post but shall get their pension revised in the replacement scale in terms of clarification of DOP&T OM dated 11.5.2001. It does not advance the case of the applicant.

10. Counsel for applicant has also referred to another order of this Tribunal in Smt. Bhagwati Prasad and others vs. Union of India and others in OA-2380/2003 decided on 20.4.2004. Applicants were Hindi Translator in the pay scale of Rs.5000-8000. They were granted first financial upgradation in the

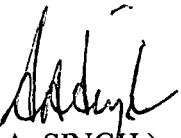
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scale of Rs.5500-9000. They claimed that they were entitled to the financial upgradation in the scale of Rs.6500-10500. According to them the post of Junior Hindi Translator was feeder post to the post of Assistant Director (OM) which was the next promotional post in the hierarchy. After examining the ACP scheme which was introduced w.e.f. 9.8.99 and the Government's clarification thereon, the Tribunal observed that as per the scheme the financial upgradation has to be in the existing hierarchy in the cadre. Applicants of these OAs were entitled to their promotion to the post of Assistant Director (OL) in the scale of Rs.6500-10500 and the clarification of the government could not override the said scheme. The present case is absolutely different. It was not a case of the grant of financial upgradation in the ACP Scheme. It can also not be said that any Government instruction and clarification was contrary to any statutory provision or rules.

11. Counsel for respondents has also referred to order of this Tribunal in M.L.Ohri vs. Union of India and others OA-3203/2001 decided on 30.12.2002 and Sh. S.C.Parashar vs. Union of India and another in OA-480/2001 decided on 20.9.2002 in support of their contention that the DOP&T's clarification were valid. We need not discuss that orders as they were on their peculiar facts.

12. Having regard to the above discussion, we do not find any merit in the OA. OA is dismissed. No costs.



(S.A. SINGH)

Member (A)

'sd'



(M.A. KHAN)

Vice Chairman (J)