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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2736/2003

This the 27th day of October, 2004.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

Uttam Chand Chawla
S/O late Dhanna Ram Chawla,
Resident of 416 Bhai Parmanand Colony,
Kingsway Camp, Delhi-110009
(Retired Desk Officer of the
Department of Agricultural Research &
Education).

... Applicant

(In person)

-versus-

Union of India through
Secretary to Government of India,
Department of Agricultural Research
& Education, Ministry of Agriculture,
Krishi Bhawan, New Delhi-110001.

... Respondent

(None present)

ORDER (ORAL)

None has appeared on behalf of the respondents even on the second call. Respondents remained unrepresented even on the earlier date of hearing, i.e., 26.10.2004. As such I have proceeded to adjudicate upon the OA in terms of Rule 16 of the Central Administrative Tribunal (Procedure) Rules, 1987.

2. Applicant retired from government service on 31.1.1988 (A/N) on attaining the age of superannuation. At the time of his retirement he was holding Class-II (Gazetted) post of Desk Officer in the Department of Agricultural Research and Education, Ministry of Agriculture. His last basic pay was Rs.3200/- per month in the pre-revised scale of pay of Rs.2000-60-2300-75-3200-100-3500. His basic pension was fixed at



Rs.1585/- per month and his family pension was fixed at Rs.1200/- per month for the period from 1.2.1988 to 3.1.1995 and at Rs.600/- per month only for the period beyond that. In implementation of the Fifth Central Pay Commission's recommendations w.e.f. 1.1.1996, on revision of pay scale of Rs.2000-3500 to Rs.6500-10500, applicant's basic pension was revised to Rs.4774/- with retrospective effect from 1.1.1996; his basic family pension was fixed at Rs.2198/- w.e.f. 1.1.1996 in accordance with the Department of Pension and Pensioners' Welfare OM 45/86/97/P&PW(A)-Pt-IV dated 8.5.1998. Applicant had represented to the respondents for re-fixation of his pension/family pension stating that his pension should be re-fixed after getting old basic pay of Rs.3200/- revised to Rs.9700/- per month in the revised scale of Rs.6500-200-10500 w.e.f. 1.1.1996.

3. Respondents have declined to refix applicant's pension/family pension as claimed by him. In their counter reply respondents have stated that the Fifth CPC had recommended parity between pre-1.1.1996 and post-1.1.1986 family pensioners and only modified parity between pre-1.1.1996 and post-1.1.1996 family pensioners.

4. Applicant has sought the following relief:

"(1) The regulating or refixation of the quantum of pension and family pension for the Applicant and his family with effect from 1.1.1996 by the Government (as per the Order of 17.8.1999 of para one above) through the executive circulars/orders or Office Memoranda of the Government and, thus OTHERWISE THAN through any Act of the Parliament or through the promulgation of appropriate STATUTORY RULES as per the essential requirements of Article 309 of the Constitution of India, was, without any doubt, unlawful and rather unconstitutional, as brought out in sub-paragraphs (iii)(b) to (iii)(f) of para 3 above, and accordingly the impugned Government Order of 17.8.1999 must be declared null and void, in law, and fresh refixation, of the basic pension for the Applicant and of the basic family pension for the family of the Applicant, with effect from 1.1.1996 ordered on the lines indicated in the next item (ii) below.

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(ii) Since the changes in the scales of pay of the Central Government posts from time to time become necessary on account of changing of worsening economic and financial conditions in the country, and not, with a view to providing any financial benefits to any particular categories of the serving or retired employees, justice and fair play would demand that keeping in view the principle of equality enshrined in Article 14 of the Constitution of India, all the scales of pay of the Government posts which have been in force from time to time, both during the past and the future, should be treated as equivalent to one another, and so, whenever there are changes in the scales of pay of the posts, the quantum of pension and family pension of all the then pensioners and family pensioners must be updated by notional refixation of their basic pay in the then latest scales of pay so as to avoid any discrimination between the various kinds of pensioners and family pensioners belonging to each separate grade. And this principle MUST be given effect to by revising the pensions and family pensions of all the pre-1996 pensioners and family pensioners with effect from 1.1.1996 through the promulgation of appropriate STATUTORY RULES.

(iii) The government has been treating the families of the retired employees as the "family pensioners" from the respective dates of retirement of the concerned employees from their service. Certainly, no existing law allows such a thing and accordingly, the Government be advised to act in accordance with the existing law.

(iv) In the light of what has been brought out in sub-paragraph (iv)(b) of para 3 above, the Respondent Department had committed a serious criminal offence in not doing its mandatory and obligatory duty as per the requirements of sub-rule (3) of Rule 27 (read with Rule 28) of the statutory "Central Civil Services (Classification, control & Appeal) Rules, 1965" in the matter of getting appropriate orders passed on the two Appeals of the Applicant by the competent Appellate Authority and then of conveying the same to the Applicant. Accordingly, the authorities responsible for the aforesaid lapse deserve to be given deterrent punishment, under intimation to the Applicant. And,

(v) Finally, for causing sufficient mental and physical agony to the Applicant during the past four years on account of the aforesaid lapse on their part, the concerned authorities of the Government must be

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required to pay to the Applicant suitable and appropriate costs from their own pockets, which could really prevent them and others from indulging in the aforesaid kind of lapses in the future."

5. In his argument, applicant contended that he is entitled to prefer an appeal under Rule 23(4) of the CCS (CCA) Rules as his pension/family pension have been denied to his disadvantage. He stated that he had preferred statutory appeal on 11.6.1999 and also written to the executive authorities on 10.9.1999, 8.2.2000 and 30.8.2000 for expeditious decision on his appeal. Respondents have responded to him vide Office Memoranda dated 9.4.2001, 15.5.2002 and 16.8.2002 rejecting his representation/appeal without considering the grounds mentioned by him. He stated that he would be satisfied if the appellate authority, i.e., the President of India in his case, considers his notice dated 18.7.2003 (Annexure A-5) by passing a detailed and speaking order within a reasonable period.

6. I have gone through the office memoranda dated 9.4.2001, 15.5.2002 and 16.8.2002 whereby applicant's representations have been rejected. It is found that these memoranda are not detailed and speaking orders and have not dealt with in detail the grounds taken by the applicant in his representations.

7. While respondents have not taken due interest in presenting their side of the story as they have remained absent on the date of hearing, in my considered view and in the interest of justice, it would be appropriate to dispose of this OA by directing the respondents to consider applicant's notice dated 18.7.2003 (Annexure A-5) by passing a detailed and speaking order within a period of three months from the date of communication of these orders. Ordered accordingly. On remaining





aggrieved, applicant shall have liberty to seek legal remedy against respondents' decision on his aforesaid notice.

8. The OA stands disposed of in the above terms.

(V. K. Majotra)
Vice-Chairman (A)

27.10.04

/as/