

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
Original Application No. 60-2019

Date of Reserve :17.09.2019

Date of Order : 22.10.2019

CORAM :

Hon'ble Sh. M.C.Verma, Member (Judicial)

R.K. Khola aged about 77 years (Senior Citizen) S/o Late Sh. Murlidhar Yadav, Scientist / Engineer-SF (Retd.), B-9, Avani Row Houses, Nr. Satellite Towers, Ahmedabad – 380015.

...Applicant

[Applicant in person]

Vs.

1- Union of India (Notice to be served through) The Secretary, Department of Space, Government of India, Antariksh Bhavan, New BEL Road, Bangalore – 560 231.

2- The Secretary, Department of Space, Government of India, Antariksh Bhavan, New BEL Road, Bangalore – 560 231.

3- The Director, Space Applications Centre, Ahmedabad–380 015.

..Respondents

[Ms. Roopal R. Patel : Advocate]

O R D E R

M. C. Verma, Member (J)

Being aggrieved by non payment of his transfer due on superannuation, for non making payment of his professional update allowance of Rs. 5,000/- per annum due since 01.04.1999, for non implementing of his revised pension order dated 06.10.2017 and for non giving of the gold coins and the certificate of appreciation, like that of all other employee of DOS / ISRO, applicant has preferred this Original Application.

2. The crux of relevant facts, as has been set out in the O.A. by the applicant in his O.A. are that vide order dated 03.05.1993 he illegally was compulsorily retired under 56 FR (j). That upon challenge said order of compulsory retirement was quashed. That consequent to Order dated 07.05.2013, passed by Hon'ble Gujarat High Court, in SCA No. 9190/2004, which did attain finality by judgment dated 24.01.2017 of Hon'ble Supreme Court, he, on attaining the age of superannuation retired with effect from 31.03.2002. That as per order dated 07.05.2013 of Hon'ble Gujarat High

Court in SCA No. 9190/2004 he is entitled to all benefits as if he was in service till his retirement. It is also pleaded in the OA that like other Government employees he is entitled to T.A. for settling at his native town in Haryana, he made representations to various authorities but the same were rejected vide letter dated 08.05.1995 and 31.05.2018 (Annex.A/1 Colly). That in order to inspire and motivate the Scientists/Engineers in DOS/ISRO and to give their best contributions, in OM dated 03.02.1999 (Annex.A/6), sanctioning to grant incentive, was issued. That applicant is entitled to such incentive and he requested for the incentive but all in vain. That the pensioners who retired before 27.01.2010 must be treated equally in every respect, that large number of officers of DOS/ISRO who did retire before applicant, namely Late Dr. U. Rao, Dr. K. Kasturirangan, Sh. S.Madhvan Nair, Sh. N Pant, Sh. P.P. Kale etc., were given gift of gold coins but his request dated 02.05.2018 (Annex.A/10) made to the Secretary, DOS & Chairman, ISRO to provide him gold coin and certificate was rejected by an arbitrary and discriminatory order dated 25.05.2018. It is also pleaded that respondents issued order, dated 06.10.2017 for release of his pension according to 7th Pay Commission but in fact it was not implemented and his pension arrears has not yet been paid despite the fact that he is 77 years old and is in acute need of money to look after his family. That he has been treated in an unfair manner by the respondents hence this OA.

3. Respondents have inter alia filed their reply pleading that applicant was appointed as Engineer-SC in year 1971 and promoted as Sci/ Enge-SD, SE & SF on 1/1/1973, 1/1/1977 & 1/1/1986 respectively. That he was retired prematurely on 03.05.1993, under FR 56 (j), he filed OA 407/1993 for relief and thereafter filed SCA 9190/204 and 3136/2005 against the order dated 04.04.2001 passed in OA No. 407/1993 and order dated 06.08.2001 passed in OA No. 814/2000 by the Tribunal. That Hon'ble High Court of Gujarat allowed the SCA No. 3136/205 and both orders of the Tribunal were quashed and it was directed that the department has to pay interest @ 18% instead of 12%. That respondents filed SLP 9993/2014 before the Hon'ble

Supreme Court and in the meantime also deposited Rs. 31,99,861/- in Gujarat High Court for complying the order dated 15.04.2014 in *MCA(Contempt No. 839/2014* and a batch) through Cheque dated 28.04.2014. That the SLPs, preferred by respondents were dismissed by Hon'ble Supreme Court, vide order dated 24.01.2017. That in due compliance of judgment dated 07.05.2013 passed in *SCA 9190/2004* and adherence to the direction given by Hon'ble High Court of Gujarat in the aforesaid Special Civil Application, the Department setting aside the order of premature retirement, dated 03.05.1993, under FR 56(j) issued reinstatement order of applicant, vide communication dated 30.03.2017 (Annex.R/3), and applicant was deemed to have continued in service till he reached the age of superannuation i.e. 31.03.2002. That the SAC (ISRO) Ahmedabad revised the pay, pension and other retiral benefits of the applicant and revised pension order was issued on 07.06.2017 and was sent to Pay and Accounts Office on 14.06.2017.

It is further pleaded in reply that retirement benefits were processed and an amount of Rs. 12, 13,036, adjusting the pre paid amount, was paid to him as his due arrears. That Assistant Controller of Accounts, CPAO, New Delhi vide his letter dated 21.11.2017 (Annexure R-7), pursuant to DOS OM dated 09.08.2017, requested to review the entire cases with regard to the fixed value of the two increments notionally for pension and the Department has taken up the matter with DP & PW as well with CPAO and action will be taken on receipt of reply. It is also pleaded that after order of premature retirement of 03.05.1993, applicant requested for transfer TA which was forwarded to the Accounts Officer vide reference no. SAC/ Estt./ Pen/202/95 dated 08.05.1995. That after lapse of 19 years applicant sent a representation dated 07.03.2014 for approval of transfer TA again and he was informed vide letter dated 22.04.2014 (Annex.R/2) that he is not eligible for availing of transfer TA again and that as per TA Rules once the transport allowance is granted the same cannot be granted again. Para 7.1 of the reply reflects that transfer TA has been paid and Para 7.3 of the reply shows that arrears of PPO have also been paid. Respondents therefore

prayed that OA is liable to be rejected as he is not entitled to any relief sought for in the OA.

4. Applicant did not file any rejoinder and after admission when this OA came on Board for final hearing, on 20.08.2019, applicant, who is appearing in person to conduct his case, made statement that he does not want to press relief as has been enshrined in Para 8.2 & Para 8.4 of the OA and wants to file separate OA for said relief. Needless to say in Para 8 of the OA following reliefs have been claimed :-

"(i) Declare the action of the respondents for not approving his T.A. on transfer claims and for transportation of his personal effects because he would like to settle at his native village-Zarinabad, Distt. Rewari (Haryana), as arbitrary, illegal and misuse of authority and to direct the respondent authorities to approve the same.

(ii) Declare the action of the respondents for not making payment of his professional update allowance of Rs. 5000/- per annum which is due since 01.04.1999, as arbitrary, unlawful and gross misuse of authority and further direct the respondents to pay the professional update allowance of Rs. 5000/- p.a. with 18 percent interest w.e.f. 01/04/1999 till the actual date of payment.

(iii) Declare the action of the respondents for not implementing his revised pension order dated 06.10.2017 even after a long delay of more than 3 years and also for not making payment of his pension arrears which is about more than Rs. 3.5 lakh, as arbitrary, vitiated in law and gross misuse of authority and further direct the respondents to implement the above referred pension order of the applicant and also direct the respondents to pay the pension arrears of the applicant with 18% w.e.f. 01/01/2016 till the actual date of payments without any further delay.

(iv) Declare the action of the respondents for not giving the gold coins and the certificate of appreciation of service dated 27.01.2010 which have been given to all the employee of DOS / ISRO who have retired after 01/01/2008 under the order issued on 27/1/2010, as arbitrary, whimsical, without any authority of law and the gifts were given by Dr. Radhakrishnan with the sole aim of becoming popular among staff of DOS/ISRO as well as among his superiors, and further declare the respondents to give the gold coin as well as the certificate of appreciation to the applicant also."

5. As noted above applicant, on 20/8/19 waived of and relinquished prayer (ii) and (iv) and thereafter also, during pendency some changes in

the circumstances, having bearing on the matter has taken place. On 23.08.2019 this matter when again came on Board and applicant made his submission confined only to prayer No. I and III. Learned counsel for respondents, Ms. R.R. Patel urged, in between, that the transfer TA and arrears of PPO had already been paid and she referred Paras 7.1 & 7.3 of the reply of respondents. Para 7.1 of the reply of respondents was having assertion that applicant had been paid the amount vide reference order dated 08.05.1995. Fortunately, reference order dated 08.05.1995 was on record as Annexure A (I) colly and this documents was only showing that TA for transportation of personal effects received from Shri Dr.R.K.Khola (applicant) is being sent for further action. The document was not reflecting about payment but was reflecting only that it was under process. Para 7.3 of reply relates to PPO dated 07.06.2017 and not to PPO dated 06.10.2017, the PPO subject matter of the OA. Anyhow, upon having glance of the documents learned counsel for respondents, at that stage made request that she would ascertain the correct facts from the respondent department and would made submission thereafter only. She was directed to ascertain the true facts qua TA & payment of arrears in respect of PPO dated 06.10.2017. Respondent thereafter, on 09.09.2019 have filed certain documents , including a fresh PPO, dated 26.08.2019, issued by respondents. Copy of the documents has been supplied to the applicants.

6. In aforesaid backdrops the matter came up for final hearing on 17.09.2019 and was heard. Applicant urged that respondents now have issued PPO dated 26.08.2019. That in changed scenario and having hope that his pay etc. might have correctly been fixed and that respondent would pay the arrears, to which he is find entitled to according to this PPO, he want to withdraw his prayer (iii) also to implement the above referred pension order dated 06.10.2017 but simultaneously he also wants to reserve his right to agitate the correctness of this fresh PPO, in case he find that some mistake remained there in it. He also expressed his apprehension that respondent, to harass him deliberately may cause delay in making

payment of arrears under this PPO as well. Learned Counsel for respondent assured at that stage that no undue delay would be there and arrear would be paid as early as possible on completion of formalities. The prayer (iii) of the OA also, in circumstances noted above was withdrawn and was not pressed for.

7. The controversy, in this O.A. now remains centered around to relief enshrined in Para 8 (i) of the OA. Applicant, who is present in person, referred the prayer made in Para 8 (i) and submitted that he is pressing no relief except this relief made in Para 8 (i) in the O.A. and urged that his native village is Zarinabad, District Rewari, Haryana and upon retirement he had to be paid TA admissible on retirement for travelling expenses of him and his family to his native village and for transportation of his house hold luggage. That he was entitled to travel in First AC compartment of railway and his family was consisted of five members. That he has not been paid any T.A. on retirement. Applicant also submitted that though his superannuation is w.e.f. 31.03.2002 but the order to this effect was passed only in year 2017.

8. Learned counsel for respondents informing that no transfer TA has been paid to the applicant urged that after order of premature retirement applicant did submit one TA bill of amount Rs 950/- and said bill was forwarded to the Accounts Officer vide reference no. SAC/ Estt./ Pen/ 202/95 dated 08.05.1995. She also submitted that as per said TA bill Shri Khola (the applicant) shifted from Vastapur colony to Aalay Flats Vastapur. That no bus or train ticket was submitted. That after lapse of 19 years applicant sent a representation dated 07.03.2014 for approval of transfer T.A. again and he was informed vide letter dated 22.04.2014 (Annex.R/2) that he is not eligible for availing of transfer TA. Applicant in rebuttal did admit that no T.A. bill except above referred bill was submitted and he explained that after order of compulsory retirement respondent compelled him to vacate his official residence and he under compulsion shifted his luggage to a nearby rented flat by rickshaw and the bill of March 1995 is of expenses of that shifting by rickshaw and it is not transfer T.A., that after

passing of order by Hon'ble High Court he gave representation, dated 07.03.2014 for approval of transfer T.A. but he was informed vide letter dated 22.04.2014 (Annex.R/2) that he is not eligible for availing transfer TA. He urged that in peculiar facts of his case his request for transfer T.A. can't legally be denied.

9. Considered the submissions and perused the record. Reiterating the factual matrix suffice it to note that against his premature retirement, under FR 56(j) applicant knocked at appropriate legal forum, he was reinstated in service by Hon'ble High Court in SCA No. 9190/2004 & a batch (decided on 07.05.2013) but its operation initially was stayed in SLP preferred by respondent and finally the SLP was dismissed by Hon'ble Supreme Court, vide its judgment dated 24.01.2017 and thereafter only respondent passed order, on 30.03.2017, of reinstatement and of his superannuation w.e.f. 31.03.2002. Applicant, after passing of order by Hon'ble High Court gave representation dated 07.03.2014 for approval of transfer T.A. but he was informed that he is not eligible for availing transfer TA. In such circumstances to deny the relief, only on the ground that he did not submit T.A. bills after reinstatement shall not be justified.

10. Now the question arises whether it will be appropriate to give liberty to the applicant to submit the bill now and to direct the respondent to consider the same and to take decision thereon but when I deeply considered this aspect, I did find that in backdrop facts of the matter it may not be feasible & appropriate because in said circumstances an issue firstly would be there whether the amount chargeable would be according to lump sum Transfer Grant, which was in force in year 1993 when applicant was retired under FR 56(j) or would it be chargeable according to Composite Transfer Grant, brought in existence to implement the recommendation of 5th Pay commission and which was in force on 31.03.2002, the date of his superannuation, according to order passed by respondent on 31.03.2017 pursuant to direction of Hon'ble High Court in SCA No. 9190/2004 (decided on 07.05.2013), or whether it should be chargeable according to norms applicable in year 2017 when order was

passed by respondent. Further there may be complication/problem of furnishing receipt /ticket etc. of relevant period and all these may open another floodgate of litigation. Keeping in view that applicant at present is of about 77 years of age and to avoid all these intricacy it would be justified and in interest of justice to grant lump sum amount, rather directing for submitting of bill by the applicant and consideration and decision thereon by the respondent.

11. According to applicant in year 1993 his basic pay was Rs. 11,865/-, the approximate fare per passenger for travelling from Ahmedabad to his native place was about Rs. Rs 550/- and for five persons the figure comes to Rs. 2,750/- and adding the approximate charge of transporting luggage to the tune of Rs 10,000/-, the total figure come to Rs. 24,615/-(Rs twenty four thousand six hundred and fifteen only). He has also urged that even for rounding up it is assumed as Rs. 20,000/- (Rs twenty thousand) despite that by applying the interest, since 1993, at GPF rate the gross figure would be Rs. 3,40, 000/- (Rs three lac & forty thousand). He also added that on 31.03.2002, the actual and admitted date of his superannuation, his basic pay was Rs. 1,34,500/- (Rs One lac, thirty four thousand and five hundred). He contended that on retirement not only the travelling expenses of the family of employee and for transportation of his house-hold luggage is paid but employee is also given one month salary.

12. Contention of respondents' is that the liability at the most can confine to the amount of bill submitted in year 1995 and not beyond that and that CTG (composite transfer grant) was not applicable in year 1993, and in that year in addition to expenses incurred in journey to place of settlement lump sum transfer grant having sealing of Rs. 4,000/, packing charge having sealing of Rs. 1,500/-, as per OM No. 19018/86-E.IV dated 03.01.1986 could be claimed and payment would be on the basis of actual expenses incurred in performing journey .

13. Apart from what has been stated above, I have come across the fact that it is not illustrated by record as to what was the basic pay of applicant

at the time of his superannuation in year 2002 but his basic pay, after implementation of & 7th CPC, as is shown in the PPO dated 26.8.2019, filed by the respondents along with his reply, was fixed as Rs. 1,34,500/- (Rs. One lac thirty four thousand and five hundred). Thus, taking note of all relevant factors, it appears to be justified to direct the respondents to pay the amount of Rs. 90,000/- (Rs. Ninety thousand) towards transfer TA. Needless to reiterate that except the prayer for non-payment of his T.A. on transfer claims on superannuation other prayer made in O.A., viz. prayer made in Para 8(ii), 8(iii) & 8(iv), meant to say prayer for making payment of his professional update allowance of Rs. 5,000/- per annum, prayer qua revised pension order dated 06.10.2017 and prayer for grant of gold coins and the certificate of appreciation has not been pressed and thus were not adverted to.

14. In view of factual & legal scenario, discussed above respondents are directed to pay the amount of Rs. 90,000/-(Rs. Ninety thousand only) to the applicant, for transfer TA on retirement / superannuation. This payment is directed to be released in favour of applicant within two months from the date of receipt of copy of the order.

15. With aforesaid observations & direction instant OA stand disposed of. Pending M.A., if any also stand disposed of accordingly.

(M C Verma)
Member(J)

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