

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.1623/2003**

Reserved on: 17th July, 2008

% Date of Decision: 4th August, 2008

Shri M.L. Ohri
S/o late Sh. B.D. Ohri
Flat No.B-39, Pocket-B
Sarita Vihar
New Delhi

...Petitioner

Through: J.C. Madan, Advocate.

Versus

1. Union of India
Through the Secretary
Ministry of Personnel
Public Grievances & Pension
Department of Pensions and
Pensioners Welfare
North Block, New Delhi
2. The Secretary
Ministry of Finance
Department of Expenditure
North Block
New Delhi
3. The Pay & Accounts Officer,
Central Pension Accounting Office
Ministry of Finance
Trikot-II Complex
(Behind Hotel Hyatt Regency)
Bhikajicama Place
New Delhi.
4. The Central Administrative Tribunal
Through the Registrar
Principal Bench
Copernicus Marg
New Delhi

...Respondents

Through: Mr. R.V. Sinha, Advocate.

CORAM :-

**THE HON'BLE MR.JUSTICE MADAN B. LOKUR
THE HON'BLE MR. JUSTICE J.R. MIDHA**

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

J.R. MIDHA, J.

The Petitioner retired from Central Government service from the post of Assistant Director of Income Tax (equivalent to Under Secretary) on 30th April, 1990 in the pay scale of Rs.3,000-100-3,500-125-4,500/-. His last drawn average pay was Rs.3,888/- and, accordingly, his pension was fixed at Rs.1,944/-.

On 27th October, 1997, the Department of Pension and Pensioners' Welfare, Government of India, issued an Office Memorandum whereby the Government revised the pension of Central Government pensioners on the recommendation of the Fifth Central Pay Commission w.e.f. 1st January, 1996. On 17th December, 1998, Department of Pension and Pensioners' Welfare, Government of India, issued another Office Memorandum to the effect that w.e.f. 1.1.1996, pension 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. 1.1.1996 of the post held by the pensioner.

At the time of retirement, the petitioner's pension was fixed at Rs.1,944/-, being 50% of the last drawn average pay of Rs.3,888/-. In terms of OM dated 27th October, 1997, the petitioner's pension was revised to Rs.5,557/-, being 50% of the revised pay scale for the post of

Assistant Director of Income Tax. However, the Petitioner's pension continued to be Rs.5,557/- after the OM dated 17th December, 1998.

The Petitioner filed the OA before the learned Tribunal challenging the OM dated 17th December, 1998 on the ground that the pension of the Deputy Secretary, on the basis of the said OM, has increased from Rs.5,557/- to Rs.6,000/- whereas there has been no corresponding increase in the pension of the Petitioner. The Petitioner submitted a comparative chart in the OA which is reproduced in para 4 of the impugned order to demonstrate that the Deputy Secretary with one year service and the pay of Rs.3,825/- would draw a pension of Rs.6,000/-. According to the Petitioner, his last drawn pay was Rs.3,888/- and, therefore, he should draw higher pension than the Deputy Secretary and, therefore, the OM dated 17th December, 1998 is discriminatory and should be quashed.

We have heard learned counsel for the parties at length. During the course of arguments, the counsel for the Petitioner fairly admitted that so far as the petitioner is concerned, his pension has been correctly fixed at Rs.5,557/-, being 50% of the revised pay scale of the post of Assistant Director of Income Tax and to that extent, he has no grievance. The Petitioner's sole grievance is that the Deputy Secretary should not draw pension higher to him. We have examined the comparative chart given by the Petitioner. The Petitioner has made anomalous comparison in his chart. If the pension of Under Secretary with one year service is compared to the pension of Deputy Secretary with one year service, there would not be any anomaly. To illustrate, the Under Secretary with one year service in 1990 would draw the last pay of Rs.3,100/- and the basic

pension would be Rs.1,550/-, being 50% of the last drawn pay. In terms of OM dated 27th October, 1997, his pension would be revised to Rs.4,669/- and on the basis of the OM dated 17th December, 1998, it would be further revised to Rs.5,000/-. Correspondingly, the Deputy Secretary with one year service would draw the pay of Rs.3,825/- in 1990 and his pension would be Rs.1,913/-, being 50% of the last drawn pay. The pension would be revised to Rs.5,511 in terms of OM dated 27th October, 1997 and to Rs.6,000/- on the basis of the OM dated 17th December, 1998. As a result, the revised pension of Under Secretary with one year service would be Rs.5,000 and that of Deputy Secretary with one year service would be Rs.6,000/-. We do not find any discrimination in this calculation.

It was next contended by the Petitioner that the pension cannot be linked to the post as has been done by the OM dated 17th December, 1998. We do not find any force in this argument. This argument was rejected by the Government by its letter dated 2nd July, 2001 which has been reproduced in para 5 of the impugned order. We agree with the reasons given by the Government that the posts held at the time of retirement and the revised scales of pay prescribed for the posts have to be necessarily taken into account. The posts held are important and the Petitioner's comparison has to be made with the persons holding the same rank and not with the persons holding higher ranks. We agree with the learned Tribunal that the classification based in terms of the posts held at the time of retirement is neither unreasonable nor arbitrary.

In view of the above, we are of the opinion that the OM dated 17th December, 1998 does not suffer from arbitrariness or unreasonableness. The Petitioner admittedly has no grievance so far as his own pension is concerned. His grievance to the higher pension of the Deputy Secretary holding the next higher post is unjustified inasmuch as there is no unreasonableness in the higher pension to persons holding higher post. There is no merit in the present petition and the same is dismissed.

(J.R. MIDHA)
JUDGE

(MADAN B. LOKUR)
JUDGE

4th August, 2008
s.pal