

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

+ **W.P. (C.) No.268/2007**

% **Date of Decision: 23.11.2009**

Sh.H.S.Bhogal Petitioner

Through Mr.Y.S.Chauhan, Advocate

Versus

Union of India & Ors Respondents

Through Mr.A.K.Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J. (Oral)

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CM No.14658/2009

Issue notice to the respondent. Mr. Bhardwaj accepts notice and states that no reply is to be filed.

For the reasons stated in the application it is allowed. The order dated 18.11.2009 dismissing the writ petition in default of appearance of petitioner and his counsel is set aside and the petition is restored to its original number.

W.P. (C.) No.268/2007

The petitioner has impugned the order dated 5.10.2006 of Central Administrative Tribunal in OA No.2487/2005, H.S. Bhogal vs. Union of India & Ors., rejecting his original application seeking quashing of order dated 12.9.2005 passed on the representation of the petitioner and further seeking direction to revise his pension in accordance with law and release the same including arrears, interest and other consequential benefits.

Brief facts to comprehend the disputes are that the petitioner sought voluntary retirement on 28.3.1981 and from 1st March 1981 his pension was fixed at Rs.495/-. While fixing his pension, average emoluments drawn by him during last completed 10 months immediately preceding the date of his retirement were considered.

For some time before his retirement, the petitioner was on deputation. However, he was reverted to his parent department before his retirement, he worked in the parent department for some time and then retired from service on taking voluntary retirement. Therefore, while computing his pension with effect from 1.3.1981, as the emoluments drawn by him during last completed 10 months immediately preceding the date of retirement had to be considered, the

deputation allowance which the petitioner was receiving for some part of the last ten months was also considered while computing his pension.

The pension of Rs.495/- per month was computed taking into consideration 25 years 7 days qualifying service of the petitioner and 5 years weightage was also given to him under the rules applicable at that time.

The pension of the petitioner as per recommendation of 4th Pay Commission was revised to Rs.1131/- with effect from 1.1.1986. On recommendation of the 5th Pay Commission, pensions of all the pensioners was revised as per OM dated 10.2.1998 which contemplated notional fixation of the pay as on 1.1.1986.

While fixing notional pay of the petitioner as on 1.1.1986, the deputation allowance which the petitioner was getting in 1980 for a part of the last ten months of his service, when he was on deputation with UPSC, was not taken into consideration.

The petitioner contended that as per OM dated 24.7.1998, his pension could not be revised to his disadvantage unless such revision was on account of detection of a clerical error. The petitioner, therefore, sought computation of his notional pay as on 1.1.1986 by including the

deputation allowance also, which petitioner was getting for some part of the last ten months of his service and the component of which was considered while computing the petitioner's pension from 1.3.1981. The representation of the petitioner was, however, declined by the respondents by order dated 12.9.2005 which was challenged by him in OA No.2487/2005 titled H.S. Bhogal vs. Union of India and Ors. The Tribunal also dismissed the petition of the petitioner holding that the pleas raised by the petitioner have no merit by its order dated 5.10.2006 which is impugned by the petitioner in the present petition raising the same grounds which were raised before the Tribunal.

The petition is contested by the respondents contending, inter alia, that notional pay as on 1.1.1986 had to be fixed on the basis of last basic pay and not the average emoluments which the petitioner was getting. The respondents contended that even the Ministry of PPG & P had issued a clarification dated 19.3.1999 under Rule 33 of CCS (Pension) Rules, 1973 clarifying that 'Emoluments' means basic pay as defined in Rule 9(21) (a) (i) of Fundamental Rules which a government servant was receiving immediately before his retirement. The said rule also defined 'Pay' to mean the amount drawn monthly by a government servant as the pay, other than special pay or pay granted in view of his personal qualification. It was contended that considering the ambit of said rule, deputation allowance would not fall within the scope of Fundamental Rule 9 (21) (a) (i). In the circumstances, it is contended

that the petitioner is not entitled for consideration of deputation allowance for computation of his pension on the basis of notional pay from 1.1.1986. The respondents also contended that on the basis of last pay which was notionally fixed from 1.1.1986, the petitioner is entitled for a revised pension of Rs.3269/-. However, as his basic pension was Rs.1131/- pursuant to fourth pay commission and which the petitioner was drawing with effect from 1.1.1986, the petitioner was given a monthly consolidated pension of Rs.3422/- with effect from 1.1.1996 which was beneficial for the petitioner in comparison to the revised pension pursuant to OM dated 10.2.1998. Therefore, in accordance with OM dated 24.7.1998 petitioner has been allowed to draw monthly pension of Rs.3422/- from 1.1.1996 in compliance with OM dated 24.7.1998 and the pension of the petitioner has not been revised to his disadvantage.

In the circumstances, whether the deputation allowance which petitioner was getting for some part of the last ten months period before the date of his taking voluntary retirement (but not at the time of his retirement) is to be considered while fixing his pension on the basis of notional pay of the petitioner on 1.1.1976, is the point for decision in this matter.

We have heard the learned counsel for the parties in detail. This is not disputed that the initial pension of the petitioner was fixed at

Rs.495/- with effect from 1st March, 1981 which was revised to Rs.1131/- w.e.f 1st January, 1986 pursuant to fourth pay commission. Revision of pension pursuant to recommendation of 5th Pay Commission also cannot be disputed by the petitioner. For revision of pension pursuant to fifth pay commission, the manner was indicated in OM No.45/86/97-P&PW (A)/Part III dated 10th February, 1998. This memorandum contemplated notional fixation of the pay of pre 1986 retirees at par with the serving employees.

The tenor of OM No.46/86/97-P&PW(A)-Part III dated 24th July, 1998 also cannot be disputed which contemplated and which has been mainly relied on by the Learned counsel for the petitioner that the pension is not to be revised to the disadvantage of the Government servant unless such revision was on account of detection of clerical error. This also has been accepted by the Counsel for the parties that in case of the petitioner there was no clerical error in fixing his pension.

At the time of voluntary retirement of the petitioner on 28th February, 1981, his pension was fixed taking into consideration that he had put in service of 25 years and 7 days of qualifying service and he had also been given 5 years service more as per the existing pension rules. Since for fixation of pension of petitioner in 1981, the average emoluments drawn by him during the last completed 10 months preceding the date of retirement had to be taken into consideration,

therefore, the deputation allowance of 20% which he was getting for some part of that ten months period, had to be considered.

However, as per O.M dated 10.2.1998, the criteria for fixation of pension on the basis of notional pay as on 1.1.1976 was the last basis pay drawn by the employee and not the average emoluments of last 10 months immediately preceding the date of retirement.

A clarification dated 19th March, 1999 under Rule 33 of CCS (Pension) Rules, 1973 was issued by the Ministry of PPG & P clarifying that the expression 'emoluments' means basis pay as defined in Rule 9 (21) (a) (i) of Fundamental Rules which defines pay as the amount which the Government servant receives as pay other than special pay or pay granted in view of his personal qualification. The learned counsel for the petitioner is unable to explain as to how the 'deputation allowance' will fall not within the ambit of "Special Pay" in terms of the clarification dated 19th March, 1999.

This is not disputed by the Learned Counsel for the petitioner that notional pay has been fixed w.e.f 1.1.1986 in accordance with rules. If that be so than the deputation allowance from Cabinet Secretariat which the petitioner was getting from 1.10.1975 up to 30.9.1980 could not be included in the basis pay of the petitioner which was notionally fixed from 1.1.1986 pursuant to the recommendation of

the 5th Pay Commission. Thus the pay of the petitioner was notionally fixed at Rs.2375/- per month as on 1.1.1986 and after adding DA, 1st interim relief, 2nd interim relief and Fitment weightage, the pension of the petitioner was fixed at Rs.3269/- w.e.f 1.1.1996.

However, since the petitioner was drawing basic pension of Rs.1131/- from 1.1.1986, he has been paid consolidated pension of Rs.3422/- w.e.f. 1.1.1996. Therefore, though the petitioner pension was fixed at Rs.3269/- w.e.f 1.1.1996 under OM dated 10th February, 1998, he continued to get pension of Rs.3422/- in terms of OM dated 24th July, 1998 which contemplates that the pension shall not be revised to the disadvantage of the Government servant. Therefore, the plea of the petitioner to grant him pension after taking into consideration the deputation allowance cannot be accepted, nor the petitioner can contend that his pension has been revised to his detriment. The finding of the Tribunal therefore, cannot be faulted.

The petitioner has not pressed the plea that he is getting less pension than his junior especially Shri Darshan Singh as the said junior had put in 33 years of service compared to the petitioner who had sought voluntary retirement after doing service for 25 years and 7 days, which was treated as 30 years of service.

In the circumstances, the order dated 12th September, 2005 of the respondents declining the representation of the petitioner claiming fixation of pension after taking into consideration the deputation allowance does not suffer from any illegality or such error which would require rectification. Therefore, the order dated 5th October, 2006 of the Central Administrative Tribunal dismissing the petition against the order dated 12th September, 2005 also does not suffer from any error or illegality which will require interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition in the facts and circumstances is without any merit and it is, therefore, dismissed. Parties are however, left to bear their own costs.

ANIL KUMAR, J.

November 23rd, 2009
'jk/dp'

VIPIN SANGHI, J.