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

+ **W.P. (C) 5687/2007**

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Reserved on: 8th February, 2017

Pronounced on: 6th March, 2017

DIRECTOR GENERAL CIVIL AVIATION & ANR. Petitioner

Through: Ms. Anjana Gosain, Advocate &
Mr. Vishu Aggarwal, Advocate.

Mr. D.S. Rawat, Deputy Director Administration
for DGCA.

Versus

IQBAL SINGH VEDI & OTHERS Respondents

Through: Mr. Malaya Kumar Chand, Advocate
with Mr. Rohit Sharma, Advocate with respondent
no.1 in person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. Petitioners have filed this Writ Petition (C) under Article 226 of the Constitution of India for issuance of the writ of Certiorari or any other writ of appropriate nature, order or direction for quashing of the order dated 04.06.2007 passed in OA No. 1640/2006 by the Central

Administrative Tribunal, New Delhi (hereinafter referred to as “Tribunal”).

2. The factual matrix of the Writ Petition are that the respondent no. 1, 2 & 3 were working as Senior Technical Officers under Director General of Civil Aviation, New Delhi (hereinafter referred to as “DGCA”). By an Act No. 64 of 1985 of Parliament, National Airport Authority (hereinafter referred to as “NAA”) was constituted and employees of DGCA/Civil Aviation Department were permanently absorbed in National Airport Authority on 02.10.1989 on the terms and conditions prescribed in the Department of Pension and Pensioner Welfare vide O.M. dated 05.07.1989. At the time of absorption, the Government gave three options to the employees regarding their retirement benefits. Consequent to their absorption in NAA w.e.f. 02.10.1989, the respondent no. 1, 2 & 3 opted to be governed by the pensionary benefit available under Government of India at the time of their retirement in accordance with the Central Government Rules in force at that time. DGCA issued order No. 1/1/90-PEM C(4) dated 10.09.1990 mentioning therein that those officials who opted to retire under CCS Pension Rules on reaching the age of superannuation, their emoluments for calculation of their pension will be governed by Rule 33 Note 10 of CCS Pension Rules.
3. The respondent no. 1, 2 & 3 retired from the service of NAA on 30.11.1990, 31.12.1990 and 30.11.1990 respectively. After their retirement, the respondents started getting their pension as per Central Civil Services (Pension) Rules, 1972.

4. In the month of June, 1996 the pay scales of the employees in the Airport Authority of India, which is the successor organization of National Airport Authority, having come to existence by a separate Act of Parliament, were revised on Industrial Dearness Allowances (hereinafter referred to as “IDA”) pattern retrospectively w.e.f. 02.10.1989 and revision of the pay scale was made effective in June, 1996 i.e. after the retirement of the respondents.
5. On 27.10.1997 one Office Memorandum was issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare for implementation of Government’s decision on the recommendation of 5th Central Pay Commission in order to implement w.e.f. 01.01.1996, pension, family pension of all the pre-1996 pensioners/family pensioners. Meanwhile, the respondents had given several representations to the petitioners herein to revise their pension after revising their emoluments.
6. Admittedly, identically placed colleagues of the respondents namely, Sh. Jagdish Tuli, Sh. D.L. Khillan, Sh. G.D. Sharma and Sh. M.L. Jalla approached the Tribunal by filing an OA No. 480/1998 titled as **“Jagdish Tuli & Ors. Vs. Union of India”**, which was disposed of by the Tribunal on 13.11.2000 and directed the petitioners herein to fix their pension in accordance with CCS (Pension) Rules on the basis of last pay drawn and also to pay arrears from the due dates upto the date of retirement along with interest @ 12% and to make the payment of other retiral benefits on the same basis. The Tribunal has further directed the petitioners herein to take note that fixation of pension in

accordance with CCS (Pension) Rules would mean fixation of pension @ 50% of the average emoluments drawn during last 10 months preceding to the date of retirement in each case.

7. The order dated 13.11.2000 came under challenge in a Writ Petition (C) 1597/2001 by the petitioner herein and a Division Bench of this Court, vide order dated 05.05.2006, did not find any reason to interfere with the directions of the Tribunal particularly when the similar relief has already been given to Sh. A.K. Mukherjee and two others. However, the Division Bench of this Court has reduced the rate of interest to 9%.
8. Since the pension of the respondents herein was not revised by the petitioners, they preferred OA No. 1640/2006 before the Tribunal on 03.08.2006. During the pendency of the OA, the petitioners issued three separate orders dated 30.10.2006 revising of IDA pension to CDA pension in respect of respondent no. 1 to 3 from the date of retirement and further consolidation w.e.f. 01.01.1996. Prior to issuance of these orders dated 30.10.2006, O.M. dated 19.09.2003 was also issued by the Government of India, Department of Pension & Pensioners Welfare by which pension of all PSU retirees, who had been absorbed in the PSU as a result of conversion of Government Department and had opted for pensionary benefits of combined service in the Central Government and the PSU as per the Central Government Rules on their absorption shall be revised w.e.f. 01.01.1996 and all the absorbers shall be notionally brought on to CDA scales w.e.f. 01.01.1996. However, it is also mentioned therein that this OM shall not apply to the past pensioners, who have, in the past, been given a special dispensation on account of

specific orders of the courts as accepted and implemented by the Government. It is directed that the cases of such nature shall continued to be governed as per the existing provisions specifically applicable to them.

9. By the impugned order dated 04.06.2007, the Tribunal quashed all the three orders dated 30.10.2006 with respect to the respondents and the petitioners herein were directed to revise/refix the pension of the respondents strictly in accordance with the options exercised by them and in accordance with the CCS (Pension) Rules, 1972 as well as the terms and conditions of the Vth CPC. The Tribunal has also awarded 9% interest on the arrears to the respondents from the date it became due till the date of payment.
10. It is argued by the learned Standing Counsel for the petitioner that the pension under Central Government CCS Rules is fixed @ 50% of the average emoluments drawn by the employees during last 10 months of their service. The pay scales at the Central Dearness Allowance (CDA) pattern in the Central Government are lower than equivalent pay scales at Industrial Dearness Allowance (IDA) pattern. As such the pension of IDA pay scale is fixed at higher amount than the pension fixed at the equivalent CDA pay scales. However, since the Dearness Relief (DR) on the pension fixed on the IDA pay scale is lower than Dearness Relief (DR) on the pension fixed on the CDA pay scale, the total pension payable on IDA pay scale and that on CDA pay scale remains almost similar. She submitted that after revision of the pay scale on IDA pay pattern w.e.f. 02.10.1989 in the National Airport Authority/Airport

Authority of India, the pension of respondents was to be revised on the basis of emoluments drawn on IDA pattern in terms of the formula and on the basis of CCS (Pension) Rules i.e. 50% of the average emoluments drawn by the employees during the last 10 months of their service but this could not be done in view of the instructions from the authorities from time to time. He cited OM dated 27.10.1997 issued by the Department of Pension and Pensioners Welfare, which prescribed the formula for consolidation of pension drawn by Central Government Employees based on CDA pattern taking into account the components payable on the basis of CDA pay scales annexing thereof a table of consolidation of pension fixed on CDA pay scale as on 01.01.1996 and the amount so arrived will be the consolidated pension/family pension on CDA pattern w.e.f. 01.01.1996. She further submitted that the pension of the respondents was not revised from the date of their retirement pursuant to the revision of the pay scales in the Airport Authority of India on IDA pattern, the respondents have been representing them for such revision and on filing of OA No. 1640/2006 before the Tribunal on 03.08.2006, they have issued orders dated 30.10.2006 in respect of the respondents revising their pension with effect from the date of their retirement on the basis of the emoluments drawn on IDA pattern. She further submitted that the pension of the respondents was re-fixed on the revised IDA pay scales from the date of their retirement and was further consolidated/revised w.e.f. 01.01.1996 following the OM dated 19.09.2003 issued by the Department of Pension & Pensioners Welfare. Ms.Gosain further argued that the orders dated 30.10.2006 with respect to the respondents are as per the

Government of India instructions as the same was revised on the basis of OM dated 19.09.2003. It was next submitted that respondents cannot claim higher pay scale of IDA with the DR on CDA pattern, which is higher and respondents can be paid either pay scales of IDA pattern with DR, which is lower or CDA pattern scale with DR which is higher.

11. On the other hand, learned counsel for the respondents as also the respondent no. 1 in person have vehemently argued that there was no question of CDA or IDA pattern for fixing the pension or revising the same as at the time of their absorption in National Airport Authority of India, they had opted before retirement to be governed by the pensionary benefits available under the Government of India at the time of their respective retirement in accordance with the Central Government Rules in force at that time. It is further argued that the petitioner cannot change the formula of fixing the pension by issuing OM or orders to their detriment. It is also argued that the petitioner has implemented the directions of the judgment in OA No. 480/1998 titled as “Jagdish Lal Tuli Vs. Union of India” decided by the Tribunal on 13.11.2000 and upheld by the Division Bench of this Court in WP (C) No. 1597/2001 decided on 05.05.2006 except with regard to the rate of interest, which was reduced to 9% and therefore the petitioners cannot discriminate between similarly situated persons. It is submitted that their pension should be revised as per the option submitted by them to the Government at the time of their absorption in National Airport Authority, which was accepted by the petitioners.

12. We have heard the learned counsel for the parties and very carefully perused the material available on record.
13. Admittedly, the respondents no.1 & 2 had submitted their options for pensionary benefits at the time of their absorption in NAA w.e.f. 02.10.1989 to the effect that they would be governed by the pensionary benefit available under the Government of India at the time of their retirement in accordance with the Central Government Rules in force at that time. Here it would be relevant to advert to Rule 33 Note 10 of Central Civil Services (Pension) Rules, 1972, which reads as under: -

“Note 10: - When a Government servant has been transferred to an autonomous body consequent on the conversion of a Department of the Government into such a body and the Government servant so transferred opts to retain the pensionary benefits under the rules of the Government, the emoluments drawn under the autonomous body shall be treated as emoluments for the purpose of this rule.”

Further, it is pertinent to refer Para 1(a) & (b) of the Office Memorandum dated 13.01.1986 issued by the Department of Pension and Pensioners Welfare regarding settlement of pensionary terms in respect of the Government employees transferred to Autonomous Organization/Public Sector Undertaking consequent on the conversion of Government Department Office into an autonomous body on public undertaking, which reads as under: -

“In supersession of the Ministry of Finance, Department of Expenditure, Office Memorandum No. F.2(6)-EV A//62 dated 5th November, 1964, it has now been decided that the pensionary terms in respect of Government employees who are transferred to an autonomous body/public sector undertaking on the conversion of a Central Government Department/Office into an autonomous body or a public undertaking would be governed by the following conditions: -

(a) The permanent Government servants shall have an option to retain the pensionary benefits available to them under the Government rules or be governed by the rules of the public undertaking/autonomous body. This option shall also be available to quasi-permanent and temporary employees after they have been confirmed in the autonomous body/public undertaking.

(b) The Government servants who opt to be governed by the pensionary benefits available under the Government shall, at the time of their retirement, be entitled to pension etc. in accordance with the Central Government rules in force at that time.”

14. Subsequently, another OM dated 05.07.1989 was issued by the Ministry of Personnel, which again clarified that the Government servants who opted to be governed by the pensionary benefits available under the Government, shall, at the time of their retirement, be entitled to pension etc. in accordance with the Central Government Rules in force at that time.
15. The respondents no. 1, 2 & 3 exercised their options in the month of January, 1990 and they have retired from the service of the Public Sector Undertaking on 30.11.1990, 31.12.1990 and 30.11.1990 respectively and on retirement their pension was admittedly fixed in accordance with the CCS (Pension) Rules 1972.
16. During the year 1997, NAA revised the pay scales of the respondents and paid them the arrears of the revised emoluments w.e.f. 02.10.1989 till the date of their respective retirement. Several pensioners of NAA (former department of Civil Aviation) requested the petitioners for re-fixation of pension/family pension and other retirement benefits as per the revised emoluments received by them. Suddenly, the petitioners herein issued three revised PPO dated 30.10.2006 to the respondent no.

1, 2 & 3 changing the nature of their pension from Central Government rules to IDA pattern for which they had never opted and the respondents did not want their pension to be fixed under IDA pattern, which is infact resulted in reduction of their pension. Similarly placed four retirees namely (1) Sh. Jagdish Tuli, (2) Sh. D.L. Khillan, (3) Sh. G.D. Sharma and (4) Sh. M.L. Jalla filed an OA No. 480/1998 against the petitioners herein before the Tribunal. In OA No. 480/1998 titled as ***“Jagdish Tuli & Ors. Vs. Union of India”***, the Tribunal has passed the following directions: -

“i) The respondents are directed to fix the applicants’ pension in accordance with CCS (Pension) Rules on the basis of last pay drawn and also to pay arrears from the due dates upto the date of payment alongwith interest @ 12% and not @ 18% as asked for by the applicants.

ii) The respondents are also directed to make payments in respect of the other retiral benefits on the same basis.

iii) The respondents are further directed to take note that fixing of pension in accordance with the CCS (Pension) Rules would mean fixation of pension @ 50% of the average emoluments drawn during the last 10 months preceding to the date of retirement in each case.”

17. This order of the Tribunal was challenged before the Division Bench of this court by way of WP (C) 1597/2001 decided on 05.05.2006 and this court has upheld the order of the Tribunal dated 13.11.2000 except that the interest was reduced to 9% instead of 12% and Division Bench of this court has also observed that the petitioners therein, who had opted to retain the pensionary benefits under the Government rules claimed parity and similar treatment to that accorded in respect of a claim

preferred by one A.K. Mukherjee and two others and the similar relief had been given to A.K. Mukherjee and two others.

18. During the course of arguments, learned Standing Counsel for the petitioners have admitted at the bar that they have not challenged the order dated 05.05.2006 of the court in WP (C) No. 1597/2001, which has attained the finality. She also admitted that the order of the CAT in OA No. 480/1998 dated 13.11.2000 as modified on the point of interest by order of the Division Bench of this Court dated 05.05.2006 in W.P. (C) No. 1597/2001 has already been given effect to. It is also not disputed that by issuing three PPOs dated 13.10.2006, the pensionary benefits of the respondents no. 1, 2 & 3 have been reduced considerably and it is pointed out by the learned Standing Counsel for the petitioners that if impugned order of the Tribunal is given effect to, they will have to modify the pension of other similarly placed employees who had retired.
19. Under Rule 70 of CCS (Pension) Rules 1972, pension once authorised after final assessment shall not be revised to the disadvantage of the Government servants, unless such revision becomes necessary on account of detection of a clerical error subsequently and Rule 70 of CCS (Pension) Rules 1972 reads as under: -

“70. Revision of pension after authorization

(1) Subject to the provisions of Rule 8 and 9, pension once authorized after final assessment shall not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of detection of a clerical error subsequently;

Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the Head of Office without the concurrence of the Department of Personnel and Administrative Reforms if the clerical error is detected after a period of two years from the date of authorization of pension.

[(1-A)) The question whether the revision has become necessary on account of a clerical error or not shall be decided by the administrative Ministry or Department.]

(2) For the purpose of sub-rule (1), the retired Government servant concerned shall be served with a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him.

(3) In case the Government servant fails to comply with the notice, the Head of Office shall, by order in writing, direct that such excess payment, shall be adjusted in instalments by short payments of pension in future, in one or more instalments, as the Head of Office may direct.”

20. In our view the Office Memorandum dated 19.09.2003 is applicable to those Central Government employees, who have retired or are retiring on IDA pay scales and opted for pensionary benefits of the combined service in Government and Public Sector Undertaking and admittedly, the respondents no. 1, 2 & 3 have not retired in IDA pay scales and as such the respondents no.1, 2 & 3 are not covered by it. Admittedly, the pension of the respondent no.1, 2 & 3 have been considerably reduced by the petitioners herein by three PPOs dated 30.10.2006. Further under Rule 70 of CCS (Pension) Rules, the pension of a retired Government servant cannot be reduced to his detriment or disadvantage.
21. It is clear as crystal that the respondents no.1, 2 & 3 have opted for pension under CCS (Pension) Rules 1972 and the directions of the Tribunal in OA No. 480/1998 titled as **“Jagdish Tuli & Ors. Vs. Union**

of India”, dated 13.11.2000 were upheld by the Division Bench of this Court dated 05.05.2006 in WP (C) No. 1597/2001 except on the point of interest, which was reduced to 9%, which has attained the finality and has been implemented by the petitioners with regard to similarly placed retired employees of the department/autonomous body, we are not inclined to interfere with the directions given by the Tribunal by the impugned order. Since the respondents no. 1, 2 & 3 are in the age group of 85-87 years, as they had retired in the year 1990, we expect from the petitioners to implement the directions given by the Tribunal by way of impugned order within a period of four weeks from the date of receipt of the order.

22. The petition is dismissed accordingly. No costs.

VINOD GOEL, J.

G. S. SISTANI, J.

MARCH 06, 2017

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