

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7461 OF 2006**

M. V. S. Murty	...Petitioner
Versus	
Union of India & Ors.	...Respondents

Petitioner-in-person not present.
Mrs. S. V. Bharucha with A. A. Ansan for Respondent Nos. 1 and 2.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

Date of Reserving the Judgment : 03 April 2018
Date of Pronouncing the Judgment : 11 April 2018

JUDGMENT :

1] On 8th March 2018, Mr. M. V. S. Murty – the petitioner was present in the Court. On this date, Mr. Murty, applied for leave to place on record written submissions by the next date. He stated that he does not live in Mumbai and therefore, it will not be possible for him to make oral submissions or to engage any Advocate to make oral submissions on his behalf. Upon leave being granted, Mr. Murty has placed on record his written submissions on 9th March 2018 together with certain annexures and copies of decisions rendered by the Hon'ble Supreme Court and this Court.

2] Mrs. Bharucha appears for the respondent nos. 1 and 2. On 3rd April 2018, when the matter was called out for final hearing, Mrs. Bharucha tendered on record communication dated 1st March 2018 addressed by the Senior Admin. Officer – I, Government of India, Ministry of Defence, to her and communication dated 27th February 2018 issued by the Accounts Officer Government of India, Ministry of Defence, addressed to the Officer in Charge, Computer Centre, Allahabad. She submits that from these communications, she has instructions to submit that the grievance raised by the petitioner in the present petition stands redressed. She states that copy of communication dated 27th February 2018 has in fact been marked to Shri M V S Murty. The communication dated 1st March 2018 and 27th February 2018 are taken on record and marked 'X' and 'Y' for the purposes of identification.

3] The challenge in this petition is to the judgments and orders dated 5th October 2000 in Original Application No. 240 of 2002 and 31st December 2001 in Original Application No. 252 of 2001 made by the Central Administrative Tribunal (CAT), Mumbai Bench.

4] The petitioner, who was a scientist employed in Defence Research & Department Association (DRDO), was granted two additional increments with effect from 3rd February 1999 as an incentive for scientist. The petitioner, voluntarily retired from DRDO with effect from 30th April 1999. The necessary Pension Payment Order (PPO) was received some time in May 1999, which had, taken into consideration the two additional increments granted to the petitioner on 3rd February 1999. However, after about six months from the date of issuance of said PPO and after about nine months from the date of the petitioner's retirement, the respondents, issued the Corrigendum dated 7th February 2000, by which, the original PPO was sought to be modified, so as to exclude the benefit of two additional increments granted to the petitioner on 3rd February 1999.

5] The petitioner, mainly, aggrieved by this Corrigendum dated 7th February 2000, instituted Original Applications before the CAT. In the Original Applications, the petitioner, applied for setting aside of the Corrigendum as also consequential correspondence based upon the same. The petitioner, also applied for a restraint on the recovery of amounts already paid to the petitioner and applied for

refund of the amounts recovered by the respondents on the basis of said Corrigendum. The CAT, granted certain reliefs to the petitioner, though, not in clear terms. Hence, the present petition, in which, the petitioner, apart from seeking to set aside the orders passed by the CAT, also seeks relief of setting aside of the Corrigendum, consequential communications, restraint upon the recoveries and refund of amounts already recovered. This is clear from the perusal of the various sub clauses of paragraph 12 of the petition.

6] In his written submissions, the petitioner has contended that incentive increments are a part and parcel of his basic pay and therefore, the inclusion of such increments in the original PPO was quite correct and its exclusion in the Corrigendum is incorrect. Mr. Murty has submitted that there was no justification in recovering the pension amount correctly paid to him and therefore the respondents, must be restrained from effecting any further recoveries. He submits that the respondents must also be directed to refund the recoveries made by them along with interest. He submits that on the portion of the pension amount, unlawfully withheld from the petitioner, by relying

upon the Corrigendum to the PPO, the petitioner must be awarded interest. He has also prayed for compensation by relying upon decision of this Court in ***Writ Petition no. 11706 of 2015 Mrs. Sheila Rajan vs. Union of India & Ors. Decided on 29th September 2016.***

7] Mr. Murty has also relied upon ***Mohan Kumar Singhania & Ors. vs. Union of India & Ors. AIR 1992 SC 1 and Owners and Parties interested in M. V. "Vali Pero" vs. Fernando Lopez & Ors. AIR 1989 SC 2206,*** to urge that rules of procedure ought to be so interpreted so as to sub serve the cause of justice. On this basis, Mr. Murty submits that construction which sub serve the cause of justice is to be preferred to one which is rigid and negatives the cause of justice. Mr. Murty, along with his written submissions has also enclosed an Office Memorandum dated 6th July 2017 which relates to revision of pension of pre-2016 pensioners as well as tabulation relating to structure of interest rates. Mr. Murty has also relied upon the judgment and order dated 6th January 2011 in OA No. 2509 of 2010 delivered by the Central Administrative Tribunal, Principal Bench at New Delhi, to submit that in similar circumstances, the CAT at Delhi, has

granted relief to the applicants who were scientists in the DRDO. For all these reasons, Mr. Murty has submitted that his petition should be allowed and reliefs as prayed for by him, be granted.

8] As stated earlier, Mrs. Bharucha, learned counsel for the respondent nos. 1 and 2 has placed on record the communications dated 1st March 2018 and 27th February 2018. The communication dated 1st March 2018 encloses the communication dated 27th February 2018. The communication dated 1st March 2018, in fact states that in compliance to the ibid orders i.e. the order vide letter No. DHRD/85191/Incentives/VII-CPC/C/P/01/2344/2017/D (R&D) dated 22nd November 2017 regarding counting of two additional increments towards pay for payment of DA, HRA, Pension and Pensionary Benefit to Scientist C to Scientist F in DRDO, the case of the petitioner i.e. Shri MVS Murty has been processed and forwarded to PCDA, Allahabad vide letter No. RDE/94411/MVSM/FG-10 dated 27th February 2018 for revision of pension.

9] The communication dated 27th February 2018,

warrants verbatim reproduction :

"No.RDE/94411/MVSM/FG-10/ADM Date:27 Feb 2017

*To,
The Officer-in-Charge,
EDP-G1/Civil, Computer Centre,
Office of the Principal CDA (Pensions)
Draupadi Ghat,
ALLAHABAD - 211 014*

(Through Jt CDA R& D, Pashan Pune)

SUB : COUNTING OF TWO ADDITIONAL INCREMENTS TOWARDS PAY FOR PAYMENT OF DA, HRA, PENSION AND PENSIONARY BENEFITS IN RESPECT OF SHRI M V S MURTY, SCIENTIST 'E'

Reference DHRD letter No. DDHRD / 85101/Incentives VII-CPC/C/P/01/12344/ 2017/ D(R&D) dated 22 Nov 2017 (xerox copy enclosed).

2 In terms of above cited letter two additional increments sanctioned as a part of incentive to scientists shall be treated as pay for Pension and Pensionary benefits. Hence, Pensions / Family Pensions in respect Scientist 'C', 'D', 'E' and Scientist 'F' who have been retired w.e.f. 01 Jan 1996 is required to be revised by adding two additional Increments.

3 The abovenamed officer of this Esst. has voluntary retired from Govt. service on 30 Apr 1999. He was drawing two additional increments as a part incentives @ Rs.400/- w.e.f. 01 Jan 1996. Considering the additional increments as a part of pay the revised calculation sheet and Data Sheet Appendix 'B' alongwith all connected documents are forwarded herewith for revision of pension and issue a corrigendum PPO.

For Jt CDA (R&D), Pashan :- It is requested to transmit the Data Sheet to the office of the PCDA

(P), Allahabad. His service book (in II Parts) is also forwarded herewith for your perusal and return when done with.

*Sd/-
(SB KALE)
Accounts Officer
For Director*

Encls: As above

Copy to :-

*Shri M V S MURTY
B-276, Tarakarama Layout,
Rushidonda VUDA Lay-Out,
Gitam Engg. College PO
VISA KHAPATNAM 530 045 ..For information*

N.O.O.

*Internal copy to : FG-7 (Legal Cell)
..For information"*

10] From the aforesaid communications, it does appear that the claim of the petitioner that two additional increments awarded to him, have now been taken into consideration and revised pension is proposed to be paid to the petitioner by issuance of a Corrigendum PPO. Mrs. Bharucha, the learned counsel for the respondents states that the necessary procedures in the matter of issuance of Corrigendum PPO as well as payment of revised pension will be completed within a reasonable period. The statements of Mrs. Bharucha on behalf of the respondent nos. 1 and 2 as also, the statements emanating from the communications

dated 1st March 2018 and 27th February 2018 are accepted as statements made to this Court. On the basis of the same, we direct the respondents to issue a Corrigendum PPO and grant the revised pension to the petitioner as expeditiously as possible and in any case, within a period of three months from today.

11] Even otherwise, we find that there was no justification in issuing the Corrigendum of PPO so as to exclude the two additional increments which were granted to the petitioner and other scientists of the DRDO as incentive increments. Since, the implication of communications dated 1st March 2018 and 27th February 2018 is that such Corrigendum stands withdrawn and the two additional increments will now be taken into consideration for the payment of revised pension to the petitioner, we make no formal orders to set aside such Corrigendum.

12] Mrs. Bharucha, in pursuance of query states that to the best of the knowledge of the officer instructing her, no deductions / reductions have been made from the pension payable to the petitioner. However, on instructions she

submits that in case any deductions have been made, then, the deducted amounts, will be refunded to the petitioner. If any deductions have indeed been made, we direct the refund of the said amounts to the petitioner within a period of three months from today together with interest thereon at the rate of 6% per annum. The interest is to be computed from the date of deductions, if any, till the date of actual payment of the said amount to the petitioner. If however, the petitioner, does not refund the deducted amount within a period of 3 months from today, then, said amount, if any, shall carry interest at the rate of 8% per annum.

13] Since, the orders have been issued for revision in pension, there arises no question of making any further recoveries and therefore, it is not necessary to pass any formal orders restraining the respondents from making any recoveries from the pension amounts payable to the petitioner.

14] As regards petitioner's claim for interest for compensatory costs, we have considered the same.

However, we find that there was an issue with regard to inclusion or exclusion of the incentive increments in the pay for the purposes of determination of pension pending in relation to several scientists of the DRDO. Although, the earlier decisions taken by the DRDO may not have been correct, this does not appear to be a case where out of any malice, the petitioner, was discriminated against.

15] The facts and circumstances in the case of *Mrs. Sheila Rajan* (supra) were quite different, as is evident from paragraph 20 of the judgment and order dated 29th September 2016. Besides, in this case, the respondents upon realising their mistake, have themselves, corrected the same and even taken steps to revise the pension. Taking into consideration all these circumstances, we are not inclined to award any compensatory costs to the petitioner. However, we direct that the respondents pay to the petitioner reasonable costs of Rs.10,000/- within a period of three months from today.

16] Since, we have directed the refund of amounts, if recovered from the petitioner along with interest, we see no

reason to make any further orders as regards payment of any further interest to the petitioner.

17] Accordingly, the Rule is made absolute in this petition to the extent indicated above together with costs computed at Rs.10,000/-.

18] All concerned to act on basis of authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA