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

Decided on: 6th December, 2018

\+ **W.P.(C) 15339/2004**

RAJENDRA PRASAD PANDEY ..... Petitioner

Through: Mr. R.K. Shukla, Adv.

versus

PRINCIPAL SECRETARY & ORS. ..... Respondents

Through: Mr. Ruchir Mishra, Adv. with Mr.Sanjiv Kr. Saxena, Mr. M.K. Tiwari, Mr. Ramneek Mishra & Mr.Abhishek Rana, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

S.RAVINDRA BHAT, J. (OPEN COURT)

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1. The petitioner had approached the Central Administrative Tribunal complaining of wrongful pension fixation pursuant to the implementation of the recommendation of the 4th Pay Commission with effect from 01.01.1986. Concededly, he had retired as a public servant of the Central Government with effect from 30.06.1993.

2. The petitioner in support of his contention of short-payment of pension especially relied upon the calculation chart, annexed to the Office Memorandum [hereafter referred to as "OM"] dated 22.04.1987. According

to him the additional relief, had to be calculated on the basis of Consumer Price Index [hereafter referred to as "CPI"] 608, as on 16.04.1987. Thus, the additional dearness relief would have been ₹655.80 and consequently the additional relief in terms of the OM of 28.02.1996 (which find mention, under the given prevailing circular] would have been ₹112.00/-. According to the petitioner, the additional relief in terms of para 4.1 (c) of the 16.4.1987 circular would have worked out ₹104.60 thus working out his ultimate pension of ₹1408.20.

3. The Central Government on the other hand relied upon the OM dated 16.04.1987, especially of para 3.1(a), 3.1(b), 4.1(C) and para 6.1 to contend that the pension fixation [i.e. at ₹513/- basic pension with the dearness relief of ₹463 and additional relief at ₹100/-] was justified. The impugned order discussed the rival contentions and rejected the petitioner's claim, based upon the following findings:-

> *"12. I have heard the counsel appearing for the parties. Insofar as the claim of the applicant that his pension w.e.f. 1.1.1986 has not been correctly fixed is concerned, I am afraid the same is based on the misunderstanding of the provisions of the OM dated 16.4.1987. As has been pointed out by the counsel for respondents, the formula based on which the applicant is claiming his pension to be revised to Rs.l407 is applicable for fixation of pay of serving Govt. employees whereas in case of the pensioners, the dearness relief of CPI of 608 points subject to a maximum of Rs.463 and a minimum of Rs.100 being the notional relief calculated at 70% of the existing pension can only be allowed. This distinction appears to have been misunderstood by the applicant.*

13. Insofar as the release of a part of 'the DCRG amount is concerned, I find that the respondents; are certainly to be blamed for the de]ay in releasing the same. The plea advanced by the counsel for respondents that a part of the blame for the delay has to be shared by the applicant as he did not approach the respondents for the release of the amount even after the copy of the releasing order was entorsed to him, I am afraid is not going to cover up lapse on part of the respondents. On the contrary, I find that the reply of the respondents in effect amounts to an admission of the lapse on their part. The applicant, under the circumstances, will be entitled to an interest for the delayed period of payment least from 7.2.1985 until the date of payment and I order that the applicant be paid simple interest @ 9% p.a.

14. Insofar as the payment of fixed medical allowance is concerned, the applicant should approach the concerned bank from, where he is drawing his pension quoting the authority on the subject and after furnishing the necessary undertaking and hopefully the bank will have no difficulty in releasing the same. I, however, direct the respondents also to issue an advisory to the bank in the matter so as to facilitate the release of the fixed medical allowance to the applicant."

4. The OM of 16.04.1987, to the extent it is relevant is reproduced below:-

3.1 In these orders

(a) 'Existing pensioner' or 'Existing Family pensioner' means a pensioner who was drawing/entitled to pension/family pension on 31-12-1985. For purposes of updating family pension it also covers members of family of employees retired prior to 1-1-1986 and in whose case family pension has not commenced as the pensioner is/was alive on 31-12-1985.

(b) 'Existing pension' means the basic pension inclusive of commuted portion, if any, due on 31-12-1985. It covers all classes of pension under the CCS (Pension) Rules, 1972 as also Disability Pension under the CCS (Extraordinary Pension)

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4.1(C) In the case of Government servants who retired on or after 31-1-1982 but before 31-3-1985 and have opted or deemed to have opted for merger of dearness upto CPI 320 in pay in terms of Ministry of Finance, Department of Expenditure O.M. No. F.1(3)-EV/82, dated 8th April, 1982, the additional relief shall be admissible as follows:

(a) In the case of pensioners drawing pension of Rs. 500 or less, the additional relief shall be equal to 10% of total amount of existing pension plus existing dearness relief subject to the condition that the additional relief shall in no case be less than Rs. 50.

(b) In the case of pensioners drawing pension above Rs. 500 additional relief shall be equal to the difference between the existing fixed dearness relief of Rs. 463 and the notional relief calculated at 70% of existing pension as defined in para. 3.1 (b) subject to the condition that where the said difference shows negative amount or is less than Rs. 100, the additional relief shall be Rs. 100.

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6.1 The pension/family pension of existing pensioners/family pensioners will be consolidated with effect from 1-1-1986 by adding together

(i) the existing pension/existing family pension,

(ii) the existing dearness relief, and

(iii) the additional benefits accuring from paragraphs 4 and 5 above.

The amount so arrived at will be regarded as pension/family pension with effect from 1-1-1986. The upper ceiling on pension plus relief laid down in the Department of Pension and Pensioners' Welfare O.M. No. 42(4)-PW/86, dated the 3rd March, 1986 will stand removed. Since the consolidated pension will be inclusive of commuted portion of pension, if any, the commuted portion will be deducted from the said amount while making monthly disbursement.

6.2 Some of the existing pensioners who retired between 31-3-1985 to 31-12-1985 are in receipt of personal pension. The said personal pension will continue to be granted as a separate element and will not be merged into the pension as consolidated above."

5. The OM relied upon by the petitioner to the extent it is relevant reads as follows:-

"(1) The undersigned is directed to state that in pursuance of Government decisions on the recommendations of the Fourth Central Pay Commission announced in this Department's Resolution No. 2/13/87-PIC, dated the 18th March, 1987, the President is pleased to decide the dearness relief shall be paid to Central Government pensioners and family pensioners to compensate them for rise in cost of living beyond average CPI, 608 at the following rates:-

For the purpose of these orders:- (i) Pension/family pension in the case of pre-1-1-1986 retirees and where family pension was sanctioned prior to 1-1-1986, means the consolidated pension or consolidated family pension, as the case may be, effective from 1-1-1986, in terms of orders issued in this Department's O.M. No. 2/1/87-PIC-II, dated 14-4-1987.

(ii) In the case of pensioners who retire from service on or after 1-1-1986, or where family pension is sanctioned for

the first time on or after 1-1-1986, pension/family pension means the basic pension/basic family pension as the case may be in terms of this Department's O.M. No.2/1/87-PC-II, dated 14-4-1987

1.2 Payment of dearness relief involving a fraction of a rupee shall be rounded off to the next higher rupee.

1.3 Other provisions governing grant of dearness relief to pensioners such as regulation of dearness relief during employment/re-employment, regulation of dearness relief where more than one pension is drawn, etc., will remain unchanged.

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Explanatory Memorandum for the Guidance of Pension Disbursing Authorities

In accordance with the existing practice dearness relief was being sanctioned to pensioners/family pensioners from time to time as and when there was 8 point rise in the average consumer price index, and four separate sets of rates were being specified in the orders for application to pensioners with reference to their period of retirement of class of pension.

2. The above practice has been reviewed in the light of the accepted recommendations of the Fourth Central Pay Commission.

The features of the revised arrangements are as follows:-

(i) The revised arrangements will apply to price-rise beyond average CPI 608.

(ii) Dearness Relief will be sanctioned from 1st July, and 1st January every year based on increase in price rise

beyond average CPI 608 as on the preceding 30th June or 31st December, as the case may be. The accompanying order will continue to remain operative until the Government issues fresh orders based on the position of average CPI on 30-6-1987.

(iii) One uniform set of rate for each period, as for example, laid down in Para. 1 of the accompanying order will cover all pensioners/family pensioners irrespective of their date of retirement or date of sanction of family pension or the class of pension, as specified in Paragraph 1 of the accompanying orders. In the case of pre 1-1-1986 cases, the dearness relief will be calculated on the consolidated pension or consolidated family pension comprising the pension plus dearness relief up to CPI 608 plus additional benefits sanctioned to them on the basis of Pay Commission's recommendations. Necessary orders specifying the manner in which pension/family pension is to be consolidated as on 1-1-1986 have been issued separately in this Department's O.M. No.2/1/87-PIC-I, dated 16-4-87, and on corresponding orders for Armed Forces personnel being issued by the Ministry of Defence. In the case of pension/family pension for post 1-1-1986 cases, the dearness relief will be calculated on the basic pension or basic family pension, as the case may be.

(iv) * * *

(v) * * *

(vi) Similarly in the case of pensioners/family pensioners who are in receipt of more than one pension, the dearness relief, where admissible, will be calculated on the total of all pensions taken together.

(vii) * * *

(viii) In case there is any doubt about admissibility or otherwise of the dearness relief or its quantum in any individual case, the Pension Disbursing Authorities *should always consult the concerned Accounts Officers. Where necessary the Department of Pension and Pensioners' Welfare can also be consulted.*

(2) Relief admissible to pensioners has receipt of disability pension under CCS (EOP) Rules. – *The relief will be admissible to a Government servant who has been awarded disability pension under CCS (Extraordinary Pension) Rules. The grant of relief will be regulated as follows:-*

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(iii) No relief will be payable to the person referred to in Clause (i) above, if he is employed/re-employed in any of the Establishments/Organisations mentioned in Decision (3) below."

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(viii) In the case there is any doubt about admissibility or otherwise of the dearness relief or its quantum in any individual case, the Pension Disbursing Authorities should always consult the concerned Accounts Officers. Where necessary the Department of Pension and Pensioner's welfare can also be consulted."

6. The petitioner also relied upon certain Frequently Asked Questions (FAQs) spelt out in the form of clarification of doubts and furthermore stated that interim relief would be taken into account for determining the retirement benefits and it would not count for any other purpose. The reliance was also additionally placed upon the circular/clarification dated 29.04.1985, to the effect that the 4th Pay Commission recommendations on interim relief at the rate of 10% of the basic pay of the employee subject to minimum of ₹50/- per month had been accepted with effect from 01.03.1985.

7. This Court is of the opinion that the elaborate exercise of calculation of pension undertaken by the CAT in the impugned order after considering the relevant OM, is reasonable and justified. The OM dated 16.04.1987 especially in para 4.1 (C) clearly visualizes the class of employees the petitioner fell into i.e. who retired on or after 31.01.1982 but before 31.03.1985 and who were entitled to dearness relief and dearness allowance at the stage indicated (CPI 320). The petitioner's entire argument is that the subsequent OM dated 22.04.1987 applied to him and consequently interim pension fixation, which were taken care of by clarifications and circulars issued from time to time, enured to his benefits. This Court is unable to agree with that submission; for whatever reasons the Central Government kept apart this class of pensioners; those who retired prior on 31.03.1985 and took into account that the pensioner who had retired at the stage were enjoying dearness allowance when in service when the CPI was 320. Based upon this, the tabular chart annexed to the OM dated 06.04.1987 was issued. Para 4.1 (C) is crucial that it prescribed the formula for calculating additional relief which is 70% of the basic pension, with a further rider that it cannot exceed Rs. 100 and if it does, that figure would prevail.

8. This Court finds that this calculation was adhered to by the respondents while fixing the petitioner's pension, which he was content with for over 17 years. What appears to have initiated the present proceedings is the advent of the 5th Pay Commission and consequent pension fixation [which appears to have accrued in 2000]. At this stage, based upon some calculation by the respondent, the petitioner appears to have been inspired to initiate the present proceedings contending that the initial pay pension fixation was wrong.

9. In these circumstances, the Court finds no reason to interfere with the findings of the CAT and the writ petition is dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

DECEMBER 06, 2018
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