



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.1975 of 2020

Mr.T.V.Ramachandran Nair

... Petitioner

Vs.

1.Union of India,
Represented by its Secretary - Food,
Ministry of Consumer Affairs, Food and Public Distribution,
Department of Food and Public Distribution,
Krishi Bhawan, New Delhi - 110 001.

2. The Director,
Ministry of Consumer Affairs, Food and Public Distribution,
Department of Food and Public Distribution,
Krishi Bhawan, New Delhi - 110 001.

3. The Regional Director (Food),
Ministry of Consumer Affairs, Food and Public Distribution,
Department of Food and Public Distribution,
Office of the Regional Director (Food), Southern Region,
No.3, Haddows Road, Chennai - 600 006.

4. The Pay and Accounts Officer,
Ministry of Consumer Affairs, Food and Public Distribution,
Department of Food and Public Distribution,
Shastri Bhavan, Chennai - 600 006.



5. The Secretary Department of Ministry of Finances,
Department of Expenditure,
Government of India,
New Delhi - 110001.

6. The Secretary Department of Ministry of Pensioners Welfare,
Ministry of Personal and Public Grievances,
New Delhi - 110001.

7. Food Corporation of India,
Represented by its Managing Director,
No.16/20, Barakamba Lane,
new Delhi - 110001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Mandamus, directing the respondents to treat the petitioner as Central Government Pensioner as per his option exercised under Section 12-A(4)(a) and (b) of the Food Corporation Act 1964 for the purpose of payment and disbursement of retirement benefits and other Benefits applicable to the Central Government Pensioners and grant revised Pension to the petitioner from time to time as directed by the Central Pay Commission to the Central Government retired employee respondents 1 to 3 and the same shall be payable to the petitioner from his date of retirement i.e. 30.04.1998 on the basis of his last draw pay in the Corporation within a stipulated time.



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For Petitioner : Mr.Arun Anbumani
For Respondents : M/s.ME.Sarashwathy,
Senior Panel Counsel.

ORDER

This writ petition has been filed seeking a direction to the respondents to treat the petitioner as a Central Government Pensioner as per his option exercised under Section 12-A(a) and (b) of the Food Corporation Act, 1964 for the purpose of payment and disbursement of retirement benefits and other benefits applicable to the Central Government Pensioners and grant revised pension to the petitioner from time to time as directed by the Central Pay Commission to the Central Government retired employees and the same shall be payable to the petitioner from his date of retirement i.e. 30.04.1998 on the basis of his last drawn pay in the Corporation within a stipulated time.

2. The case of the petitioner is that he retired from service on 30.04.1998, after serving about 36 years in Food Corporation of India (FCI), established under the Food Corporations Act, 1964. He was a 'Food Transferee', i.e., a person originally was working under the



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Ministry of Food, Government of India, placed at the disposal of the Food Corporation of India. Under Section 12(A) of the said Act, an opportunity was given to every transferee employee like the petitioner to opt for the scale of pay applicable to the post held by such employee under the Government immediately before the date of transfer or the scale of pay applicable to the post under the Corporation to which the employee was transferred.

2.2. The petitioner opted for terminal benefits admissible to the employees of the Central Government after his retirement, the retirement benefits were also provided on the basis of Industrial Dearness Allowance (IDA) instead of Central Dearness Allowance (CDA) under the Pension Payment Order bearing P.P.O.No.03687/01/0066/9 by the direction issued by the second respondent.

2.3. The directive of the second respondent was challenged by



some retired employees before the Hon'ble High Court of Kerala. The learned single Judge allowed the writ petitions. The writ appeals were preferred. The Hon'ble Division Bench of the High Court of Kerala also confirmed the order passed by the learned Single Judge and dismissed the writ appeals. The said order was challenged before the Hon'ble Supreme Court of India in a batch of cases. The Hon'ble Supreme Court of India, vide its judgment dated 10.02.2010, dismissed the appeals in Civil Appeal Nos.238 to 244 of 2004.

2.4. After passing of the above judgment, the petitioner addressed a letter dated 26.03.2010 to the fourth respondent who is the Pay and Accounts Officer under the Ministry of Consumer Affairs for payment of petitioner's pension. Thereafter, the fourth respondent, vide reply dated 04.05.2010, informed the petitioner that the third respondent will revise the pension after obtaining the orders from the Ministry and that the fourth respondent can authorise the revised pension only after the cases are received from the third respondent. The petitioner made a representation before the respondents to



continue to disburse the retirement benefits and pension benefits in parity with the Central Government employees and disburse arrears from the date of retirement i.e. on 30.04.1998 with 9% interest. Since the same was not considered, the petitioner has come forward with the present writ petition.

3. The learned counsel appearing for the petitioner submitted that initially, the petitioner was working under the Ministry of Food, Government of India and subsequently, under Section 12(A) of the Food Corporation Act, 1964, he opted for transfer to Food Corporation of India and the opportunity was given to the transferred employee to opt for the scale of pay applicable to the post held by such employee under the Government immediately before the date of transfer or the scale of pay applicable to the post under the Corporation to which the employee was transferred.

4. In pursuance of Section 12(A) of the Act, the petitioner has



opted for:

- "a. Pay applicable to the post under the Food Corporation of India, and*
- b. Leave, Provident Fund, retirement for other terminal benefits admissible to the employees of the Central Government."*

5. The learned counsel further submitted that though the petitioner had opted for terminal benefits admissible to the employees of the Central Government, after his retirement, the terminal benefits were being provided on the basis of the Industrial Dearness Allowance (IDA) instead of Central Dearness Allowance (CDA). The petitioner has retired way back on 30.04.1998, i.e., 25 years ago and still he is unable to get the retirement benefits under the Central Government Dearness Allowance.

6. The learned counsel further submitted that erroneous payments were made on the basis of a directive issued by the second respondent bearing No.A38011/10/93.FC.3, dated 08.02.1996. The



same was challenged by a group of retired employees before the High Court of Kerala and the learned Judge has allowed the writ petitions.

As against which, the respondents preferred writ appeals and the same were dismissed by the Hon'ble Division Bench of the High Court of Kerala by confirming the order passed by the learned single Judge.

7. Aggrieved by the order passed by the Hon'ble Division Bench, the respondents preferred Civil Appeal No.238 to 244 of 2004 batch of cases before the Hon'ble Supreme Court of India and by the judgment dated 10.02.2010, the Hon'ble Supreme Court dismissed the appeals. The relevant paragraph of the judgment is extracted hereunder:-

"24. In the result, the appeals are dismissed. Each of the private respondents shall get costs of Rs.10,000/- from the appellants.

25. Since the appeals have been dismissed, the authorities concerned are directed to release the amount payable to the respondents and other similarly situated



persons within a period of three months from today, else they shall have to pay interest @ 9% per annum from the date of this order."

8. After passing of the above Judgment, the petitioner addressed a letter dated 26.03.2010 to the fourth respondent, who is the Pay and Accounts Officer under the Ministry of Consumer Affairs and the other responsible authorities for payment of the petitioner's pension. Vide reply dated 04.05.2010, the petitioner was informed by the fourth respondent that the third respondent will revise the pension after obtaining orders from the Ministry and that the fourth respondent can authorise the revised pension only after the cases are received from the third respondent.

9. The learned counsel further submitted that the clarification was sought by the authorities under their letters dated 21.01.2015 and 18.02.2015 respectively from the Ministry of Consumer Affairs, Food and Public Distribution, as to whether all those Food Transferees, have exercised their option for Central Government Terminal Benefits under Section 12(A) of the Act or governed by IDA scale of pay and to



whom IDA relief is to be paid.

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10. The learned counsel further submitted that the Deputy Legal Advisor of the Ministry of Law & Justice, Department of the Legal Affairs had clarified the issue, in favour of the Food Transferees, vide his opinion dated 30.03.2015. The second respondent, vide proceedings dated 24.09.2010, had given the following directive to the Regional Directors like the third respondent herein, as per the judgment passed by the Hon'ble Supreme Court of India:-

"2. The Regional Director (Food), Ministry of CA F&PD, New Delhi/Mumbai/Chennai/Kolkata/Guwahati (with the directions that claims/representations from similarly situated persons as ordered by the Hon'ble Supreme Court be invited through prominent advertisement in the leading newspapers of adequate circulation of their area within four weeks time from the date of publication and examined on merit for expeditious settlement."

11. The petitioner has made a representation on 08.07.2015 to the



respondents herein seeking settlement of his terminal benefits on CDA basis, as directed by the Hon'ble Supreme Court of India.

12. The third respondent issued the impugned communication dated 29.09.2015 rejecting the request of the petitioner on the sole ground that his representation was not received within the stipulated time of four weeks given in the advertisement dated 15.10.2010.

13. Aggrieved by the above order, the petitioner has approached this Court by filing W.P.No.35827 of 2015 along with a batch of similar cases. By order dated 01.10.2018, the writ petitions were allowed. Pursuant to the above order, the petitioner's eligibility for pension as admissible to the Central Government Employees in accordance with the provisions contained in Section 12(A)(4) read with Section 12A(4)(c) of the Act, is subject to the permissible revisions admissible to Central Government Employees. The petitioner has given the Option form dated 01.07.1981, in which, it is stated that he opted the scale of pay applicable to the post held by the petitioner under the



Government immediately before the date of transfer and in regard to the leave, Provident Fund, retirement or other terminal benefits admissible to the employees of the Central Government in accordance with the rules and orders of the Central Government as amended from time to time.

14. The learned Senior Panel Counsel appearing for the respondents has filed the counter affidavit dated 08.10.2021 and the relevant paragraph is extracted hereunder:-

"a. It is submitted that the averments in paragraph 1 do not merit any comment and the averments in paragraph 2(a) do not place the accurate position on record and that Shri.T.V.Ramachandran Nair worked as Subedar and retired on 30.04.1998 was a food transferee and has opted the scale of pay applicable to the post under the corporation and the other terminal benefits admissible to the employees of the Central Government in accordance with the rules and orders of the Central Government as amended from time to time in the option form exercised by him at the time of the employees of Food Department transferred to the services of the Food Corporation of India under Section 12-A of the Food Corporation Act.



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k. The averments made by the petitioner in paragraph 3 are denied as inaccurate and it is submitted that shri T.V.Ramachandran Nair has opted the scale of pay applicable to the post under the Corporation and the other terminal benefits admissible to the employees of the Central Government in accordance with the rules and orders of the Central Government as amended from time to time in the option form exercised by him at the time of the employees of Food Department transferred to the services of the Food Corporation of India under Section 12-A of the Food Corporation Act."

15. Heard both sides and perused the materials available on record.

16. In this case, the petitioner retired on 30.04.1998, after serving about 36 years in Food Corporation of India (FCI), established under the Food Corporations Act, 1964 and he was a 'Food Transferee', i.e., a person originally working under the Ministry of Food, Government of India, placed at the disposal of the Food Corporation of India. Under Section 12(A) of the said Act, an opportunity was given to every



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transferred employee like the petitioner to opt for the scale of pay applicable to the post held by such employee under the Government immediately before the date of transfer or the scale of pay applicable to the post under the Corporation to which the employee was transferred. A similar opportunity was also given to the transferred employees to opt for leave, Provident Fund, retirement or other terminal benefits admissible to the employees of the Central Government in accordance with the rules and orders of the Central Government, as amended from time to time, or the leave, provident fund, retirement or other terminal benefits admissible to the employees of the Corporation under the regulations made by the Corporation under the Act.

17. In pursuance of Section 12(A) of the Act, the petitioner opted for (a) Pay applicable to the post under the Food Corporation of India and (b) Leave, Provident Fund, retirement or other terminal benefits admissible to the employees of the Central Government.



18. The petitioner has given the option form as early as 01.07.1981 and the relevant portion is extracted hereunder:-

"(a) by the scale of pay applicable to the post under the Corporation to which I am transferred.

(b) by the leave, provident fund, retirement or other terminal benefits admissible to employees of the Central Government in accordance with the rules and orders of the Central Government as amended from time to time."

19. The Pension Payment Order of the petitioner vide P.P.O.No.03687/98/0032/2 issued to the Food Transferree by the Pay and Accounts Office, Ministry of Food, Government of India, Shastri Bhavan, Delhi, in which, it is clearly mentioned as follows:-

Section II-Details of Pension

3. Rules under which sanctioned	Central Civil Service Pension Rules
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20. From the above, it is crystal clear and evident that the petitioner has opted only for payment of terminal benefits and the retirement benefits and pension only under the Central Deraness



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Allowance (CDA) and not IDA as claimed by the respondents.

21. The relevant portion of the paragraph is extracted hereunder, in the counter affidavit filed by the respondents:-

"k. The averments made by the petitioner in paragraph 3 are denied as inaccurate and it is submitted that shri T.V.Ramachandran Nair has opted the scale of pay applicable to the post under the Corporation and the other terminal benefits admissible to the employees of the Central Government in accordance with the rules and orders of the Central Government as amended from time to time in the option form exercised by him at the time of the employees of Food Department transferred to the services of the Food Corporation of India under Section 12-A of the Food Corporation Act."

22. The petitioner having exercised Option of the Central Dearness Allowance as early as 01.07.1981 and even in the Pension Payment Order dated 30.04.1998, it was clearly mentioned that the Rule under which the pension is sanctioned as per the Central Civil



Services Pension Rules.

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23. From a perusal of the Option form dated 01.07.1981 and Pension Payment Order dated 30.04.1988, it is crystal clear that the petitioner has opted for the Central Dearness Allowance. In the Option form as well as PPO, it is clearly mentioned that the petitioner has opted only for Central Dearness Allowance and not for the Industrial Dearness Allowance as contended by the respondents. The petitioner is a senior citizen aged about 83 years old and he retired from service on 30.04.1998 still he has not yet received his terminal benefits, pensionary benefits and retirement benefits as applicable and also, the other benefits opted by him in his Option form dated 01.07.1981 and subsequently, the same was also mentioned in the Petitioner's Pension Payment Order dated 30.04.1998 issued by the Pay and Account Office, Ministry of Food, Government of India, Shastri Bhavan, Delhi.



24. In view of the above factual matrix of the case, this Court is of the considered view that the petitioner is a Central Government Pensioner as per the Option exercised under Section 12A(4)(a) and (b) of the Food Corporation Act, 1964 for the purpose of payment and retirement and other benefits applicable to the Central Government Pensioners.

25. In a similar case, this Court passed an order in W.P.No.8071 of 2012 dated 01.06.2023 directing the respondents to pay the pension to the petitioner as per the Central Dearness Allowance and to pay the CDA Pension based on the judgment of the Hon'ble Supreme Court of India in Union of India Vs P.N.Natarajan and others reported in (2010) 12 SCC 405.

26. In the result, the writ petition is allowed and the respondents are directed to treat the petitioner as Central Government Pensioner as per his option exercised under Section 12-A(a) and (b) of the Food Corporation Act, 1964 for the purpose of payment and disbursement



of retirement benefits and other benefits applicable to the Central Government Pensions and grant revised Pension to the petitioner from time to time as directed by the Central Pay Commission to the Central Government retired employees. The same shall be payable to the petitioner from his date of retirement i.e. 30.04.1998 on the basis of his last drawn pay in the Corporation, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

04.09.2023

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Index : Yes/No

Speaking Order : Yes/No

To:

1.The Secretary,
Union of India,
Food, Ministry of Consumer Affairs, Food and Public Distribution,
Department of Food and Public Distribution,
Krishi Bhawan, New Delhi – 110 001.

2. The Director,
Ministry of Consumer Affairs, Food and Public Distribution,
Department of Food and Public Distribution,
Krishi Bhawan, New Delhi – 110 001.



3. The Regional Director (Food),
Ministry of Consumer Affairs, Food and Public Distribution,
Department of Food and Public Distribution,
Office of the Regional Director (Food), Southern Region,
No.3, Haddows Road, Chennai – 600 006.
4. The Pay and Accounts Officer,
Ministry of Consumer Affairs, Food and Public Distribution,
Department of Food and Public Distribution,
Shastri Bhavan, Chennai – 600 006.
5. The Secretary Department of Ministry of Finances,
Department of Expenditure,
Government of India,
New Delhi – 110001.
6. The Secretary Department of Ministry of Pensioners Welfare,
Ministry of Personal and Public Grievances,
New Delhi – 110001.
7. Food Corporation of India,
Represented by its Managing Director,
No.16/20, Barakamba Lane,
new Delhi – 110001.

J.SATHYA NARAYANA PRASAD,J.



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W.P.No.1975 of 2020

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