
(2018) 12 CAT CK 0197

In the Central Administrative Tribunal

Case No : Original Application No. 3517 Of 2017

N.K. Madhok

APPELLANT

Vs

Union Of India Through And Anr

RESPONDENT

Date of Decision : 06-12-2018

Acts Referred:

Citation : (2018) 12 CAT CK 0197

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : U. Srivastava, Rajinder Nischal

Final Decision : Dismissed

Judgement

1. Briefly stated, the facts of the current O.A. are that the applicant was appointed as LDC in CPWD. The applicant joined the Directorate General of Civil Aviation on 02.04.1976 (hereinafter referred as DGCA).

2. On creation of National Airport Authority, the operational wings of DGCA Hqrs. Including the applicant was transferred vide order dated 07.10.1986 w.e.f. 01.06.1986 (F/N), on the same terms and service conditions. The applicant was absorbed in National Airport Authority vide order dated 28.12.1989 w.e.f. 02.10.1989 on the post of Steno Gr.B after serving in DGCA, the applicant resigned from the post of Sr. Pers. & Admn. Officer on 30.11.1993.

3. An Office Memorandum dated 18.08.2009 was issued from the Ministry of Health & Family Welfare, Department of Health & Family Welfare on the subject ? Extension of CGHS benefits to PSU absorbees". The operative part of the said O.M. reads as under:-

"5. The matter has been examined in consultation with Ministry of Law & Justice and IFD in the Ministry of Health & Family Welfare and it has been decided with the approval of the competent authority that CGHS facility may be extended to those PSU absorbee who had commuted 100% of their pension and they have

been restored 1/3rd portion of their pension after 15 years in terms of the order of the Hon"ble Supreme Court of India dt. 01.05.1998, referred to above. The contribution to be made will be decided by Grade Pay that they would now have drawn in the Govt. in the post held by them but for their absorption in the PSU."

4. The applicant submitted a representation dated 17.11.2014 to the DGCA for restoration of pension and CGHS/Medical facilities stating that before his retirement in November, 1993, he had opted for 100% commutation of pension and was paid lump sum amount on retirement in 1993 by the DGCA Hqrs. Some amount to this effect was also paid couple of years later by the NAA Hqrs. However, he was neither paid any pension nor provided with any CGHS/Medical facilities post my retirement in November, 1993. He mentioned that as per orders of Hon"ble Supreme Court in Writ Petition No. 3958-61 of 1993 dated 09.12.1986 and also its judgment of 01.05.1998, 1/3rd pension of his pension was supposed to be restored after 15 years of his retirement, and CGHS facilities should have been restored as per Deptt. of Health & Family Welfare, Ministry of Health & Family Welfare, Govt. of India"s Order No. C.14012/11/2003/CGHS-Desk-I dated 18.08.2009 issued with the concurrence of IFD (Health) vide Dy.No.892/AS&FA dated 26.05.2009.

5. In view of the aforementioned facts, the applicant requested for restoration of both his Pension & CGHS/Medical facilities, as admissible to him. He also made a request to release his pension with arrears and the interest accrued thereon till the date of payment.

6. As per Department of Pension and Pensioner"s Welfare O.M. dated 15.09.2008, sanction of Competent Authority was accorded on 09.04.2015 for payment of arrears on account of 1/3rd restored pension w.e.f. 02.10.2004 and subsequent revision of pension w.e.f. 01.01.2006 to 31.03.2015. Later, the respondents issued another order dated 16.04.2015, in supersession of order dated 09.04.2015 (Annexure-10).

7. An order dated 20.04.2015 was issued by Assistant Controller of Accounts on the subject of restoration of 1/3rd commuted value of pension in respect of employees absorbed in PSUs/Autonomous Bodies in terms of Dept. of Pension and Pensioners" Welfare O.M. dated 30.09.1996 and payments were made in the bank account of the applicant.

8. The applicant submitted a representation dated 29.04.2015 to the respondents for non-payment of interest on arrears of pension paid after 10 years and under payment of pension for the intervening period i.e. from 02.10.2004 to 31.03.2015. The request of the applicant for non payment of interest on arrears of pension was taken up by respondent No.2 with respondent No.3. This was followed by a reminder from the applicant on 2/3.06.2015 with no result.

9. The applicant filed an OA-438/2017, which was disposed of by the Tribunal on 06.02.2017 directing the respondents to consider the applicant"s representation

dated 27.07.2016 and pass an appropriate reasoned and speaking order. Thereafter, the applicant filed a CP-391/2017 in OA-438/2017. Vide order dated 01.08.2017, the said C.P. was dismissed with liberty to the applicant to avail remedy by filing fresh proceedings in accordance with law. The current O.A. has been filed by the applicant seeking the following reliefs:-

"(a) Directing the respondents to place the relevant records pertaining to the present O.A. before their Lordships for the proper adjudication in the matter in the interest of justice.

(b) Quash and setting aside the order dt. 23.06.17 (Annexure A/1) issued by Airports Authority of India further directing the respondents to consider and finalize the requests of the applicant for (i) Pension should be calculated & paid @Rs.2120/- basic pay w.e.f. 02.10.04 to 31.03.15 with arrears and interest @ 18% compound on yearly basis (ii) payment of interest on delayed restoration of 1/3rd pension after 10 ½ years (iii) compensation for deprivation of medical facilities to self and his family members for 22 long years @18% interest compound in yearly basis and (iv) non-payment of pension for his services of 4.2 years rendered with them with all other consequential benefits admissible to the applicant in accordance with the relevant rules and instructions on the subject with cost within 30 days of CAT's rules.

(c) Allowing the O.A. of the applicant with all other consequential benefits and costs."

10. In reply, the respondents have taken a preliminary objection that the current O.A. be dismissed for want of jurisdiction.

10.1 The respondents contend that the applicant was a member of the Central Secretariat Stenographers' Service (CSSS) Cadre and joined the office of the Directorate General of Civil Aviation on 02.04.1976 as Stenographer Grade-II. Consequent on establishment of National Airport Authority (NAA), the services of the applicant were placed at the disposal of NAA. The applicant was absorbed in NAA w.e.f. 02.10.1989 as Steno Grade-C vide their Establishment Order No. 317/89 dated 28.12.1989. Thereupon, the applicant opted for benefits of pensionary benefits of 100% commutation and gratuity for the service rendered in the DGCA. The applicant resigned from his service in NAA w.e.f 30.11.1993.

10.2 Later on, an O.M. dated 30.09.1996 was issued stating that:-

"5. All the concerned Central Government absorbees in a PSU/Autonomous Body etc. shall have to formally apply to the respective administrative Ministry/ Department/Office from where they had retired and were paid lumpsum commuted value of pension for the purpose of getting benefit of this O.M."

10.3 The representation of the applicant dated 17.11.2014 for restoration of 1/3rd pension was received in DGCA on 09.12.2014 from AAI with calculation sheet of pension and arrears of pension from the date he became eligible for restoration of commuted value of pension i.e. 02.10.2004. The sanction of

arrears was issued by DGCA in consultation with PAO on 20.04.2015 for release of pension and arrears. As such, there was no inordinate delay in restoration of commuted value of pension to the applicant, who had applied for the same only on 17.11.2014. His pension, including arrears, was sanctioned on 20.04.2015.

10.4 With regard to fixing of his pension, taking into account the benefit of the pay @Rs.2120/- due to ad hoc promotion given to the applicant by NAA, it is submitted that the services of the applicant were placed at the disposal of the Authority by DGCA with clear stipulation that he shall hold his office in the Authority on the same terms and conditions of service. NAA vide their Order No. 155/89 dated 30.06.1989 had given ad hoc promotion to the applicant from 01.07.1989 to 31.12.1989 without taking consent of the Government (DGCA) with the stipulation that the applicant shall have no claim for regular promotion in the grade and his ad hoc service will not be counted for seniority and eligibility for next higher grade. Hence, the temporary benefit of ad hoc promotion accorded by the Authority to the applicant without the consent of the DGCA cannot be claimed by the applicant from the Government for fixing of his pension and that too after rendering more than about 04 years regular service in NAA and after 25 years of taking benefits of 100% commutation of his pension.

10.5 With regard to extension of CGHS benefits to PSU absorbees, it is contended that Department of Health and Family Welfare vide their O.M. dated 18.08.2009 issued instructions for extending the benefits to them with the stipulation that "the contributions to be made will be decided by the Grade Pay that they would now have drawn in the Government in the post held by them but for their absorption in the PSU". Further, the pensioners have to apply directly to CGHS for taking benefits of CGHS facilities by making the necessary contributions along with copy of PPO, and the Head of Office or Department has no role to play in this regard.

10.6 It is contended that the main grievance of the applicant pertains to the benefit of the pay of ad hoc promotion given to him by the NAA/AAI. The pension benefit for the service of more than 04 years rendered in the AAI comes under the purview of the AAI and hence no action accrues to DGCA except his grievance for payment of interest on arrear of pension. The respondents aver that the applicant is not entitled to any interest due to delay for which he himself is responsible since he applied for benefit of 1/3rd commutation value of pension only in 2014. It was mandatory for him to make a formal application for restoration of his commutation value of pension as per the instructions of the Department of Pension and Pensioners' Welfare vide their O.M. dated 30.09.1996. The applicant has already been extended CGHS facilities as per the prescribed procedure of the Government.

11. I have gone through the facts of the case and considered the rival submissions made. The facts of the case are not in dispute. The applicant in the O.A. has requested for the following:-

- (i) Payment of interest on delayed restoration of 1/3rd pension after 10 ½ years.
- (ii) Compensation for having been deprived of medical facilities to him and his family members of 22 years.
- (iii) Non payment of pension for his service rendered in the National Airport Authority (NAA) now Airport Authority of India (AAI) for a period of 4.2 years.

11.1 As far as the grievance regarding payment of interest on delayed restoration of 1/3rd pension is concerned, it is seen that the applicant had earlier applied for 100% commutation of his pension. He had opted for all pensionary benefits of 100% commutation and the gratuity for the service rendered in the Government (DGCA).

However, in pursuance to the judgment of the Hon"ble Supreme Court, Department of Pension & Pensioners Welfare issued instructions for restoration of 1/3rd commutation value of pension in respect of employees absorbed in PSUs/ Autonomous bodies vide O.M. dated 30.09.1996. The applicant on 17.11.2014 requested for restoration of 1/3rd of his pension in terms of the aforementioned O.M. The said request was received in DGCA on 09.12.2014 from AAI with calculation sheet of pension and arrears of pension from the date he became eligible for restoration of commuted value of pension i.e. w.e.f. 02.10.2004. DGCA sanctioned the due amount on 16.04.2015. The PPO was issued on 20.04.2015 for release of pension and arrears.

11.2 While the O.M. dated 30.09.1996 gave the benefit of restoration of 1/3rd commutation value of pension to the employees like the applicant who had been absorbed in PSU, there was another condition in para-5 of the O.M., which stipulated that:-

"all the concerned Central Government absorbees in a PSU/Autonomous Body etc. shall have to formally apply to the respective administrative Ministry/ Department/Office from where they had retired and were paid lumpsum commuted value of pension for the purpose of getting benefit of this O.M."

11.3 The prescribed procedure for getting the 1/3 commuted value of pension was to formally apply for it, which the applicant did only on 17.11.2014. He got his pension and arrears within five months of his having made the request i.e. on (20.04.2015). It seems unfair to hold the respondents responsible for the delay in releasing his dues (restoration of commuted value of pension), when he himself had not adhered to the required procedure/guideline. Thus, his request for grant of interest on this account lacks merit and is accordingly rejected.

12. The applicant has further asked for compensation of Rs.20 lacs + 18% interest on yearly basis for having been deprived of medical facilities to him and his family members w.e.f. the date he resigned i.e. 30.11.1993 to 08.06.2015 when the facilities were restored to him. In the impugned order dated 23.06.2017, the respondents have clearly mentioned that there is no provision for medical facilities in AAI for employees, who resign. The applicant comes

under this embargo. Before tendering his resignation, the consequences of such action would have been considered by the applicant - non availability of medical facilities would be one of those. Hence, this request of the applicant merits no intervention from the Tribunal.

13. The third request of the applicant is regarding grant of pension for the services, which he rendered with NAI w.e.f. 02.10.1989 to 30.11.1993. It has clearly been explained that NAI, (now AAI) had no Scheme for grant of pension prior to 01.01.2006. Having resigned from NAI on 30.11.1993, the applicant is not eligible for grant of pension, which became operative in AAI w.e.f. 1995.

14. In view of the aforementioned facts, the request of the applicant is not tenable. O.A. is accordingly dismissed. No costs.