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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO.1299/2002

NEW DELHI THIS 23rd DAY OF JANUARY, 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Capt. K.S.Malhotra S/o Late Shri P.S.Malhotra
Retired Junior Staff Officer
Directorate General of Home Guards &
Civil Defence, Delhi.

Resident of
A-16, DDA Colony,
Naraina Vihar, New Delhi.

.....Applicant

(By Shri M.C.Dhingra, counsel for the applicant)

VERSUS

1. Government of NCT of Delhi,
through Chief Secretary,
Players Building,
Delhi Government Secretariat,
IP Estate, New Delhi.
2. Secretary Home,
Government of NCT of Delhi,
Players Building,
Delhi Government Secretariat,
IP Estate, New Delhi.
3. Director General Home Guards-cum-Director
Civil Defence,
Nishkam Sewa Bhawan,
Directorate General Home Guards and
Civil Defence,
Raja Garden, New Delhi-110027.

.....Respondents

(By Mrs.Renu George, counsel for respondents)

O R D E R

Alleged illegal demand of Rs. 87,611/- by
respondents letter F. No. Estt. 6(8)/K/77/CDHG/1761
dated 12.4.02 is under challenge in this O.A.

2. Shri M C Dhingra and Smt. Renu George,
represented the applicant and the respondents respectively
in this OA.

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3. The applicant, an Emergency Commissioned Officer (ECO) - Group 'A' on release from the Army, joined on 15.7.71, as Jr. Staff Officer - Group 'B', on ad hoc basis. Thereafter the applicant had to file ^{many} ~~may~~ ₂ OAs to vindicate his rights. Govt of India, Deptt. of Pension and Pensioners Welfare issued OM No. 28/29/93-P&PW(B) dated 23.5.94 called for option from ex-servicemen in re-employment, to come to pension scheme, on their refunding the Provident Fund/ Terminal Gratuity with 6% interest. The applicant exercised his option on 27.7.94. Respondents not having done the needful, he filed OA No. 358/01, which was disposed of on 4.9.2001 with directions to the respondents to count the army service for calculation of retiral benefits. Respondents thereafter raised a demand of Rs. 1,74,081/-, which appeared to be unreasonably high. The applicant deposited an amount of Rs. 10,710/-, on 6.3.2002. After keeping silent for a period, the respondents demanded a further amount of Rs. 87,611/- which was wrongly arrived at. According to ^{him} ~~them~~ he was liable to pay interest only for the period 15.7.71 to 27.7.94 and that ^{6% 2} @ 6%. Demand by the respondents was illegal and hence this OA.

4. Grounds raised in this OA are that:-

- i) the applicant's case was covered under OM dated 23.5.95 and not under OM dated 25.8.94, prescribing a higher rate;

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- ii) applicant had been harassed considerably forcing him to come to the Tribunal many times and he cannot be harassed by the higher interest rate which was introduced on 25.8.94, after he has exercised his option;
- iii) he could not be subjected to higher rate of interest retrospectively;
- iv) Tribunal had directed the respondents to act in accordance with law, which was represented by OM dated 23.5.94;
- v) he was liable to pay interest @6% from 71 to 27.7.94 and respondent's action was violative of the requirements in law;
- vi) the respondents change of stance and asking for compound interest till the date of payment in 2002, was improper as the delay occurred on account of the respondents;
- Viii) the impugned communication was clearly illegal and the attempt to invoke the directions in OM dated 25.8.94 was mischievous; and
- viii) the respondents action was ^{in 2} contumacious disobedience of the tribunal's order in OA 451/2001.

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5. Contesting the pleas by the applicant the respondents point out that the applicant had suppressed the fact that he had obtained clearance for counting his army service, only on the condition to refund the terminal benefits with interest, in terms of DP&PW OM No. F/7/1/93-P&PW dated 25.8.94, as conveyed by GNCT's letter F.1/10/93-HG/2015 dated 5.3.2002. While the facts raised by the applicant are not denied, respondents state that they had not received the circular dated 23.5.94. The applicant had applied for the counting of past service on 27.7.94. The applicant had inspite of being advised to do so, had not visited the office to verify the amount of Rs.174081/- indicated by the Deptt. ^{As refundable} and had rushed to Tribunal. The demand of Rs. 87,611/- was made only in pursuance of the instruction and the same was correct. The applicant has no case at all, urge the respondents.

6. Both Sh. Dhingra and Smt. George reiterated their written pleadings forcefully during the oral submissions. While Sh. Dhingra contended that his client been denied justice. Smt. George pointed out that the applicant was attempting to mislead the Tribunal, by suppression of material facts.

7. I have considered the rival contentions carefully. The point for determination falls into a small compass - the quantum of interest payable by the applicant while refunding the terminal benefits, for inclusion of the army service as pensionable service in the civilian post. Facts are not disputed. The applicant being an army retiree, re-employed in Civil post is entitled for having his army service counted for the purposes of pension from the Civil post. Instructions in this regard were

originally covered by DP&PW's OM dated 31.5.88. However, the OM which is of relevance in this case is OM No.28/29/93-P&PW (B) dated 23.5.94, which reads as below:

"The undersigned is directed to refer to this department's OM No. 28/50/87-P&PW dated 31st May, 1988 on the subject mentioned above and to say that a re-employed military pensioner seeking the benefits of past service under Rule 19(1) of CCS (Pension) Rules is allowed to exercise option for counting of military service as qualifying service within a period of one year from the date of joining civil service or post. It is also laid down that the amount of pension, gratuity etc. already received by such Government servants from the military authorities shall be refunded to the Government with interest from the date of their joining the civil service. In the said order it was specifically laid down that the administrative authorities concerned are required to incorporate in the order of re-employed itself a clause to the effect that if the re-employed ex-serviceman desired to take advantage of the retirement benefit based on combined military and civil service he should exercise option within a period of one year from the date of his re-employed.

It has been represented to this Deptt by Associations of Military pensioners and individuals that in some cases it has not been possible for ministries/Departments and field offices to disseminate the information about the facility for exercise of option in terms of the above mentioned orders to the affected officers/ servicemen who were posted in the different parts of the country. As a result, many of these officers/servicemen could not avail of the opportunity to exercise their options within the stipulate period. Keeping in view these representations, it has been decided as a one time relaxation, to provide a last opportunity to military pensioners who are presently re-employed in civil posts/services to exercise within a period of 6 months from the date of issue of these orders.

3. The officers/servicemen exercising option in accordance with the provisions of this OM for counting of military service as qualifying service shall be required to refund the benefits in accordance with the provisions of the Rule 19(1) of CCS (Pension) Rules, 1972 alongwith 6 per cent simple interest as already notified vide this Department's OM of 31st May, 1988, referred to above."

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Accordingly the applicant, is found to have filed his option in terms of his letter dated 27.7.94. Nearly seven years thereafter the respondents have on 12.11.2001, directed the applicant to pay an amount of Rs. 1,74,081/- being the interest on the terminal gratuity of Rs. 4500/- received by him at the time of discharge from the Army. This amount has been worked out keeping in mind DP&PW OM No.F.7/1/93 P & PW (F) dated 25.8.94, a clarificatory order which reads as under:

"Interest to be paid at the rate applicable to GPF deposits - *** 3. It has been decided that wherever the employees are required to refund the pensionary benefits received by them for the service already rendered by them under the Central or State Government or autonomous bodies in order to avail of the benefit of counting of past services for pension purposes in terms of the provisions of Rules 17 to 20 of CCS (Pension) Rules, 1972 and Department of Pension and Pensioners' Welfare OM No. 28/10/84-PU, dated the 29th August 1984, as amended from time to time, the rate of interest will be the rate applicable on GPF accumulations from time to time, for the period from the date of receipt of pensionary benefits to the date of their refund to the the Government/Autonomous body.

4. In cases where after the issue of the orders by the competent authority on the basis of option exercised by an employee for counting the past service for pensionary purposes, if an individual does not deposit the pensionary benefits already received by him within one month of the receipt of communication from the Government/Autonomous Body, a penal interest at one per cent per annum will be charged in addition to normal rate of interest mentioned above.

5. (a) **

(b) the rate of interest mentioned in para 3 above will be applicable in cases of Government servants/employees of autonomous bodies where pensionary benefits already drawn have not been refunded to Government/Autonomous Body, as on date of issue of this OM.

6. All existing instructions relating to interest rate payable by the Government or the employees, as the case may be, will cease to operate with effect from the date of issue of this OM.

While according to the respondents this was the correct steps to be taken and the proper OM to be followed, the applicant contends that clarification issued on a date subsequent to his option cannot retrospectively act against him. It is agreed on all hands that the applicant has filed his option for counting his army service for civilian pension on 27.7.94 on the basis of DP&PW'S OM dated 23.5.94. That being the case he would be governed by the directions of the said OM i.e. to ^{refund} ~~pay~~ the terminal benefits along with 6% simple interest. Directions issued on 25.8.94, fixing a different rate of interest and a penal rate would not be applicable in his case. Mere averment of the respondents that they had not received OM dated 23.5.94, does not detract from the fact that the said OM had been issued and the applicant ^{has} exercised/option has been in response to the same. Applicant is, therefore, liable to pay only simple interest @ 6% per annum. Delayed communication of directions by the respondents, would not make him [✓] liable to pay compound interest, as directed by a later communication. The applicant has refunded the amount of terminal gratuity with interest, which has been worked out by him from the date of his joining the civilian post to that of his exercising the option i.e. from 15.7.91 to 27.7.94. This is not sufficient. He would have to pay the interest from the date of receipt of the terminal benefits in 1968 to the date of his returning ^{the same} i.e. 18.2.2002. His plea that the interest was payable only upto the date of his option i.e. 27.7.94 is incorrect as he held the amount with himself and earned interest thereon till 18.2.2002. As the respondent cannot take advantage of

their delay and demand that the applicant pays interest on the basis of the subsequent clarificatory order, so the applicant cannot take advantage of his action in not depositing the terminal gratuity and interest along with his option dated 27.7.94. That being the case the applicant should have to deposit balance of the interest worked out @6% simple interest to the date of its refund.

8. In the above view of the matter the OA succeeds to some extent and is accordingly disposed of. The impugned order dated 12.4.2002 demanding Rs.87,611/- is quashed and set aside and the respondents are directed to rework the dues from the applicant at simple interest @6% from 1968, the date of his discharge from Army till 18.2.2002 when he had deposited the amount of Rs.10,710/-. This shall be done within two month from the date of receipt of a copy of this. The amount so arrived at should be adjusted against the amount of Rs.10,710/-, already paid. If any amount remains to be paid by the applicant, he shall be so advised by the respondents. Applicant shall thereafter pay the amount, within one month thereafter. Respondents shall thereafter pass orders directing that his Army service stands included in pensionable service in the Civil post. No cost.

(Govindan S. Tampi)

Member (A)

Patwal/