CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(15)

O.A.NO.2133/2001

This the 22nd day of October, 2002

Hon'ble Shri Shanker Raju, Member (J)

T.A.4069/Ex.Major
Shri B.S.Ahluwalia
r/o House No.7/102
Subash Nagar, New Delhi

..Applicant

(By Advocate: Shri S.K.Sawhney)

VERSUS

1. Union of India through
Secretary
Ministry of Agriculture
(Department of Agriculture)
Directorate of Economics & Statistics
Krishi Bhawan, New Delhi

2. Additional Director General
Territorial Army (T.A.4)
General Staff Branch
Army Headquarters
DHQ, Post Office, New Delhi

..Respondents

(By Advocate: None)

ORDER

By Shri Shanker Raju, Member(J):

Applicant, through this OA, impugns respondents' order dated 25.4.2001 whereby his request for grant of retiral benefits on the basis of pay received earlier to his retirement on 1.4.1978 in the borrowing department has been turned down.

2. Applicant has sought commutation and grant of retiral benefits along with arrears from 1.4.1978 till date with 12 per cent interest.

3. Applicant was appointed as a Technical Clerk in the Directorate of Economics & Statistics, Ministry of Food and Agriculture on 12.7.1949 and was deputed to Infantry Battalion (Territorial Army) from 1.3.1960 and served there in General Staff Branch upto

30.6.1977. Applicant remained on leave and getting salary as per the borrowing department from 1.7.1977 to 31.8.1977 and thereafter from 1.11.1977 to 31.12.1977. Applicant was also deputed to training with the Territorial Army from 1.9.1977 to 31.10.1977 and 1.1.1978 to 31.3.1978.

4. Applicant applied for voluntary retirement vide letter dated 15.11.1978 and stood retired on 1.4.1978. Applicant, being aggrieved with wrong fixation of his pay, has preferred representations for pensionary benefits and filed OA 1918/1996 before the Tribunal which was disposed of on 12.9.2000 with directions to the respondents to consider the claim of the applicant and to take appropriate decision in the matter of re-fixation of pension.

5. Respondents through impugned order rejected his request, giving rise to the present OA.

6. Though despite opportunity, none appeared for the respondents. Matter stood adjourned on several occasions for non-appearance of the respondents despite being served the notices. As the matter is running in the regular list, I am constrained to dispose of this OA in terms of Rule 16 of the CAT (Procedure) Rules, 1987, on the basis of the available pleadings on record.

7. Shri S.K.Sawhney, learned counsel for applicant, with regard to the limitation, contends that as the Tribunal directed the respondents to take a final decision which has been taken by the

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respondents on 25.4.2001 and in the light of the decision of Apex Court in M.R.Gupta v. Union of India & Others, 1995(5) Scale 29, limitation, taken by the respondents, has already been rejected in earlier OA, the present OA is not barred by limitation as pay and allowances and pensionary benefits constitutes a recurring cause of action.

8. Shri Sawhney further states that the applicant cannot be denied retiral benefits on the basis of pay drawn from 1.3.1960 to 1.4.1978 as Rule 33 of the Pension Rules provides that emoluments for the purpose of retiral benefits means basic pay as defined under FR 9(21)(a)(i) and the average as per note 6 of the Rule 33 of the Pension Rules pay drawn by Government servant while on deputation to the Army Force especially treated as emoluments, applicant who continued to draw the pay of Territorial Army, during the last ten months of his service, he is entitled to be accorded of pensionary benefits on the same pay scale. In this background, it is stated that one Major M.R. Sharma was granted retiral benefits on the last pay drawn in the borrowing department in Territorial Army, however, the applicant has been discriminated arbitrarily. This constitutes violation of Articles 14 and 16 of the Constitution of India.

9. Shri Sawhney states that as per the certificate issued by the Ministry of Agriculture applicant has been certified to be on deputation to Territorial Army, vide Annexure.AA2 (attached to the rejoinder), on 2.3.1960 to 30.6.1977 and as per the

revised edition 1962, Territorial Army is treated as a wing of the Army vide Annexure-AA1. In this background, it is stated that the stand of the respondents that the applicant was not on deputation but on embodiment, has no legs to stand as such as per Rule 33 of the rules ibid, applicant is entitled for the pensionary benefits on the basis of last pay drawn.

10. On the other hand, respondents in their reply denied the contentions and stated that applicant was taken on the rolls as Technical Clerk and was granted 120 days Earned Leave from 30.6.1977 to 27.10.1977. He was relieved to attend annual training camp from 1.9.1977 to 31.10.1977 and applied for 89 days Earned Leave which was accorded to him. Later on the period of leave was modified and the applicant was allowed to undergo voluntary training from 1.1.1978 to 31.3.1978.

11. It is stated that applicant was on embodiment in the Territorial Army not on deputation, and as Territorial Army is a voluntary force and to supplement the regular forces, applicant was relieved from Territorial Army w.e.f. 30.6.1977. Thereafter, he attended training as such he was not on deputation with Army Force and as per the Rules 33 and 34 of the CC (Pension) Rules, the emoluments means basic pay as defined in the rules on the basis of which average emoluments are computed for payment of retiral benefits. As the applicant was not on deputation to Army Force, as per Note 6 below Rule 33 of the CCS (Pension) Rules, 1972 would have no application in his

case. Applicant was paid leave salary as per the rules. He is entitled for leave salary as per Territorial Army and would have in excessive civil leave salary is debitable to Defence Services Estimates. The liability of civil employer is restricted to his entitlement to civil leave salary and accordingly he has been sanctioned pension after taking into account the emoluments which he would have been drawn had he not been absent from duty. The pay drawn in Territorial Army is not to be treated as emoluments for determining civil pension. As the applicant was on leave immediately before his retirement, the last pay drawn Rs.1650/- mentioned in Annexure-A3 shall not be taken into account for calculation of pensionary benefits.

12. I have carefully considered the rival contentions of the parties and perused the material on record. In view of the certificate issued to the applicant by Chief Administrative Officer by the Ministry of Agriculture and Cooperation certifying that the applicant was on deputation to Territorial Army from 2.3.1966 to 30.6.1977 and on return he sought voluntary retirement. It is no more disputed that the applicant was on deputation and the contention of the respondents that applicant was on embodiment to the voluntary organisation, cannot be countenanced in view of the regulation for the army (revised edition 1962) defining Territorial Army as one of the comprises of Army.

13. In so far as the pensionary benefits are concerned, the same are to be accorded in view of Rule 33 of the Pension Rules ibid which defines emoluments means basic pay as defined in Rule 9(21)(a)(i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement and as per Note 6 below Rule 33 of CCS (Pension) Rules ibid provides that pay drawn by the Government servant while on deputation to the Army Force shall be treated as emoluments. Applicant who was in Territorial Army and had been undergoing training with the permission of the respondents and was drawing salary as a Major in Territorial Army even during the period of leave, the average emoluments should be construed including the pay drawn while on deputation to the Army Force and as Territorial Army has been treated as part of the Army, the pay drawn by the applicant during the Territorial Army is to be treated and construed as pay drawn in Armed Force and on which the emoluments are to be computed by the respondents on the last pay drawn in Territorial Army.

14. In so far as the limitation is concerned, the same would have no application in the present case as earlier decision in OA 1918/1996, respondents have passed an order rejecting the claim of the applicant on 25.4.2001 and the present OA is filed within the limitation period.

15. In the result and having regard to the reasons recorded above, I allow this OA. Impugned order, at Annexure A1, is quashed and set-aside. Respondents are directed to compute and grant retiral

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benefits of the applicant as per the pay received earlier to his retirement, i.e., 1.4.1978 in the borrowing department and in this process to revise pension and accord all the arrears, i.e., difference in the pension to the applicant within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

/rao/