

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1734/98

199

T.A. No.

DATE OF DECISION. 3.7.2000.

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Bhim Sain Khatri

....Petitioner

Shri A.K. Trivedi

....Advocate for the
Petitioner(s)

VERSUS

Union of India & Ors.

....Respondent

Shri V.S.R. Krishna

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 1734/98

(29)

New Delhi this the 3rd day of July, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Bhim Sain Khatri,
S/o late Devi Dayal Khatri,
R/o SSI Plot No. 2-A/12,
NIT Faridabad-121001. Applicant.

(By Advocate Shri A.K. Trivedi)

Versus

1. Union of India through its Secretary, Ministry of Defence, South Block, New Delhi.
2. Engineers-in-Chief, E-in-C's Branch, Army Headquarters, Kashmir House, DHQ PO, New Delhi.
3. Chief Engineer, Western Command, Chandimandir-134107.
4. Garrison Engineer (South), Air Force, Palam, Delhi Cantt-110010. Respondents.

(By Advocate Shri V.S.R. Krishna)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application in which he has stated that although he has retired on superannuation from service with the respondents on 30.4.1998, he has not received his retiral benefits, i.e. pension, gratuity, leave encashment, commutation of pension, balance payment of GPF and other retiral benefits. This O.A. has been filed on 2.9.1998.

2. The applicant has stated that he had submitted all his pension papers and other required documents in the

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Office of respondents well in time and had also submitted a representation dated 9.5.1998 to which no reply has been received. The applicant superannuated from service in April, 1998 as Superintendent E/M Grade-II. According to him, his pay had been wrongly fixed in the scale of Rs.4500-7000 whereas it should have been in the scale of Rs.5000-8000, as amended by the Govt. of India, Ministry of Defence letter dated 11.11.1997. He has referred to an order published by the respondents dated 25.4.1998 granting him the higher pay scale of Rs.5500-9000 w.e.f. 9.12.1997. Shri A.K. Trivedi, learned counsel has submitted that the delay in finalisation of the pension claim of the applicant was absolutely due to the non-action on the part of the respondents despite information having been given to them. He has submitted that the applicant is entitled to the pay scale of Rs.5000-8000 as he is holding an equivalent status of diploma Engineer. The applicant has stated that since the respondents have failed to pay his retirement benefits in time, including payment of provisional pension and gratuity under the provisions of Rule 64 of the CCS (Pension) Rules,1972, he has claimed that the O.A. may be allowed with interest @ 18% per annum on the amounts due to him by way of retiral benefits till the date of actual payment.

3. I have seen the reply filed by the respondents and heard Shri V.S.R. Krishna, learned counsel. The respondents have contended that the replacement scale for diploma Engineers of Rs.5000-8000 from Rs.4500-7000 came into effect from 1.1.1996. As the applicant was a non-diploma holder and the audit authorities were not

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approving his pay in the higher replacement scale, the case was referred to the competent authority for clarification on 18.4.1998. At the time when they filed their counter affidavit on 2.7.1999, they have stated that the applicant's case for pay fixation in the replacement scale was in the process of finalisation. They have also submitted that the applicant has been paid CGEIS on 21.9.1998 and GPF on 27.6.1998. Finally, after receipt of the clarification from the competent authority on 8.9.1998, they have stated that they have taken necessary action to fix the applicant in the replacement scale of Rs.5000-8000. The respondents have contended that as the applicant has never requested for provisional payment to the respondents on the basis of the earlier pay scale, but has been making representations for being paid the higher replacement scale, the matter took time. Shri V.S.R. Krishna, learned counsel, has submitted that in the circumstances, there has been no delay on the part of the respondents in taking action in sanctioning the payment to the applicant and in any case it was not intentional, but due to the fact that the applicant had requested for refixation of his pay which took some time for consideration. In the reply, they have also stated that the remaining benefits of pension, namely, gratuity, commutation, leave encashment and arrears on account of fixation of pay will be paid within four months.

4. In the rejoinder filed by the applicant, he has stated that he had received provisional pension and gratuity for a period of six months w.e.f. 1.5.1998 to 31.10.1998 and thereafter nothing had been paid and this was reiterated by Shri A.K. Trivedi, learned counsel. He has also submitted that some part of GPF is still outstanding and not

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paid by the respondents. The applicant has also submitted that certain arrears of pay and allowances are outstanding, as mentioned in paragraph 4.17 of the rejoinder.

5. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. The main contention of the learned counsel for the respondents is that there was some delay in making the payments of retiral benefits ^{which was} due to the applicant because he had made a representation for fixation of his pay in the higher pay scale of Rs.5000-8000 on 9.5.1998 which took some time for consideration and necessary orders by the competent authority. However, it is noticed from the same representation (Annexure A/3) that the applicant has also stated that he has served the respondents for 38 years and has not received any amount by way of terminal benefits. He has also specifically requested the authorities to release his pensionary benefits by 25.5.1998. In the circumstances of the case, there is no reason why the respondents could not have paid the undisputed amounts of retiral benefits calculated on the basis of the lower pay scale of Rs.4500-7000, which they have failed to do. The respondents have themselves stated that they have received the clarification from the competent authority on 8.9.1998, that is about four months after the retirement of the applicant regarding re-fixation of his pay in the higher scale of Rs.5000-8000. It appears that even thereafter there has been ^{considerable} ~~some~~ delay on the part of the respondents in paying the retiral benefits to the applicant which ought to have been paid at least in part, as mentioned above, on the date of his retirement in accordance with the rules. It is also

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relevant to note that the applicant has mentioned that even the provisional pension and gratuity has not been paid for some period from 1.5.1998 to 31.10.1998. During the course of arguments, the learned counsel for the respondents had submitted that they have already paid the due amounts to the applicant although details thereof are not available on record.

7. In the facts and circumstances of the case, the judgement of the Supreme Court in **State of Kerala Vs. Padmanabhan Nair** (1985(1) SCC 429), is applicable to the facts of the present case. In that case, it was observed that "The necessity for prompt payment of retirement dues to a Govt. Servant immediately after retirement cannot be over emphasised..." In the present case, it is seen that the respondents have not paid even the retiral benefits calculated on the undisputed pay scale of Rs.4500-7000 to the applicant at the time of his retirement on 30.4.1998, and even after filing their reply on 2.7.1999 they have stated that they will take about four months more to pay the remaining benefits of pension, gratuity, commutation, leave encashment and arrears on account of re-fixation of pay. This shows that the respondents cannot be stated to have acted with promptitude in making payments of the retiral benefits to the applicant on superannuation from service on 30.4.1998.

8. In the facts and circumstances of the case, the O.A. succeeds and is allowed with the following directions:

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(1) The applicant shall be entitled to simple interest @ 10% per annum on the retiral benefits due to him from the date of his retirement till the date of actual payment, in accordance with the relevant rules.

(2) The applicant may submit a detailed representation regarding further amounts that are outstanding to him by way of retiral benefits, to the respondents within two weeks from the date of receipt of a copy of this order. This shall be considered by the respondents within one month and the payments, if any, due to him paid promptly. If any of the claims of the applicant are rejected, they shall do so by a speaking and reasoned order within the same period. In the circumstances, any such amounts due to the applicant shall also be paid with 10% simple interest from the due date till the date of actual payment.

(3) In the facts and circumstances of the case, cost of Rs.2000/- (Rupees two thousand) is granted to the applicant and against the respondents.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

"SRD"