

Central Administrative Tribunal
Principal Bench

(24)

O.A.No.1776/96

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 9th day of October, 1998

Shri P.L.Taneja,
A-25
Shivaji Colony
Meerut Cantt. ... Applicant

(By Shri U.S.Bisht, Advocate)

Vs.

1. Union of India through
Secretary
Ministry of Defence
New Delhi - 11.
2. E-in-C's Branch
Army Head Quarters
Kashmir House, DHQ, PO
New Delhi - 11.
3. Controller of Defence Accounts (Pension)
Allahabad. ... Respondents

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

O R D E R

The OA discloses a longest and chequered history of representations and litigation spread over more than 25 years. The applicant at the time of his retirement on 13.2.1974, was posted as Assistant Garrison Engineer (AGE). During the period from 11.11.1970 to 26.4.1972 he was posted in that capacity at Bareilly. The Deputy Commander Works Engineer (DCWE), i.e., Executive Engineer posted there fell sick and the applicant was asked to attend to the work of the DCWE also from 11.11.1970 to 27.4.1972. The applicant has claimed the pay of the higher post but as the same was refused, he filed a Civil Suit in the Court of City Munsif, Meerut on 18/30.3.1977 claiming the balance of the officiating pay of Rs.3388.93. The suit was decreed in his favour on 7.2.1978. The appeal filed by the respondents was transferred to the Allahabad Bench of this Tribunal and

was dismissed by order dated 2.9.1986. The decree amount was also paid to the applicant. Thereafter the applicant made a number of representations to the respondents for redetermining his retiral benefits and pension on the basis that he had been granted officiating pay as AGWE/EE for the aforementioned period between 1970 and 1972. His grievance is that vide letter dated 12.4.1996, Annexure A1, his representation has been finally rejected.

2. The respondents in their reply have contested the claim on the ground of resjudicata, limitation and also because the applicant has filed another OA No.1866/96 for the same relief.

3. I have heard the counsel on both sides. The learned counsel for the applicant strongly relying on M.R.Gupta Vs. Union of India & Others, 1995 (31) ATC 186 argued that due to wrong fixation of his pension, the applicant has a recurring cause of action. He also cited the judgment of this Bench in OA No.352/87, R.Sangeeta Rao Vs. Union of India, ATJ 1990(1) Vol.8 CAT Page 120 in support of his contention that the Tribunal can take cognizance of a grievance which arose before 1.11.1982, i.e., three years prior to the establishment of this Tribunal if there is a recurring cause of action, i.e., the non-payment of salary or of pension. In regard to respondents case that the OA is barred by resjudicata, the learned counsel for the applicant submitted that his Civil Suit No.103/77 before the Civil Court was in respect of his officiating pay. Until and unless the same was decreed in his favour the applicant could not raise the question of refixation of his pension. The learned counsel also pointed out that the OA No.1866/96

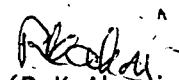
was on an entirely different subject of proper fixation of his pay on his promotion as Assistant Garrison Engineer (AGE) and did not relate to the proper fixation of his pension.

4. It was explained by the counsel on both sides that prior to the amendment of the Pension Rules, following the recommendations of the Fourth Pay Commission, the pension was to be fixed on the basis of an average emoluments drawn during 33 months prior to the date of retirement. Since the applicant retired before the amendment under which only 10 months of average emoluments counted for fixation of pension, the grant of higher pay between 1970-1972, would have a direct bearing on refixation of the pension of the applicant.

5. I have given careful consideration to the contentions advanced by both the parties. The wrong fixation of pension through a wrong application of pension Rules would certainly give the applicant a recurring cause of action and bring the matter within the purview of the Tribunal. The delay in such cases in approaching the Tribunal will only affect and modulate nature of reliefs which may be granted. Here, however, the dispute arises on account of grant of officiating pay between 1970 to 1972. The applicant retired from service in 1974. The civil suit filed by him is of the year 1977. In other words, the applicant when he filed the Civil suit had already retired from service and was a pensioner. However, while seeking the difference in pay before the Civil Court, he did not, at the same time, seek the differential of pension relief even though he was at the relevant time already a pensioner for a period

of at least three years. Therefore, I am inclined to agree with the objection of the respondents that the claim of the applicant is now barred by constructive resjudicata. When an issue could and should be raised, it is deemed under law to have been raised and decided and the bar of resjudicata applies and the same issue cannot be allowed to be raised again. The applicant herein could obtain the relief sought here in his previous suit but failed to ask for it, nor raised the issue. He is therefore barred from gaining it in a fresh proceedings.

6. The OA is accordingly dismissed as barred by resjudicata. There shall be no order as to Costs.


(R.K.Ahooja)

Member(A)

/rao/