

Central Administrative Tribunal  
Principal Bench

O.A.No.944/96

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

New Delhi, this the 5th day of August, 1997

Shri Gulshan Jit Singh Ahluwalia  
s/o late S. Jhirmal Singh  
17B/28, Dev Nagar  
Karol Bagh  
New Delhi - 110 005.

... Applicant

(Applicant in person)

Vs.

1. Union of India through  
The Secretary  
Ministry of Defence  
South Block  
New Delhi.

2. The Engineer-in-Chief  
Army Headquarters  
Kashmir House  
New Delhi - 110 001.

3. The Chief Engineer  
Western Command  
Chandi Mandir.

... Respondents

(By Shri R.D.Sharma, UDC, Departmental Representative)

O R D E R(Oral)

This is a second round of litigation. The applicant was compulsorily retired from service of Respondent No.3 vide order dated 24.4.1989, Annexure-A. The order also stated that the period of absence from 9.5.1981 to 18.6.1987 will be treated as unauthorised absence from duty for all purposes. An appeal was filed by the petitioner before the Engineer-in-Chief, R-2 who in his order 26.5.1990 stated that the applicant would be entitled for full pay and allowances for the period from 5.5.1981 to 2.12.1981, if the leave is due to him and the same is supported with medical certificate from an Authorised Medical Attendant. The applicant submits that the requisite certificate has already been submitted by

him. The applicant had earlier challenged his compulsory retirement in OA No.858/93 decided on 10.11.1995. While dismissing that OA, the Tribunal had observed as follows:

16

"Before parting with this case however we note that the applicant has asserted during hearing that he has not been paid various sums which were due to him, including pay fixation on the new scale prior to his retirement; full amount of GPF; TA/DA for proceeding to Bhatinda on 14.6.1987 etc. No such reliefs were sought for in the OA itself and this prayer constitutes a separate cause of action which cannot be made a part of this OA. Shri V.S.R.Krishna has very fairly stated that in case any payments are due to the applicant he should list out the same in a proper application addressed to the respondents which would be got examined by them and in case any payments were due the same would be made expeditiously. In any event this prayer for payment of dues claimed by the applicant is a matter in respect of which it will be open to him to pursue it separately with the respondents. This OA is disposed of accordingly."

2. The applicant submits that he has filed a detailed representation with the respondents but they have not taken any action. He seeks the relief that Respondent No.2 and No.3 be ordered to pay all the arrears after calculation of emoluments, with 18 percent interest, according to the new pay scales and leave of joining period be added in his leave account and 15 days leave be added in his credit <sup>on</sup> when the petitioner having become permanent in cadre.

3. The respondents in their reply have stated that Half Pay Leave and Earned Leave is due to him, but he has to submit medical certificate from an AMA. They also stated that they are taking action to regularise his leave upto 2.12.1981 and to pay his pay and allowances admissible since the absence from 3.12.1981 to 18.6.1987 for a period of more than five years. The same requires condonation by the Hon'ble President of India as per Rule 12 of Leave Rules, for which an application has to be made by the applicant. Revised pay can only be fixed after this period of absence is condoned by the Hon'ble

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President of India. Leave encashment, Pension, Gratuity, etc. will also be calculated thereafter. They deny the claim of the applicant for payment of interest on the ground that all his dues are pending due to his <sup>own</sup> faults and not those of respondents, for not filing the application for condonation of delay for the consideration of the President of India. During the course of the hearing on earlier occasions, the respondents were advised to take an early action for the condonation of the delay. The learned counsel for the respondents had undertaken on the last occasion to pursue the respondents to obtain the requisite approval on an urgent basis. Today when the case came up for hearing, the applicant submits that the Hon'ble President of India has accorded necessary approval for condoning the unauthorised absence and treating the same as dies-non for all purposes viz., increments, leave, etc. vide order dated 15.7.1997. A copy of this order notified in Special Part - II was also produced and has been taken on record.

4. In view of the position that the necessary condonation orders have been issued, it is now possible for to the respondents to fix the pay of the applicant on the revised pay scales and calculate his other retiral benefits by way of leave encashment, Pension, Gratuity, etc. on that basis and as stated by them in their reply. The applicant however argues that since considerable delay has already been taken place, the follow up action may be taken by the respondents urgently <sup>and to</sup> and complete the same within a period of one month. He also prays for a direction for grant of penal interest at the rate of 18% on his outstanding dues.

-4-

19

5. I have carefully considered the matter. The OA is disposed of with the following directions:

a) The respondents will take action to fix his pay on the revised pay scales and issue the necessary orders regarding the revised pension, gratuity, commutation of pension, leave encashment and other retiral benefits due to the applicant within a period of three months from the date of receipt of a copy of this order positively.

b) The applicant will be entitled to 12% interest on the payment of arrears of pension, i.e. the pension due to him after deducting the money which has already been paid to him. He will of course be entitled to the normal rate of interest on any arrears of GPF amount due to him.

6. The OA is disposed of accordingly. No costs.

*R.K. Ahooja*  
(R.K. AHOOJA)  
MEMBER(A)

/rao/