

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1001 of 1996

New Delhi this the 24 day of February, 1998

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Chander Bhan
R/o 7/73, Trilok Puri,
Delhi-110 091.

...Applicant.

By Advocate Shri George Paracken

Versus

1. Director,
Intelligence Bureau,
North Block,
New Delhi.

2. Assistant Director,
Intelligence Bureau,
Block No.7,
East Block,
R.K. Puram,
New Delhi-110 066.

...Respondents

By Advocate Shri S.M. Arif.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant is aggrieved by the order dated 26.5.1995 of the respondents conveying sanction for payment of Death-cum-Retirement Gratuity (DCRG) to the applicant, who retired on 31.7.1994 (After-Noon) and also simultaneously ordering the recovery of an amount of Rs.11,120/- overpaid as pay and allowances, and sanctioning the net payment of Rs.619/-. The applicant's contention is that he has not been given any prior notice for such recovery.

2. Applicant claims to have been appointed as Farash with effect from 17.7.1963 and he worked continuously in the same post upto 19th of January, 1995.

By the order dated 17.1.1995 passed by the respondents, the applicant stood retired from service retrospectively with effect from 31.7.1994 (A/N) on his attaining the age of superannuation. The grievance of the applicant is that the respondents, besides ordering his retirement with retrospective effect and recovering the amount of overpayment of pay and allowances, have also calculated pensionary benefits without taking into account his actual length of service of 32 years and the basic pay as on 19.1.1995, the date on which his services were discontinued. He submits that it is the responsibility of the respondents to correctly verify the service rendered by him so as to determine the qualifying service for pension. He submits that he has done the qualifying service from 17.7.1963 to 19.1.1995 and would be entitled to pensionary benefits on the basis of this qualifying service. He alleges that the respondents have not correctly maintained the Service Book and verified the omissions, imperfections or deficiencies, if any and have unilaterally treated him to have retired from service on 31.7.1994. In the light of these averments, he prays for a directions to the respondents to recalculate his pensionary benefits on the basis of his length of service from 17.7.1993 to 19.1.1995 with penal interest of 24% per annum and also for a direction for payment of salary and allowances upto 19.1.1995, which they have ordered for recovery, declare that the recovery order was illegal and wrong.

3. The respondents in their counter-reply have pointed out that the application is somewhat premature.



On the basis of his personal appearance before the competent authority, it was decided to waive the recovery of excess salary paid to him. Accordingly, the recovery has been waived by the respondents order dated 13.5.1996, Annexure R-II. As regards his claim for counting his past service and determining his qualifying service accordingly, it is stated by the respondents that his request for counting past service as casual labourer and consequent revision of pensionary benefits, has been processed by the department and has been submitted to the Pay and Accounts Officer. They have annexed a copy of the letter dated 16.7.1996, Annexure R-VI. From this it is seen that they have made a recommendation in terms of the Government of India Instructions under Rule 14 of the CCS (Pension) Rules, whereby half the service rendered by the whole time contingency paid casual worker would be counted for pension subject to the conditions mentioned therein. It is stated that the applicant fulfils those conditions. In view of this, the respondents contend that the applicant's grievance about his revised pension, is premature. As regards the order retrospectively retiring him from service on attaining the age of superannuation on 31.7.1994, the respondents submit that due to some omission, respondents failed to notice his date of birth being 13.7.1934 as shown in his application. He should, therefore, have been retired w.e.f. 31.7.1994 but was inadvertantly allowed to be continued and when the error was detected, he was ordered to be retired by order dated 17.1.1995. The respondents submit that the applicant himself had a responsibility to inform the respondents

L

about his date of retirement and he could not take advantage of the non-receipt of formal orders regarding his relief on superannuation and he should not have assumed that he had been granted extension of service. However, taking into account the facts and circumstances of the case, the respondents have, as stated earlier, decided to waive the recovery of overpayment of pay and allowances. In the light of this, the respondents submit that the applicant should not have any grievance on any account.

4. We have heard the learned counsel for the parties and have carefully perused the record.

5. From the averments made by the applicant, it is seen that he is not challenging his date of superannuation as such. In fact, in para 5.4 of his application, he states as follows:-

"Because the petitioner had physically worked till 19.1.1995, though actually he should have retired with effect from 31.7.1994 and his services upto 19.1.1995 was not on account of his fault". (emphasis added)

6. Therefore, his date of retirement from 31.7.1994 is not in dispute. The respondents have admitted that due to administrative error, the applicant was permitted to continue in service upto 19.1.1995. But, however, on the representation of the applicant, competent authority has reviewed the matter and has waived the recovery of overpayment of pay and allowances for the

h

period for which he has drawn salary on the basis of his actual performance of his duty. Applicant has raised a contention on the actual amount of waiver. It is stated that by the respondents that an amount of Rs.5847/- has been ordered to be waived (Annexure R-II), being the difference between pay and allowances being overpaid and pension for the period w.e.f. 1.8.94 to 31.1.1995 and the applicant is not put to any monetary loss. In view of this clarification, this contention is also not tenable. In the light of this, there is no recovery of any overpayment as such and the applicant could not have any grievance on this account in view of the order passed by the respondents vide Annexure R-2, copy of which has also been endorsed to the applicant.

7. It is also stated by the respondents that the matter regarding revision of his pensionary benefits by recalculating his qualifying service has been recommended by the respondents and the matter is before the Pay and Accounts Officer for issue of necessary orders in this behalf. In the light of this, the applicant's claim for his qualifying service from 17.7.63 to 19.1.1995 has no basis; for one thing, the date of superannuation has to be reckoned as 31.7.1994 and he will be entitled to only 50% of the casual service as recommended by the respondents by their letter dated 16.7.96, Annexure R-6. The applicant is, therefore, entitled to qualifying service only on the above basis and is entitled to his revised pension with reference to the approved qualifying service as above. The applicant has also raised the question of penal

h

interest for his pensionary benefits. In the facts and circumstances of the case, there is absolutely no justification for allowing any interest on the pensionary benefits. No other matter survives in this application.

8. Accordingly, this application is disposed of with a direction to the respondents to communicate the revised pensionary benefits to the applicant within a period of 3 months from the date of receipt of a copy of this order. There shall be no order as to costs.

A. Vedarathi
(DR. A. VEDAVALLI)
MEMBER (J)

[Signature]
(K. MUTHUKUMAR)
MEMBER (A)

Rakesh