

Central Administrative Tribunal  
Principal Bench

C.P. No. 190 of 2000

in

O.A. No. 761 of 1993

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New Delhi, dated this the 22<sup>nd</sup> MAY, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri H.L. Sharma,  
S/o Shri B.R. Sharma,  
Ex-Superintendent B/R Grade II,  
Military Engineering Service,  
Ministry of Defence,  
C/o Dr. J.C. Madan,  
B-56, Pandara Road,  
New Delhi-110003.

.. Applicant

(By Advocate: Dr. J.C. Madan)

Versus

1. Shri T.R. Prasad,  
Secretary,  
Ministry of Defence,  
South Block, New Delhi-110011.

2. Lt. Gen. A.N. Sinha,  
Engineer-in-Chief,  
M.E.S. Army Headquarters,  
Ministry of Defence,  
Kashmir House,  
Rajaji Marg,  
New Delhi-110011.

.. Respondents

( By Advocate: Shri K.R. Sachdeva)

ORDER

S.R. ADIGE, VC (A)

Heard both sides on C.P. No. 190/2000  
alleging contumacious non-compliance of the  
Tribunal's order dated 26.7.99 in O.A. No. 761/93.

2. Applicant had filed O.A. No. 761/93  
impugning respondents' order dated 30.8.92 (Annexure  
A-2 to O.A.) deconfirming him and seeking restoration  
of respondents' order dated 14.9.85 (Annexure A-3 to  
O.A.) conferring him with all consequential benefits

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including prorata pension, gratuity etc. with interest @ 18% p.a.

3. Applicant was initially appointed as Superintendent B/R Grade II in Military Engineering Service on 31.10.63 upon being selected as Assistant Engineer (Civil) by Himachal Pradesh Housing Board, he joined there on 1.11.76, but respondents continued to maintain his lien in M.E.S. till 31.10.79. Meanwhile although he was serving in H.P. Housing Board, he was made permanent as Superintendent B/R Grade II in M.E.S. w.e.f. 1.4.76 vide order dated 14.9.85.

4. Subsequently as inabsentia confirmation of a temporary employee who had left the department to better his prospects was not found to be in order, the same was cancelled by impugned order dated 30.8.82 which applicant challenged in O.A. No. 761/93.

5. The Tribunal, after hearing both sides by its order dated 26.7.99 held that the impugned order dated 30.8.92 was not sustainable and, therefore, quashed the same. The earlier order dated 14.9.85 was directed to be revived, and <sup>it held that</sup> whatever benefits which would flow from the same would be available to applicant. On applicant's counsel's submissions that with the revival of that order, applicant would be entitled to all consequential benefits such as pro-rata pension, gratuity and other benefits,

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respondents were directed to examine the aforesaid request in accordance with the relevant provisions and make available to applicant whatever benefits were available in accordance with rules and instructions.

6. Meanwhile it is not denied that applicant was confirmed in the service of H.P. Housing Board w.e.f. 30.3.99.

7. Pursuant to the aforesaid order dated 26.7.99 respondents after seeking extension of time for implementation of the aforesaid order upto 31.5.2000 as per M.A. No. 1095/2000 in O.A. No. 76/93, have issued speaking order dated 30.5.2000 (Annexure A-2 to respondents' reply to CP) in which it has been contended that the H.P. Housing Board is an autonomous body of the Govt. of Himachal Pradesh and prior to issue of DPAR's O.M. dated 9.1.84 there was no concept of payment of prorata pensionary benefits. Hence applicant is not entitled to payment of any prorata retirement benefits.

8. The direction in the Tribunal's order dated 26.7.99 to respondents was to examine applicant's claim for prorata retirement benefits, and if in the light of such examination, respondents by means of speaking order dated 30.5.2000 have concluded that applicant is not entitled to prorata retirement benefits, the same cannot be construed to be contemptuous of the Tribunal's order. In this

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in connection the Hon'ble Supreme Court's ruling in J.S. Parihar Vs. G. Duggar & Others JT 1996 (9) Sc 608 is squarely applicable.



9. Respondents' O.M. dated 30.5.2000 gives applicant a fresh cause of action which he may agitate separately in accordance with law if so advised, Giving leave to applicant as aforesaid the C.P. is dropped. Notices discharged.



(Dr. A. Vedavalli)  
Member (J)



(S.R. Adige)  
Vice Chairman (A)

karthik