

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.544/90

DATE OF DECISION: 13th March, 92

SHRI R.L. BALI

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:-

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI J.S. BALI, SENIOR COUNSEL
WITH SHRI S.S. TEWARI, COUNSEL.

FOR THE RESPONDENTS

SHRI M.L. VERMA, COUNSEL.

1. Whether Reporters of the local papers may be allowed to see the Judgement? *yes*.
2. To be referred to the Reporter or not? *yes*.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A) 13/3/92

T.S. Oberoi 13.3.92
(T.S. OBEROI)
MEMBER (J)

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

MR. I.K. RASGOTRA, MEMBER (A))

Shri R.L. Bali has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the impugned order of the respondents dated 16.5.1989 (Annexure 1), denying him pension at the rate of last pay drawn by him in the rank of Major in the Territorial Army (TA).

2. The applicant is an employee of the Controller General of Defence Accounts. He was granted commission pursuant to the emergency declared in 1962 by the Government of India, in the TA w.e.f. 7.2.1963, where he joined duties on 22.2.1963. The applicant continued with the TA from the date of joining upto 31.3.1978. He went back to the TA for a second spell from 26.1.1982 to 31.1.1986. He took voluntary retirement after completion of 30 years qualifying service in accordance with Rule 48-A (4) of CCS (Pension) Rules, 1972. During the period of his reversion to the civil department, he passed the Subordinate Accounts Service (SAS)

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Examination - Part-I in July, 1979 and Part-II in November, 1981. He represented to the competent authority on 9.2.1982 to ante-date his seniority as per the instructions of the Ministry of Home Affairs contained in OM No.35/15/63-Estt.- (B) dated 28.4.1965. The said representation however, was rejected by the respondents. Before he proceeded for the second spell in the TA on 21.1.1982 he appears to have been assured that he would be given his officiating promotion as Section Officer (Accounts) on reversion from TA. The applicant relies on Office Order No.208 dated 24.3.1987, allowing him to proceed on voluntary retirement w.e.f. 31.1.1986, which being germane to the issue in question is reproduced below:-

"SUB:- VOLUNTARY RETIREMENT FROM SERVICE:SH. R.L.BALI
PT. AUDITOR A/C NO.8285103.

----- Shri

R.L. BALI, Permanent Auditor A/C NO.8285103 who was serving as Major in the Territorial Army and was held on the proforma strength of this organisation, **on the undertaking that he would get offg. promotion as SO (A) on his reversion to this organisation**, which did not materialise on his own volition is permitted by the CDA (AF) under rule 48-A, of CCS (Pension) rules 1972 to proceed on voluntary retirement from service wef. 31.1.86.(AN) (Thirty First January Nineteen Hundred Eight Six). He has accordingly been struck off the strength of this organisation wef. the same date i.e. 31.1.86 (AN)."(Emphasis supplied).

Consequent upon the above, the applicant requested for his pensionary awards which were sanctioned to him, reckoning the pay and allowances drawn by him during his service in the organisation of CDA (AF), Dehra Dun as Auditor. He was thus not given proforma fixation as Section Officer (A). His pay that he would have drawn as Section

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Officer (A) was not taken into consideration as he had never joined that post vide letter dated 18.8.1987. He made a representation for pensionary awards, reckoning his pay as drawn by him during the last 10 months of his service as per Rule 34 of CCS (Pension) Rules, prior to his retirement. The said representation was rejected by the respondents vide impugned order dated 16.5.1989. The said order states that:-

"....SH. R.L. BALI may hereby be informed that his request for grant of pensionary benefits based on the emoluments last drawn as an officer in Army (Territorial Army) has been examined and it is revealed that his services as an officer in the Army (TA) does not qualify for grant of any pension, the pensionary benefits for his qualifying service of 31 years (both combined DAD&TA) on the basis of notional pay viz, the emoluments what he would have drawn had he been all along in DAD as Pt. Auditor have correctly been admitted under rules. The provision of Note 6 below Rules 33 of CCS (Pension) Rules 1972 are not attracted in his case. He may therefore, treat his case as settled and finally closed."

The claim of the applicant is thus primarily founded on:

- i) Rule 34 of CCS (Pension) Rules, 1972.
- ii) Note 6 under Rule 33 of CCS (Pension) Rules, 1972.
- iii) the provisions made in Ministry of Home Affairs (MHA) letter dated 28.4.1965; and
- iv) Proforma promotion as S.O.(A/cs) consequent to his passing the S.A.S. examination in 1981.

By way of relief he has prayed that the impugned order dated 16.5.1989 be quashed and set aside and the respondents directed to ante-date the applicant's seniority and promotion after his passing the SAS examination in 1981

in accordance with MHA OM dated 4.12.1962 with all consequential benefits. He has further prayed that the respondents be directed to award civil pensionary benefits at the pay and emoluments drawn by the applicant during the last 10 months prior to his retirement.

3. The respondents have resisted the contention of the applicant and submit that the petitioner does not fulfil the conditions of voluntary retirement from service while serving with the TA and that he is not entitled to claim pension under Army Pension Regulations, as he served TA only for a period of 19 years and 267 days. The minimum service required in the TA for Army Pension Benefits is 20 years. However, the pensionary benefits of his qualifying service of 30 years (both combined in DAD&TA) on the basis on notional pay, i.e., the emoluments he would have drawn, had he been in DAD have been granted to him in accordance with Army Instructions 159/52 which governs pensionary awards in his case. The respondents also repel the contention that provision of Note-6 below Rule 33 of CCS (Pension) Rules, 1972 are applicable in his case. They, however, admit that by virtue of his having qualified in SAS examination in 1981 he was granted proforma promotion to the grade of Section Officer (A) w.e.f. 5.9.1983 under the Next Below Rule till the date of existing term with TA. He was also informed that his actual promotion and positioning in the post of Section Officer (A) will take effect from the date of assumption of charge in that post on his reversion from TA to his parent department. The applicant, however, retired from TA service w.e.f. 31.1.1986 without reverting to the parent department and without assuming charge of the Section Officer (A). Accordingly, the question of granting him seniority in the grade of Section Officer (A) does not

arise, as his actual promotion to the grade has not taken place. The respondents also deny that the provisions contained in MHA letter dated 28.4.1965 are applicable, as the said letter covers the civil government servants, including TA personnel, who are promoted to take up the military service during the emergency then imposed. In contradistinction to the above, the applicant was embodied in TA during emergency. His embodiment in the TA cannot be treated as military service during emergency. They deny that his pension was calculated on the basis of the pay drawn by him till 1981 and state that "his pensionary benefits were calculated based on average of last 10 months notional pay drawn in Defence Accounts Department."

4. The applicant has filed a rejoinder in which he has stated that he has not asked for grant of army pension. His prayer is for grant of civil pensionary awards on the basis of last pay drawn by him. He has also reiterated that he has not been granted proforma promotions, consequent to his passing SAS examination. He has further cited two cases of Major Mool Raj Sharma and Lt. Col. R.K. Malhotra who have been granted civil pensionary awards based on their last pay drawn in the TA. He submits that his case is no different from the said personnel.

5. We have heard Shri J.S. Bali, Senior Advocate with Shri S.S. Tewari, learned counsel for the applicant and Shri M.L. Verma, learned counsel for the respondents. As the respondents in their counter-affidavit had averred that the pensionary awards to the applicant have been made in accordance with Army Instructions (AI for short) 386 of 1950, we had directed them to file a copy thereof. A perusal of the AI-386 of 1950 shows that it generally governs the conditions for joining TA. It provides guidelines to the Heads of Department for allowing the civil personnel to join TA annual training and regulates short

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training of such personnel and payment of salary and allowances during the period of training. The said instruction also states that the period and training shall be treated as special casual leave. Paragraph 5 of the AI-386 of 1950 is, however, of interest and is reproduced below:-

"5. It may be stated in this connection that the occasions on which members of the Territorial Army might be called up for military duty in aid of civil power would be very rare because ordinarily regular troops would be available for this duty. Similarly, occasions when members of the Territorial Army would be embodied for supporting or supplementing the regular forces would be when the country is involved in an actual war. On such occasions, the absence of the civilian Government servants, from their offices should be treated as duty for the purpose of civil leave and pension. If a civilian Government servant is on an incremental scale of pay ~~or pay~~ be will ^d count his military service for increments in the time scale of pay applicable to him in his civil post and also towards civil pension, in the same way as if he had put in that period of service in his civil appointment...."

The Territorial Army Act states that there shall be raised and maintained in the manner hereinafter provided an army to be designated the Territorial Army. Sections 4, 5, 9 & 10 of the Territorial Act make the following provisions:-

"4. Personnel of the Territorial Army.--There shall be the following classes of persons in the Territorial Army, namely,--

- (a) officers; and
- (b) enrolled persons.

5. Officers.--Officers in the Territorial Army shall

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be of the two classes, namely,--

(a) officers holding commissions in the Territorial Army granted by the President with designations of rank corresponding to those of Indian commissioned officers (of the Regular Army); and

(b) junior commissioned officers holding commissions in the Territorial Army granted by the President with designations of rank corresponding to those of (junior commissioned officers of the Regular Army).

9. Application of the Army Act, 1950.--(1) Every officer, when doing duty as such officer, and every enrolled person when called out or embodied or attached to (the Regular Army), shall, subject to such adaptations and modifications as may be made therein by the Central Government by notification in the Official Gazette, be subject to the provisions of (the Army Act, 1950), and the rules or regulations made thereunder in the same manner and to the same extent as if such officer or enrolled person held the same rank in the Regular Army as he holds for the time being in the Territorial Army.

(2) When an offence punishable under (the Army Act, 1950), has been committed by any person whilst subject to that Act under the provisions of subsection (1) such person may be taken into and kept in military custody and tried and punished for such offence as aforesaid in like manner as he might have been taken into and kept in military custody, tried and punished if he had continued to be so subject.

10. Summary trial and punishment.--In addition to, or in substitution for, any punishment or punishments to which he may be liable under (the Army Act, 1950), and enrolled person may be punished either by a

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criminal court or summarily by order of the prescribed authority for any offence under that Act or for the contravention of any of provisions of this Act or of any rules made thereunder with fine which may extend to one hundred rupees to be recovered in such manner and by such authority as may be prescribed:

Provided that no fine shall be summarily inflicted by order of the prescribed authority in any case in which the accused claims to be tried by a criminal court...."

It will thus be seen from the above that the officer on embodiment in TA is governed by the provisions contained in Army Act, 1950 and in that view of the matter he cannot but deemed on military duty. We are, therefore, inclined to accept the view that the provisions of MHA's OM dated 28.4.1965 would be applicable to the applicant. We have already noted that AI-386/50 is not applicable in his case.

In the circumstances, he cannot be denied the benefit of his proforma promotion consequent to his having passed SAS examination in 1981 on the ground that he did not physically join that post, as he was embodied in TA. This could not be the reason for denying him the benefit of proforma promotion and consequent pay and allowances which he would have drawn, had he been promoted as SO(A/C) from the date his next junior was promoted. Admittedly, he is not eligible for army pension, as his service falls short of 20 years which is the minimum period of qualifying aggregate period for embodied service in the case of officers in the TA. Note 6 under Rule 33 of CCS (Pension) Rules also does not appear to be relevant in the case of the applicant. His case is squarely governed by the MHA OM dated 24.4.1965.

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We have not been shown any other rule or administrative instructions governing the civil pensionary awards of the civil officers who are embodied in the TA and retire therefrom.

In the above conspectus of the case, we are of the view that the pensionary awards of the applicant should be made, reckoning the emoluments as he would have drawn had he been promoted on the basis of proforma fixation from the date his next junior was promoted as SO (A/C) after he had qualified in the SAS examination in 1981, progressing him thereafter in the relevant scale of pay in accordance with the Rules. He shall also be entitled to ante-dating his seniority according to relevant provisions in MHA's OM (supra).

In these circumstances of the case, we set aside the impugned order dated 16.5.1989. We further order and direct that the retiral benefits of the applicant shall be recomputed and differential paid to him most expeditiously but preferably within 16 weeks from the date of communication of this order.

The O.A. is diposed of, as above, with no order as to costs.

Dulupriya
(I.K. RASGOTRA)
MEMBER(A) 13/3/92

Oberto 13.3.92
(T.S. OBEROI)
MEMBER(J)

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