

(7)

Central Administrative Tribunal
Principal Bench, New Delhi

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O.A.No.2850/91

Date: 18.5.1992

Mool Raj Sharma

...Petitioner

Shri B.B.Raval

...Counsel for the
petitioner

Versus

Union of India & Others

...Respondents

Shri P.H.Ramchandani

...Sr. Counsel for
the respondents

CORAM:

THE HON'BLE MR. JUSTICE V.S.MALIMATH, CHAIRMAN.

J U D G M E N T (ORAL)

The grievance of the petitioner is that the pension which was fixed when he retired on 31.8.1978 has been sought to be abruptly reduced by the impugned order dated 4.11.1991 without any justification whatsoever. Though no reasons have been stated in the impugned order, in the reply affidavit it is stated that an error has been committed in ascertaining the average pay for 10 months preceding the retirement. What governs the computation of the emoluments is Rule 33 of CCS Pension Rules which provides that the expression "emoluments" means pay as defined in Rule 9(21) of the Fundamental Rules (including dearness pay, as determined by the order of the Government issued from time to time) which a Government servant was receiving immediately before his retirement or on the date of his death. Note

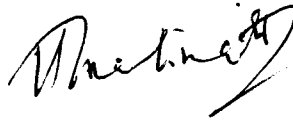
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6 to this Rule says that pay drawn by a Government servant while on deputation to the Armed Forces of India shall be treated as emoluments. In this case, the petitioner was working as Upper Division Clerk in the National Defence Academy at Khadakvasla. For nearly 16 years from 1962 to 1978, he worked with the National Territorial Army.

He came back to the National Defence Academy at Khadakvasla from where he voluntarily retired. Ten months immediately prior to his date of retirement, the petitioner had received 5 months pay as U.D.C. from the National Defence Academy and for the period of 5 months before that, he had received higher pay from the Territorial Army. It was thus that the average of these two amounts that was taken into account for computing the pension of the petitioner on the basis of Note 6 to Rule 33 of the CCS Pension Rules. What is now sought to be contended is that the petitioner could not have been treated as having been on deputation to the Territorial Army from 1962 to 1968. There is hardly any satisfactory material for the respondents to sustain their stand that the petitioner was serving in the Territorial Army for such a long period otherwise than on the basis of deputation. That being the position, the authorities were right when they first fixed the pension taking into account the pay drawn by the petitioner in the Territorial Army. There was

no justification for reduction of the same.

2. For the reasons stated above, this petition is allowed and the impugned order dated 4.11.91 is hereby quashed. The petitioner shall continue to draw pension as was fixed w.e.f. 1-9-1978 with consequential additions as might have been done in accordance with the relevant orders from time to time. No costs.



(V.S. Malimath)
Chairman

pkk.