

O.A. No. 2528/2004

New Delhi this the 2nd day of May, 2006

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. N.D. Dayal, Member (A)

Rajendera Pal Behl
S/o Sh. G.R.Behl
R/o 48 A, AD Block, Shalimar Bagh
New Delhi.

.....Applicant

(By Advocate: Sh. S.S.Shamshery)

Versus

1. Quarter Master General (QMG)
Army Hqrs, DHQ, PO
West Block III, R.K.Puram, New Delhi.
2. Deputy Director General Military Farm (D.D.GMF)
Army Hqrs, DHQ, PO
West Block III, R.K.Puram, New Delhi.
3. Director Military Farm (DMF)
HQ, Southern Command,
Kirkee, Pune, Maharashtra.
4. Officer Incharge
Military Farms Records, Delhi Cantt.
5. Officer Incharge
Military Farm Pimpri, Pune, Maharashtra.

Respondents

(By Advocate: Sh. Rajeev Bansal)

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The short question that arise for decision in the present case is whether the pay of the applicant on his voluntary retirement w.e.f. 17.5.97 has been correctly fixed. The applicant in the present OA has prayed for a direction to the respondents to fix his pension in the replacement pay scale recommended by the 5th Pay commission w.e.f. 20.1.99 and that he should be granted interest @ 9% p.a. w.e.f. 20.1.99 on Rs.57,552/- paid to him as DCRG and further respondent should be directed to pay the TA/DA on the journey undertaken by him as a consequence of his transfer.

2. The facts, which are relevant for deciding this OA are, that the applicant had been working as an Assistant Supervisor in the Military Farms, Rajouri in Jammu &

Kashmir. He remain unauthorisedly absent from duty from 1.6.89 to 8.5.1997. He joined on 10.5.97 and the period of his absence was regularized by the respondents by granting him extra ordinary leave. The applicant applied for voluntary retirement w.e.f. 20.1.99 and he was granted voluntary retirement w.e.f. 17.9.97. The applicant has been sanctioned pension at Rs.1275/- w.e.f. 18.5.97. According to the applicant, his pension ought to have been fixed in the pay scale recommended by the 5th Pay Commission. Earlier the applicant had filed an OA No.2499/2001 which was decided on 23.4.2002 and the respondents were directed to pay the retiral benefits and other dues to the applicant from the due date with interest @ 9.5% w.e.f. 20.1.99. On non-compliance of this order, the applicant moved the Tribunal for initiating contempt proceedings against the respondents which was disposed off on 5.8.2003 with a direction that the claim of the applicant would be considered in accordance with the order of the Tribunal dated 23.4.2002 within a period of 2 months positively. The respondents have again fixed the applicant's pension at Rs.1275/- p.m. The pension is to be computed on the basis of the average emoluments for the last 10 months and the respondents have calculated 16 days in the new pay scale and the remaining 9 months and 14 days in the pre-revised pay scale. The benefit of the revised pay scale, as such, has not been granted to the applicant. The contempt petition filed by the applicant was disposed off on 3.8.2004 allowing the applicant to seek his remedy in accordance with law.

3. The respondents have repudiated the claim of the applicant. In the counter reply the respondents have stated that the applicant was working as Assistant Supervisor at Military Farms, Rajouri and he was transferred to Military Farms, Pimpri by letter dated 5.5.1989. He was relieved from Military Farm, Rajouri to join the post at Military Farm, Pimpri on 1.6.89 vide movement order dated 23.5.89. The applicant neither reported for duty at Military Farm, Pimpri nor applied for leave till 8.5.1997. On 9.5.97, he reported at Military Farm Pimpri and submitted application for grant of extra ordinary leave from 1.6.89 to 24.4.97 after treating the period from 25.4.87 to 8.5.97 as joining/journey period. After joining on 19.5.97, he applied for voluntary retirement by his application dated 10.5.97 and without awaiting for the approval and sanction from the higher authorities he left the farm on 19.5.97. His request for

voluntary retirement was accepted on 20.1.99 but w.e.f. 17.5.97. The applicant was on extra ordinary leave for about 8 years. He was drawing Rs.1480/- as pay in the old pay scale. On his joining his pay was fixed at Rs.4600/- in the revised pay scale, i.e. in the pay scale of Rs.4000-6000, which is the replacement scale as per the recommendation of the 5th Pay Commission. The pension is to be fixed on the average emoluments received by the pensioner during the last 10 months. The applicant had worked for only 16 days in the revised pay scale, therefore, the pay for the period of 9 months and 14 days was computed in the old pay scale. The average emoluments of the applicant worked out to be Rs.1636/- and the pension was computed accordingly at Rs.818/- but he was paid minimum pension prescribed under the rules, Rs.1275/- p.m. plus applicable dearness allowance. His retirement gratuity was worked out on the basis of Rs.4600/- and the order of revised gratuity has been passed by PCDA (Pension), Allahabad vide corrigendum dated 18.10.2003 and the DCRG of Rs.81972/- was paid in place of Rs.24420/-

4. In the rejoinder the applicant has reiterated his own case.

5. We have heard the learned counsel for the parties and have gone through the record.

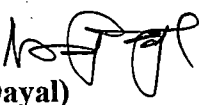
6. It is admitted that the applicant had been sanctioned extra ordinary leave for the period of his absence from duty from 1.6.1989 to 24.4.97 after treating the period from 25.4.97 to 8.5.97 as joining/journey period. It is also not in dispute that the applicant was drawing pay of Rs.1480/- p.m. in the pre-revised scale on 1.6.89 and that on joining back the duty on 9.5.97, his pay was fixed at Rs.4600/- in the revised pay scale as recommended by the 5th Pay Commission. It is also admitted that after joining the duties on 9.5.97, the applicant worked in the revised pay scale only up to 17.5.1997. As such, the applicant had worked in the revised pay scale only for 16 days and has been paid salary for the said period on the basis of his basic pay of Rs.4600/- plus the due allowances. There is also no dispute on the total quantum of the pensionable qualifying service rendered by the applicant. Rule 34 read with clause (b) of sub-rule (1) of Rule 3 of the CCS (Pension) Rules, 1972 has defined the average emoluments to be determined with reference to the emoluments drawn by the Government servant during last 10 months of his service. The pension is to be computed as such on the

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basis of the average emoluments drawn during the last 10 months of his service. Note 2 below Rule 34 is relevant. It has stated that "if, during the last 10 months of his service, a Government servant had been absent from duty on extraordinary leave, or had been under suspension the period whereof does not count as service, the aforesaid period of leave or suspension shall be disregarded in the calculation of the average emoluments and equal period before the ten months shall be included". As a result, the period during which the applicant was sanctioned extraordinary leave on his request shall not be taken into consideration for determining the average emoluments. The respondents have only counted the 16 days during which he had worked in the revised pay scale as recommended by the 5th Pay Commission and have computed the emoluments of the remaining period of 9 months and 14 days in pre-revised scale which he was receiving prior to extra-ordinary leave period to compute the average emoluments of the applicant on the basis of which the pension of the applicant was to be determined. There is no error in the method the applicant's average emoluments were determined and pension calculated. The learned counsel for the applicant has not been able to cite ~~out~~ any rules or Government instructions under which the period during which the applicant had been on extraordinary leave is to be reckoned for determining the average emoluments for fixing the pension.

7. As a result, the order of the respondents does not suffer from any legal infirmity.

8. No other point has been raised and urged by the learned counsel for the applicant before us. Accordingly, the OA is dismissed leaving the parties to bear their own costs.


(N.D. Dayal)
Member (A)


(M.A. Khan)
Vice Chairman (J)

Rakesh