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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 2592/2004

This the 27th day of January, 2006

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)

Hakim A.J.Khan
Ex-Reader
R/o B-30 Abul Fazal Enclave,
Part I P.O. Jamia Nagar,
Okhla, New Delhi-110025.

(By Advocate: Sh. S.D.Raturi)

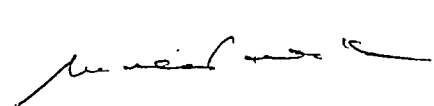
Versus

1. Hon'ble Lt. Governor,
Government of N.C.T. of Delhi,
Raj Niwas, Rajpur Road, Delhi.
2. Government of N.C.T. of Delhi
through its:
Chief Secretary, Govt. of N.C.T. of Delhi
Delhi Secretariat, I.P.Estate,
New Delhi-110002.
3. Government of N.C.T. of Delhi
through its:
Principal Secretary, Health & Family Welfare
Govt. of N.C.T. of Delhi
Delhi Secretariat, I.P.Estate,
New Delhi-110002.
4. The Director (I.S.M.&H.)
A&U Tibbia College Campus
Government of N.C.T. of Delhi
Karol Bagh,
New Delhi-110005.
5. Joint Secretary, (I.S.M.&H.)
A&U Tibbia College Campus
Government of N.C.T. of Delhi
Karol Bagh,
New Delhi-110005.

(By Advocate: Ms. Renu George)

ORDER

Applicant who had been working as a Reader in A&U Tibbia College in the pay scale of Rs.12000-18000 retired on 31.1.2000. His grievance is that he has not been paid pension, gratuity, amount of commutation of pension and the arrears of his pay and allowances w.e.f. 1.1.96. The present OA is filed for a direction to the respondents to



release the pension, retirement benefits along with interest @ 18% p.a. from the date of retirement to the date of its actual payment.

2. The respondent in their counter have stated that the matter regarding framing of recruitment rules for the post of Readers and Professors is under the examination of the Central Government and after the concurrence of the Central Government to the draft recruitment rules is received, the same would be sent to UPSC for its consideration/concurrence, thereafter rules will be published and notified and only thereafter the process of appointment under the Government either in its initial constitution or subsequent thereto would be taken up.

3. I have heard the learned counsel for the parties and have perused the relevant record.

4. Relevant facts are not in dispute. The applicant was initially appointed as Lecturer in A&U Tibbia College which was established under Tibbia College Act, 1952 and he was in due course promoted to the post of Reader and on attaining the age of superannuation has since retired from service on 31.1.2000. In the meantime by Tibbia College (Take Over) Act, 1997 was enacted and A&U Tibbia College was taken over by Government of NCT of Delhi w.e.f. 1.5.98. Section 7 of the aforesaid Take Over Act related to the existing employees of the College. It has provided as under:-

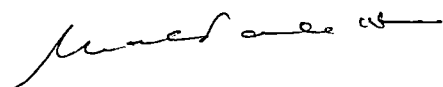
“7. Where the services of a person, who has been immediately before the appointed day employed in the College, are, in the opinion of the Government necessary having regard to the requirements of the college he shall become from the date of his appointment by the government, an employee of the Government and shall hold office or service in the Government with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such college had not been transferred to and vested in the government and continue to do so unless and until his employment in the college is duly terminated or until his remuneration and terms and conditions of employment are duly altered by the Government;

Provided that such employees shall, in themselves, constitute a separate class and group of employees of the government and shall not be equated to or merged with the other employees of the Government.”

5. The expression ‘appointed day’, as defined by clause (a) of Section 2 of the Act 1997 means, the day on which the Act 1997 comes into force, which is 1.5.1998. The salient features of this section are as follows. (i) The provision will apply to those persons who were in the employment of the College on 1.5.1998 on which date the Act 1997 came into force and (ii) the State Government was to consider immediately (on 1.5.1998

or soon thereafter) whether the services of all those employees were necessary having regard to the requirement of the College and having formed this opinion it was to give appointment to them. As a result of the appointment made under this rule, the employees (i) will become, from the date of such appointment, Government employees, (ii) such appointees will have right and privileges as to pension, gratuity and other matters as would have been admissible to them before the taking over of the College by the Government and (iii) such employees will be governed by those rules (i.e. which governed their services prior to 1.5.1998) till their employment is terminated or the terms and conditions of their employment are altered. The proviso to Section 7 further stipulated that the employees are appointed under Section 7 will constitute a separate class and group of Government employees and they will not be equated to or merged with other employees of the Government.

6. It is admitted in the counter reply that the Government has still not carried out the exercise which it was required to do immediately before 1.5.98 or soon thereafter, i.e., form an opinion that the services of the applicant are "in the opinion of the Government necessary having regard to the requirement of the College" and decide about the appointment of the applicant in the Government service. The applicant would become employee of the Government of NCT of Delhi only after the appointment letter in accordance with the first part of Section 7 is issued. The consequence are that the rights and privileges of the applicant as to pension, gratuity and other matters would be regulated by the rules, regulations which had regulated his service immediately before his becoming a Government employee by an order issued under Section 7. Section 16 of the Take Over Act while repealing the Tibbia College Act, 1952 had saved the rules and regulations framed thereunder. In terms of Section 7 aforesaid those rules and regulations concerning pension, gratuity and other retrial dues of the applicant would continue to apply to the employees of the college who had become employees of the Government by virtue of Section 7 aforesaid till such time those rules and regulations were altered or the employment was determined. It is not the case of the parties that those rules and regulations/notifications or conditions of service relevant for settling the pension and other pensionary claims retrial dues of the applicant have been altered. As



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such, the applicant would continue to be governed by those rules and regulations and would be entitled to the settlement of his pensionary and retrial claims as per those rules.

7. But the question of settlement of the pension, gratuity etc. would arise only after the respondent Government of N.C.T. of Delhi had carried out the exercise stipulated in the first part of Section 7 of the Tibbia College (Take Over) Act, 1997. It is really disturbing that although over six long years have passed the Government of NCT of Delhi has still not been able to carry out the mandate of first para of Section 7. According to the averment made in the counter reply the State Government has not been able even to obtain the concurrence of the Central Government to the draft recruitment rules framed by it which has caused persons like the applicant great inconvenience and deprived them of their legitimate pensionary dues admissible under rules, in the evening of their life.

8. Counsel for both the parties have fairly submitted that the pensionary claims and other dues of the applicant cannot be settled unless and until the Government of NCT of Delhi undertakes the exercise as per the mandate of Section 7 of the Tibbia College (Take Over) Act, 1997 and decide about the appointment of the applicant and other similarly situated persons. Therefore, it was suggested and they have agreed that the proper course for the Tribunal at this stage would be to give a direction to the respondent to do that exercise without further delay and thereafter settle the claim of the applicant made in the present OA as per applicable rules. More or less in similar situation this Tribunal in OA-465/2005 vide order dated 29.11.2005 has already directed the Government of NCT to carry out the exercise which was mandatory as per first part of Section 7 within the period stipulated by the order. A similar order may be passed in the present case also.

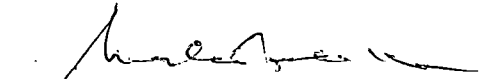
9. Accordingly, the present OA is disposed of with a direction to the respondents to carry out the exercise which the Government of NCT^{of Delhi} was obliged to do as per first part of Section 7 and decide about the appointment of the applicant in government service as on 1.5.98 within a period of three months from the date on which certified copy of this order is received by the respondents.

10. After the compliance of the requirement of first part of Section 7 is satisfied and in case the applicant is appointed in the government service, the respondents are further directed to settle the claim of the applicant for pension, gratuity, commutation of pension

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and payment of arrears of pay and allowances payable to the applicant as admissible under the rules and regulations applicable to the applicant in the light of the later part of Section 7 of Tibbia College (Take Over) Act 1997 within two months of the order passed.

11. The respondents are also directed to consider the claim of the applicant towards interest on account of delay in payment of his dues, if any. Parties are left to bear their own costs.



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

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