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**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.2755/2004

Friday, this the 3rd day of February 2006

Hon'ble Shri Shanker Raju, Member (J)

Dr. (Miss) Prabha Sharma
R/o 133, Engineer's Estate
21, IP Extension
Patpar Ganj, Delhi-92

..Applicant

(By Advocate: Shri SD Raturi)

Versus

1. Hon'ble Lt. Governor
Government of NCT of Delhi
Raj Niwas, Rajpur road
Delhi
2. Govt. of NCT of Delhi
through its
Chief Secretary, Govt. of NCT of Delhi
Delhi Secretariat, IP Estate
New Delhi-2
3. Govt. of NCT of Delhi
through its Principal Secretary
Health & Family Welfare
Govt. of NCT of Delhi
Delhi Secretariat
IP Estate, New Delhi-5
4. Director (ISM&H)
AIU Tibbia College Campus
Govt. of NCT of Delhi
Karol Bagh, New Delhi-5
5. Joint Director (ISM&H)
Govt. of NCT of Delhi
A&U Tibbia College Campus
Karol Bagh, New Delhi-5

..Respondents

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(By Advocate: Shri Vijay Pandita)

ORDER

By virtue of the present OA, the applicant seeks her pensionary benefits with 18% interest.

2. The applicant was lastly promoted as a Reader w.e.f. 1.12.1996. As per amendment carried out by the Govt. of NCT on 21.7.1997 under clause 'C' of Section 16 of Tibbia College Act, 1952, 'fund-cum-pension-cum-gratuity' was approved for the employees of Tibbia College. There was contributory fund of the Board to which every employee, who has completed more than 3 years service and whose pay is chargeable to regular establishment, was required to subscribe an equal amount, which shall be contributed by the Board. However, this CPF was transferred to the Employees Provident Fund Commissioner w.e.f. 1.4.1982. In the year 1995, EPF came into force w.e.f. 16.11.1995. As Tibbia College was taken over by the Govt. of NCT of Delhi w.e.f. 1.5.1998, the management of college was transferred to and vests absolutely in the Govt. Section 7 of Tibbia College Take-over Act, 1997 provides in relation to the employees, who were in service on 1.5.1998 to hold the office in the Govt. with the same right and privileges as to the pension and gratuity. A sum of Rs.247/- PM on account of pension received by the applicant under EPF Scheme, 1995, which she has refunded by a sum of Rs.33926/- to the Regional Provident Fund Commissioner, Delhi vide her letter dated 5.1.2004. A sum of Rs.187491/- was received by the applicant as leave encashment. On representation to finalize the pension and retrial benefits, no satisfactory reply has come forth.

3. Learned counsel would contend that in a case decided by a co-ordinate Bench in *Hakim A.J. Khan v. Lt. Governor & others* (OA-2592/2004) decided on 27.1.2006 directions have been issued to the respondents to carry out the exercise, which the Govt. of NCT was obliged under Section 7 *ibid* and thereupon to settle the claim of the applicant therein for pension, gratuity and commutation and payments of arrears of pay and allowances within two months. It was

also directed to consider the claim of the applicant towards interest on account of delay in payment.

4. Learned counsel for applicant states that the case of the applicant, in all fours, is covered by the above ratio.

5. On the other hand, Shri Vijay Pandita, learned counsel for respondents vehemently opposed the contentions and stated that for want of any decision, the applicant has not been declared as an employee of the Govt. and Govt. of NCT has limited liability. The rules having been notified with consultation of UPSC are under examination. The applicant having not completed 2 years service with the Govt., is not entitled for pension.

6. I have carefully considered the rival contentions of the parties and perused the material placed on record.

7. In Hakim A.J. Khan's case (supra) where the applicant was retired on 31.1.2000, the Tribunal had made the following observations:-

"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 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 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."

8. In the light of above, I am of the considered view that unless under Section 7 of the Tibbia College Take-over Act, 1997 Govt. of NCT carries out an exercise, the claim for pension, gratuity and other ancillary benefits as also the interest on delayed payment, cannot be worked out.

9. In the result, for the foregoing reasons, I am satisfied that the case of the applicant is, in all fours, squarely covered by the decision of this Tribunal in Hakim A.J. Khan's case (supra). Accordingly, the present OA is disposed of with directions to the respondents to carry out the exercise, which Govt. of NCT was obliged to do as per first part of Section 7 *ibid* and decide about the appointment of the applicant in Govt. service w.e.f. 1.5.1998 within a period of three months from the date of receipt of a copy of this order. After the above compliance, if Section 7 is satisfied, the respondents are further directed to settle the claim of the applicant for pension, gratuity, commutation of pension and payments of arrears of pay and allowance as admissible under the rules and regulations in the light of the later part of Section 7 *ibid* within two months thereafter. The

respondents shall also consider the claim of the applicant towards interest on account of delay in payment of her dues in accordance with the pronouncements of the Apex Court. No costs.

S. Raju
(Shanker Raju)
Member (J)

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