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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.682/2004

This the 8th day of October, 2004.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Ex. Ct. Ajeet Singh S/O late Nand Lal,
House No.32A, Mandir Mohalla,
Samai Pur, Samai Pur Badli,
Delhi.

... Applicant

(By Shri N. Safaya, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Home Affairs,
North Block, New Delhi.
2. Govt. of NCT of Delhi through
Chief Secretary,
5th Sham Nath, Delhi.
3. Commissioner of Police,
Delhi Police, Police Headquarters,
New Delhi.

... Respondents

(By Shri Ajesh Luthra, Advocate)

ORDER

Hon'ble Shri V.K.Majotra, Vice-Chairman (A) :

The applicant and 17 other officials of Delhi Police were dismissed from service w.e.f. 14.4.1967 by Presidential orders under provisions of Article 311(2)^(c) of the Constitution of India. By virtue of the present OA, applicant has sought grant of pension/pensionary

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benefits on the basis of service rendered by him prior to his dismissal from service on 14.4.1967.

2. It is not disputed that applicant and others had filed a Writ Petition in the High Court against their dismissal from service. The Writ Petition was dismissed. Later on, they filed petitions in the Hon'ble Supreme Court of India, which quashed the impugned orders. The 18 petitioners were, therefore, reinstated in service from the date of dismissal, i.e., 14.4.1967 and given admissible benefits. The President again dismissed them vide order dated 5.6.1971. the petitioners filed CWP 100-W/72 in the High Court of Delhi. It was dismissed. Thereupon the petitioners preferred a Civil Appeal before the Hon'ble Supreme Court vide No.1491-1501/74. By order dated 31.7.1987, the Hon'ble Supreme Court decided that respondents pay them a lump sum amount instead of paying a recurring allowance. In the case of dismissed Sub Inspectors, a lump sum amount of Rs.60,000/-; in the case of dismissed Head Constables, Rs.50,000/-; and in the case of Constables, a lump sum amount of Rs.40,000/- was directed to be paid in lieu of compassionate allowance. Another Civil Misc. Petition No.20363/1987 in Civil appeal Nos.1491-1501/1974 : Bakshi Sardari Lal v. Union of India was filed before the Hon'ble Supreme Court for clarification, which was disposed of vide order dated 27.8.1987 (Annexure R-4) to the effect that those who had not joined in the earlier petitions, would also be paid in accordance with the

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scales indicated in order dated 31.7.1987. The applicant and 17 others filed a petition against order dated 31.7.1987 made by the Hon'ble Supreme Court to the President of India, praying for grant of pension. The decision rejecting that was conveyed to ex-Head Constable Dev Raj vide letter dated 3.3.2000. Ex HC Dev Raj filed another Writ Petition 622/2002 before the Hon'ble Supreme Court which was dismissed as withdrawn. Shri Dev Raj filed OA No.285/2003 before the Tribunal seeking grant of pension on the basis of the claimed qualifying service. This OA was disposed of on the death of the applicant. Legal heirs of the applicant were not brought on record.

3. The learned counsel of applicant stated that the present applicant has filed this OA similarly as Shri Dev Raj had as the question involved therein remained undecided.

4. The learned counsel of applicant contended as follows :

- (1) As no order to forfeit applicant's pension had been made by a competent authority, applicant would be entitled to grant of pension for the period he remained in service prior to his dismissal. Such period would constitute qualifying service for pensionary benefits. The learned counsel relied on (2002) 1 SCC 428 : **Lt. Col. (T.S.) Harbans Singh Sandhu v. Union of India & Ors.**

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- (2) A Government servant is entitled for pension and gratuity on completion of requisite period of service (20 years for pension and 5 years for gratuity) as per Rule 14 and Rule 49 of the Central Civil Services (Pension) Rules, 1972 (herein after referred to as the Pension Rules).
- (3) The President can withhold pension or gratuity or both, in full or in part, if the pensioner has been found guilty of grave misconduct or negligence during the period of service. As no orders have been passed in the present case forfeiting or withholding applicant's pension or gratuity, he is entitled to pension on the basis of service rendered by him.

5. The learned counsel of the respondents contended that applicant's case has no relevance with the case of Dev Raj who had died while his OA was pending before the Tribunal and his legal heirs were not brought on record. The learned counsel further stated that with the punishment of dismissal from service, it is not necessary to pass any orders regarding forfeiture of pensionary benefits. The service rendered by such an official stands forfeited and so his pension and gratuity. The learned counsel relied upon Rule 41 of the Pension Rules. The following provisions of the Pension Rules are relevant for adjudicating the matter :





“9. Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement.”

“13. Commencement of qualifying service

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantially or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post:

Provided further that –

- (a) in the case of a Government servant in a Group ‘D’ service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and
- (b) in the case of a government servant not covered by Clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity.”

“24. Forfeiture of service on dismissal or removal

Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service.”

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"41. Compassionate Allowance

(1) A government servant who is dismissed or removed from service shall forfeit his pension and gratuity:

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a Compassionate Allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.

(2) A Compassionate Allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of Rupees three hundred and seventy-five (*Rupees one thousand two hundred and seventy five from 1-1-1996 see GID below Rule 49*) per mensem."

"49. Amount of Pension

(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.

(2) (a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem;

(b) in the case of a government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the

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amount of pension shall be less than Rupees three hundred and seventy-five per mensem;

(c) notwithstanding anything contained in Clause (a) and Clause (b), the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of Rule 54.

(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service.

(4) The amount of pension finally determined under clause (a) or Clause (b) of sub-rule (2), shall be expressed in whole rupees and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee."

6. We have considered the rival contentions. Indeed, applicant's case has no relevance to the case of Shri Dev Raj who had died during the pendency of his OA and his legal heirs had not substituted him.

7. The case of Lt. Col. (T.S.) Harbans Singh Sandhu (supra) is distinguishable. While under the Pension Regulations for the Army, 1961 it is obligatory to pass orders of forfeiture of pension/gratuity of the cashiered army officers, there is no such requirement of passing an order under the CCS (Pension) Rules or CCS (CCA) Rules. Provisions of Rule 9 of the Pension Rules relate to the pensioners on being found guilty of grave misconduct or negligence during the period of service. In the present case, applicant had not become a pensioner and was dismissed from

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service during the course of his active service. As such, provisions of Rule 9 *ibid* would not apply to his case. The provisions of Rule 24 of the Pension Rules clearly state that dismissal or removal of a Government servant from a service or post entails forfeiture of his past service. In the light of this clear provision for forfeiture of past service on dismissal or removal from service, there is no question of considering applicant's service prior to dismissal from service as qualifying service for pensionary benefits. Applicant has been granted compassionate allowance in terms of Rule 41 of the Pension Rules, which also states that a Government servant dismissed or removed from service, forfeits his pension and gratuity. The Hon'ble Supreme Court on a special consideration has allowed compassionate allowance to him. He is not entitled to counting of past service as qualifying service for pension under the provisions of the Pension Rules when Rule 24 and Rule 41 specifically provide for forfeiture of past service and forfeiture of pension and gratuity in the case of government servants dismissed or removed from service.

8. Following the above discussion, we have no hesitation to conclude that it is not necessary to pass any orders by any authority regarding forfeiture or withholding of pension/gratuity in the case of Government servants dismissed or removed from service. They are not entitled to any pensionary benefits excepting compassionate

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allowance on a special dispensation under Rule 41 of the Pension Rules.

9. In result, this OA is dismissed being destitute of merit, however, without any order as to costs.

S. Raju
(Shanker Raju)
Member (J)

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A)

/as/