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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A. No. 1740/1992

New Delhi: this the 30th day of July, 1997.

HON'BLE MR. S. R. ADIGE, MEMBER(A)

HON'BLE MRS. LAKSHMI SUMINATHAN, MEMBER(J)

Shri Vinod Kad (Ex. Serviceman)
S/o Late Shri Ganesh Das Kad
Aged about 50 years,
R/o 80/74, Malviya Nagar,
New Delhi- 110017.

Working as Team Commander,
in Technical Support Group of
National Security Guard,
New Delhi

.....Applicant.

(By Advocate: Shri N.K. Gupta)

Parties

1. Union of India,
through

The Cabinet Secretary,
Govt. of India,

Cabinet Secretariat,
Rashtrapati Bhawan,
New Delhi.

2. The Secretary,
Ministry of Personnel, Public Grievances & Pensions,
Dept. of Personnel & Training,
North Block,
New Delhi - 110001.

3. The Secretary,
Research & Analysis Wing (RAW)
Room No. 8-8, South Block,
New Delhi - 110011

.....Respondents.

(By Advocate: Shri S.M. Arif)

JUDGMENT

HON'BLE MR. S. R. ADIGE, MEMBER(A)

Applicant seeks quashing of respondents' letter dated 26.5.92 (Annexure-A7) rejecting his prayer for exercising option for pay fixation u.s.o.

25.1.83 in terms of Defence Ministry's O.M. dated 8.2.83 and prays that the option exercised by him by letter dated 11.6.87 be treated as legal and valid with consequential benefits.

2. Applicant is an Ex-serviceman who retired from the Air Force on 31.12.75 on a monthly pension of Rs.125/- p.m. Before his retirement applicant had applied for the post of Research Assistant in RAW and was re-employed there u.e.f. 11.6.76. His pay was fixed in the minimum of scale of Rs.425-700 and after ignoring Rs.50/- from the pension component of Rs.124/- . Later this ignorable part of Rs.50/- was increased to Rs.125/- u.e.f. 19.7.78 vide Finance Ministry's Memo of said date. Applicant's pension was revised to Rs.151/- p.m. u.e.f. 1.4.79 as a consequence of a judgment of the Hon'ble Supreme Court, but he contends that this increase of Rs.27/- p.m. in pension was also deducted from his salary. He states that on 1.10.82 he was promoted as Sr. RA. By OM dated 8.2.83 it was decided that u.e.f. 25.1.83 in case of those Ex-Servicemen who retired before attaining 55 years of age, the first Rs.250/- of pension would be ignored for all service officers and in case of personnel below Commissioned rank, the entire pension (for this purpose pension was to include pension equivalent of gratuity and other forms of retirement benefits). In case of persons such as applicant, who were on re-employment, the pay was to be refixed accordingly provided they opted to come under these orders. Option was to be exercised within six months and once exercised

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use to be final.

3. Applicant contends, and respondents do not categorically deny in their reply that he was not shown the said OM within time. He asserts that he came to know of it only in May/June, 1987 and immediately he did so, he made a representation on 11.6.87 (Annexure-A3) and exercised his option in terms of OM dated 8.2.83. However, he states that despite repeated representations respondents took no action, until then eventually issued impugned letter dated 26.5.92 rejecting his prayer while applicant contends apart from being illegal and arbitrary has put him to considerable financial loss.

4. We have heard applicant's counsel Shri M.K. Gupta and respondents' counsel Shri S.M. Arif. We have also perused the materials on record and given the matter our careful consideration.

5. Although respondents contend that applicant had feigned ignorance of their OM dated 8.2.83, we have already noticed that in their reply they themselves do not categorically deny that the said OM was not shown to applicant within the prescribed period for submitting option. Applicant has contended that he submitted his option on 11.6.87 immediately he became aware of the contents of OM dated 8.2.83 and prima facie we have no reasons to disbelieve him.

6. In this background, and having regard

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to the facts and circumstances of this particular case, we see no reasons why applicant should be denied the benefit of OM dated 8/2/83. This OA therefore succeeds and is allowed. Respondents' impugned letter dated 26.5.92 is quashed and set aside and they are directed to treat the option exercised by him by letter dated 11.6.87 (Annexure-A3) as legal and valid. Necessary orders in accordance with rules and ^{instruction} ~~orders~~ should be passed by respondents with consequential benefits within three months from the date of receipt of a copy of this judgment. No costs.

Lakshmi Srinivasan
(MRS. LAKSHMI SRINIVASAN)
MEMBER(J)

K. Rajagopal
(S. R. ADIGE)
MEMBER(A)

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