

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. No. 3315/92

T.A.No.

Date of decision 31-7-98

Sh.J.R.Sharma

... Petitioner

Dr.D.C.Vohra

... Advocate for the
Petitioner(s)

 VERSUS

UOI & Ors

... Respondents

Sh.M.K.Gupta

... Advocate for the Respondents

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The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

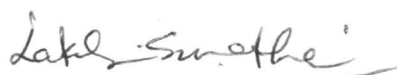
The Hon'ble Shri K.Muthukumar, Member (A)

1. To be referred to the Reporter or
not?.

Yes

2. Whether it needs to be circulated to
other Benches of the Tribunal?

No.


(Smt.Lakshmi Swaminathan)
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

...
OA.No.3315 of 1992

New Delhi, this 31st day of July, 1998

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER(J)
HON'BLE SHRI K. MUTHUKUMAR, MEMBER(A)

J.R. Sharma
S/o Shri Balmukund Sharma
R/o F/265-C Dilshad Garden
DELHI 110095.

... Applicant

By Advocate : Dr D. C. Vohra

versus

Union of India, through

1. The Secretary
Ministry of Environment & Forests
Pariyavarani Bhawan
CGO Complex, Lodi Road
NEW DELHI 110003.

2. National Zoological Park
Through its Director
Mathura Road
NEW DELHI 110003

... Respondents

By Advocate: Shri M.K. Gupta

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, M(J)

The applicant has filed this application seeking the following main reliefs:

"8(1) A direction to the respondents-1&2 to re-fix the pension and other pensionary benefits such as the DCRG, taking into account;

(a) the army service rendered by the applicant;

(b) special pay admissible to him for looking after the library work, and the pay admissible to him against the upgraded/promotional post of the Sr. Stenographer in the office of the respondent-2; and

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(c) pay admissible to him in the promotional posts of Office Superintendent/Administrative Officer from the dates these posts fell vacant;"

The Sub-clauses of this clause are consequential reliefs.

2. The applicant submits that he has worked with the Army from 1945 to 1953 before joining the civil service in the Settlement Office and thereafter he joined respondent no.2 as Stenographer. During the period of service with respondent no.2 between 1973 to 1990, he has submitted that he was implicated in a criminal case and the respondents fixed his provisional pension at Rs.170 p.m. during the pendency of the criminal case vide order dated 23.7.86. The Delhi High Court, by the order pronounced on 22.5.90 allowed the applicant's appeal and set aside the charges in the criminal case. Thereafter, the respondents passed the order dated 12.4.91 working out his pay and pensionary benefits as if he was deemed to have been in government service. They, however, rejected his request for upgradation/promotion on the ground that it was not in accordance with the rules and orders. Thereafter the applicant had made a number of representations and then he has filed this OA seeking the aforesaid reliefs.

3. We have seen the reply filed by the respondents as well as heard Shri M. K. Gupta, learned counsel. He has submitted that by the

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applicant's own representation dated 5.8.91, he has stated that he had been granted one year's war service for the period from 31.3.45 to 31.3.46 for the services rendered by him in the Indian Army Medical Corps. We find that this is in accordance with the provisions of the CCS(Pension) Rules, 1972. Learned counsel has submitted that the applicant was not entitled to further benefits of Army service because he has already taken the terminal benefits while leaving the Army service which he had not refunded. It is ~~also~~ further pointed out that no option as required under the rules, had been exercised by the applicant. In this connection, Dr D.C. Vohra, learned counsel has submitted that by O.M. dated 18.9.78 the Government had permitted the Army services to be counted for the purpose of pension. He was, however, unable to show us any document that the applicant had exercised his option within the period prescribed in the O.M. We therefore find that the claim of the applicant to include the Army Service in the civil service for pension purposes is not sustainable. Accordingly the claim in para-8 (1)(a) of the OA, is rejected.

4. With regard to the Special Pay claimed by the applicant, having regard to the provisions of F.R.9(21)(a) read with Rule 33 of the CCS(Pension) Rules, 1972, we find this pay is not to be included as part of the 'emoluments'. Hence this claim is also not sustainable and is accordingly rejected.

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5. Dr D.C. Vohra, learned counsel has submitted that in accordance with the O.M. dated 29.6.72 (Copy placed on record), since the applicant was working with the Director, National Zoological Park, New Delhi at the relevant time, he was entitled to the upgradation of the post of Stenographer in the higher pay scale of Rs.310-426.

Paragraph-1 of O.M. dated 29.6.72 is reproduced below:

"The posts of Stenographers attached to Officers in subordinate offices and other offices of the Government of India whose status is higher than that of a Deputy Secretary to the Government of India, shall be _____ in _____ the _____ scale _____ of Rs.210-10-290-15-320-EB-15-425 if the posts are at present in a lower pay scale. Consequently, such of the posts of Stenographers attached to the officers of the type mentioned above, which are in a lower pay-scale, shall be upgraded to the higher pay scale of Rs.310-10-290-15-320-EB-15-426." (emphasis added)

6. Shri M. K. Gupta, learned counsel on the other hand has submitted that there was no upgradation of the post of Stenographer in the case of the Zoological Park as the applicant was not posted with an officer of the rank of Deputy Secretary or higher. We find from the applicant's own representation dated 3.8.92 that he has stated that the pay scale of the Director, Delhi Zoological Park was revised from Rs.1100-1400 to 1300-1800 w.e.f. 1.10.66 when the post was included in the Indian Forest Service. If this is so, then it shows that the post of the Director in the Zoological Park is not equivalent even to the post of Deputy Secretary's grade in the Central Government. Therefore, at the relevant period, the

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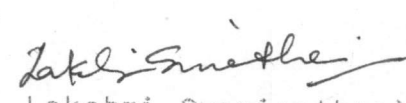
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applicant was attached to an officer whose status was not higher than that of a Deputy Secretary to the Government of India. In the circumstances, the claim for automatic upgradation of his post in the higher scale in terms of O.M. dated 29.6.72 is also not sustainable and is rejected.

7. Another submission made by Dr. D.C. Vohra, learned counsel is that since there has been considerable delay in fixing the pension of the applicant between the time when his provisional pension was fixed at Rs.170 p.m. and the order dated 12.4.91, some interest should be paid to the applicant. We find this claim also not sustainable, in view of the fact that the final pension orders have been passed in accordance with law and rules after the judgment of the Delhi High Court was delivered on 22.5.90. In the order dated 23.7.86, the respondents **clearly** have/mentioned that the applicant was granted provisional pension of Rs.170 p.m. together with the additional relief as admissible under the rules, until the conclusion of the judicial proceedings and final orders thereon. Therefore, the claim for interest for the intervening period is also without any basis and is rejected. We have also considered the other submissions on behalf of the applicant but find no merit in the same.

8. In the result the application fails and is accordingly dismissed. No costs.


(K. Muthukumar)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)