

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD

ORIGINAL APPLICATION NO. 629/2001

THURSDAY, THIS THE 19TH DAY OF SEPTEMBER, 2002

HON'BLE MR. S. DAYAL, MEMBER-A  
HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

Radhey Shyam Sharma, S/o Late Jagat  
Prasad, R/o B-276, Shyam Nagar,  
Kanpur. .... Applicant

(By Advocate Shri H.S. Srivastava)

Versus

1. Union of India, through the Secretary,  
Ministry of Defence,  
New Delhi.
2. Engineer-in-Chief,  
Army Headquarters,  
Kashmir House,  
New Delhi.
3. Chief Engineer, Central Command,  
Lucknow.
4. Garrison Engineer, E & M,  
Chakeri, Kanpur.
5. Principal Controller of Defence  
Accounts (Pensions),  
Allahabad .... Respondents

(By Advocate Shri R.C. Joshi)

O R D E R

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

By this application the applicant has sought the following reliefs:-

- (i) to issue orders/directions to respondents to pay interest @ 12% per annum on the delayed payment of Death Cum Retirement Gratuity from 1.6.1989 till the date of actual payment.
- (ii) to issue orders/directions to respondents to calculate and pay commuted value of pension at the purchase value of Rs.10.46 P., which is applicable at the age of 59 years, the age next birthday of superannuation with interest @ 18% after adjustment of the amount already paid.
- (iii) to issue orders/directions to the respondents to pay leave encashment for balance leave of 175 days with interest @ 18% per annum with effect from 1.3.89 till the date of actual payment.



(iv) to issue orders/directions to the respondents to pay the amount of Rs. 21,447/- recovered from the D.C.R.G. as damage rent with interest @ 18% per annum from the date of recovery till the date of actual payment.

(v) to issue orders/directions to the respondents to consider the case of applicant for promotion to the grade of Executive Engineer and promote him to that post notionally from the date his junior was promoted with all consequential benefits.

(vi) to issue orders/directions to the respondents which the Hon'ble Court may deem fit in the circumstances of the case.

(vii) to award costs of the suit.

2. It is submitted by the learned counsel for the applicant that this is a second round of litigation and he had to file the second O.A. as all the reliefs arising out of the judgement given <sup>in</sup> ~~by~~ the earlier O.A. were not complied with by the respondents and it was specifically mentioned in the orders passed in the contempt petition that the learned counsel for the applicant still has a few demands left on them <sup>however that</sup> ~~cannot~~ be allowed to stand in the way of disposal of this contempt petition. ~~and since~~ no case of deliberate dis-obedience is made out and substantial compliance of the order passed by the Tribunal in TA No. 6/95 has already been made, ~~The~~ contempt petition was dismissed and notices discharged. Contempt order is annexed as Annexure A-2 on page 29. He has drawn our attention to the earlier order passed by this Tribunal in TA No. 6/95 dated 29.04.97 para 15 at page 28 where-by the following directions were given to the respondents:-

"Respondents are directed to treat the plaintiff/appellant in service upto the date he attained the age of superannuation. We further direct that the respondents shall notionally fix his pay with all increments as would have become due to him had he remained in service and work out his pensionary and other terminal benefits on the basis thereof. The arrear of such benefits shall be paid within a period of 3 months from the date of communication of this order and the respondents shall thereafter continue to pay to the applicant pension at the revised rate. There will be no order as to costs."



3. It is admitted by the applicant's counsel that pursuant to the directions passed by the Tribunal the applicant was deemed to be in service till 1989, i.e., the actual date of his superannuation in normal course, his pay was fixed and notional increments and the arrears were paid to him. It is also admitted by the applicant's counsel that the pensionary benefits as calculated by the respondents were given to the applicant in August 1998. However, the grievance of the applicant is that while calculating the pensionary benefits, he was not paid full amount on account of leave encashment as he was given only 65 days leave encashment, whereas, it should have been for 240 days. Similarly, he has submitted that the commuted value of pension was not calculated properly ~~norther~~ <sup>norther</sup> at the time of giving the Gratuity and amount of Rs. 21,477/- was <sup>wrongly</sup> ~~wrongly~~ deducted as damage rent from the applicant's D.C.R.G., but the same has been refunded to the applicant in December 2001. Therefore, he has claimed that since this amount was wrongly deducted from his D.C.R.G., he should be paid interest on the said amount for the intervening period. He has also claimed interest at the rate of 12% per annum on the delayed payment of D.C.R.G., from 01.06.1989 till the date of actual payment.

4. The applicant's counsel has also invited our attention to page 33 of the O.A. which is annexed as Annexure A-1. and It is a letter dated 14.04.2000, addressed to the Garrison Engineer, E&M, by the Senior Accounts Officers (Pensions), wherein it is specifically mentioned that as far as interest on delayed payment of D.C.R.G., is concerned, the Hon'ble CAT, Additional Bench, Allahabad has stated in the order dated 28.04.1997 that all terminal benefits shall be paid within 3 months from the date of the order. Since D.C.R.G., was paid in



July 1998, the interest may be calculated and submitted to this office after obtaining sanction of the competent authority for further necessary action. He has also invited our attention to para 10 on page 5 of the counter affidavit wherein the respondents have themselves stated that the case for interest for delay period is being initiated for obtaining the sanction from CFA for payment. Similarly in para 17 on page 9 of the counter affidavit the respondents have submitted that the matter was referred to P CDA(P) (Pension) for their decision which appears is under process. They have however, clarified that the leave encashment was paid for 65 days as per CE CC leave encashment certificate No.909201/GE Kanpur/FRI/EIRA dated July, 1998 and the demand of applicant for leave encashment for eight months is not correct as he had not physically worked during the said period. The applicant's counsel has also insisted that in the mean time many of the juniors of the applicant were given further promotion. Therefore, the applicant is also entitled to be promoted from the said date. The applicant has also filed a detailed representation in this connection which is annexed as Annexure A-4 wherein he has dealt with each of the points in detail.

5. We have heard counsel and perused the pleadings as well. It is seen in para 4.12 of the O.A. that applicant has himself stated that he has been paid leave encashment for 65 days only even though he had 77 3/11 days earned leave at his credit as on 10.10.1975. Similarly, a perusal of the earlier judgement given in TA No.6/95 shows that after adjudicating upon all the issues, the Tribunal had directed the respondents to treat the



plaintiff/appellant in service upto the date he attained the age of superannuation and work out his pensionary and other terminal benefits on the basis of pay fixation on notional basis. The said direction was directed to be carried out within 3 months from the date of communication of the order. It goes without saying that the retiral benefits/terminal benefits would include the gratuity as well, and thus the direction given by the Tribunal <sup>was</sup> <sub>A</sub> to release the same within 3 months from the date of receipt of a copy of the order, without giving any direction for interest so the applicant can't now claim interest from a date prior to the earlier order. According to us the starting point of interest would be only after the expiry of three months from the date of communication of the said order. Therefore, it has been rightly pointed out by the Senior Accounts Officer that the interest on D.I.C.R.G., should be calculated from the <sup>was</sup> <sub>A</sub> said date after the judgement given in TA No.6/95. However, the said interest has till date not been paid to the applicant. We had asked the respondent's counsel a specific question as to what is the final outcome of all these demands raised by the applicant because in the counter affidavit they have specifically stated that certain things are under process and are referred to the authorities for their concurrence. But he was not in a position to make a positive statement for sure as according to him the matter is still under consideration. Sitting here in the court we cannot decide the actual number of days one would be entitled to on account of leave encashment or for the actual commutation value as these are the points which are to be decided by the accounts branch on the basis of records and figures available before them.

7. Therefore, we think it would be appropriate and in

the interest of justice to direct the respondents to decide all the issues raised by the applicant in his representation dated 27.05.2000 at Annexure A-4 and pass a detailed and reasoned order thereon within a period of three months from the date of receipt of a copy of this order under intimation to the applicant.

8. The interest of gratuity shall be paid to the applicant within a period of three months from the date of receipt of a copy of this order calculated from September 1997, till the date of actual payment of D.C.R.G., i.e., August 1998 at the rate of 9% per annum.
9. With the above directions, the O.A. stands disposed of with no order as to costs.



Member-J



Member-A

/Neelam/