

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH
ALLAHABAD

ORIGINAL APPLICATION NO. 1143/2004

ALLAHABAD this the 18 day of **November, 2011**

Present:

HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER- J
HON'BLE MR. Shashi Prakash, MEMBER -A

Radhey Shyam Sharma aged about 73 years s/o Late Jagat Prasad r/o B-276, Shyam Nagar, Kanpur 208013.

.....Applicant

V E R S U S

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Engineer-in-Chief, Army Headquarters, Kashmiri House, New Delhi.
3. The Chief Engineer, Central Command, Lucknow.

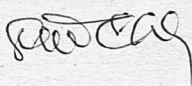
.....Respondents

Present for the Applicant: Shri H.S.Srivastava
Present for the Respondents: Sri Dharmendra Tewari
brief holder of Shri R.K.Srivastava

ORDER

(Delivered by Hon'ble Mr. Justice S.C. Sharma, J.M.)

1. The instant O.A. has been instituted for the following relief:

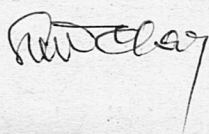


- “(i) to quash the Chief Engineer, HQ Central Command, Lucknow Speaking Order No. 901066/Supra/2408/EIAB dated 02 Jul 2003.
- (i) to issue orders/directions to the respondents to consider the case of the applicant for promotion to the grade of Executive Engineer and promote him on that post notionally from the date his junior Sri Ram Avtar Rajvanshi was promoted to that grade i.e. 25 June, 1987 Forenoon with all consequential benefits.
- (ii) to issue orders/directions to the respondents to pay salary for the period from 14.1.1978 to 28.2.1989 with interest @ 18% per annum from the date of accrual till the date of actual payment.
- (iii) to issue orders/directions to the respondents to pay commuted value of pension at the purchase value of Rs. 10.46, which is applicable at the age of 59 years, the age next birth day of superannuation, with interest @ 18% per annum from the date and the date pension was paid till the date of actual payment, after adjustment of the amount already paid;
- (iv) 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;
- (v) to issue orders/directions to the respondents to pay interest on delayed payment of Death-cum-Retirement Gratuity as per rules w.e.f. 1.6.89 i.e. beyond three months from the date of retirement after adjustment of the amount of interest already paid.”

2. Pleadings of the parties may be summarized as follows. It has been alleged by the applicant that he was appointed as B/R grade II on 18.3.1953 in Military Engineering Service and got last promotion in the grade of Assistant Engineer w.e.f. 1.2.1977 and his date of birth is 7th February, 1931. An application was submitted by the applicant for voluntary retirement and 3 months' notice was served on 14.1.1978 and within that period the competent authority had neither accepted nor rejected the request of the applicant. An application was submitted by the applicant after expiry of three

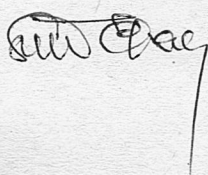
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months vide his application dated 11.8.1979 and requested the Garrison Engineer E/M Chakeri Kanpur that his application for voluntary retirement has not been accepted by the competent authority hence he should be advised whether he should resume his duty, but no reply was given by the respondents of these applications. As no reply was given, hence he filed Civil Suit No. 197/1980 against the order of his premature retirement in the court of Second Additional Judge, Kanpur which was dismissed on 13.10.1981. Thereafter, appeal was filed before the Hon. High Court, but it was transferred to the C.A.T. Allahabad Bench and registered as T.A. No. 6/1995. The applicant requested the authorities to finalize his dues pending appeal before the Hon. High Court and the respondents intimated the applicant that his dues shall be finalized soon after the decision of the Hon. High Court. T.A. No. 6/95 was decided on 28.4.1997 and directions were given to the respondents to treat the applicant in service upto the age he attained the superannuation. And further direction was given to fix notional pay with all increments as would have become due to him had he remained ^{in D} service and work out his pensionary and other terminal ⁷¹ benefits on the basis thereof. The arrears etc. shall be paid within 3 months and the pay shall be fixed on the revised rates. The applicant had to move application for contempt as the respondents did not ² implement the order of the Tribunal. But the contempt petition was decided with the observation that the matter can be sorted out by the respondents by giving calculation of the pay fixed before 1.2.85 and



after 1.2.85, but no action was taken by the respondents. In compliance of the order dated 19.9.2002 certain amount has been paid, but all the pending payable dues have not been paid despite several requests. Whereas the applicant is entitled for all the pensionary benefits in view of the judgment of the Tribunal because it has been held in the order that the applicant shall be treated in service upto the date he attained the age of superannuation and entitled for benefits of notional promotion to the grade of Executive Engineer which was given to his juniors Ram Avtar Rajvanshi, Sri Dinkar Eknath Mulay and Sri Gopal Sahai Srivastava and all the increments due for payment to the applicant have not been paid to the applicant.

3. The respondents contested the case and filed the Counter reply and denied all the allegations made in the O.A. It has further been alleged that the applicant was serving as Superintendent B/R grade I Charge Holder under Garrison Engineer (P) Kanpur till March, 1978. Orders were issued for applicant's posting to Garrison Engineer (P) Khamaria for which he made a representation but the higher authorities did not consider the representation of the applicant. Thereafter, the applicant submitted his voluntary retirement papers in January, 1978 and served a notice for three months and the papers were submitted to the Chief Engineer Lucknow for acceptance. That while the matter for voluntary retirement was under consideration, the post of charge holder was upgraded to Assistant Engineer. Voluntary retirement was accepted in September, 1978. The

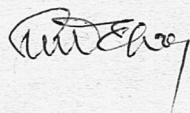


applicant did not accept the decision and he filed Civil suit No. 107/1980 in the Civil Court. The suit was dismissed and appeal was filed before the Hon. High Court and thereafter it was transferred to the C.A.T Allahabad Bench ² and it was registered as T.A. No. 6/95. The T.A. 6/95 was decided in favour of the applicant and direction was given to the respondents to treat the applicant in service upto the date he attained the age of superannuation i.e. February, 1989 and fix pay with all increments notionally as would have become due to him had he remained in service and also work out his pensionary and terminal benefits on the basis of these. The order was implemented, but the service book of the applicant was not available and in accordance with the available documents, all the terminal benefits were paid. The applicant had also claimed for commutation from 1.3.1989 instead of 4.7.1989 and interest on this late payment, leave encashment for 175 days. The interest was also paid to the applicant till actual payment of DCRG. Regarding leave encashment of balance 175 days, the applicant has not physically served, and as such he gained no leave and the applicant is not entitled for 8 months leave encashment. However, pay and allowances for 84 days have been paid vide cheque dated 28.10.2002 alongwith ^{refund of} damage rent. Regarding promotion to the rank of Executive Engineer, the same has been clearly mentioned/explained by the Chief Engineer Headquarters, Central Command, Lucknow and speaking order was passed in this connection. The O.A. lacks merit and is liable to be dismissed and principle of no work no pay will be applicable.

4. In response to the Counter reply of the respondents, the applicant filed R.A. and reiterated the facts which have been alleged in the O.A. Moreover, on behalf of the respondents, Supplementary Counter Affidavit has also been filed.

5. We have heard Shri H.S. Srivastava Advocate for the applicant and Shri Dharmendra Tewari Brief holder for Shri R.K. Srivastava, advocate for the respondents and perused the entire facts of the case.

6. After hearing the arguments of the learned counsel for the parties we are of the opinion that the matter for adjudication has been minimized as now the learned counsel for the applicant pressed for recalculation and payment of commuted value of pension at the purchase value of Rs.10.46 which is applicable at the age of 59 years, issue of leave encashment for the balance leave of 175 days alongwith interest w.e.f. 1.3.1989 till the date of actual payment and the promotion of the applicant in the grade of Executive Engineer and an order of promotion of the applicant notionally from the date his juniors were promoted with all consequential benefits. The learned counsel for the applicant conceded that all other contentions/issues stand resolved and the payments had already been made. In order to consider that what amount and from which date will be payable to the applicable, a perusal of the order passed by this Tribunal in T.A. 6/95 dated 28.4.1997 is essential, because the payment is to be made as per directions of the Tribunal in the above



mentioned T.A. It will be appropriate to reproduce the operative part of the order of the Tribunal which is as under:-

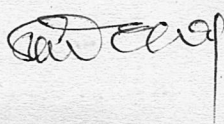
"15. In the facts and circumstances discussed above, this application is partly allowed and the Judgment and decree passed by the learned 2nd Addl. Civil Judge, Kanpur is set aside. Respondents are directed to treat the plaintiff/appellant in service upto the date he attained the age of superannuation. 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."

Hence it has been held by the Tribunal that the respondents shall treat the applicant in service upto the age of supeannuation. Further direction has also been given to fix the pay of the applicant notionally with all increments which would have become due to him had he remained in service and work out his pensionary and other terminal benefits on the basis thereof.

7. As we have stated above that the learned counsel for the applicant had admitted that except above mentioned payments of three items, all have been paid as per direction of the Tribunal. First, the commuted value of pension at the purchase value prevalent at the time has not been paid. As we have stated above, that the Tribunal, in the above mentioned T.A. has ordered that the applicant will be treated in service upto the date he attained superannuation, hence the applicant is entitled for commuted value of pension on the date of superannuation. The matter of voluntary retirement is not to be

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adjudicated afresh. It is a fact that the applicant submitted application seeking voluntary retirement and served three months notice on 14.3.1978, but within a period of three months, the respondents neither accepted, nor rejected the request of the applicant and after expiry of the period of three months the applicant expressed his willingness to resume the duty but no reply was given by the respondents and that is why the Civil Suit was filed in the Civil Court and when the Civil suit was pending the applicant attained the age of superannuation. But as we have stated that as per direction of the Tribunal the respondents ought to have treated him in service upto the age of superannuation, and all the benefits payable to a retired employee are payable to the applicant on the date he attained the age of superannuation. Accordingly, the applicant is entitled for commuted value of pension on the date of superannuation. We have perused the speaking order dated 8.7.2003. It has been stated in para " that as per para (b) of speaking order "*As per the CCS (Pension) Rules in vogue, commuted value of pension is payable only from the date of signing of the application for the commutation by the applicant subject to the medical fitness of the retiree. There is no provision of paying commutation retrospectively without any medical certificate. It is, therefore, regretted that your commutation cannot be counted from Mar. 1989 and since the payment of Commutation from Mar 1989 is not within the statutory rules, the question of the payment of interest on it does not arise.*" The payment of commuted value of pension has been turned down



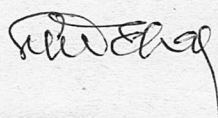
on the ground that it is payable subject to medical fitness of the retiree. But we have to take into account the circumstances in which the order was passed in favour of the applicant. When the applicant was not permitted to resume the duty after expiry of the period of three months, after submission of his application for voluntary retirement, then the applicant filed a Civil suit in the Civil Court. The suit was dismissed. The appeal was filed before the Hon. High Court and the appeal was transferred to the Tribunal and it was decided on 28.4.97 and the operative portion of the order has been reproduced above. As per order of the Tribunal, the applicant was to be treated in service upto the age of superannuation and this order was passed on 28.4.97, hence it was not possible for the applicant to file medical fitness certificate and it is to be treated that the order for commuting the value of pension was passed on the date when the applicant attained the age of superannuation and the commuted value ought to have been paid as per provisions of CCS (CCA) Rules. Under these circumstances, we are of the opinion that the contention of the respondents turning down the claim of the applicant for commuting the value of pension is not tenable. It is to be done in accordance with the directions of the Tribunal and not otherwise. Hence, bar, as alleged by the respondents is not ^{applicable to} ~~applicable to~~ applicant and the applicant is entitled for commuted value of pension w.e.f. 1.3.1989 alongwith interest @ 9% per annum.

8. It has also been alleged by the applicant that leave encashment for balance 175 days has also not been paid to the applicant. It has

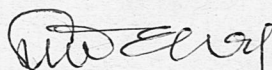
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been alleged by the respondents in the speaking order dated 2.7.03 that " As per record held by the Department, you had 65 days leave in your credit on the date you took the voluntary retirement and accordingly a sum of Rs.9783/- towards leave encashment has already been paid to you." Hence, according to the respondents, leave encashment for the period of 65 days is payable to the applicant and this leave encashment had already been paid. But the applicant alleged that the balance in his leave account was of 175 days and the applicant is entitled for encashment of these days. But the respondents calculated the leave of 65 days. But no documentary evident has been filed on behalf of the applicant to show that there was balance of 175 days in his account of leave. Under these circumstances, whatever the respondents alleged is to be accepted as correct and we are of the opinion that only 65 days leave was in the leave account of the applicant as reflected in the records. No evidence has been produced by the applicant as proof of 175 days leave, hence this claim of the applicant cannot be accepted and as we have already accepted that there was a balance of 65 days in the leave account of the applicant and that the amount of these days had already been paid by the respondents, and it has been accepted by the applicant, hence in this claim no amount is payable to the applicant.

9. Moreover, the applicant has also claimed promotion to the post of Executive Engineer. As we have already stated above, that in view of the judgment of this Tribunal in the above mentioned T.A., the applicant was to be treated in service upto the age of



superannuation. Under these circumstances, the applicant is also entitled for promotion notionally if his juniors were promoted. It has been alleged by the applicant in the O.A that numerous juniors to the applicant namely Ram Avtar Rajvanshi, Sri Dinkar Eknath Mulay and Sri Gopal Sahai Srivastava were promoted. The seniority list has also been filed in support of this contention. There is also no denial of this fact by the respondents. But it has been alleged that as the applicant was not in service and he has not worked on the post, hence he is not entitled for promotion. But we are of the opinion that as the Tribunal held that the applicant is to be treated in service till the date of his superannuation, hence whatever benefits accrued to the applicant is payable to him and in case juniors to the applicant were promoted prior to the date of his superannuation, then the applicant is also entitled to the promotion. As this fact has not been disputed that these persons named above have not been promoted prior to the superannuation of the applicant, hence, the applicant is also entitled for promotion notionally. We agree with the arguments of the learned counsel for the respondents that the applicant had not worked on that post and he had not shared higher responsibility, hence he is not entitled for actual payment of the promoted post, but he is certainly entitled for notional promotion and also entitled for revision of pension according to the promotional post. Hence we agree with the learned counsel for the applicant that he is entitled for notional promotion to the post on which his juniors were promoted



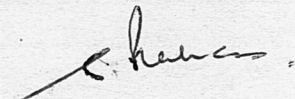
and from the same date when his juniors were promoted. Hence the applicant is also entitled for such benefit.

10. For the reasons stated above, we are of the opinion that the applicant is entitled to commuted value of pension from the date he attained the age of superannuation and the applicant is not required to file medical fitness certificate as has been provided in the speaking order by the respondents, because the applicant was to be deemed in service as per order of the Tribunal in the above mentioned T.A. and this condition cannot be imposed on the applicant in order to disentitle him for payment of commuted value of pension. We are of the opinion that the applicant is entitled for commuted value of pension on the date of his superannuation. Moreover, the applicant is entitled for notional promotion from the date his juniors were promoted till the applicant attained the age of superannuation and notional promotion shall be given accordingly, but the pension of the applicant shall also be revised accordingly. The O.A. deserves to be allowed for the above mentioned items. For the encashment of leave, O.A lacks merit.

11. The O.A. is allowed partly and dismissed partly. No amount is payable to the applicant towards leave encashment. But the respondents are directed to make payment of the commuted value of pension to the applicant at the rate prevailing at the time when he attained the age of superannuation and this amount shall be paid to the applicant alongwith interest @ 9% per annum and the payment of interest will be made till the date of actual payment. Moreover,

Order

the respondents shall give notional promotion to the applicant and his pension shall be revised after recalculating the same in accordance with notional promotion and arrears of the revised pension shall also be paid to the applicant alongwith interest @ 9%. The respondents are directed to comply with the order within a period three months from the date when the certified copy of this order is produced before them. The applicant shall produce the certified copy of this order before the respondents at the earliest. No order as to costs. The order passed by Respondents on dated 2nd July, 2003 relating to item No. (b) and (c) of the order is quashed.


Member (A)

s.a


(Member (J))