

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH : ALLAHABAD

Original Application No.246 of 1999

Allahabad this the 06th day of December 2004.

Hon'ble Mrs. Meera Chhibber, Member-J.

Hon'ble Mrs. Roli Srivastava, Member-A.

R.S. Saini

S/o Late Sunder Lal Saini

R/o Q. No.P-32/1, Defence Colony,  
Shyam Nagar 'C' Block,  
Kanpur Nagar.

.....Applicant.

(By Advocate : Sri R.K. Shukla)  
Versus.

1. Union of India  
through the Secretary  
Ministry of Defence  
Government of India,  
NEW DELHI-11
2. The Director General Quality Assurance,  
Dept. of Defence Production (DGQA/Adm-7(B)),  
Govt. of India, Ministry of Defence,  
DHQ PO NEW DELHI-110011.
3. The Controller of Accounts (Fys)  
10-A, Shaheed Khudi Ram Bose Road,  
Calcutta-700 001.
4. The Controller of Defence Accounts  
Central Command,  
LUCKNOW.
5. The Chief Quality Assurance Officer,  
Chief Quality Assurance Estt. (M),  
Post Box No.229,  
KANPUR-208004.

.....Respondents.

(By Advocate : Sri Amit Sthalekar)

O\_R\_D\_E\_R\_

(By Hon'ble Mrs. Meera Chhibber, J.M)

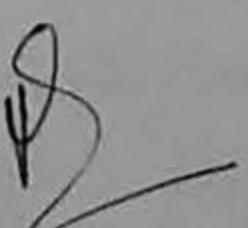
By this O.A., applicant has sought the following  
relief(s) :

"to issue a mandamus, order or directions to the  
respondents to make proper fitment/fixation of pay  
of the applicant at the stage and post of IDC following  
the instructions laid down in para 4 (b) of AG's  
Branch New Delhi letter No:34577/Org.4 (Civ) (d)  
dated 28.8.87 and also involving the provisions of  
F.R.27".



2. It is submitted by applicant that he was ex-serviceman and was released from Army w.e.f. 1.8.1982. Thereafter he was re-employed in 18 Infantry Division and was later employed as LDC in Chief Quality Assurance Estt. Kanpur w.e.f. 16.4.1984. In Army he was drawing total salary of Rs.404.50 and after release was getting pension of Rs.218 P.M. As L.D.C his pay was fixed at the lowest of the scale at Rs.260/- . He, therefore, requested that his pay should be fixed at the same stage by giving him benefit of increments for the years he had served in Army vide application dated 2.5.1983. He relied on F.R. 27. Being aggrieved he gave a representation on 17.1.1994 but no reply was given. He also relied on other cases viz Radhamuni Prasad who was given the benefit of increments as per number of years put in by him in Army. He also relied on the case of Shri R.N. Singh who is said to be similarly situated but he was also given this benefit. Applicant has submitted he cannot be discriminated against, therefore, O.A. may be allowed.

3. Respondents have raised preliminary objection to the maintainability of O.A. itself on the ground that it is barred by limitation because his case was rejected as back as on 2.8.1991 whereas he filed the present O.A. in 1999 i.e. after about 8 years, therefore, it is liable to be dismissed on this ground itself. On merits they have explained that after his release from Army applicant was re-employed as LDC in Headquarter 18 Infantry Division which was a different organisation, therefore, he should have asked them to fix his pay. As far as benefit of letter dated 28th August 1987 is concerned they have explained it was issued by Adjutant General's Branch which is a different organisation and that order is not applicable on D.G.Q.A. They have further explained that as per



Ministry of Defence O.M. dated 15-07-1960 there was a provision as follows :

"(i) The initial pay, on re-employment, should be fixed at the minimum stage of the scale of pay prescribed for the post in which an individual is re-employed. In case, where it is felt that the fixation of initial pay of the re-employed officer at the minimum of the prescribed pay scale will cause undue hardship, the pay may be fixed at a higher stage by allowing an increment for each year of service which the officer has rendered before retirement in a post not lower than that in which he is re-employed.

(ii) In addition to the above, the Govt. Servant may be permitted to draw separately any pension etc. provided that a total amount of initial pay as above plus the gross amount of pension and/or the pension equivalent of other form of retirement benefit does not exceed.

(aa) The pay he drawn before his retirement; or  
(bb) Rs.3000/- whichever is less.

(iii) Fixation of pay at a stage higher than the minimum of the prescribed scale of the re-employment post is subject to adjustment of pensionary benefits being availed by the re-employed pensioner i.e. total pay and pensionary benefits cannot exceed the pay drawn before retirement.

4. The Ministry of Defence OM dated 15-07-1960 was further modified and as per OM dated 08.02.1983 it was decided to ignore the entire pension while fixing the pay but restriction placed while fixation of pay still continued to operate as is evident from Rule 16 of C.C.S Fixation of pay of re-employed pensioners order 1986 (Annexure CA IV). They have thus submitted that pay of applicant was correctly fixed because pay of Rs.260 + pension 218 and PEG 3087 was already much more than the last pay drawn by him which was 404.50. They have further stated that as per his own submission, the petitioner has exercised option vide application dated 17.05.1988 i.e., over

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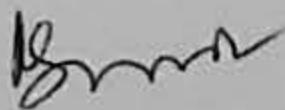
five years after the issue of OM dated 8.2.1983 as against the provision of six months for exercising option. Moreover, the petitioner was re-employed initially in Headquarter 18 Infantry Division and thereafter transferred to DGQA i.e. after issue of OM dated 8.2.1983 and as such was not required to exercise any option in terms of OM dated 8.2.1983 after joining the DGQA organisation. As far as other persons are concerned, they have explained those cases are different because the applicant after retirement from the Army was initially re-employed as IDC in HQ 18 Infantry Division and thereafter transferred to DGQA, whereas, the two individuals referred to in these paras were initially appointed in DGQA, after their release from the Army. Therefore, there is no parity between the case of the applicant and the above named individuals. They have, therefore, prayed that O.A. may be dismissed.

5. We have heard both the counsel and perused the pleadings as well. Admittedly after release from Army applicant was initially re-employed in 18 Infantry Division and was transferred to DGQA later, so naturally his pay fixation would have been done at 18 Infantry Division as he was not re-employed in DGQA whereas the examples he gave, those persons were redeployed in DGQA after their release from Army, we are, therefore, satisfied that applicant cannot be said to be similarly situated persons. Moreover the pay fixation of applicant was done in 1984. He represented but his case was rejected in 1991 by informing him that as per Govt. orders his pay + pension should not exceed the last pay drawn earlier. The applicant filed present petition only in 1999 that is after 8 years without explaining the delay, therefore, this petition was fit to be dismissed on limitation alone but keeping in view the judgment of M.R. Gupta reported in AIR 1996 S.C. 669 we are not

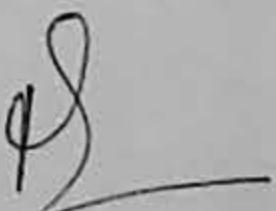


dismissing it on limitation, but on merits also it is seen that though OM dated 15.07.1960 permitted the pay to be fixed on a higher stage by allowing increments for each year of service which officer had rendered before retirement but it was clarified that the total amount of initial pay + the gross amount of pension does not exceed the pay he drew before his retirement or Rs.3000 whichever is less.

6. Perusal of above clearly shows that he could be given the benefit subject to the condition that his pension + pay does not exceed the amount he was last drawing before retirement. In the instant case admittedly he was drawing Rs.404.50 and after retirement was drawing 218 as pension. If his pension and pay fixed are added i.e.  $260+218$  total comes to 478 which is more than 404 already, therefore, he was rightly denied the benefits of increments as claimed by him. We, therefore, find that applicant has not been able to make out any case for interference by the Tribunal. The O.A. is, therefore, dismissed with no order as to costs.



Member-A



Member-J.

Shukla/-