

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 1349 of 2002

Allahabad this the 28<sup>th</sup> day of May, 2004

Hon'ble Mr.A.K. Bhatnagar, Member (J)

R.R. Singh Yadava S/o Late Than Singh R/o 331 Nai Bazar,  
Naini, Allahabad.

Applicant

By Advocate Shri Swayambar Lal

Versus

1. Union of India through Defence Secretary, Ministry of Defence, New Delhi.-110011.
2. Director General Ordnance Services(OS-8D) Army Headquarters DHQ PO New Delhi-110011.
3. Officer-in-Charge, Army Ordnance Corps Records A.O.C. Record Office Secunderabad.
4. Commandant, Ordnance Depot, Talegaon, Pune (M.R.).
5. Commandant & M D, 508 Army Base Workshop, Allahabad Fort-211005.

Respondents

By Advocate Shri P.D. Tripathi

O R D E R

This O.A. has been instituted under Section 19 of the Administrative Tribunals Act, 1985 praying to quash the impugned orders dated 20.12.01(annexure A-1), dated 30.01.02(annexure A-2) and dated 22.02.02(annexure A-3).

2. The facts, in short, are that the applicant joined in as Graduate Civilian School Master on 31.08.1966/BEG Centre

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Roorkee. He was transferred to Kota on 29.05.68 on the same post and grade. The applicant was declared surplus on 15.11.1969 and was absorbed and deployed in the same establishment. The applicant in pursuance to the order of this Tribunal was given seniority in the grade of Senior Storekeeper w.e.f. 19.08.1966 vide order dated 18th July, 1994. He was promoted as Ordnance Officer Civilian(Stores) on regular basis on 18.05.1996. However, based on the order of Central Administrative Tribunal, Principal Bench New Delhi, reversion order of the applicant was issued on 30.06.1999. The applicant challenged the same by filing O.A.No.866 of 1999 and the order of reversion was stayed by the order dated 31.08.1999. The O.A.No.866/99 was dismissed by order of this Tribunal dated 07.09.2000. The applicant challenged the order of Tribunal before the Hon'ble High Court, Allahabad by filing Writ Petition No.41837 of 2000 and the Hon'ble High Court by order dated 17.10.2000 stayed the order of Tribunal. The writ petition referred to above is still pending. The applicant superannuated on 31.01.2002. The applicant rendered an undertaking on 11.01.02, as desired by the respondents on 31.12.2001. The grievance of the applicant is that though the pay and allowances for the promotional post of Ordnance Officer Civilian(Stores) were paid to the applicant till the date of superannuation, yet his post retiral benefits have not been finalised. The applicant also submitted the Clearance Certificate on the date of retirement i.e. on 31.01.2002. The respondent no.5 issued the orders on 22.02.2002 for grant of provisional pension only as the Writ Petition No.41837/2000 is still pending before the Hon'ble High Court. The applicant filed an application before the respondent no.5 on 06.06.2002 for payment of gratuity and commutation. The applicant was informed by

letter dated 01.08.2002 that the amount of G.P.F., C.G.E.I.S. and Leave Encashment has been passed. As required by the respondents, applicant submitted advance receipt on 01.08.02, however, the passed amount has been withheld on 25.09.2002. The applicant submitted representation before all concerned for payment of passed amount. The respondents on 04.10.02 demanded Clearance Certificate and the applicant by letter dated 10.10.2002 clarified to respondent no.5 that he has already ~~only~~ submitted the Clearance Certificate. Since no action has been taken by the respondents, applicant filed this O.A. on 11.11.2002, which has been contested by the respondents by filing the counter-affidavit.

3. Heard Shri Swayambar Lal, Counsel for the applicant and Shri P.D. Tripathi, Counsel for the respondents, perused the pleadings as well as the records.

4. Admittedly, the applicant challenged the reversion order dated 30.06.1999 in O.A.No.866/99 and the reversion order was stayed by this Tribunal vide order dated 31.08.99. The applicant continued on the higher post without facing any reversion. The O.A.No.866/99 was dismissed on 07.09.00 and the applicant challenged the same before the Hon'ble High Court, Allahabad by filing writ petition no.41837 of 2000 and the Hon'ble Allahabad High Court stayed the operation of the order of this Tribunal dated 07.09.2000 on 17.10.2000. The writ petition no.41837 of 2000 is still pending for adjudication before the Hon'ble High Court though the applicant has already superannuated on 31.01.2002. Now the short question involved in this case is whether the applicant is entitled for the post retiral benefits or not.

5. Learned counsel for the respondents submitted that as per para-1(c) of Rule 69 of C.C.S.(Pension)Rules 1972, no gratuity can be paid to the Government servant until the conclusion of departmental or judicial proceedings and issue of final orders thereon. In the impugned letter dated 22.02.2002 the authority quoted is the Army Headquarters letter dated 20.12.2001 amended by Army Headquarters letter dated 30.01.2002(annexureA-3).

6. The applicant's counsel has assailed this contention of the respondents relying on the Judgment and Order of this Tribunal passed in the case of Peer Mohd. Vs. Union of India and Others 2001(2) A.T.J. 45 wherein this Tribunal has held that the word 'judicial proceedings' under Rule 74 of C.C.S.(Pension)Rules means the proceedings arising out of misconduct of the employee having connection with the employment. The applicant's counsel has also placed reliance on the Judgment of the Hon'ble Supreme Court in the case of Vijay L. Mehrotra Vs. State of U.P. and others 2002 S.C.C.(L&S) 278, in which the Hon'ble Supreme Court has held that there should be expeditious payment of retiral benefits and the Hon'ble Supreme Court also allowed the interest at the rate of 18% from the date of retirement to the dates of actual payments. The applicant's counsel has further relied upon the Judgment of Principal Bench of this Tribunal in the case of Gyan Prakash Sharma Vs. Govt. of NCT of Delhi & Ors. 2002(1) A.T.J. 277 wherein the Principal Bench has laid down that in case of delayed payment of retiral benefits, employee is entitled to interest and in the case under reference the Principal Bench allowed the interest at the rate of 18% from the date of retirement

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till the date of actual payment of retiral benefits  
We find substance in the submission of learned counsel  
for the applicant.

7. Undoubtedly, the applicant continued working  
on the higher post, in the initial stage on account of  
interim order of this Tribunal dated 31.08.1999 and  
thereafter by the stay order of Hon'ble High Court dated  
17.10.2000. *Ad rd*

8. As regards the pension and retiral benefits, the  
principle is very well settled that for the pension purpose  
average of last 10 months salary drawn by an employee is  
taken into account whereas for other retiral benefits, it  
is the last pay drawn which is relevant. In the present  
case, I am unable to understand what prohibits the respon-  
dents in paying the pension and post retiral benefits due  
to the applicant. Pendency of the writ petition has got  
no relevance whatsoever in regard to the payment of  
pension and retiral benefits to the applicant.

9. ~~also~~ I would also like to observe that the applicant  
continued on a <sup>higher</sup> post, worked thereon and he was paid salary  
for the same. Obviously, once he worked on the higher  
post, may be because of the interim order granted by this  
Tribunal or on account of stay order granted by the Hon'ble  
High Court, he was paid the pay and allowance for the same. So  
there is no reason for the respondents not to settle the  
post retiral claim of the applicant.

10. In the impugned letter dated 20.12.2001, the  
respondents have used the word "abundant caution". I  
am unable to understand as to what is the respondents... pg. 6/

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meant with the above term specially when there is no specific rule on which respondents could rely and deny the retiral benefits to the applicant. What is more surprising is that by another impugned letter dated 30.01.2002 the word "gratuity" from line 13 of para-2 has been deleted to read as 'provisional pension'. This act of the respondents cannot be sustained in the eyes of law as the action of the respondents is not covered under any rule.

11. Not only this, by the letter dated 20.12.2001 (annexure A-1), the respondents desired to settle the pensionary benefits of the applicant on the condition that in case of any revision in pension and gratuity resulting into excess payment, it shall be recovered from the applicant's pension. I appreciate the jesture of the applicant in rendering the certificate on 11.01.02. I failed to understand why the respondents rolled back and denied the legal claim of the applicant.

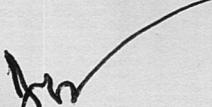
12. In view of the above facts and circumstances and discussions, in my considered opinion, the respondents have committed gross illegality. The applicant is entitled for his pension and post retiral benefits along with interest thereon for the delayed payment.

13. The O.A. is, therefore, allowed. The impugned orders dated 20.12.2001, 30.01.2002 and 22.02.2002 are quashed. The respondents are directed to make payment of all the retiral benefits to the applicant within a period of 3 months from the date of communication of this order. The applicant shall also be entitled to interest...pg.7.

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at the rate of 8% on the amount due to him from the date of applicant's superannuation to the date of actual payment. There shall be no order as to costs.

  
Member (J)

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