

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 13 DAY OF 4 2010)

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mr.S.N Shukla, Member (A)

Original Application No. 300 of 2003

(U/S 19, Administrative Tribunal Act, 1985)

1. Smt. Radhika Devi aged about 61 years, W/o late Shri Yashwant Singh R/o LG 37 A.D.A Colony, Naini, Allahabad.
2. Vishal Singh aged about 26 years, son of late Yashwant Singh R/O L.G. 37 A.D.A. Colony, Naini, Allahabad.
3. Sunil Kumar Singh, aged about 26 years, son of late Yashwant Singh R/O L.G. 37 A.D.A. Colony, Naini, Allahabad

..... Applicants

By Advocate : Shri Rakesh Verma

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Master General of Ordnance Branch Army Headquarters, Delhi Head Quarter P.O. New Delhi-110 011.
3. Officer Incharge, Army Ordnance Corps Records, Secunderabad.
4. Commandant, Central Ordnance Depot, Chheoki, Allahabad.

..... Respondents

By Advocate : Shri P. Krishna
Shri S.C. Mishra
Shri R.D. Tiwari

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O R D E R

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

The Applicant through this O.A. filed under section 19 of Administrative Tribunals' Act 1985, has prayed for following main relief (s):-

- “(a) To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 20.2.2002 passed by the respondent NO.2 as communicated to the petitioner by the respondent no. 4 vide its order dated 4.3.2002 (Annexure A-1).*
- (b) To issue a writ, order or direction in the nature of mandamus commanding the respondent no. 2 to allow the pay protection to the petitioner fixing the basic pay of the petitioner at Rs. 199/- per month as on 1.7.1968 with all consequential benefits thereof such as onward re-fixation of pay till the date of retirement and allow retirement benefits accordingly within a period as may be stipulated by this Hon'ble Tribunal”.*

2. Learned counsel for the respondents raised a preliminary objection that this O.A. is inordinately time barred and is liable to be dismissed on this ground alone. Learned counsel for the applicants has filed Misc. Delay Condonation Application No. 949 of 2003 stating therein that he could not approach the Tribunal in time because of his illness. We have carefully noticed that there is only 23 days of delay. In the interest of justice, delay in filing Original Application is condoned. M.A. NO. 949/03 is allowed.

3. During the pendency this O.A., the applicant (Yashwant Singh) died on 21.1.2003. The legal heirs of the deceased applicant filed Misc. Substitution Application No. 241 of 2004, which was allowed vide order dated 4.8.2004 and legal heirs were substituted.

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On merits-

4. The extensive history of the case is that the applicant was initially appointed as Examiner (Hindi) w.e.f. 11.9.1963 at Examination Centre, Fort William Calcutta in Censorship Organization under the Directorate of Military Intelligence, Ministry of Defence vide order dated 11.9.1963. The Applicant retired from service on 31.12.2009 while working as Senior Store Superintendent. The post of Examiner (Hindi) carried the pay scale of Rs. 175-6-300 and his basic pay was Rs.199/-. As the applicant was declared surplus, he was absorbed in alternative post as Civilian Assistant Store Keeper in the Army Ordnance Corps at Central Vehicle Depot, Panagarh (West Bengal) w.e.f. 1.7.1968 in the lower pay scale of Rs.110-3-180 and vide order dated 06.01.1968 his basic pay in the aforesaid pay scale was fixed at Rs. 122/- per month as on 1.7.1968. According to the applicant, before absorption in the lower post on 30.6.1968, he was drawing basic pay at Rs.199/- per month which was higher than the basic pay fixed after his absorption which was Rs.122/- per month. The grievance of the applicant is that even when he was absorbed in lower post carrying the lower pay scale his pay should have been protected at Rs.199/- basic per month. Before joining the aforesaid post of Civilian Assistant Store Keeper at Central Vehicle Depot, Panagarh, on 1.7.1968, the applicant was asked to submit an application for grant of equivalent post to which he was holding earlier, and in response thereto, he submitted application dated 16.7.1968 on proper format, which is forwarded to Master General of

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Ordinance Branch H.Q. Delhi vide letter dated 6.10.1968. According to the applicant, the respondent NO.2 vide letter dated 6.12.1968 intimated that the applicant would be restored in the same grade/post as and when vacancy occurs. However, the matter was not finalized, although several vacancies of the same grade and scale fell vacant in due course, but the applicant continued to work on the post of Civilian Assistant Store Keeper. For redressal of his grievance, applicant sent several applications and reminders to the Competent Authority but as the competent authority did not pay any heed to the request of the applicant, he filed O.A. No. 406 of 1993, which was disposed of vide order dated 10.7.2001 with direction to the respondent NO.2/Master General of Ordnance Branch, Army Head Quarter, Delhi to consider and decide the claim of the applicant within four months. In compliance of the order of the Tribunal dated 10.7.2001, the Competent Authority decided the representation of the applicant vide order dated 20.2.2002, aggrieved the applicant has filed the present O.A. on the ground that even though he was absorbed in lower post carrying the lower pay scale as the post in the same/equivalent grade was not available, under the law, his pay should have been protected at Rs.199- basic per month, which he was drawing earlier.

5. On the notice, the respondents filed counter affidavit. Learned counsel for the respondents stated that the applicant was declared surplus on account of disbandment of the

Censorship Organization and was offered the lower appointment of C.A.S.K. in the pay scale of Rs.110-180, which he accepted and was posted to C.V.D Panagarh w.e.f. 01.07.1968. His pay was accordingly fixed in the lower grade of C.A.S.K by giving him the benefit of the previous increments earned by him as an Examiner. The applicant joined the post of C.A.S.K. at C.V.D. Panagarh. Learned counsel for the respondents would further contend that after joining the post, the applicant applied for restoration to his previous grade/post. Learned counsel for the respondents further submitted that in the year 1976, the applicant was offered the appointment of Translator Junior (English/Hindi) in the scale of Rs.360-600 at C.O.D's Office, New Delhi which he did not accept and filed O.A. No. 406/1993 which was disposed of with the direction to the respondents to consider the applicant's case and in compliance thereto the Competent Authority has passed the impugned order dated 20.02.2002 (Annexure A-1).

6. Applicant has filed rejoinder reply and reiterated the facts enumerated in the O.A.

7. We have heard Shri Rakesh Verma, learned counsel for the applicant and Shri P. Krishna, learned counsel for the respondents and perused the written argument filed by the parties counsel.

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8. Learned counsel for the applicant would contend that in the letter dated 14.11.1966 (Annexure A-III) it is specifically provided that in case of absorption in the lower pay scale in any other Defence Installation, the pay of the individual shall be protected and the applicant in view of the above, on joining the lower post w.e.f. 01.07.1968, was required, in the prescribed format, to make an application for pay protection which he did through proper channel on 16.07.1968, just after 15 days.

9. For better appraisal of the controversy involved in the present case, we could like to produce the Special Army Order NO. 8/S/76 policy (Annexure A-IX) for affecting adjustment of Class III & IV surplus civilian employees of Defence Establishment. For the sake of convenience para 19 is reproduced hereunder:-

"19. The employees who are offered lower appointments under these orders due to lack of vacancies in their own grade/Trade will be informed in writing the pay scale of the new appointment before they are issued with movement orders. They will also be advised to apply to Army HQ/Org. 4 (Civ) (b) through proper channel for re-classification to their original posts on the form as at Appendix 'E' on joining duty in their new posts"

From page 24 (Para 4.xix) of original application, we further find that the said para 19 has been amended in following terms:-

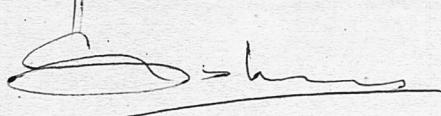
"19 (A) An individual posted in the lower scale of pay due to non-availability of matching scale of pay, will be allowed to carry his previous scale of pay alongwith him even he was officiating in it".

In reply to the said averments, in para 5 of the Counter Affidavit, the respondents have stated as follows:

"the applicant could not be given the post of Junior Translator or any other post in the same pay scale at the time of his absorption till 1975 due to non-availability of the same. But the fact is that he was offered the post of Translator Junior in the year 1976 in the pay scale of Rs.260-600 and later he was asked to appear at the written test/interview, but he refused for the reasons best known to him and due to his refusal, has lost his right to the claim of restoration of his previous grade/post.

10. On a careful analysis of the case, we are not convinced with the submissions advanced by the learned counsel for the respondents that before offering the alternative lower appointment at Civilian Store Keeper in Central Vehicle Depot Panagarh, the applicant was offered the post of Translator Junior (English/Hindi) in the scale of Rs.360-600 by Army Head Quarter against his original grade/pay but as he did not accept the same, he is not entitled to pay protection. In any view of the matter, the applicant's pay should have been protected before offering him the alternative lower appointment.

11. Accordingly, O.A is allowed. Impugned order dated 20.2.2002 (Annexure A-1) is hereby quashed and set aside. The Respondents are directed to fix the pay of the applicant (Yashwant Singh) after giving him the benefit of pay protection of the post of Examiner (Hindi), with all consequential benefits. This exercise shall be completed with a period of 3 months from the date of receipt of a certified copy of this order. No costs.



Member (A)
Manish/-



Member (J)