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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Dated: this the 31 st day of May, 2012

Original Application No. 828 of 2006

Hon'ble Ms. Jayati Chandra, Member – A

R.D. Verma, S/o late Ayodhya Prasad Verma, R/o 273/5, NLC, Kidwai Nagar, Kanpur Nagar, previously employed as Ordnance Officer (Civilian), Ordnance Depot, Alipore, Kolkata.

... Applicant

By Adv : Shri N.K. Nair and Shri M.K. Updhayaya

V E R S U S

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Director General of Ordnance Services, MGO's Branch, Army Head Quarters, DHQ PO, New Delhi – 110011.
3. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.
4. Area Accounts Officer, Office of the AAO (Eastern Command), Patna.
5. The Commandant, Ordnance Depot, Alipore, Kolkata.

... Respondents

By Adv: Shri Anil Dwivedi

(Reserved on 28.05.2012)

ORDER

② R.D. Verma J. Chandra

The applicant Shri Krishna, has filed this OA seeking relief against order dated 19.01.2005 passed by the respondents refixing the pay and pension of the applicant up to the stage of Ordnance Officer from the last post held by the applicant before he retired. He has also prayed for direction to the respondents to pay the retiral and other benefits alongwith 18% interest. The unpaid retiral benefits including leave encashment, pension arrears paid, salary for the last month of working.

2. The applicant has initially appointed as Civilian School Master in the Army in 1991. On being declared surplus he and 05 others similarly

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placed persons were absorbed on a lower grade of Store Keeper in COD, Kanpur. The applicant and 05 others namely S/Shri Hari Om Updhayaya, D.C. Pandey, S.K. Shukla, Sajaval Singh and B.K. Singh filed OA No. 1232/91 claiming their seniority and counting their services rendered by them as Civilian School Master and pay fixation on the same scale on which they were declared surplus. The said OA was decided on 24.12.1993 with the direction that seniorities of the applicant and 05 others be maintained and to fix their pay in the higher grade in which they were drawing salary as Civilian School Master. It was also directed that all consequential benefits including proper pay fixation, promotion etc be granted to the applicant and 05 others. Accordingly the applicant was granted promotion as Store Superintendent, Senior Store Superintendent and Ordnance Officer. As Ordnance Officer he was transferred to Ordnance Depot, Alipore, Kolkata. The applicant retired from service as Ordnance Officer on 31.07.2000.

3. On retirement the applicant was given gratuity, pension, Provident Fund, Commuted Value of pension etc. calculated as per entitlements of the post of Senior Store Superintendent and not as Ordnance Officer, which is the post hold by the applicant at the time of his retirement. The applicant prayed for pay fixation of pay on the promoted post and consequential revised gratuity etc. He was also not been paid leave encashment, salary for the last month of his retirement i.e. July, 2000 and TA/DA claims etc. He was informed by letter dated 0752/RDV/48/Fin dated 11.01.2001 that all terminal benefits have been withheld by the Army Head Quarters and will be released to him on receipt of clearance of the Army Headquarters.

4. The pay fixation etc. and payment of dues for other applicants of the earlier OA No. 1232/91 i.e. S/Shri Hari Om Updhayaya, D.C. Pandey,

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S.K. Shukla, Sajaval Singh and B.K. Singh etc have been paid and all their retiral dues at revised rate and arrears with interest have also been paid to them. Shri Hari Om Updhayaya had filed OA No. 618/96 claiming retiral benefits with interest. The same was allowed vide order dated 28.11.2001 by this Tribunal (Annexure A-5). Finally the applicant received letter No. B/1/13621/OS-8C(ii) dated 21.06.2005 by DGOS, New Delhi stating that the release of retiral benefits in respect of him and of S/Shri B.K. Singh, Sajaval Singh & S.K. Shukla and the applicant were taken up by the Ministry of Defence and the matter could not be settled as various cases were pending before Hon'ble Delhi High Court (Annexure A-1). The same position was reiterated by letter dated 22.03.2006 (Annexure A-2). However, all other employees i.e. S/Shri B.K. Singh, S.K. Shukla & Sajaval Singh have subsequently been paid all retiral dues after proper fixation inspite of the earlier condition of matter being subjudice. But only the applicant was singled out for non payment of dues. Hence, this OA seeking fixation of pay and all consequential benefits of revised pension, revised pension commutation, revised CGEIS, payment of salary etc.

5. In the counter affidavit the respondents have admitted the fact that vide direction in OA No. 1232/91 the pay etc was to be fixed. Moreover, they have stated that as per their calculation certain amounts were to be paid to the applicant on receipt of instructions from the Army Headquarters. As instructions were not received, the amounts were refunded as per following details:-

Sl. No.	Bill No. and date	Mode of payment	Amount Rs.	Cheque No. and date	Deposited vide MRO No. & Date
1.	54/RDV/Fin dt. 22.2.01	Unutilized leave encashment	123817/-	AU/478109 dt. 31.5.01	765390 dt. 23.09.03
2.	0752/23/CGE dt 23.2.01	CGEGIS Claim	12924/-	478684 dt. 11.06.01	765391 dt. 23.9.03
3.	13/RDV/Fin dt. 26.6.00	Last month's pay	15202	480866 dt. 26.7.01	765392 dt. 23.9.03
4.	24/DA Arrears dt. 28.9.00	DA Arrears	260	481948 dt. 14.8.01	765393 dt. 23.9.03
5.	09/TA-DA/Tfr. Dt. 15.6.00	Tfr TA-DA	5891	479626 dt. 15.11.00	765394 dt. 23.9.03

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6.	14/TA-DA/Retir dt. 31.7.00	Retirement TA- DA	20298	232474 dt. 15.11.00	765394 dt. 23.9.03
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6. Further they have stated out of the applicants who had filed OA No. 1232/91, Shri Hari Om Updhayaya was promoted to OOC (S) and absorbed in situ. He superannuated on 31.10.1995 and all his retiral dues except pension were withheld by the pension sanctioning authority vide Ministry letter dated 07.06.1996 and the same could not be release till Shri Updhayaya filed Writ Petition No. 6537/02 before Hon'ble High Court. Shri Sajaval Singh and another applicants of OA No. 1232/91 was promoted and posted to AD, Dehu Road and superannuated from there. The amount of Rs. 162350/- was also withheld against him under direction of Army Headquarters (Annexure CA-3).

7. The applicant was promoted to the post of OOC only in the year 2000 as he was earlier involved in disciplinary case. He was transferred to OD Kolkata in May 2000. He superannuated from OD Kolkata on 31.07.2000. But as per the prevailing procedure his pension claim was prepared in the lower rank of SSS and sent to authority who sanction pension order vide PPO No. C/AOC/17105/2000 dated 07.08.2000. He was paid following amounts:-

- i. Pension @ Rs. 4290/-
- ii. DCRG Rs. 201251/-
- iii. Capitalized Value (Commutation) Rs. 202008/-

8. Thereafter, the respondents have been continuously seeking clarification whether revised terminal benefits can be released to the applicant, but Army Headquarters have opined that at present the matter is subjudice and, therefore, no payment can be made (Annexures CA-4 and CA-5). In para 5 of the counter affidavit the respondents have stated that "since the applicant is a retired person and is also a party in ongoing litiagation of Ex CSM's case subjudice before the different Courts, certain

amounts be withheld". They have also stated that there is no illegality in withholding the certain amount due to be paid on account of retiral benefits. However, in case, the verdict of the Hon'ble Court goes in favour of the applicant, the withhold amount will be paid.

9. Rejoinder Affidavit, Supplementary Counter Affidavit and Supplementary Rejoinder affidavit have also been filed in this case.

10. I have heard Shri M.K. Updhayaya, learned counsel for the applicant and Shri Anil Dwivedi, learned counsel for the respondents has filed written argument in lieu of verbal submission. I have perused the entire facts of the case. It is very clear that the initial cause of action arose to the applicant through the direction received in OA No. 1232/91. As per that direction all the pay fixation etc. had to be done. Thereafter, in due course of time, as admitted by both the parties, the applicant reached the stage of SSE. It is also admitted that in the month of May, 2000 he was promoted to the post of OD and transferred from COD, Kanpur to OD, Kolkata. It is not stated that he did not join at Kolkata. He therefore, worked at OD Kolkata for 02 months prior to his retirement. Therefore, by virtue of having retired from a higher post and pay scale he is entitled to fixation of pay on the higher scale and fixation of pension including the commuted value of pension as per the last salary drawn by him. The question of fixing his pay at the lower salary scale of SSS and stating that the same was done "as per practice in vogue" is a gross negligence to follow the financial rule by the respondents. Even if the pension papers etc. were being prepared earlier to the promotion order as soon as the last promotion order, was issued and executed it was incumbent upon the respondents to ensure that the entire pension etc. is recalculated on the basis of revised salary on the promotion scale.

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11. I am also unable to understand that on what ground the salary of the applicant for the last month has been withheld. The respondents have failed to show that is any disciplinary proceedings against the applicant which would justify the withholding part or whole of the salary of the last month. Mere saying that some cases are pending in which the applicant is a party is not enough. The respondents have neither stated the actual case number nor filed any kind of stay order or any order adverse to the interest of the applicant which will justify with-holding of the following amounts:

- i. Salary for the last month of service
- ii. Regular pension at last salary drawn
- iii. Commutation of pension as per last salary drawn
- iv. Leave encashment
- v. CGEIS
- vi. TA/DA amounts

12. In view of the above the OA is allowed. The PPO No. C/AOC/17105/2000 dated 07.08.2000 is hereby quashed. The respondents are directed to refix the pension of the applicant at the revised scale of the post of Ordnance Officer, OD, Kolkata within a period of 03 months from the date of receipt of a certified copy of this order. However, till such time of re-fixation of pension, pension at the current rate will continue to be paid. All other emoluments as per entitlement including arrears of pension will also be paid to the applicant within a period of 06 months from the date of receipt of a certified copy of this order with an interest @ 8.50% per annum. No cost.

S. Chandra

Member (A)

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