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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

ORIGINAL APPLICATION NO. 27/2004

Date of Decision: 18.01.2005.

Hon'ble Mr. Kuldip Singh, Vice Chairman.

Narayan, S/o Shri Kana Ram, aged about 61 years, resident of - village & Post Jud. Tehsil- Osian, Dist. Jodhpur (Raj.) Last employed on the post of Mazdoor, T. No. 97 in 25 Ammunition Company, C/o 56 APO.

: APPLICANT.

Rep. By Mr. J.K. Mishra, & Mr. B. Khan : Counsel for the applicant.

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1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Officer, Commanding, 25 Ammunition Company, 19, FOD, C/O 56 APO
3. The Account Officer. CDA (Pension), Allahabad.
4. The Manager, UCO Bank, Mathaniya Dist. Jodhpur (Raj).

: Respondents.

Rep. By Mr. Vinit Mathur: Counsel for the Respondents. No. 1 to 3

Rep. by Mr. P.C. Singhvi: Counsel for respondent No. 4

ORDER.

Mr. Kuldip Singh, Vice Chairman.

The Applicant has filed this O.A claiming the following reliefs:



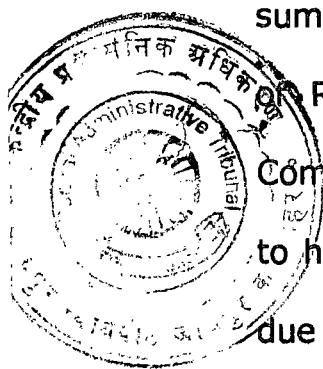
- (i) That withholding of applicant's retiral benefits may kindly be declared illegal.
- (ii) That respondent may be directed to make payment of the due amounts of DCRG, commutation, P.F. and all other retiral benefits to the applicant with interest.
- (iii) That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iv) That the costs of this application may be awarded.

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2. At the time of filing of this O.A the applicant has also made a prayer for interim relief, seeking a direction to the respondents not to withhold the monthly pension. Vide order dated 06.02.2004, this Tribunal directed that the operation of Annex. A/4, vide which instructions were issued to the bank to stop payment of pension to the applicant was stayed.

3. The facts in brief as alleged by the applicant are that the applicant is an ex-serviceman and was initially appointed as Mazdoor under Officer Commanding, 25 Ammunition Company, 19,F.O.D Barmer. On attaining the age of superannuation he was retired from service on 31.03.2002. He had been sanctioned pension vide PPO No. C/AOC/16204/2003 dated 04.03.2003, to the tune of Rs. 1275/- per month with effect from 01.04.2002. Out of Rs. 1275/- the applicant had commuted a sum of Rs. 510/- and his residual pension has been fixed as Rs. 765/- per month. The applicant was also sanctioned a sum of Rs. 37,008/- towards DCRG and Rs.52,226/- towards commutation of pension. At the same time a sum of Rs. 89,234/- is shown as due from the applicant and a sum of Rs. 1000/- has been withheld after adjusting the DCRG & Commutation, an amount of Rs. 6812/- has been ordered to be paid to him, vide Annex. A/2. Thus the applicant has not been paid his due amount of PF., other reitral benefits like DCRG,commuted value of pension, leave encashment etc. In addition to that he has also not been paid the monthly pension. The applicant has contended that the pensionary benefits are ^{not in} bounty rather they are the property of an individual and the action of the respondents in not paying the due amounts is a breach of trust and thus the action of the respondent is also against the fair play and natural justice. It is



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further contended that fundamental right as enshrined in Art.21 of the Constitution of India has been violated by the respondents. Therefore the action of the respondents deserves to be quashed.

4. The respondents have contested the case by filing a detailed reply. They have pleaded in the reply that the applicant was initially working as Mazdoor in the office of 19 Field Ammunition Depot (FAD for short) and was transferred to 25 Ammunition Company on 01.03.2000 and he retired from service on attaining the age of superannuation on 31.03.2002. In the meanwhile, the 25 Ammunition Company has received an intimation to the effect that a sum of Rs. 1,04,119/- was to be recovered from the applicant on account not vacating the quarters and subletting of Government Married Quarter Type I No. 201/1 in the location of 19 FAD. It is stated in the reply that during the service of the applicant from 01.03.2000 to 31.03.2002, only a sum of Rs. 14,885/- could be recovered and therefore for the recovery of balance amount of Rs. 89,234/- the pension documents were forwarded to the LAO(B) Jodhpur for verification/audit. During verification it was found that there was an over payment of Rs. 2559/- and that amount was also yet to be recovered from him. In view of the above the pension amount has been stopped.

5. Heard the learned counsel for both the parties and perused the documents. On 09.12.2004, the learned counsel for the respondents was directed to file complete statement of accounts with regard to the payment of retiral benefits including DCRG, PF, Pension, Commutation of pension. In compliance of the same, the learned counsel for the respondents has produced records which shows that the applicant had sub let the premises and not vacated the premises and on account of that a sum of Rs. 1,04,119/- was due from the applicant. The said amount was to be recovered by



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way of adjusting the gratuity, commuted value of pension etc.

6. The learned counsel for the applicant did not deny the dues to the government which have been raised due to non vacating the quarter. However, it is submitted that the DCRG could have been adjusted but the respondents cannot adjust the same from commuted value of pension. It is further submitted that the respondents cannot stop payment of pension, which could be done only under Rule 9 of the CCS(Pension) Rules, 1972, which reads as under:

9. Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government; if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement

Provided that the Union Public Service Commission shall be consulted before any final orders are passed;

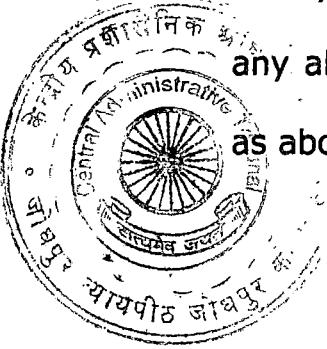
A perusal of above Rule 9 of the CCS (Pension) Rules, 1972, would go to show that stoppage of pension or withholding of pension can be made only by way of Presidential order. Thus withholding of pension or non-payment of commuted value of pension cannot be done for adjusting the Government dues. *as if entitles civil consequences be*

7. In view of the above discussion, I am of considered opinion that the action of the respondents in withholding the pension and the commuted value of pension cannot be sustained. However, they are entitled to adjust the Government dues from DCRG and leave encashment etc of the applicant. Hence the O.A is partly allowed. The instructions issued to the concerned Bank to stop the payment of pension to the applicant are hereby quashed. The respondents are directed to pay the withheld commuted value of pension and

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also issue directions to the concerned bank to make payment of the withheld pension to the applicant forthwith and continue to pay him the pension. However, I make it clear that the respondents are at liberty to recover the balance dues from applicant by resorting to any alternative method in accordance with law. O.A is disposed of as above. No costs.


Kuldeep Singh
Vice Chairman

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Copy of letter sent
to R/S by special post
Reply as Vade no 6
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Part II and III destroy
in my presence on 08/01/2014
under the supervision of
Section Officer () as per
order dated 18/12/2013

Section Officer (Record)