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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

Original Application No. 193/2007

Date of order: 07.07.2008

HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER.

Bheek Singh Rathore son of late Shiv Dan Singh, aged about 64 years, resident of 244, Laxmi Nagar, Pata 'B' Road, Jodhpur, last employed on the post of Manager, in the office of Battle Axe Canteen, Hqrs. 12 RAPID PIN 908412 (erstwhile known as 12 Infantry Division) C/o 56 APO.

...Applicant.

Applicant present in person.

VERSUS

1. Union of India through Secretary to Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. G O C, Hqrs. 12 RAPID PIN 908412 (erstwhile known as 12 Infantry Division) C/o 56 APO.
3. Canteen Officer, Battle Axe Canteen, 12 RAPID PIN 908412 (erstwhile known as 12 Infantry Division) C/o 56 APO.

...Respondents.

None present for the respondents.

ORDER

The applicant, Shri Bheek Singh Rathore, has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 and has prayed for the following reliefs:



"(i) That impugned order dt. 27.7.2006, (Annexure A-1) and penalty order dated 20.1.2007 (Annexure A/2), and dated 28.3.2007 may be declared illegal and the same may be quashed and the OA allowed in favour of applicant.

(ii) The respondents may be directed to reckon the qualifying service of the applicant as 12 years and 6 days, from the date of his initial appointment i.e.

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25.6.1991 till deemed date of superannuation 30.6.2003 i.e. on completion of 60 years for all purposes including payment of salary and gratuity and make the payment thereof.

(iii) That the respondents may be directed to fix the pay of the applicant in the pay scale of Rs. 5500-9000 w.e.f. 1.1.96 meant for Manager Grade C canteen in the corresponding CSD canteen on the equivalent post. The due amount of arrears on account of payment of salary, fixation of pay in revised scale of pay and gratuity may be directed to be paid along with interest at the market rate.

(ii) 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.

(iii) That the costs of this application may be awarded."

2. The brief facts of the case as brought out from the various documents on record are as under:

(i) Shri Bheek Singh Rathore was appointed as Accountant of Battle Axe Canteen w.e.f. 25th June, 1991 vide order dated 17th July, 1991 (Annexure A/4). The appointment was temporary.

(ii) Subsequently, Shri Bheek Singh Rathore was appointed as Manager of Battle Axe Canteen w.e.f. 01st January, 1993 vide order dated 21st December, 1992 (Annexure A/5). The appointment was temporary. He was also asked to look after the job of Accountant in addition to the duty of Manager till an alternate arrangement is made.

(iii) The services of the applicant was terminated by an order dated 03.06.2000 based on some fact finding inquiry. The applicant challenged this termination order in O.A.

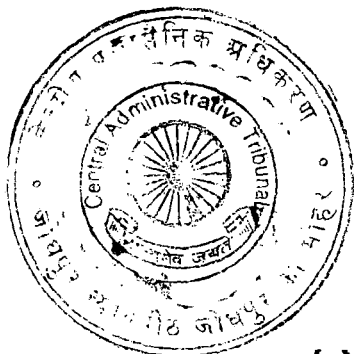
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No. 24/2001 (Bheek Singh Rathore vs. Union of India & Ors.) before this Bench of the Tribunal and the same was allowed vide order dated 09.07.2002. He was, subsequently, retired at the age of 58 years on 30th June, 2001. This has been mentioned in the Original Application. Annexure A/2 dated 20th January, 2007, reply to para 5 (e) mentions salary from 01st June, 2001 to 30th June, 2001 at revised rates. Para 4 (h) of Annexure A/3 dated 28th March, 2007 mentions salary from 1st January, 1993 to 3rd June 2000 at old rates and also from 3rd June 2000 salary as per old rates upto 58 years of age.

(iv) The decision of this Bench of the Tribunal in O.A. No. 24/2001 was challenged by the respondents before the Hon'ble High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Writ Petition No. 4016/2002 and the same was dismissed vide order dated 18.07.2005 (Annex. A/6). The operative portion of order dated 18.07.2005 is reproduced as under:

"Accordingly, the petition fails and is hereby dismissed. It may be stated that if the respondent is not superannuated as a result of quashing the termination order, he may be reinstated with all other benefits. In case the respondent has attained the age of superannuation, no reinstatement is possible. However, in such event he shall be entitled to all the benefits of continuing in service and retiral benefits which he may otherwise be entitled as if the impugned order of termination was not passed."



(v) Against the Hon'ble High Court order dated 18.07.2005 a Special Leave to Appeal (Civil) No. CC 4404/2006

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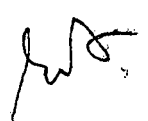
(Annexure A/7) was preferred by the Union of India before the Hon'ble Supreme Court. The same was dismissed on the ground of delay vide order dated 05.07.2006.

3. The respondents have filed their reply. In reply, the

respondents submitted that appointment of Shri Bheek Singh Rathore as Canteen Manager w.e.f. 1st January 1993 was a fresh appointment vide fresh appointment letter dated 21st December, 1992, and therefore, should not be clubbed with the initial appointment of Shri Bheek Singh Rathore on the post of Accountant w.e.f. 25.06.1991. The respondents also mentioned that his services were terminated due to a disciplinary action. This termination was not upheld by this Tribunal and that the Hon'ble High Court also dismissed the writ petition.

4. The applicant has filed rejoinder. In rejoinder, the applicant maintained that there was a continuity of service right from his initial appointment on 25.06.1991 and that he continued to work till his retirement, of course after the decision of Hon'ble C.A.T., High Court and Apex Court.

5. On the date of hearing i.e. today on 07.07.2008, the applicant is present in person. I have heard the applicant and perused the records. The applicant argued/submitted as under:



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"(i). I was appointed as Accountant on 25.06.1991 vide order-dated 17.07.1991 in Battle Axe Unit Run Canteen and subsequently, promoted as Manager on 01.01.1993. In the appointment letter, for the post of Manager, dated 21st December, 1992 (Annex. A/5) given to me, it is clearly mentioned that I will look after the job of Accountant and that the Manager's job is rather a promotion. I was retired on 30th June, 2001. I had completed 10 years and 6 days qualifying service as Accountant/Manager and pension is admissible after serving of 10 years.

(ii). I was not granted pension though I had completed 10 years service though I had requested for pension and arrears, if any. Arrears also become due on the outcome of the 5th Pay Commission i.e. w.e.f. 01st January, 1996. Annexure A/9 gives list of my colleagues who were given arrears from 01.01.1996 onwards.

(iii). On making a query that why arrears were not paid to me, I was told that my service as Accountant has not been considered being not a permanent employee.

(iv). I humbly pray that my request should be granted."

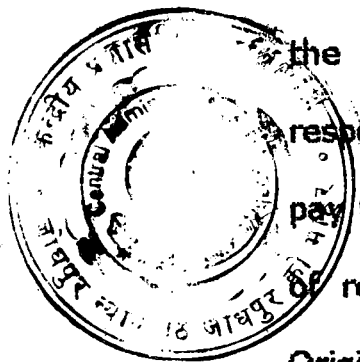
6. From the various documents as well as the averments made in person by the applicant, it can be concluded that Shri Bheek Singh Rathore was appointed as Accountant of Battle Axe Canteen on 25th June, 1991. He was subsequently appointed as Manager of Battle Axe Canteen w.e.f. 01st January, 1993. This appointment could be considered in continuity with the previous appointment of Accountant. His services were

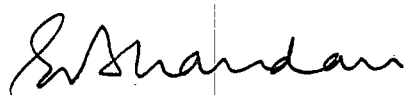




terminated w.e.f. 3rd June, 2000 but this termination was challenged and as per the decisions of this Bench of the Tribunal and subsequently affirmed by the Hon'ble Rajasthan High Court at Jodhpur, his services were counted as continuous till his superannuation on 30th June, 2001 at the age of 58 years. Thus, the qualifying years put in by the applicant as Accountant/Manager of Battle Axe Canteen was little more than 10 years. His service period could be counted from 25.06.1991 to 30.06.2001.

7. In view of the above, the respondents are directed to calculate the pension, retiral benefits etc. as per the rules in force, as the applicant has served for more than 10 years. The respondents are further directed to complete this exercise and pay the arrears within a period of three months from the date of receipt of certified copy of this order. Accordingly, the Original Application is allowed only to this extent. No order as to costs.




[R.R. Bhandari]
Member (A)

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R/copy
Kumar
10/7/08

8m/Am
Received copy
9/07/08
FM
Indeep Kaur

Part II and III destroyed
in my presence on 15/12/14
under the supervision of
section officer (1) after
order dated 19/8/2014
[Signature]
Section officer (Record)