

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 196/2012

Jodhpur this the 27th day of May, 2013.

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J)

Gordhan Ram Choudhary Driver M.T. grade -II (Retired), Age 62 years. S/o Sh. Bhikha Ram, R/o Behind Dhadwasiya School, Vishwakarma Nagar, Jodhpur (Rajasthan).

.....Applicant

(Through Advocate Mr. N.M. Vyas)

Versus

1. The Secretary, Ministry of Defence, Defence Res. & Dev. Organization, Laser Science & Technology Center, Metealife House, Delhi – 110 054.
2. The Director, Defence Laboratory, Ratanada Palace, Jodhpur.
3. The Joint Director, M.T., Defence Laboratory, Ratanada Palace, Jodhpur.
4. The Principal Controller of Defence Account (Pension), Draupdighat, Allahabad – 211 014.

(Through Advocate Ms K. Parveen)

.....Respondents

ORDER (Oral)

The applicant by way of this application prayed to grant him pensionary benefit from 18.02.1992 instead of 01.01.1995 and the legality of order of granting him pensionary benefits w.e.f. 01.01.1995 has been challenged. Further, he has prayed to grant him pensionary benefits from his initial entry in service from

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18.02.1992 and interest @ 12% p.a. on the arrears of pension and other dues.

2. The short facts of the case are that the applicant was initially appointed in the Indian Army on the post of Driver and superannuated in the year 1987. The non applicant issued certain vacancies of the Drivers and for filling up of these vacancies, they asked the soldier board to send the name of the eligible candidates for the post of Drivers. The soldier board sent the name of the applicant alongwith other eligible candidates. The applicant was selected on the post of Driver MT grade - II in the respondent-department and was temporarily appointed in work of National Technology Mission of Drinking Water project. The services of the applicant were extended from time to time upto 01.04.1995. The annual grade increments were also sanctioned to him for the above services. As the project of National Technology Mission of Drinking Water was continued, therefore, the services of the applicant on the post of Driver were confirmed and he was regularly appointed w.e.f. 01.04.1995 and he was superannuated on 31.07.2010. The applicant was awarded pensionary benefits for the services rendered from 01.04.1995 to 31.07.2010. It has been averred that respondent-department ought to have grant him pensionary benefits w.e.f. 18.02.1992 instead of 01.04.1995 but respondent-department failed to consider the representation of the applicant and lastly he served the demand of justice notice but no

heed was paid and it was not replied by the respondents. Hence, this OA has been filed.

3. The respondent-department by way of counter denied the claim of the applicant and it has been averred that initial appointment of the applicant from 18.02.1992 to 31.03.1995 was temporary, therefore, he is entitled to get the pensionary benefits from the date of his services being permanent i.e. from 01.04.1995 and temporary services of the applicant cannot be counted for the purpose of pension. The applicant's temporary appointment would have been liable to be terminated without any notice and defended the order of the respondent-department.

4. Heard both the parties. Pondered over the argument of counsel for respondents and also perused the pleading as well as relevant record submitted with the OA. In reply the date of initial appointment of the applicant has not been denied and in para 4.3 of the counter reply, it has been admitted that the applicant was initially appointed as Civ. MT Driver-II w.e.f. 18.02.1992 under the Project "Rajiv Gandhi national Drinking Water Mission" (RGNDWM) under department of rural Development, Ministry of Agriculture for a period of one year and thereafter, his services were extended upto 31.03.1995. Further, Annex. A/5 "Recategorization Seniority & Consequential Financial Benefits" infer that there is no break in service from 18.02.1992 to the date of superannuation of the applicant and he has earned his annual grade

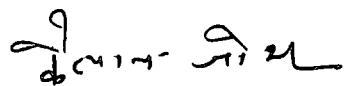
increments during that period. Although, annex. A/3 refers his appointment from 01.04.1995 with 2 years of probation period.

6. Counsel for the respondents contended that his services from 18.02.1992 to 31.03.1995 cannot be considered for the purpose of pensionary benefits but the contention raised by the counsel for the respondents does not seem to be logical because a person appointed on temporary basis earned annual grade increment followed by permanent appointment without any break in service then he is entitled to get the pensionary benefits from the date of his initial service. It is well settled principle of law that pension is neither a bounty nor a matter of grace. It has been held to be a right of an employee for having put in long number of years of satisfactory service. It is considered to be a deferred payment for years of rendering tireless service. In the backdrop of concept of welfare State, it is a measure of social security and reward for loyalty. Hon'ble Apex Court approved this concept in catena of judgments. It is also settled principle of law that in case of non-payment of pension it is recurring cause of action. When annex. A/5 itself shows that the applicant has served the respondent-department from 18.02.1992 continuously without any break in service, he must be entitled to have the pensionary benefits counted even his temporary service which he rendered and therefore, this inaction on the part of the respondents not counting his services from 18.02.1992 to 31.03.1995 for the purpose of pensionary benefits is illegal and PPO issued by the respondent-department not counting aforesaid

period toward pensionary benefits cannot be sustained in the eyes of law.

7. In view of the discussion made hereinabove, the OA is allowed and annex. A/4 (PPO) issued by the respondents is illegal and is quashed. The respondents are directed to recalculate and refix the pension and to pay arrears of pensionary benefits of the applicant within 3 months from the date of receipt of this order considering his pensionable services from 18.02.1992 instead of 01.04.1995.

8. Looking into the entire facts and circumstances of the case, I do not deem it fit to award any interest on the arrears of pension as well as there shall be no order as to costs.



**(Justice K.C. Joshi)
Judicial Member**

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