

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 223/2013

Reserved on : 11.05.2015

Jodhpur, this the 21st May, 2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Veera Ram, S/o Shri Shera Ram, aged 32 years, Mazdoor in 25 Ammunition Depot., Jassai, District Barmer, R/o Village Dhundha, District-Barmer.

.....Applicant

By Advocate: Mr. Vijay Mehta.

Versus

1. Union of India through the Secretary, Govt. of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commanding Officer, 25 Ammunition Depot, Jassai, District Barmer.

.....Respondents

By Advocate : Ms K. Parveen.

ORDER

This OA has been filed under Section 19 of Administrative Tribunals Act, 1985 not against any written order but filed for not governing services of the applicant by the CCS (Pension) Rules, 1972 seeking following relief(s):-

"The applicant prays that the action of the respondent of not governing the services of the applicant by the provisions of

(Pension) Rules, 1972 and the respondents may further be directed to make required deduction from the salary of the applicant as per provisions of the Rules of 1972. Any other order, as deemed fit may also be passed. Costs may also be awarded to the applicant."

2. It has been averred by the applicant in the OA that he applied for grant of appointment on compassionate ground to the Commandant, 19 FAD, Jodhpur and eventually approached Rajasthan High Court for the said appointment and the Hon'ble Rajasthan High Court vide its order dated 16.08.2007 (Annex. A/1) passed in D.B.C.W.P. No. 3243/2003 directed the respondents to give appointment to the applicant without arrear of salary but with consequential benefits from the date person lower in order of merit was given appointment. In compliance of order of the Hon'ble Rajasthan High Court, the applicant was appointed on the post of Mazdoor vide order dated 19.11.2008 by the Commandant, 224 Advance Base Ordnance Depot, Jodhpur who was previously known as Commandant, 19 FAD w.e.f. 25.01.2002. It has been averred that it has been clearly mentioned in the order that the date of appointment of the applicant shall be w.e.f. 25.01.2002. The applicant immediately joined his services and he was transferred from Jodhpur to Jassai in 25, Ammunition Depot on 02.12.2009. It has been submitted that thus it is evident that the applicant has been appointed w.e.f. 25.01.2002 and he is governed by CCS (Pension) Rules, 1972. However, despite this the

of the applicant despite repeated requests. The applicant has also averred that he has learnt that the respondent No. 2 has sought permission to govern the services of the applicant by the provisions of Rules of 1972 but no required order has been passed. The applicant also submitted representation dated 15.10.2012 (Annex. A/3) but despite lapse of more than six months, the same has not been disposed nor even a line in reply has been given. Hence, the applicant has filed the present OA for above mentioned reliefs.

3. By way of reply it has been stated that on filing of Writ Petition in the Hon'ble Rajasthan High Court, the Hon'ble Court vide its order dated 16.08.2007 directed the respondents in the following manner :

“The respondents are directed to consider the petitioner's case as per the merit as on 01.05.2001 on the basis of recommendation made by the unit board and if on that basis he is found in order of merit against the available vacancies, he may be given appointment with effect from the date person lower in order of merit with consequential benefit. The order be given effect to within three months. However, it will not entail claim to any arrears of emoluments before the date of actual appointment.”

Under the authority of the above Hon'ble High Court, Jodhpur order dated 16.08.2007 and Integrated Headquarters of Ministry of Defence (Army) letter No. A/23802/BD-004-007/224 ABOD/SC/OS-6C(i) dated 03 Sep. 2008, Shri Veera Ram was

Depot vide letter No. C/10703/138/Est-NI dated 19.11.2008 subject to following conditions :

- (a) Join duty as early as possible alongwith your Character Certificate duly signed by the Gazetted Officer
- (b) As per order of Hon'ble High Court, Jodhpur order dated 16 Aug 2007, your date of appointment will be considered with effect from 25 Jan 2002.
- (c) As per ibid Hon'ble High Court, Jodhpur order dated 16 Aug 2007, the financial effect will be entitled with effect from your physical joining duty in this depot.
- (d) The post is purely temporary and initial appointment will be probation for a period of two years. During probation period if found unsuitable, service will be terminated without any notice.

On receipt of appointment letter dated 19.11.2008, the applicant joined duty at Advance Base Ordnance Depot on 20.11.2008 with effective date of appointment 25.01.2002. It has also been stated that on 15.10.2012, the applicant submitted an application to Officer Commanding 25 Ammunition Company and requested for grant of MACP w.e.f. 25.01.2012 on completion of 10 years' service from the effective date of appointment i.e. 25.01.2002 and in reply the applicant was informed vide letter dated 16.11.2012 that physical appointment was made on 20.11.2008 and according to para 1(b) of appointment letter dated 19.11.2008, all the financial benefits can be granted with effect from physical joining of the service i.e. 20.11.2008. On receipt of letter dated 16.11.2012, the applicant has filed this OA on 27.5.2013 for not governing the services of the applicant by the

context, it has also been submitted that a letter seeking clarification with regard to MACP and consequential benefits was forwarded to DGOS (OS-8C) vide letter No. T.No. 234/Veera Ram/Civ (IPs) dated 24.06.2013. It has been reiterated that financial benefits are required to be entitled from physically joining of service by the applicant and for MACP 10 years regular service is required i.e. regular service for the purpose of MACP shall commence from the date of joining of post i.e. 20.11.2008 in direct entry grade on regular basis. In the case of the individual the date of appointment is 25.1.2002, however, the date of joining of the post is 20.11.2008, hence, the individual does not complete 10 years from joining the post i.e. 20.11.2008 making him eligible for MACP. The issue regarding consequential benefits is not clear and requires further advice i.e. the date of appointment (25.1.2002). Regarding applicability of pension rules, it has been mentioned that CCS (Pension) Rules, 1972 are applicable to those employees who are appointed before 31.12.2003. In the instant case, the actual physical joining of the applicant is 20.11.2008, therefore, the Pension Rules of 1972 are not applicable to the applicant. Thus, the applicant is not entitled to get any relief as claimed by him in the OA and the respondents have thus prayed for the dismissal of the OA.

4. Heard both the parties. Counsel for applicant referred to

D.B.C.W.P. No. 3243/2003 in which the following directions were given :

"The respondents are directed to consider the petitioner's case as per the merit as on 01.05.2001 on the basis of recommendation made by the unit board and if on that basis he is found in order of merit against the available vacancies, he may be given appointment with effect from the date person lower in order of merit with consequential benefit. The order be given effect to within three months. However, it will not entail claim to any arrears of emoluments before the date of actual appointment. The petition is accordingly disposed of."

Counsel for applicant further referred to the appointment letter Annex. A/2 dated 19.11.2008 of the applicant by which in para 1(b) it is mentioned that 'As per order of Hon'ble High Court, Jodhpur order dated 16 Aug 2007, your date of appointment will be considered with effect from 25 Jan 2002.' Counsel for applicant contended that despite order of the Hon'ble High Court and appointment order issued by the respondents themselves at Annex. A/2, the applicant has not been given the benefit of Old Pension Scheme under CCS Pension Rules, 1972. He referred to the reply filed by the respondents to the OA, in which it has been mentioned that on receipt of appointment letter dated 19.11.2008, the applicant joined the duty at 224 Advance Base Ordnance Depot on 20.11.2008, therefore, he cannot be covered in the Old Pension Scheme of 1972, but rebutting the same, counsel for the applicant contended that as his appointment has been made effective from 25.1.2002, as is clear from Ann.A/2, he cannot be denied the

to the applicant. Therefore, counsel for applicant has prayed that the applicant's services may be governed by CCS Pension Rules, 1972.

5. Per contra, counsel for respondents contended that the appointment of the applicant was made effective from 25.01.2002 but as brought out in para 8 of the reply, it was clearly mentioned in the appointment letter of the applicant that the applicant would be entitled for financial effect from the date of his physically joining the post i.e. 20.11.2008 and this is mentioned in the para 1 (c) of the appointment letter as under :

1. (a) xxxxx
- (b) xxxxx
- (c) 'As per ibid Hon'ble High Court, Jodhpur order dated 16 Aug 2007, the financial effect will be entitled with effect from your physical joining duty in this depot.'

In this context, counsel for respondents submitted that the financial benefits to the applicant were rightly given from the date of physical joining of the applicant i.e. 20.11.2008 and prayed that the OA filed by the applicant may be dismissed.

6. Considered the rival contentions and also perused the record. In this OA, the main issue is whether the applicant is entitled to be covered under the CCS (Pension) Rules, 1972, in view of his appointment made effective from 25.1.2002, as these

not entitled for the same, as he joined duty only on 20.11.2008 in pursuance of appointment order dated 19.11.2008 (Ann.A/2). In this regard, it is seen that in the order dated 16.8.2007 of the Hon'ble High Court in D.B. Civil Writ Petition No.3243/2003, it has been directed that the applicant may be given appointment with effect from the date person lower in merit with consequential benefit and it has been further directed that however, it will not entail claim to any arrears of emoluments before the date of actual appointment. On perusal of this order, it is clear that the applicant is entitled to his appointment with consequential benefit but it will not entail claim to any arrears of emoluments before the date of actual appointment. In this connection, it is noted that as per appointment letter dated 19.11.2008 (Ann.A/2) the applicant's appointment has been made with effect from 25.01.2002 but as his appointment order was issued on 19.11.2008, he joined duty on 20.11.2008. Thus, as the appointment order of the applicant has been issued in pursuance to the order of the Hon'ble High Court dated 16.8.2007 in D.B.Civil Writ Petition No.3243/2003 and in the appointment order Ann.A/2 the date of appointment has been considered as 25.1.2002, the applicant is entitled to be covered by the CCS (Pension) Rules, 1972, which are applicable, as admitted by the respondents themselves, to those appointed prior to 31.12.2003.

7. Accordingly, in view of the discussions and analysis made hereinabove, the OA is allowed to the extent that the applicant is entitled to be covered under CCS (Pension Rules) 1972 as his appointment has been considered w.e.f. 25.01.2002 vide order Annex. A/2. With regard to any consequential benefits, the applicant may file a representation to the respondents within a month from the date of receipt of this order regarding his specific and due claims for consequential benefits arising from his being covered by the CCS (Pension) Rules, 1972 and the respondents shall decide the same within 4 months from the date of receipt of the representation, as per law and in the light of order of the Hon'ble High Court dated 16.08.2007 passed in D.B.C.W.P. No. 3243/2003.

The OA is allowed to the extent as above, with no order as to costs.



[Meenakshi Hooja]
Administrative Member

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