

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ( ALLAHABAD BENCH ), ALLAHABAD.

O.A.NO.  
T.A.NO.

O.A. 235/90 OF 199

Date of decision : \_\_\_\_\_

.....Naman Das Thakral.....Petitioner

.....Sri B.K. Shukla.....Advocate for the Petitioner.

Versus

.....Union of India & Ors......Respondent

.....Sri V.C. Chaudhary.....Advocate for the Respondent (s).

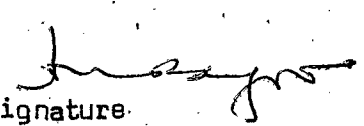
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CORAM:-

The Hon'ble Mr. Justice U.C. Srivastava, V.C.

The Hon'ble Mr. A.B. Gauthi, A.M.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether to be circulated to all other Benches ?

  
Signature

(12)

THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH, LUCKNOW

DA No. 235/90

Narain Das Thukral ... Applicant

Vs.

Union of India and others ... Respondents

Hon'ble Mr. Justice U.C. Srivastava, W.C.

Hon'ble Mr. A.B. Gorthi, A.M.

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(By Hon'ble Mr. A.B. Gorthi, A.M.)

In this application, the claim is for the grant of pension and gratuity which were refused to the applicant by Controller of Defence Accounts (Pension), hereinafter CDA(P).

2. The applicant retired as a Junior Commissioned Officer after having rendered 28 years of Military service. He was thereafter re-employed as a Lower Division Clerk in the Central Command Stationary Depot. As the post of Lower Division Clerk which he was holding w.e.f. 23-5-68 was declared surplus, he was re-categorised as a civilian Store Keeper w.e.f. 1.11.1972. Finally, he retired from the civil service from 30.11.1980. He was however, refused pension for his services as a LDC/Civilian Store Keeper on the plea that he was a subscriber to IOFWP Fund, and even otherwise as he was not confirmed in his post he could only claim terminal benefits other than pension and gratuity from the regional CDA. The applicant, on the advice of CDA, refunded an amount of Rs. 10,938/- to JCDA Funds,

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Meerut on 16.11.88 and obtained from him a certificate to the effect that Government contribution with interest thereon in respect of the applicant had been resumed and that necessary endorsement had been pasted in his Service Book. Notwithstanding the same, the CDA(P) stuck to his original decision that the applicant was not entitled to pension for the civil services rendered by him with the Central Command Stationary Depot.

3. No reply has been filed by the CDA(P). In the Counter Affidavit <sup>filed</sup> finally on behalf of Union of India and the Officer Commanding Central Command Stationary Depot, it has been stated that the applicant after his retirement from the Army was initially appointed as temporary Lower Division Clrrk, but when that post became surplus he was re-categorised as Civilian Assistant Store Keeper. He was subsequently promoted to Civilian Store Keeper Grade-III. Thus although he served in the Central Command Stationary Depot for over 12 years, he could not be confirmed as the post of Civilian Store Keeper was not confirmed by Army Headquarters. Moreover, the applicant opted for IOFWP Fund. Accordingly, on his retirement he received his full accumulated amount of IOFWP Fund including bonus and the interest.

4. We have heard the learned Counsel for both the parties. CDA(P) has been constantly asserting that the applicant was not entitled to pensionary benefits for two reasons - firstly, he was not a confirmed employee and secondly, he opted for Provident Fund. In this context, letter from CDA(P) dated 14.8.86

stated as follows :-

"Since the individual is not entitled for pension/gratuity for his civil service being not confirmed in <sup>any post</sup> ~~my part~~, the question of payment of graded relief on civil pension does not arise."

"Hence he would not be entitled for pensionary benefits even if he retired as permanent employee unless he has opted <sup>to</sup> in pensionary benefits before the date of retirement and Government contribution paid to him is resumed to the Government ~~to~~ alongwith interest thereof from the date of payment to the date of deposit through <sup>M.R.C</sup> ~~P.T.R.H.~~ and G.C.R.C. received from J.C.D.A. Funds Meerut."

5. Without careful examination <sup>a</sup> ~~of~~ or understanding <sup>of</sup> the true purport of the above letter, a prolonged exercise was undertaken to refund the amount of Provident Fund and Bonus with interest. This was finally done and a certificate was obtained to that effect from the concerned J.C.D.A. Funds.

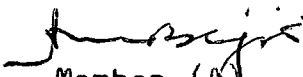
6. On behalf of the applicant, no specific rule or instructions <sup>is</sup> has been shown to us according to which the applicant ~~has been~~ entitled to pensionary benefits. The sole contention of the applicant is that since he had refunded the amount of IOFWP Funds and the bonus with interest, as advised by CDA(P), he should be paid his pension and gratuity. There can be no doubt that the letter of CDA(P) dated 14.8.86 did not state that the applicant would be entitled to pension if he refunded the accumulated amount in the IOFWP Fund with Bonus and interest. This contingency would apply only

in respect of a permanent employee. The applicant ~~examined~~ who retired without being confirmed in his post of Civilian Store Keeper cannot, therefore, claim pension or gratuity as has been sufficiently clarified by CDA(P).

7. The applicant, admittedly was not confirmed in his post. In the case of Baleshwar Dass Vs. State of U.P. A.I.R. 1981 S.C. 41, the Supreme Court had the occasion to observe that confirmation is one of the inglorious uncertainties of Government service depending on neither efficiency of the incumbent nor on the availability of substantive vacancies. The post of Civilian Store Keeper having been held by the applicant for a considerable length of period, we fail to see why and how the said post remained as a temporary ~~post~~ post. However, this is a matter for consideration and decision of the Executive Government.

8. The application under the circumstances cannot succeed. The amount of Rs. 10,930/- deposited by the applicant may be refunded to him with interest at a rate not lower than 12% per annum.

9. Subject to the above observation, the application is dismissed. There shall be no order as to costs.

  
Member (A)

  
Vice Chairman

Lucknow  
dated 26 May, 1992.