

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.790/1999.

Thursday this the 25th day of January 2001.

Coram: Hon'ble Shri B.N.Bahadur, Member (A),

S.Aruna Jatai,
B/57/547, M.I.G. Colony,
Gandhinagar,
Bandra (East),
Mumbai - 400 051.
(By Advocate Shri Suresh Kumar)

... Applicant.

Vs.

1. Union of India through
The Secretary, Ministry of Defence,
Central Secretariat, South Block,
New Delhi - 110 001.
2. Engineer-in-Chief,
Army Headquarters,
Kashmir House,
New Delhi.
3. Chief Controller of Defence Accounts,
Allahabad (UP).
4. Punjab National Bank,
PNB House, Sir P.M.Road,
Mumbai - 400 001.
(By Advocate Shri R.K.Shetty)

... Respondents.

: O R D E R :

{PER SHRI B.N.BAHADUR, MEMBER (A)}

This is an application made by Shri S.Aruna Jatai, who seeks the following reliefs from this Tribunal.

- 8(a) The respondent be directed to pay the applicant commutation pension wef 30.6.1977 with interest thereon at the rate of 12% compounded pa and further they be directed to restore the full pension w.e.f. 30.6.1992. (Approximate amount worked out by the applicant is 3,12,009.00.
- (b) To direct the respondent to restore the pension to Rs.5187/- subject to further refixation at 50% of the new scale for the post held by the applicant.

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- (c) To direct the respondent to refix his pension on the basis of granting him pay fixation vis-a-vis his junior as recommended and granted by respondent as per exhibit.
- (d) To direct the respondent to pay the remaining amount of gratuity to the applicant with interest thereon at the rate of 12% compounded pa (Approximate amount worked out by the applicant is 89,510.00).
- (e) To direct the respondent to pay the expenditure incurred by the applicant for defending the case and TA DA as per rule. (Approximate amount worked out by the applicant is 1.6 lacs).
- (f) To direct the respondent to pay the applicant compensation of Rs.10 lacs as the applicant is prevented from taking up gainful employment after retirement.
- (g) This Hon'ble Tribunal may be pleased to grant any other relief to which the applicant may be found entitled and in this respect, may pass any such order or or direction or suitable writ as deem fit.
- (h) Cost of this application may be provided for."

2. The facts of the case, as brought forth by the applicant are as follows:

The applicant retired on superannuation on 30.6.1977. Just a few days before this date, on 28.6.1977, the Respondents had served on him a Charge Sheet initiating a departmental enquiry against him. A criminal proceeding was also initiated against the applicant in November, 1977. The applicant further goes on to aver that both, the criminal proceedings and the departmental proceedings against him, were finally dropped around October, 1997 i.e. some twenty years later.

3. The applicant avers that all his pensionary benefits and other retirement dues were withheld after his retirement in 1977, except that provisional pension was paid to him. The applicant states that the matter had gone upto the Supreme Court, which directed the Union of India, through its order dt. 19.3.1997, to

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pay to the applicant the gratuity and other dues for which he was entitled, within two months (Annexure A-2).

4. The applicant further avers, at para 4.7 of his application, that consequent to the Supreme Court Order and the withdrawal of both proceedings against him, he had become entitled to the following dues, with compound interest thereon viz.

- 1) Gratuity
- 2) Provident Fund dues
- 3) The amount that the applicant was entitled to commute at the time of retirement.
- 4) Restoration of Pension that was reduced due to incorrect PPO issued by CGDA.
- 5) Restoration of Reduction of Pension that was caused by the E-in-C Branch due to their failure to maintain the seniority allotted to him by DPC.
- 6) Re-imbursement of expenditure incurred by applicant in litigation, travel to outstation and compensation for deprivation of freedom of life.

The applicant then goes on to discuss details regarding his claim/entitlements under each of the items above with calculations. These have been carefully seen.

5. The Respondents in the case have filed a reply dt.28.12.1999, in which the facts of the case are first set forth. It is stated that the disciplinary proceedings initiated against the applicant were held in abeyance, as a charge sheet had also been filed by the CBI in the Court of the Special judge at Jammu containing similar charges against some eight persons, including applicant. Further, that at the time of his retirement, the gratuity, commuted pension, and family pension were withheld, as per Rules. The applicant had filed a writ petition in the J&K High Court against departmental proceedings,

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release of gratuity, commutation of pension and other grievances. This petition was subsequently transferred to the Chandigarh Bench of this Tribunal, which disposed it of vide its order dt. 16th June, 1988 (Annexure R-1). Gratuity and GPF were ordered to be released to him. The applicant further moved the Supreme Court through SLP 5752/1990 which was dismissed (Annexure R-3). The respondents further state that in an SLP filed by the Union of India against Judgment of the CAT, however, the Hon'ble Supreme Court had declined to interfere under Article - 136 Constitution of India and the Union of India was asked to pay to the applicant, the amount of Gratuity remaining to be paid and other dues (the GPF had been paid by Respondents before the applicant moved the Supreme Court) In the further part of the written statement, the respondents give details in regard to the gratuity amount and interest released to the applicant which the applicant had refused to accept. It is also mentioned that compound interest at 12% on gratuity amount for the period from 1.7.1977 to 31.8.1998 and on Provident Fund from 1.7.1978 to 31.8.1998 has been paid.

6. Respondents further state that considering the age of the applicant, the Government of India had taken a lenient view, and had dropped all the charges, and Applicant's claims had already been considered in a sympathetic manner at the highest levels. In further portions of the written statement, para-wise comments have been made, in detail. The items as listed in para 4 above have also been sought to be replied to in detail, giving facts and figures wherever relevant. It is categorically stated that all legally due amounts have been paid to Shri Aruna Jatai as per Government sanction accorded under the letter of the Defence

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Ministry dt. 22.10.1998 (Annexure R-7). It is also avered by the respondents that the applicant's prayers and claims in the present OA have been adjudicated by the Hon'ble Supreme Court. Details regarding the departmental enquiry and criminal case have also been given.

7. A Rejoinder has been filed by the applicant, where he first makes the point that the two proceedings were foisted on him for no fault of his resulting in his having to spend large sums of money to defend himself, apart from his undergoing the mental agony caused. He has submitted, along with his Rejoinder, a number of documents in regard to his defence relating to the departmental enquiry and the criminal case.

8. The learned counsels on behalf of both the sides have been heard in the matter. As the bulk of the contentions and claim relate to matters where calculations and facts were important, the learned counsels were given time to submit their contentions and calculations cited in the OA in tabular form, by adjourning the matter on a few occasions. These have been submitted and exchanged between counsels during the course of the hearing over a number of hearings.

9. The learned counsel for the applicant first took us over the facts of the case, in detail, and pressed his claims on the various grounds viz. gratuity, pay fixation, commutation and pension/family pension. Some time was spent on the point that the sum of Rs.2,000/- that was deducted by the respondents was not correct action and the relief sought in this connection must

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be made available. Similarly, reference was made to the amount of Rs. 3,800/- paid as family pension contribution. Learned counsel Shri Suresh Kumar sought support of the case decided by this Tribunal on 9.12.1994 in OA No.250/94 to make the point that the effect of dropping of charge sheet in the departmental proceedings and withdrawal of criminal case should be viewed in a manner as provide support to the applicant in his claims.

10. The Learned Counsel for applicant also made the following points, expounding on them during his arguments.

(i) Pension Rules were progressively made by Government and amendments which were made should be given effect for settlement regarding pending claims from the respective dates.

(ii) Interest has to be compounded as per accounting procedure for Provident Fund Accounts, etc. at 12 per cent.

(iii) Initiation of Department Proceedings and Judicial Proceedings for the same cause of action is incorrect and the proceedings that were instituted were all time barred, illegal and withdrawing these after a lapse of twenty years will not bar the applicant to the benefits due at the time of retirement.

(iv) The Applicant's Counsel took support of the statements filed during argument.

11. The learned counsel for the Respondents, Shri R.K.Shetty rested his case on the written statements, mainly. He made the

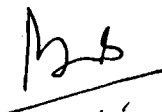
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point that no retrospective effect can be given to the dropping of the cases, either in disciplinary enquiry or the criminal charge. There was no exoneration in either, he asserted.

12. The arguments made by Learned Counsel on both sides have been considered and all papers in the case seen. The examination can proceed with reference to the claims made item-wise as set out in para 4.7 of the OA by the applicant and reproduced above in para 4. Let us first take the point relating to Gratuity. The applicant has claimed that the balance amount of gratuity that is due to him is Rs.89,510/- as per calculation shown at para 7 of the OA. The stand of the respondents in regard to gratuity is that initially Rs.24,200/plus interest at 12% simple interest were released. Subsequently, two months basic pay which was deducted, as described in the calculation. It is stated that compound interest amounting to Rs.2,47,712/- has been paid subsequently to the applicant. It is seen that the basic difference in the calculations appears to be in regard to the calculation of the interest due, as also by the fact that Applicant has disputed the two deductions of Rs. 3,800/- and Rs.2000/- made. These deductions are made by Respondents as being, respectively (i) Basic pay for awarding family pension and (ii) for outstanding T.A. Claim.

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13. I have carefully considered the calculations shown in the statement at page 7 of the O.A. and the statement handed in during arguments on behalf of the applicant as also the statement provided by Respondents in reaction thereto. After considering all facts and arguments, it cannot be concluded that either of the two deductions made (Rs. 3,800/- or Rs. 2,000/-) have been made contrary to the rules or are in any way irregular. Further, the initial payment of interest, paid as simple interest, has been revised and compound interest has been paid in November, 1998 itself. There is, therefore, no case for the payment of additional claim against gratuity, as now made in the O.A. Hence, the claim on this count is liable to be rejected.

14. The next claim of the Applicant relates to the commutation of pension, which he claims should be paid to him as being effective from 30.06.1977(with interest) and full pension from 30.06.1992. Now there is no doubt that departmental as well as criminal proceedings had been started against the Applicant in 1977. The entire chronology of events from 1977 to 1997 have been described in detail in the O.A. and elsewhere, and it is clear that inspite of the matter having been in litigation on other counts, there is no order obtained from any Court or no indication to the effect that the proceedings were baseless. In fact the issue was raked at last, as seen from the records available herein in a R.A. before Chandigarh Bench of this Tribunal (R-2). Well as the allegations may have not been proved in view of withdrawal of proceedings, it is seen that criminal proceedings were ultimately dropped, mainly because of the demise



of one of the persons charge-sheeted. It is not for this Tribunal to go into the merits of the criminal case or departmental enquiry. Suffice it to say, that it cannot be the case of the applicant that there was absolutely no reason for with-holding the commutation. Therefore, the commutation came to be granted from a later date. It is unfortunate indeed that the "later date" came over a period of some two decades due to pendency of criminal case. But the length of the pendency of the Criminal Case in Court cannot be the subject matter of discussions here.

15. The Respondents in their written statement have made the point that action was taken as per rule 9 of the Pension Rules and that the Applicant was entitled to commute a portion of his pension only after the decision for dropping disciplinary proceedings was taken. It is to be noted, importantly, that the applicant has been in receipt of full pension after his retirement with effect from 1st July, 1977. True, perhaps because of the index of multiplication, etc. as would operate in his case, as argued by the Learned Counsel for applicant, he may get higher amounts if re-calculations were to be made on the basis of the claims made by the Applicant. But this cannot entitle him to be claimed in the face of the pendency of the enquiry/criminal case, as discussed above. Hence, on this count also the Applicant cannot be provided with the reliefs he seeks. The entitlement claimed as referred to in item no. 4 of sub-para 4 of this order above, is in fact connected issue and the

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pleadings and replies made in the written statements of both parties have been similarly seen. Also the points and clarifications given in the Tabular statement referred to above. This claim also cannot be sustained, as has been explained by the Respondents.

16. It has been stated during arguments on behalf of Applicant that the matter regarding Provident Fund has been satisfactorily settled and this relief was not pressed. This matter is, therefore, not being gone into.

17. I have also considered the grievance of the applicant in regard to the contention that he was not relieved in time when he was transferred on promotion from Mumbai in 1971. This resulted in the situation that one Shri Agarwal who was lower in the panel for promotion as Sr. Surveyor of Works, actually occupied the promotional post on 09.02.1971, whereas the Applicant, though placed higher in the panel, could occupy the higher post only on 12.05.1971. The defence of the Respondents is that the proposal for stepping up of pay of the Applicant at par with that of Shri G. C. Agarwal, was considered by the Ministry of Defence (Finance) but rejected on the grounds that this was not covered by any rules. Now it is difficult to be convinced that rejection of any request, if otherwise found to be tenable, can be rejected on the ground that it is not covered by any rules. This is a rather weak argument and should not have been taken, at least at

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the level of Government. However, it is seen that the matter pertains to 1971 and has no connection with the departmental case or criminal proceedings. Prima facie the applicant has suffered a delayed pay fixation which he stated has affected him throughout and even in regard to pension fixed.

18. However, this is a matter on which he should have come for judicial redressal much earlier, and, as will be evident from the relevant dates, the applicant is hit by delay and laches. Secondly, this Tribunal is not competent to consider matters where the grievance arose prior to November, 1982. Even if we take applicant's grievance with regard to pension and a continuous cause of action, it is badly hit by delay and laches.

19. The Applicant has claimed as consequential relief an amount of Rs. 1.6 Lakhs as compensation for the expenditure incurred by him for defending this case and T.A./D.A. as per rules. He also claims a sum of Rs. 10 Lakhs, further, since he was prevented, he avers, from taking up gainful employment after retirement. It does not need detailed discussions to conclude that these are not reliefs which can be granted by this Tribunal. In view of the conclusions reached, costs cannot be awarded. Similarly, this Tribunal also cannot grant any relief by way of compensation as sought.

20. Under the circumstances of the case, the Applicant has not been able to convince the Tribunal that it can interfere in the

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matter in providing him the reliefs that he seeks. In the consequence, this O.A. is hereby dismissed. No order as to costs.

B. N. Bahadur

25/01/01
(B.N. BAHADUR)
MEMBER (A)

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