

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

X

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ O.A/T.A No. 69/2005.....

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet..... O.A..... Pg. 1..... to 5.....

2. Judgment/Order dtd 20.09.2005..... Pg. 1..... to 11..... Allowed

3. Judgment & Order dtd..... Received from H.C/Supreme Court

4. O.A..... 69/2005..... Pg. 1..... to 19.....

5. E.P/M.P..... Pg..... to.....

6. R.A/C.P..... Pg..... to.....

✓ 7. W.S. R.W. 1. to 6..... Pg. 1..... to 7.....

✓ 8. Rejoinder..... Pg. 1..... to 5.....

9. Reply..... Pg..... to.....

10. Any other Papers..... Pg..... to.....

11. Memo of Appearance.....

12. Additional Affidavit.....

13. Written Arguments.....

14. Amendment Reply by Respondents.....

15. Amendment Reply filed by the Applicant.....

16. Counter Reply.....

SECTION OFFICER (Judl.)

Habli
27/11/17

FORM NO. 4

(SEE RULE 42)
 CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH

ORDER SHEET

Original Application No. 69/05

Misc. Petition No. _____

Contempt petition No. _____

Review Application No. _____

Applicants: N. N. TalukdarRespondents: U.O.I. GovtAdvocates for the Applicant. S. Sarmia, B. Deka

B.C. Pathak, B. Pathak, D. Borna, for Respondent No. 2 to 4.

Advocates of the Respondents. C.A.C. M. U. Ahmed

Notes of the Registry	Dated	Order of the Tribunal
This application is in form is filed in P.I. Rs. 50/- Date of filing P.I. No. No. 209/116098. Dated 21.2.2005	16.3.05	At the request of Mr M.U.Ahmed, learned Addl.C.G.S.C the case is adjourned for two weeks, since the counsel has submitted that the matter is under process. List on 30.3.05 for admission.
1/c. N. Sarmia Dy. Registrar Am.	pg	<i>9/3/05</i> Vice-Chairman

steps taken.

30.3.2005 Present : The Hon'ble Mr. Justice G. Sivaranjan, Vice-Chairman.

Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents submits that letter sent to the Respondent No. 2 was returned unserved as addressee is not found. Learned Addl. C.G.S.C. further submits that some more time is required to get the instructions. Post on 13.4.2005

*Arindale C.A.C.
for per. n/2
R*

Notice & order st.

9/3/05
Vice-Chairman

13.4.2005 Mr. M.U.Ahmed, learned Addl.C.G.S.C. appearing for the respondents submits that till he has not received instruction from the respondents. Hence post this case for admission on 27.4.2005.

2 Jaafar
Vice-Chairman

bb

27.4.05 MR M.U.Ahmed, learned Addl.C.G.S.C submits that the applicant was involved in a criminal case and he has been sentenced to imprisonment and fined, which was upheld by the appellate Court also. The learned Addl.C.G.S.C further submits that a detail written statement is to be filed in this case. Hence O.A. is admitted. Issue notice to the respondent List on 1.6.2005 for written statement and orders.

2 Jaafar
Vice-Chairman

01.06.2005 Ms. B. Devi, learned counsel for the applicant is present. Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents seeks time for filing written statement. Post on 29.6.2005.

2 Jaafar
Vice-Chairman

mb

29.6.2005 Ms. B. Devi, learned counsel for the applicant is present. Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents submits that written statement is being filed today and that the case may be posted to hearing. Post on 9.8.2005 for hearing.

2 Jaafar
Vice-Chairman

mb

Notice & order dt-27/4/05
Sent to D/Section docket
issuing to resp. Nos.
1 & 3 to 6 by regd. A/I D
post and another resp.
No. 2 received by
Hand.

3/5/05 D/No- 654 to
658
Dt-4/5/05.

pg

Notice duly served
on resp. No. 4.

3/5/05

Notice duly served
on resp. No. 3, 4, 5

3/5/05

No: WLS has been
filed.

28/6/05

9.8.2005. Post the matter for hearing on
23.8.05.

KV Pathak
Member

Devi
Vice-Chairman

lm.

The case is ready
for hearing as regard
W.Ls and Rejoinder.

23
22.8.05

22.8.05. ~~Ms. B. Devi, learned counsel for the applicant and Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents.~~

23.08.2005 Present: Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

Heard Ms. B. Devi, learned counsel for the applicant and Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents.

After hearing this matter at some length it is felt necessary to see the pension papers of the applicant dealt with Defence Estate Officer, Guwahati Circle, Guwahati to satisfactory adjudication the issue, particularly, in view of the fact ^{that} the applicant has sought for interest also ~~in~~ for the delayed. The 2nd respondent will produce the file containing the pension papers of the applicant before this Tribunal through Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the said purpose.

Post on 08.09.2005.

Devi
Vice-Chairman

mb

23.08.2005 Present : Hon'ble Mr. Justice G. Sivaranjan, Vice-Chairman.

Heard Ms. B. Devi, learned counsel for the applicant and Mr. M.U. Ahmed, learned Addl. C.G.S.C.Z for the respondents.

After hearing this matter at some length, it is necessary to see the pension papers of the applicant dealt with by the Defence Estate Officer, Guwahati Circle, Guwahati to satisfactory adjudicate the issue, particularly in view of the fact that the applicant has sought for interest also for the delayed ~~payment~~. The 2nd respondent will produce the file containing the pension papers of the applicant before this Tribunal through Mr. M. U. Ahmed, learned Addl. C.G.S.C. for the said purpose.

Post on 08.09.2005.

G. Sivaranjan
Vice-Chairman

Order dt. 23/8/05
received by Mr. M.U. Ahmed,
Addl. C.G.S.C on behalf of
RESP. NO. 2.

*Conc
2518*

(3)

O.A 69/2005

Office Note	Date	Tribunal's Order
29.6.05 WJS Submitted by the Repdt. No. 1 to 6.	09.09.2005	<p>This is a part heard matter.</p> <p>Neither counsel for the applicant nor the applicant is present. Since the respondents have produced the records which were directed on 08.08.2005 after hearing the matter substantia-^{ly since no other fact} lly. The matter is proceeded with. Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents was heard and judgment is reserved.</p>
8.8.05 Rejoinder Submitted by the Applicant.	mb	<p><i>Q/A</i></p> <p>Vice-Chairman</p>
The Case is ready for hearing.	20.9.05	<p>Judgment delivered in open Court. Kept in separate sheets.</p> <p>Application is allowed.</p> <p><i>Q/A</i></p> <p>Vice-Chairman</p>
22.9.05 → & the Judgment C. Copy, has been collected by the applicant and a copy of the same has been handed over to the Addl. C.G.S.C. for the respondents.	lm	
<p><i>Q/A</i></p> <p>Recd 2 relevant documents for 67 P. Rept. No. 2, on 9/9/05 as directed in P. with cert. 22/9/05</p>		

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Office Note	Date	Tribunal's Order
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48

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

ORIGINAL APPLICATION NO. 69 OF 2005.

DATE OF DECISION: 20-09-2005.

Shri Nagendra Nath Talukdar

APPLICANT(S)

Mr. S. Sarma & Miss B. Devi

ADVOCATE(S) FOR THE
APPLICANT(S)

- VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr M.U.Ahmed, Addl.C.G.S.C

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR JUSTICE G. SIVARAJAN, VICE CHAIRMAN

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 the judgment is to be circulated to the other Benches?

Judgment delivered by Hon'ble Vice-Chairman.

No 8
D. Sivaprasad

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 69 of 2005

Date of Order: This the 20th day of September 2005.

The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

Sri Nagendra Nath Talukdar
S/o Late Aghona Ram Talukdar,
Resident of Hengrabari, Nabajyotipur,
Guwahati-36, Assam.

.....Applicant

By Advocates Mr S. Sarma and Ms B. Devi.

- versus -

1. The Union of India, represented by the
Ministry of Defence,
New Delhi.
2. Defence Estate Officer,
Guwahati Circle, Guwahati.
3. The Controller General of Defence Accounts
(CGDA) (Pension),
Allahabad, Uttar Pradesh.
4. The Controller of Defence Accounts (CDA),
Guwahati-71.
5. The Principal Directorate,
Defence Estate, Eastern Command,
13 Camac Street, Kolkata-17.
6. The Director General,
Defence Estate,
New Delhi-66.

.....Respondents

By Advocate Mr M.U. Ahmed, Addl. C.G.S.C.

.....

ORDERSIVARAJAN. J. (V.C.)

The applicant while holding the post of SDO III in the Defence Estates Officer, Guwahati Circle, Guwahati was compulsorily retired from service with effect from 9.9.2002 by invoking Rule 19 (i) of the CCS (CCA) Rules, 1965. The grievance of the applicant is that his pensionary dues have not been paid to him till date. The applicant, in the circumstances, has filed this O. A. for direction to the respondents to release all pensionary dues including due arrears to the applicant forthwith together with interest at the rate of 21% per annum for the delayed payment of pensionary dues and for a further direction to pay a sum of Rs.100000/- by way of penal interest as ordered by the Apex Court.

2. It is the case of the applicant that he was compulsorily retired with effect from 9.9.2002 as per order dated 30.8.2002 (Annexure-1) followed by communication dated 9.9.2002 (Annexure-2) and order dated 4.4.2003 (Annexure-3) issued by the 2nd respondent transferring his service to the pension establishment with effect from 9.9.2002. It is stated that the pension papers of the applicant were forwarded to the AAO, Shillong, by the 2nd respondent on 30.12.2003; the said papers were returned to the 2nd respondent on 20.1.2004 with a few audit observations; the 2nd respondent (officiating), Mr Mazumdar, called the applicant to his office and directed him to contact LAO, Guwahati; the applicant met the LAO and got the papers audited by 31.1.2004 and handed over the same to the DEO, but no action was being taken on his pension papers by the 2nd respondent.

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The applicant after waiting for quite some time brought the matter to the notice of the 5th respondent who issued a direction to the 2nd respondent by communication dated 9.9.2004. Since there was no response from the 2nd respondent even thereafter the applicant again brought this to the notice of the 5th respondent by a representation dated 11.12.2004 (Annexure-6). The 5th respondent referring to the earlier communication dated 9.9.2004 again directed the 2nd respondent to take necessary action for finalisation of the pension papers immediately by communication dated 25.1.2005 (Annexure-7). The grievance of the applicant is that in spite of all these the 2nd respondent is sleeping over the matter.

3. The respondents have filed a written statement. It is stated therein that the applicant was caught by the CBI in a case of illegal gratification and was subsequently convicted by the Trial Court by order dated 12.7.1996 in regular case No.5 (c) 93 under Section 7 of the P.C. Act of 1988; he was sentenced for one year imprisonment and also a fine of Rs.20,000/-. The applicant preferred an appeal in the High Court in which the High Court reduced the punishment of imprisonment from one year to six months and imposed a fine of Rs.10,000/- by order dated 2.5.2003. The applicant had undergone six months imprisonment with effect from 2.5.2003 in the District Jail, Kamrup, Guwahati and had also paid a fine of Rs.10,000/-. The 5th respondent issued a show cause notice proposing compulsory retirement from service on 18.2.2002 and ultimately passed the order of compulsory retirement on 30.8.2002 with effect from 9.9.2002. It is admitted that the Area Accounts Officer, Shillong vide letter No.P/V/AAO/460/VII/8 dated 8.1.2004 returned the applicant's pension papers with the objection about his missing period. It is

Gp/

further stated, "It appears that there is all delay in submitting this information by this office as it is apprehended that communication of conviction and undergoing the imprisonment may debar him from entitlement of pensionary benefit." It is further stated that it was the duty of the Government servant to convey the outcome of the criminal case which may result either in acquittal or conviction , but the applicant never conveyed his conviction and undergoing imprisonment. It is also stated that, "The pension papers were not prepared during the pendency of the aforesaid criminal cases, since the granting the gratuity, pension and/or withdrawing or withholding, the whole par of the pension, permanently or for a specific period, subject to the outcome or result or instruction of aforesaid cases. The future good conduct is an implied condition of every grant of pension and its continuance." It is admitted that on return of the pension papers on 20.1.2004 with some audit observations, later on, the same has been audited and corrected. But due to the aforesaid criminal offence/ conviction, required office procedure and rules, the matter was delayed. Now the final decision/instructions are in the process.

4. The respondents reiterated that the "The whole process was delayed due to criminal case and subsequently convicted for a period of 6 months etc. which is why the respondents had to observe some extra official procedure and to follow instruction and consultation with higher authority." It is further stated that in continuation to the steps and on receipt of the instructions from the PD, DE vide letter dated 25.1.2005 advice was sought for from the PD, DE vide office letter dated 24.2.2005 to take further action.

5. The applicant has filed a reply also. The matter was argued by Ms B. Devi, learned counsel for the applicant, on 23.8.2005

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and the same was adjourned to 8.9.2005 for production of the file containing the pension papers of the applicant. Pursuant to the said direction, Mr M.U. Ahmed, learned Addl. C.G.S.C., has placed before me the relevant files brought by an officer of the 2nd respondent. On 8.9.2005, there was no representation from the counsel for the applicant. However, since there was no other case for being heard on that date and since the counsel for the applicant was heard earlier, the hearing of the case was proceeded with and Mr M.U. Ahmed, learned Addl. C.G.S.C. was heard.

7. I have perused the pleadings in the case and the files placed before me by the learned counsel for the respondents. The factual details have already been stated. The fact remains that the applicant was compulsorily retired as per order dated 30.8.2002 with effect from 9.9.2002; the respondents have not, so far, settled the pensionary dues of the applicant even though three years have elapsed since the date of compulsory retirement. It is also an admitted position that the 2nd respondent had prepared the pension papers of the applicant and forwarded the same to the AAO, Shillong on 30.12.2003 and the same was returned to the 2nd respondent for certain clarifications as per communication dated 8.1.2004. The 2nd respondent had admitted in the written statement that the audit objection was subsequently set right. Even thereafter, the 2nd respondent did not send back the pension papers of the applicant with the clarifications/corrections sought for by the AAO in the letter dated 8.1.2004. The 5th respondent, superior authority, had issued clear directions to the 2nd respondent to settle the pension papers of the applicant urgently on 9.9.2002 and later by communication dated 25.1.2005 again issued direction to the 2nd respondent to settle the



matter immediately. Even thereafter, there is no tangible improvement in the matter. The records produced by the respondents show that the pension papers of the applicant together with the letter dated 8.1.2004 issued by the AAO, Shillong is kept by the 2nd respondent without any action.

8. The excuse of the respondents for the delay in settling the pension dues of the applicant is that a criminal case against the applicant was pending. Here it is relevant to note that the criminal case prosecuted by the CBI against the applicant culminated in the conviction of the applicant under Section 7 of the Prevention of Corruption Act, 1988 by the Special Judge, Assam/Guwahati in its judgment dated 12.7.1996. It is based on the said conviction that the 5th respondent after issuing a notice and getting the explanation of the applicant decided to compulsorily retire the applicant and issued the order dated 30.8.2002. What was pending at that time was only an appeal filed by the applicant against the conviction and sentence by the said court. This, it must be noted, has nothing to do with the settlement of the pension papers of the applicant based on his compulsory retirement. Here, it will be profitable to refer to the provisions of the CCS (Pension) Rules, 1972 for the reason that the respondents have relied on the said rules against the applicant. Rule 8 of the Rules states that future good conduct shall be an implied condition of every grant of pension and its continuance under these rules and that the appointing authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct. Here it is relevant to note that the conviction of the applicant was prior to his

compulsory retirement and the compulsory retirement order was passed on the basis of conviction in the criminal case. The appointing authority did not choose to withhold the pension due to the applicant on his compulsory retirement. Rule 8, contemplates the appointing authority passing an order withholding pension if the pensioner is convicted of a serious crime. In the instant case the appointing authority did not choose to issue any such orders withholding pension due to the applicant. It is solely due to the delay/lapses on the part of the 2nd respondent (whoever the incumbent be) that the pension due to the applicant could not be settled even after three years. There is no satisfactory explanation from the 2nd respondent for the delay in preparing the pension papers from 9.9.2002 till 30.12.2003. In fact, this question was posed by the AAO, Shillong, in his letter dated 8.1.2004 as follows:

"The individual retired on 8.9.2002, but Pension Papers have been forwarded to this office on 30.12.03 i.e. after a more than a year Reason for this delay may be intimated."

9. The same question will have to be asked for the period after 30.1.2004. The vague explanation furnished by the 2nd respondent in his written statement, namely pendency of the criminal case is no ground at all for the reason already stated. After the order of compulsory retirement based on the applicant's conviction by the Criminal Court, in the absence of a positive direction by the appointing authority in the order of compulsory retirement or subsequently, the conviction in the criminal case has no implication in the matter of settlement of pensionary dues of the applicant. If the 2nd respondent had acted on any such apprehension it was solely due to his ignorance of the rules regarding grant of pension. Any doubt in the matter of finalisation of the pension claim of the applicant could

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have been got clarified from the superior authority then and there itself. In fact, it was only a lame excuse, which cannot be countenanced. I do not find any lapses on the part of the applicant for the delayed payment of pension due to him after January 2004, for, it is seen that he took initiative in getting the records audited. Though the applicant was compulsorily retired on 9.9.2002, he submitted his pension papers to the 2nd respondent only in April 2003 and the 2nd respondent after fulfilling the requirements had forwarded the same only on 30.12.2003.

10. The procedure for preparation and finalisation of the pensionary claims, with reference to the Fundamental Rules (F.R.58 to 68) had been delineated by the Hon'ble Supreme Court in Dr Uma Agrawal Vs. State of U.P., AIR 1999 SC 1212. Para 4 of the decision at page 1213-1214 reads thus:

"We may in this connection also refer to F.R. 58 which relates to "preparation of pension papers". It states that "every Head of Office shall undertake the work of preparation of pension papers in Form 7 two years before the date on which the Government servant is due to retire on superannuation or on the date on which he proceeds on leave preparatory to retirement whichever is earlier". F.R. 59 deals with the 'stages for the completion of pension papers'. Sub-clause (I)(a) bears the heading, the first stage, and refers to the verification of service details. There are five parts in this sub-clause. Sub-clause (1)(b) refers to the second stage, namely, making good the omissions in the service book, Sub-clause 1(b)(ii) is important and it states very clearly as follows:

"Every effort shall be made to complete the verification of service, as in clause (a) and to make good omissions, imperfections or deficiencies referred to sub-clause (i) of this clause. Any omission, imperfections or deficiencies including the portion of service shown as unverified in the service book which it has not been possible to verify in accordance with the procedure laid down in clause (a) shall be ignored and service qualifying for pension shall be determined on the basis of the entries in the book."

"This directive in the rules is obviously intended to see that once the period is quite close to 10 months before the

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retirement of an employee, further time is not to be wasted in verifying data which it has not been possible to verify by following the procedure in sub-clause (1)(a) of F.R. 59. Sub-clause (1)(c) refers to the third-stage and it says that at least 10 months before the date of retirement, the Head Office shall take various steps by issuing a certificate to the Government servant and the officer can offer his remarks and thereafter, he shall be furnished Form 4 and Form 5 which he has to fill-up and send to the Head Office at least 8 months before the date of retirement. F.R.60 refers to 'completion of pension papers' in Part-1 of Form 7 at least 6 months before the date of retirement of the Government servant. F.R.61 deals with the 'Forwarding of Pension Papers to Accounts Officer', in Form 5 and Form 7 with a covering letter in Form 8 along with service book duly completed, up to date, and other documents. This has to be done at least 6 months before the date of retirement. Rule 63 refers to recovery of amounts due by the Government servant and the particulars in this behalf are to be sent at least 2 months before the date of retirement, so that the same could be recovered from the gratuity. F.R. 64 deals with provisional pension. F.R. 65 requires the Accounts Officer to assess the amount of pension and gratuity at least one month before the date of retirement. F.R. 68 requires interest to be paid on delayed payment of gratuity. As already stated, in cases of delayed payment of pension, this Court has levied interest at 12% per annum in several cases."

The Supreme Court further observed in Para 5 at page 1214 thus:

"We have referred in sufficient detail to the Rules and Instructions which prescribe the time-schedule for the various steps to be taken in regard to the payment of pension and other retrial benefits. This we have done to remind the various governmental departments of their duties in initiating various steps at least two years in advance of the date of retirement. If the rules/instructions are followed strictly much of the litigation can be avoided and retired Government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the Government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retrial benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired Government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case."

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11. In that case the applicant retired on superannuation on 30.4.1993. The retrial benefits viz., Gratuity, Provident Fund, Pension etc. were paid to the appellant only in 1997 as per interim orders issued by the Court. The Supreme Court therefore considered the question of payment of interest. Referring to the relevant rules considered in the above extracted portion in the judgment, the Supreme Court held that this is a fit case for awarding interest. The Court also fixed the interest payable at Rs. 1 lakh and the respondents were directed to pay the same to the appellant.

12. In the present case I am of the firm view that the 2nd respondent (whoever the incumbent may be) had committed a serious illegality/irregularity in keeping the pension papers with him without responding to the letter dated 8.1.2004 sent by the AAO, Shillong. In these circumstances, I direct the 2nd respondent to forward the pension papers of the applicant within one month from today with all clarifications, corrections etc. and with explanation for the delay sought for in the letter dated 8.1.2004. The 2nd respondent will take all possible steps and ensure that the pension of the applicant is sanctioned within three months thereafter. Since the delay in the matter of settlement of the pension of the applicant after January 2004 cannot be attributed to the applicant and since the delay was due to the total inaction on the part of the 2nd respondent, the respondents will pay the arrears of pension due to the applicant on grant of such pension within a period of three months thereafter together with 12% interest from 01.04.2004 till the date of payment. It is upto the respondents, if they so desire, to find out the person responsible for the delay in settling pension of the applicant and to realize the interest which is being paid to the applicant from such

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erring officers. Though the applicant had claimed a sum of Rs.1,00,000/- towards penal interest, I do not find any reason to grant penal interest as claimed.

The O.A. is allowed as above.



(G. SIVARAJAN)
VICE-CHAIRMAN

nkm

Central Administrative Tribunal

5 MAR 2005

Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL.

GUWAHATI BENCH.

Title of the case :

OA No. 69 / 2005

BETWEEN

Sri Nagendra Nath TalukdarApplicant.

-versus-

Union of India & OrsRespondents.

I N D E X

S1 No.	Particulars	Page No.
1.	Application	1 to
2.	Verification	
3.	Annexure-1	
4.	Annexure-2	
5.	Annexure-3	
6.	Annexure-4	
7.	Annexure-5	
8.	Annexure-6	
9.	Annexure-7	

Filed by: Regn. No:

File : C:WS\NNNTALUKDAR

Date:

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL.

GUWAHATI BENCH.

OA No.

69

/ 2005

N.N.Talukdar

-VS-

Union of India & Ors.

SYNOPSIS

That the Applicant who was holding the post of SDO III was asked to go on compulsory retirement from service from the establishment of Defence Estates Officer, Guwahati Circle, Guwahati. w.e.f 9.9.2002 as per order of the Principal Directorate, Defence Estates, Eastern Command vide order No. 360192/CP-14B/96/LC-1/2 dated 30.8.2002. Since then the Applicant has been running from pillar to post to get his legitimate pensionary dues. Hence this application.

M. Talukdar

Filed by -
The Applicant
Through
Bordona Devi
Advocate
10. 3. 05
22

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL.
GUWAHATI BENCH:

Title of the case : DA No. 69 / 2005

BETWEEN

Sri Nagendra Nath Talukdar
S/o Late Aghona Ram Talukdar
Resident of Hengrabari, Nabajyotipur
Guwahati-36, Assam.

....Applicant

-versus-

1. Union of India,
Represented by the Ministry of Defence,
New Delhi.
2. Defence Estate Officer,
Guwahati Circle, Guwahati.
3. The Comptroller general of Defence Accounts (CGDA) (Pension),
Allahbad, Uttar Pradesh,
4. The Comptroller of Defence Accounts (CDA),
Guwahati-71.
5. The Principal Directorate,
Defence Estate, Eastern Command,
13Camac Street, Kolkota-17.
6. The Director General,
Defence Estate,
New Delhi-66.

....Respondents.

DETAILS OF THE APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION IS MADE:

This application is not directed against any particular order but has been made against the action on the part of the

Mr. Malakhera

Respondents in not releasing the pension and other pensionary dues of the Applicant who was compelled to go on compulsory retirement from service on attaining the age of 50 on 9.9.2002. This application is also made praying for adequate compensation and interest for such delayed settlement of pensionary dues to the Applicant.

2. LIMITATION:

The Applicant declares that the instant application has been filed within the limitation period prescribed under Section 21 of the Central Administrative Tribunal Act, 1985.

3. JURISDICTION:

The Applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE:

4.1 That the Applicant is a citizen of India and as such, he is entitled to all the rights and privileges guaranteed under the Constitution of India and laws framed there under.

4.2 That the Applicant who was holding the post of SDO III was asked to go on compulsory retirement from service from the establishment of Defence Estates Officer, Guwahati Circle, Guwahati. w.e.f 9.9.2002 as per order of the Principal Directorate, Defence Estates, Eastern Command vide order No. 360192/CP-148/96/LC-1/2 dated 30.8.2002. Since then the Applicant has been running from pillar to post to get his legitimate pensionary dues.

Mr. J. Mukherjee

A copy of the order dated 30.8.2002 to go on compulsory retirement is annexed herewith as Annexure-1.

4.3. That the Applicant has raised a grievances against non-payment of pensionary dues for such delayed payment of pension as there was a delay for as many as two and half years arising out of official lapses on the part of the Respondents. The Applicant has now come before the protective hands of this Hon'ble Court for an appropriate direction to the authorities for release of the pensionary dues forthwith which is a legitimate claim of the Applicant along with an interest for such delayed settlement.

4.4. That the Applicant begs to state that pursuant to the order of Principal Directorate, the office of the Defence Estate officer, Guwahati Circle released the Applicant from service w.e.f 9.9.2002 vide another order No. 55 dated 9.9.2002.

A copy of the said order dated 9.9.2002 is annexed herewith as Annexure-2.

4.5. That the Applicant begs to state that pursuant to his release, his service particulars were transferred to the pension establishment vide order no. 24 dated 4.4.2003 and subsequent order No. 31 dated 27.5.2003, by the Defence Estates Officer, Guwahati Circle.

Copies of the orders dated 4.4.2003 and 27.5.03 are annexed herewith as Annexure-3 and 4.3

M. M. Salukden

4.6 That the Applicant begs to state that his pension papers were finally forwarded by DEO, Guwahati to the AAO Shillong office on 30.12.2003. The same pension papers were however returned to the DEO by the AAO Shillong on 20.1.2004 with few audit observations. On receipt of the papers then DEO officiating namely one Mr. Mazumdar called him to the office and advised him to contact LAO Guwahati. Accordingly, the Applicant met him and got his papers audited by 31.1.2004 and handed over the same to DEO, Guwahati. Since then his papers were lying in the office of DEO, Guwahati. The delay in settlement of pensionary dues started causing hardship to the Applicant and having no other alternative he started requesting the authority to release his dues but same yielded no result in positive. The Respondents kept on dragging the matter from one department to another without any cogent reason.

4.7. That the Applicant who was compelled to take compulsory retirement from service on 9.9.2002 kept on requesting the authority for release of his pension and gratuity but as on date nothing has been done so far in this matter. The Applicant situated thus made a demand to release of his pensionary dues along with an interest @ 21% on such delayed settlement.

4.8. That the Applicant has submitted several representations before the Respondents, but with no affirmative response.

✓ A copy of one such representations dated 1.9.2004 is annexed herewith as Annexure-5.

M. M. Talukdar

4.9. That the Applicant begs to state that pursuant to the Annexure-5, representation dated 1.9.2004, the Respondent No. 1 i.e. Principal Director, DE, EC, Kolkata, belatedly wrote back to 1 DEO, Guwahati Circle, vide letter dated 9.9.2004 to take immediate necessary action on his representation dated 9.8.2004 for finalization of his pensionary dues. But regardless of the letter from the Principal Directorate, the authorities here sit idle on the matter.

4.10. That pursuant to the letter dated 9.9.2004, the Applicant in absence of regular DEO met the EO in charge in the month of April 2004 but he was just not interested to see the forwarding draft of his pension papers which was returned by AAO, Shillong. When the Applicant tried to show the letter of Principal Director on three occasions, he was neither interested to look into it.

4.11. That the Applicant states that it is an admitted position that his pension papers were forwarded by DEO Guwahati, to the AAO Shillong, vide letter No. DEO/GAU/ADM/P-2/220 dated 30.12.03 although he retired long back as per order No. 360192/CP-148/96/LC-1/2 dated 30.8.2002. Thereafter, his pension papers were returned by the AAO Shillong, vide letter No. P/V/AAO/460/VII/S dated 8.1.2004, with some audit observations. Thereafter, the case was forwarded to the LAO for verification of qualifying service DEO Guwahati letter No. DEO/GAU/ADM/P-L/220 DEO dated 12.2.2004. Thereafter, he personally met the LAO as per the officiating DEO and got verified the case vide their letter No. LA/561/GEN-XVIII dated 19.2.2004. Thereafter, the DFA who was supposed to resubmit the papers were put up to the DEO on 3.5.2004 for approval only and since then papers are lying

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Malakar

unsettled. The Applicant through another representation dated 11.12.2004 stated the abovementioned facts to the Principal Directorate at Kolkota.

A copy of the representation dated 11.12.2004 is annexed herewith as Annexure-6.

4.12. That the Applicant begs to state that pursuant to the Annexure-6 representation dated 11.12.2004 the Respondent No. 1 i.e. Principal Director, DE, EC, Kolkota, wrote back to DEO, Guwahati Circle vide letter dated 25.1.2005 to take immediate necessary action on his representation referring the earlier communication dated 9.9.2004 for finalization of his pensionary dues. But despite the letter from the Principal Directorate, the authorities here are sitting tight over the matter even after obtaining the sanction from the higher authority.

A copy of the Principal Director's letter dated 25.1.2005 is annexed herewith as Annexure-7.

4.13. That the Applicant begs to state that he is entitled to receive retirement benefits including pension within six months from the date of his retirement but in the instant case such payment has been delayed till the year 2005. In view of that the Applicant has accrued a right to claim interest at the rate of 21% per annum for such delayed payment in accordance with the service Rules which is very much reasonable and justified.

4.14. That the Applicant begs to state that since his date of

Monika

compulsory retirement on 9.9.2002, the Respondent authorities have chosen not to release his pensionary dues without any reason and as such the Applicant through this application categorically prays before this Hon'ble Court for an appropriate direction for release of his pensionary dues with a normal interest @ 21% on the delayed settlement of such dues with an addition of Rs 1 lakh as compensation, as awarded by Apex court in a similar case. As stated above the Applicant kept on pursuing the authority concerned for release of his pensionary dues time and again but same yielded no result in positive. Infact, the Applicant submitted several representations to release his pensionary dues but as on date nothing positive has been communicated to him causing undue hardship to him and now as a last resort the Applicant has come under the protective hands of this Hon'ble Tribunal seeking appropriate remedy.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the action/inaction on the part of the Respondents in not settling the pensionary dues and as such same is not sustainable and liable to be set aside.

5.2. For that there are various guidelines and Rules more particularly Rule 68 of the pension Rules provides amount of interest on delayed payment of pensionary dues and in terms of the said Rules the Applicant is entitled to adequate interest and compensation for delayed settlement of pensionary dues.

5.3. For that the Respondents acted contrary to the Rules and guidelines holding the field and with some ulterior motive have delayed the payment of pensionary dues and gratuity which has adversely effected the Applicant and as such inaction on the

M. Shukla

part of the Respondents is liable to be set aside and quash with an appropriate direction.

5.4. For that the Apex Court has also held in many cases that if an employer fails to make payment of pensionary benefits to the employee within 6 months of the date of his retirement the authority concerned shall be liable to pay interest at the marked rate from his own pocket.

5.5. For that the Applicant begs to state that apart from other dues, delay in finalizing the pensionary dues have occurred due to laches of the Respondents. That on this score alone the claim of the Applicant in support of interest @ 21% per annum is not only legitimate but also justified.

5.6. For that the Applicant submits that it is an admitted fact that he retired from service w.e.f 9.9.2002 and according to Rules such retirement benefits should have been paid within a period of one year. Nevertheless, such payment was withheld till date, the claim of 21% interest per annum is very much legitimate and justified and the Applicant is on the record entitled for the benefit.

5.7. For that the Applicant submits that the Respondent authorities having failed to make payment of pensionary benefit to him within the prescribed period of six months i.e. from the date of retirement is very much accountable to pay interest at the rate of 21% per annum due to the delayed payment in terms of the verdict of the Hon'ble Apex Court.

5.8. For that in any view of the matter the impugned action of the Respondents are not sustainable in the eye of law and liable to set aside and quashed.

M. J. Malhotra

The Applicant craves leave of this Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED:

That the Applicant declares that he has exhausted all the remedies available to them and there is no alternative to them and there is no alternative remedy available to him

7. MATTERS NOR PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT :

The Applicant further declares that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the Applicant most respectfully prayed that the instant application be admitted, records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the Applicant:

8.1. To direct the Respondents to release all the pensionary dues including due arrears of the Applicant forthwith.

8.2. To direct the Respondents to pay an interest @ 21% p.a on the delayed payment of such pensionary dues and with further

M. Mahadevan

direction to release the interest along with Rs 1 lakh penal interest as ordered in Apex Court forthwith along with all pensionary dues.

8.3. To direct the Respondents to release his regular pension forthwith alongwith the arrears including the interest @ 21% on the arrear.

8.4. To direct the Respondents to pay adequate compensation for the delayed settlement of his pensionary dues in addition to the penal interest as claimed above.

8.5. Cost of the application.

8.6. Any other relief/reliefs to which the Applicant is entitled to under the facts and circumstances of the case as deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of this application the Applicant prays for an interim order directing the Respondents to pay provisional pension to the Applicant.

10. PARTICULARS OF THE I.P.O:

1. I.P.O No. : 20 Cr 116098
2. Date : 21.2.05
3. Payable at : Guwahati

11. LIST OF ENCLOSURES:

12. As stated in the index

11
VERIFICATION

I Sri Nagendra Nath Talukdar, Ex SDO III, aged about 50 years, resident of Hengrabari, Nabajyotipur, Guwahati-36 in the District of Kamrup, Assam do hereby solemnly affirm and verify that the statements made in paragraphs 4.9, 4.10 are true to my knowledge and those made in paragraphs 4.2 - 4.8, 4.11, 4.12 are matter of record and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the verification on this the 11th day of March of 2005.

Nagendra Nath Talukdar
Signature

98cty

- 12 -

ANNEXURE - (1)

NO. 360192/CP-148/96/LC-1/2-1

Dte. of Defence Estates

Min. of Defence, Eastern Command

13, Camac Street (7th floor)

Kolkata - 700017, Dt. 30 Aug., 02

ORDER

WHEREAS Shri N N Talukdar, SDO-III of Defence Estates Office, Guwahati Circle, Guwahati has been convicted on a criminal charge under Section 7 of the Prevention of Corruption Act 1988 by Special Judge, Assam/Guwahati in his Judgement dated 12.07.1996.

AND WHEREAS it is considered that the conduct of the said Shri N N Talukdar, SDO-III which has led of his conviction is such as to render his further retention in the public service undesirable /the gravity of the charge is such as to warrant the imposition of a major penalty.

AND WHEREAS Shri N N Talukdar was given an opportunity of personal hearing on 16th July, 2002 and offer his written explanation;

AND WHEREAS the said Shri N N Talukdar has given written explanation dated 16th July, 2002 which has been duly considered by the undersigned.

NOW, THEREFORE, in exercise of the powers conferred by Rule 19(i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the undersigned hereby directs that the said Shri N N Talukdar, SDO-III shall be compulsorily retired from service with effect from 09 September, 2002.

Abhijit Banerjee

Principal Director
Defence Estates
Eastern Command
(Disciplinary Authority)

To

Shri N N Talukdar, SDO-III
c/o the DEO Guwahati Circle.

Copy to: Rej'd/AA confidential

✓ The DEO Guwahati Circle - for information and necessary action.

*Attested
by
Advocate*

OFFICE OF THE DEFENCE ESTATES OFFICER : GUWAHATI CIRCLE : GUWAHATI
PART II OFFICE ORDER

STATION : GUWAHATI

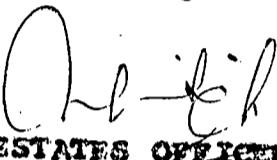
ORDER NO. 55

DATED : THE 09 SEPT '2002

STRUCK OF STRENGTH

1. Shri N.N. TALUKDAR, SDO-III

- Pursuant to the orders contained in Principal Directorate, Defence Estates, Eastern Command, Kolkata Order No.360192/CP-148/96/LC-1/21 dated 30-8-2002 Shri N.N. Talukdar, SDO-III of this office is hereby struck of strength of this office with effect from today, the 9th September, 2002(F/N), consequent upon his compulsory retirement from Service as ordered vide Order quoted above.


DEFENCE ESTATES OFFICER
GUWAHATI CIRCLE

DISTRIBUTION :-

1. Office Order Part II Book.
2. The Principal Director, DE, EC,
13, Canac St. (7th Floor),
Kolkata-17.
3. The Director General, DE
New Delhi-66.
4. The C.D.O. Guwahati, Guwahati-71.
5. The A.A.O. Shillong, Shillong-1.
6. The J.C.D.O (Yunode), Meerut Cantt.
7. The D.M.O. DDO Guwahati
8. Shri N.N. Talukdar, SDO-III
9. Internal Office Files.
10. Spares.

- A copy of the Order No.360192/CP-148/96/LC-1/21 dated 30 Aug '2002 from the Principal Directorate, Defence Estates, Kolkata is enclosed herewith.

Attested
Dri.
Advocate

OFFICE OF THE DEFENCE ESTATES OFFICER : GUWAHATI CIRCLE
OFFICE ORDER PART-II

STATION : GUWAHATI ORDER NO. 24 DATED 07 APRIL, 2003

Shri N.N.Talukdar, SDO-III of this office has gone on compulsory retirement from Govt. service wef. 09.09.2002 (F/N) and S.O.S. of this office wef. 09.09.2002 and his service has according been transferred to the Pension Establishment wef. 09.09.2002 (F/N).

Date of birth : 01.03.1954.

Date of appointment : 01.06.1976.

Auth : Principal Director, DE, EC, Kolkata

letter No. 360192/CP-148/96/LC-1/ 21 dt. 30.8.2002

Defence Estates Officer
Guwahati Circle

DISTRIBUTION

1. Office Order Book.
2. The Principal Director, DE, EC, Kolkata-17.
3. The Director, General, DE, New Delhi-66.
4. The Joint Director, DE, Shillong.
5. The C.D.A. Guwahati-71.
6. The A.A.O., Shillong-10.
7. The C.G.D.A. (Pension)
Allahabad, U.P.
8. The J.C.D.A. (Fund) Meerut.
9. The L.A.O. (A), Guwahati-71.
10. Shri N.N.Talukdar, SDO-III.

Attested
Ran
Advocate

OFFICE OF THE DEFENCE ESTATES OFFICER:: GUWAHATI CIRCE: GLY-3

OFFICE ORDER PART-II

STATION :: GUWAHATI ORDER NO. 3) DATED THE 27 May '03.

Shri N. N. Talukdar, SDO-II of this Office has Compulsory retired from Service ref 09.9.2002 (F/N) vide Principal Director, DE, EC, Kolkata letter No. 360192/CP-148/96/LC-1/21 dt. 30.8.2002 and has been S.O.S of this office w.e.f. 09.9.2000 (F/N). His Service has been transferred to the pension establishment i.e C.G.D.A Allahabad ref 09.9.2002 (F/N). His date of birth was 01.3.1954 and date of appointment in Govt. Service was 01.6.1976.

In this connection this office Part-II Order No. 25 dt. 4.4.2003 also refers.

DISTRIBUTION

1. OFFICE ORDER PART-II BOOK
2. THE A.A.O. SHILLONG.
3. C.D.A. GUWAHATI
4. THE C.G.D.A. Pension, Allahabad.
5. Shri N. N. Talukdar, SDO-II
6. Spare.

Arif H
Defence Estates Officer,
Guwahati Circle.
Defence Estates Officer,
Guwahati Circle,
Guwahati-3

*Attested
By
Advocate*

ANNEXURE-5

To

01.09.2004

Mrs Malati Krishna Kumai
Principal Director,
Defence Estates, Eastern Command,
13 Comac Street (7th Floor)
Kolkata-700017.

Sub:- Pension Papers

Respected Madam,

With due respect I would like to draw your kind attention that I have gone on Compulsory retirement on 8.9.2002 as per your order No.360192/CP-148/96/LC-1/2 dated 30.8.2002 and DEO Guwahati office order No.55 dated 9.9.2002.

Madam, after a long gap of time my Pension Papers was forwarded to the A.A.O. Shillong by teh DEO Guwahti on 30.12.2003. The same pension papers were returned to the DEO by the A.A.O. Shillong on 20th January 2004 with few audit observations. On receipt of the papers then DEO (officiating) Mr. Mazumdar called me to the office and advised me to contact L.A.O Guwahati. Accordingly I meet the L.A.O and get the papers audited by 31st January 2004 and haded over to the DEO Guwahati since then my pension papers are lying with the DEO Guwahati.

Madam, I am suffering a lot with finantial hardship when I have to take all care of my 104 years old widow ill mother including my family. So it is my earnest request to you kindly help me and my family by issuing an early instruction to the DEO Guwahati to re-submit my pension papers to A.A.O. Shillong.

Thanking you Madam.

Yours faithfully

Nagendra Nath Talukdar
Ex-SDO-III
Upper Hengrabari
Nabajyotipur
Guwahati-781036.

Attested
Advocate

ANNEXURE-6

To

11.12.2004

Mrs. Malati Krishna Kumai
Principal Director,
Defence Estates, Eastern Command,
13 Comac Street (7th Floor)
Kolkata-700017.

Sub:- Pension Papers

Respected Madam,

With due respect I am very made thankful on your letter No.360192/LC-1/XIV/95 dated 09.09.2004 with the instruction to DEO Guwahati for taking necessary action on my letter dated 01.09.2004.

Madam, I feel sorry to inform you again that in absence of regular DEO at Guwahati office I meet the DEO in Charge since April 2004 but he is not interest jut to see the forwarding draft of my pension paper which were not returned by A.A.O. Shillong long back. I treat to show your letter dated 9.9.04 thrice but he is not interested to see your letter also. The position of my pension papers are as under:-

(i) The pension papers were forwarded by D.E.O Guwahati to the A.A.O Shillong vide letter No.DEO/GAU/ADM/P-2/220 dated 30.12.2003 but I was retired on 09.09.2002 as per your order No.360192/CP-148/96/LC-1/21 dated 30.8.2002.

(ii) The pension papers were returned by the A.A.O Shillong vide their letter No.P/V/AAO/460/VII/s dated 08.01.2004 with some audit observations.

(iii) The case towarded to the L.A.O. for verification of qualifying service vide DEO Guwahati letter No.DEO/GAU/ADM/P-2/220 dated 12.2.2004.

(iv) I personaly meet the L.A.O. as per the officiating DEO and got verified the case vide their letter No.LA/561/GEN-XVIII dated 19.2.2004.

The D.E.A. to re-submit the pension papers were put up to the DEO on 03.05.04 for approval only and since then papers are lying unactioned.

Madam, I have retired on 09.09.02 and more than 28 months passed without getting any pension benefit and now I am in deep finantial hareship with four family members including 104

Approved
S. K. Datta

years old widow ill mother. It is therefore my earnest request to you kindly passed a solid advice to the DEO Guwahati by name to re-submit my pension papers immediately to the AAO Shillong. If the DEO will not take proper action this time on your valuable advice I will take legal advice against the DEO Guwahati in charge.

Thanking you Madam,

Yours faithfully

Nagendra Nath Talukdar
Ex-SDO-III
Upper Hengrabari
Nabajyotipur
Guwahati-781036.

Copy to:-

Dr. Arun Kr. Sarma
Member of Parliament,
Lok Sabha
(By Hand).

with a request to take up
the case with the prop.
authority of Defence Estates.

To

REGISTERED

No. 360192/LC-I/XIV/114
Principal Directorate, DE
Min. of Defence Eastern Command
13, Camac Street (7th floor)
Kolkata-17, dated 25 Jan '05

The DEO
Guwahati Circle
GUWAHATI-781003.

SUB : FORWARDING OF PENSION PAPERS.

In continuation of this Principal Dte, DE, letter of even number dated 09.09.04, a copy of communication dt. 11.12.2004 received from Sri N.N.Talukder Ex-SDO-III is enclosed herewith.

2. Necessary action for finalisation of subject issue may please be taken immediately under intimation to all concerned.

Encl :-

M.K. Talukdar

Principal Director
Defence Estates
Eastern Command

Copy to :-

1. Sri N.N.Talukdar
Ex-SDO-III..... for information.
 2. F/copy.

Krishna

*Attested
Sri
Advocate*

Central Administrative Tribunal
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

29 JUN 2005

O.A. No. 69 /2005

IN THE MATTER OF:

Sri Nagendra Nath Talukdar
... Applicant

- Versus -

Union of India & Ors.
... Respondents

- AND -

IN THE MATTER OF:

Written statements submitted by
the Respondents No. 1 to 6.

- AND -

IN THE MATTER OF:

The answering respondents beg to
submit a brief history of the case
which may be treated as part of the
written statement.

BRIEF HISTORY OF THE CASE

Mr. Nagendra Nath Talukdar, Ex-SDO-III of DEO Guwahati Circle, Guwahati was caught by the C.B.I. in a case of illegal gratification and was subsequently convicted by the Trial Court. The order of punishment awarded by the Trial Court vide their Order dated 12.07.1996 in regular case No. 5(c) 93 under Section 7 of P.C. Act of 1988 which he was sentenced for 1 (one) year imprisonment and also fined for Rs. 20,000/- Mr. Talukdar preferred an appeal in the High Court which he was lost the case. The Hon'ble High Court reduced the punishment of imprisonment from 1 year to 6 (six) months and imposed a fine of Rs. 10,000/- (Rupees Ten Thousand) vide Order dated 02.05.2003, Mr. Talukdar has undergone for 6 months imprisonment w.e.f. 02.05.2003 in the Distt. Jail Katiurup, Guwahati he also paid a fine of Rs. 10,000/-.

During the period Principal directorate, DE, EC, served him a notice to show cause as to why he should not compulsorily retired from Service vide letter No. 360192/CP-148/96/LC-I/CON/ 12 dated 18.02.2002, due to non-finalisation of High Court decision since July 1996. The Principal Directorate, DE, EC, ultimately passed the order of compulsorily retirement vide letter No. 360192/CP/148/96/LC-I/CON/ 12 dated 18.02.2002 with effect from 09.09.2002 since his service is not required for the interest of public and administration.

After his retirement it appears that he lost appeal and under went imprisonment ~~of~~ 6 months and paid a file of Rs. 10,000/- up holding his conviction by the Trail Court by the Hon'ble High Court. His pension papers were delayed due to above reasons.

The Area Accounts Office, Shillong vide his letter No. P/V/AAO/460/VII/S dated 08.01.2004 returning his pension papers with the objections about his missing period.

It appears that there is all delay in submitting this information by this office as it is apprehended that communication of conviction and undergoing the imprisonment may debar him from entitlement of pensionary benefit.

In fact it was the duty of the Government servant to convey the outcome of the criminal proceedings, which may result either in acquittal or conviction. Mr. Talukdar never conveyed his conviction undergoing imprisonment. As per rule 48 of Central Govt. civil Service Rule 1972 and FR 56(j) provided that "The appropriate authority could compulsorily retire a Government Servant under specific conditions, compulsorily retirement is not a penalty as it does not mean to removal/dismissal within the meaning of Article 311 as it does not entail loss of benefit.

Whereas the criminal investigation to the framing of serious charges and the subsequent conviction normally precludes a suspension, 'Seal Cover procedure', and subject to the outcome of the proceedings culminating either in complete exoneration or conviction.

The conviction with imprisonment/fine invariably leads to dismissal. The conviction under the corruption act is punitive, preventive and exemplary.

THE HUMBLE ANSWERING RESPONDENT, in continuation of the aforesaid brief history submit their written statement As follows :-

1 (a) That I am Defence Estate Officer, Guwahati Circle and Respondent No. 2 in the above case. I am acquainted with the facts and circumstances of the case. I have gone through a copy of the application served on me and have understood the contents thereof. Save and except whatever is specifically admitted in this written statement, the contention and statement made in the application may be deemed to have been denied. I am competent and authorized to file the written statement on behalf of all the respondents.

b) The application is filed unjust and unsustainable both on facts and in law

c) That the application is also hit by the principles of waiver, estoppel and acquiescence and liable to be dismissed.

2) That with regard to the statement made in paragraph 4.1, 4.5 it is the matter of records.

3) That with regard to the statement made in paragraph 4.2, 4.3 and 4.4, the answering respondent submits that the applicant was asked to go on compulsory retirement from service, as he has been found guilty of grave misconduct and subsequently he was convicted.

It is pertinent to mention here that the applicant was caught by the CBI in a case of illegal gratification and was subsequently convicted by the trial Court. The order of punishment awarded by the Trial Court (Special Judge) vide its order dated 12.07.1996 in Special Case No. 5(c)

under Section 7 of the P.C. Act, 1988 in which applicant was sentenced for one year imprisonment and with a fine of Rs. 20,000/- . Thereafter the applicant preferred an appeal against the aforesaid order before Hon'ble High Court upheld the Trial Court order reducing the punishment of imprisonment from 1 year to 6 months and imposed a fine of Rs. 10,000/- (Rupees Ten Thousand) vide order dated 02.05.2003. The applicant has under gone for 6 months imprisonment w.e.f. 02.05.03 in the District Jail, Kamrup, Guwahati and also paid fine of Rs. 10,000/- and during the aforesaid period, the Principal Directorate, DE, EC, served him a notice to show cause as to why he should not be compulsorily retired from service vide letter No. 360/92/CP-148/96/LC-I/CON/12 dated 18.02.2002 due to non finalisation of the Hon'ble High Court decision since July 1996. The Principal Directorate ultimately ordered the award of compulsory retirement w.e.f. 09.09.2002 in the interest of the public and the administration.

The pension papers were not prepared during the pendency of the aforesaid criminal cases, since the granting the gratuity, pension and/or withdrawing or withholding, the whole or part of the pension, permanently or for a specific period, subject to the outcome or result or instruction of aforesaid cases. The future good conduct is an implied condition of every grant of pension and its continuance.]

The copy of the order dated 12.07.2005 passed by the Hon'ble Special Judge in special case No. 5(C) U/s of the Prevention of corruption Act, 1988 is annexed herewith and marked as Annexure - 1.

Furthermore, the Doctrine of legitimate expectation cannot be resorted to for the purpose of release of pensionary benefit. It is being an equitable principle must follow the law/ rule etc.

4. That with regard to the statements made in paragraph 4.5, 4.6, 4.7 and 4.8, the answering respondent begs to state that relevant pension papers, service particulars of the applicant were transferred to the pension establishment, AAO, Shillong having jurisdiction power in this regard. The aforesaid papers were returned to the DEO by the AAO Shillong on 20.01.2004 with some audit observations and later on same has been audited, corrected. But due to the aforesaid criminal offence/ conviction, required office procedure and Rules, the matter was delayed. Now the final decision/instruction are in the process.

It is not corrected that the applicant repeatedly visited the Respondents Office. He was very much aware the reason of the delayed and considering the gravity of the offence committed by the applicant, the applicant accepted the proposal of compulsory retirement without any agitation/objection.

5. That with regard to the statements made in paragraph 4.9, 4.10, 4.11, 4.12, 4.13 and 4.14 of the application, the answering respondent submits that the pensionary benefit in question is not a normal case since it is not a normal case of retirement. The whole process was delayed due to criminal case and subsequently convicted for a period of 6 months etc. which is why the respondents had to observe some extra official procedure and to follow instruction and consultation with higher authority.

Further, it is not a fact that the respondents are sitting idle in settling the pensionary benefit of the applicant in continuation to the steps and on receipt of the instruction from the PD, DE vide letter No. 360192/LC-1/XIV/ 114 dated 25.01.2005, advice sought for from the PD, DE vide the office letter No. DEO/GAU/Legal/CAT/NNT/ 126 dated 24.02.2005 to take further action.


 DEFENCE ESTATES OFFICERS
 Guwahati Circle
 Guwahati-3

Copies of the aforesaid two letters are annexed herewith and marked as Annexures - 2 & 3 which are self explanatory.

Further more, there are certainly underlying principles governing the grant of Pension. Since the applicant is convicted of a serious crime and is found guilty of grave misconduct, the Respondent/appointing authority can withdraw the pension in full or in part, either permanently or for a specified period and in order to effectuate this principle, the all relevant issue/points are in the process of finalizing the necessary steps taken the Respondents.

And due to the aforesaid statements made in this written statement and in the light of the relevant laws and rules, the ground/relief and the prayer made in the application are not tenable in the eye of law and as such, the applicant is not entitled to any relief as prayed for.

6. That the Respondents submit that the application is devoid of merit and as such same is liable to be dismissed.
7. The written statement is made bonafide and for the ends of justice and equity.

7

VERIFICATION

52


DEFENCE ESTATES OFFICER
Guwahati Circle
Guwahati-3

I, Sri Ganesh Chandra Sarkar

Sp. Late Bishnupada Sarkar, working as Defence Estate Officer, Guwahati Circle, Guwahati - 3 do hereby solemnly affirm and verify the statements made above are true to my knowledge, belief and information and nothing being suppressed.

I sing this verification on this
Guwahati.

18th day of June, 2005 at


Signature

8 AUG 2005

गुवाहाटी न्यायालय
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

O.A.No.69/05

Sri Nagendra Nath Talukdar

-VS-

Union of India & Ors.

REJOINDER TO THE APPLICATION FILED BY THE APPLICANT:

1. That the applicant begs to place reply against the brief history of the case as given in the Written Statement as follows:

That the applicant most respectfully submits that a CBI case was developed by a retired major during July 1992 when he was evicted from defence land. Pursuant to the said CBI case he was convicted by the Special Court in the month of July 1996. Immediately on receipt of the order of conviction he preferred appeal before the Hon'ble Gauhati High Court. The Hon'ble High court reduced the punishment vide order dated 2.5.03.

That the applicant begs to state that the Principal Director has issued him a show cause notice for compulsory retirement from service on 18.2.02 after 10 years of CBI case and 6 years of Special Court's order. Immediately on receipt of the show cause notice he submitted his reply stating the actual fact of the case. Then the Principal Director called him to Kolkata for personal hearing on 16.7.02 and also asked him to give written

*Filed by -
the applicant
through
Bomdona Duni
obhisekale 12
8.8.05*

10

explanation. Accordingly the applicant appeared personally before the Principal Director as well as submitted his written explanation. The Principal Director has considered such written explanation as evident from the order of compulsory retirement No.360192/CP-148/96/LC-1/2 dated 30.08.02 w.e.f. 9.9.02. The respondents have stated that the applicant has compulsorily retired from service vide order No.360192/CP-148/96/LC-12 dated 18.2.02 which is not correct.

The applicant begs to submit that the pension papers were forwarded by the regular DEO to the AAO Shillong on 31.12.03. It was informed by the DEO that he took some time for communication with higher authorities regarding full pension instead of two-third pension and finally he got the order for full pension during Oct. 2003 and he took another two months time for correcting the pension papers which were earlier prepared for two third only and forwarded the same to the AAO Shillong on 31.12.03. The AAO Shillong returned the pension papers on 20.1.04 with some observation and requested the DEO Guwahati to re-submit the papers immediately.

The applicant while denying the averments made by the respondents begs to submit that as per Swamy's Pension Rules, "Compulsory retirement of a Govt. servant is one of the major statutory penalties that can be imposed upon a Govt. servant under the CCS(CCA) Rules."

The applicant further submits that such pension or gratuity or both will not be less than two-third or more than full compensation pension or gratuity or both admissible on the date of compulsory retirement.

50

PARAWISE REPLY OF THE APPLICANT:

1. That save and except the statements which are admitted herein below other statements made in the written statement are categorically denied and the respondents are put to the strictest proof thereof.
2. That with regard to the statement made in para 1, 2 and 3 of the written statement the applicant does not admit anything contrary to the relevant records of the case.
3. That with regard to the statement made in para 4 of the written statement the applicant reiterating and reaffirming the statements made above begs to state that after meeting all the needful the regular DEO has forwarded the pension papers to AAO Shillong on 31.12.03 and the same papers were returned to the DEO on 28.1.04. The then DEO forwarded the said pension papers to LAO for verification on 12.2.04 and were got verified on 19.2.04. After that one Mr. C.K. More took the charge of officiating DEO, as the regular DEO retired from service, and kept the pension papers pending. The applicant further submits that he regularly visited the office of the DEO but nothing resulted in positive and till date pension papers were lying there.
4. That with regard to the statement made in para 5, 6 and 7 of the written statement the applicant begs to state that it is not correct that the process of pension papers was delayed due to criminal case. The respondents have mentioned that they had to observe some extra official procedure and to follow instruction and consultation with higher authorities. In this connection it is pertinent to

mention here that the applicant has undergone imprisonment for 6 months w.e.f. 2.5.03. But it is very clear that during this period the higher authority i.e. the appointing authority has sanctioned the full pension in the month of October 2003 and the pension papers were forwarded by the regular DEO to AAO, Shillong on 31.12.03. This shows that all the initial process were completed.

The applicant further submits that he wrote a letter to the Principal Director on 1.9.04 (Annexure-5) in connection with the settlement of my pension papers. The Principal Director immediately wrote a letter to the DEO vide letter No.360192/LC-1/XIV/95 dated 9.9.04 for taking early action in the matter. But DEO has not taken any step in this regard. Finding no positive response the applicant again wrote a letter to the Principal Director on 11.12.04 stating all pending position of his pension papers. Immediately on receipt of the said letter dated 11.12.04 the Principal Director in reference to her earlier letter dated 9.9.04, wrote a letter to the DEO on 25.1.05 (Annexure-7) for taking necessary action immediately for finalization of the pension papers. But inspite of this situation the Respondent No.2 has not taken any step till date. Therefore it is very much clear that the Respondent No.2 was sitting over the matter showing disregard to the letters of the Higher Authority.

5. That in view of the above facts and circumstances of the case, the applicant prays before this Hon'ble Tribunal to pass necessary order/orders to release all the pensionary dues including due arrears forthwith.

5
VERIFICATION

I Sri Nagendra Nath Talukdar, Ex SDO III, aged about 50 years, resident of Hengrabari, Nabajyotipur, Guwahati-36 in the District of Kamrup, Assam do hereby solemnly affirm and verify that the statements made in paragraphs _____ are true to my knowledge and those made in paragraphs 1, 3, 4 are true to my legal advice and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the verification on this the _____ day of of 2005.

Nagendra Nath Talukdar

Signature