

CENTRAL ADMINISTRATIVE TRIBUNAL

JABALPUR BENCH, JABALPUR

O.A. No. 239 of 2004

Date of order : 6th May, 2005

C O R A M

Hon'ble Mr. M.P.Singh, Vice-Chairman
Hon'ble Ms. Sadhna Srivastava, Member(J)

S.R.Namdeo, S/o Khushiram Namdeo, retired Fitter, Ticket No.3677, W/s Section, Gun Carriage Factory, Jabalpur, R/o H.No.649, Sangam Colony, Jabalpur. Applicant.

Vrs. '

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. General Manager, Gun Carriage Factory, Jabalpur.
3. The Dy. General Manager (Administration), Gun Carriage Factory, Jabalpur.
..... Respondents.

Counsel for the applicant : Shri Mukesh Mishra
Counsel for the respondents : B.Da. Silva

O R D E R

By Sadhna Srivastava, Member(J) :-

The facts of the case are that the applicant was removed from service, vide order dated 23.4.1996 against which he filed an O.A.No.686 of 1996 before this Tribunal and the Tribunal quashed the removal order and converted it into order of compulsory retirement. Hence, for granting the pension, the respondents have passed an order fixing the pension of the applicant by passing the speaking order dated 16.1.2003, Annexure-2. Thereafter, the applicant has filed the present O.A. seeking directions to the respondents

2. O.A. 239 of 2004

to pay the pension to the applicant as per new pay scale as the applicant has been compulsorily retired on 23.4.2003 .

2. While contesting the O.A, the respondents have filed written statement justifying the order dated 16.1.2003 on the ground that the same has been issued according to note 2 referred below Rule 34 of CCS Pension Rules 1972. Admittedly, the order dated 16.1.2003 has not been challenged by the applicant and as such the said order has attained finality. Though there is infirmity in the pleadings of the applicant but it appears to us that the applicant is aggrieved with the order dated 16.1.2003 through which his pension has been fixed and as such we have to test whether the order dated 16.1.2003 has been passed according to the rules or not. For fixation of the pension in the present case the relevant provision is Note 2 of Rule 34 of CCS Pension Rules as reproduced below :

“If during the last ten months of his service, a Government servant had been absent from duty on extra ordinary leave, or had been under suspension the period whereof does not count as service, the aforesaid period of leave or suspension shall be disregarded in the calculation of the average emoluments and equal period before the ten months shall be included.”

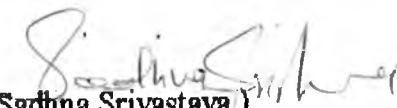
3. As per the aforesaid Rule, the pension shall be determined with reference to the emoluments drawn by the government servant during the last ten months. Admittedly, since the service of the applicant came to end on 23.4.1996 and as such for the purpose of last pay drawn during the last ten months would be prior to 23.4.1996. From 1.1.1995 to 23.4.1996 , the applicant was on extra ordinary leave, and , as such, for calculation of the average emoluments the relevant period would be from 1.2.1994 to 31.12.1994 i.e prior to when the new scale of pay were enforced as a result of the the recommendation of the




3. OA 239 of 2004

5th Pay Commission. There is no dispute that the new/revised pay scale came into effect only on 1.1.1996 and as such the pension of the applicant has to be fixed according to the pay scale which he drew in the last ten months i.e. in between 1.2.1994 to 31.12.1994. The applicant was drawing the pay scale during the above period at the rate of Rs.995/- and as such, there is no illegality in the order dated 16.1.2003 passed by the respondents and the applicant is not entitled for the relief for fixation of pension according to the new pay scale.

The O.A. is dismissed. No cost.


(Sadhna Srivastava)
Member(Judicial)


(M.P. Singh)
Vice-Chairman

mps.

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

पत्तिलिपि अर्पित:-

(1) सचिव, डी.पी.ओ. नं. ३३३३३३३३, जबलपुर

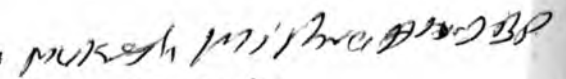
(2) आवेदन (1/10/03).....के अध्यक्ष

(3) प्रवर्तक (1/10/03).....के अध्यक्ष

(4) कार्यपालक, डी.पी.ओ. नं. ३३३३३३३३, जबलपुर

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार


B.D. Singh
B.D. Singh

gased
13/5/05