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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.137 of 1999

Jabalpur, this the 22nd day of January, 2003.

Hon'ble Mr. Justice N.N. Singh- Vice Chairman
Hon'ble Mr. Sarweshwar Jha- Member (Admnv.)

K.R.Pachwani, aged about 59 years,
S/o late Shri Lachhmal Pachwani,
(Retired Ordnance Officer Civilian
(Stores)), R/o 151, Dwarka Nagar,
Jabalpur (M.P.)

-APPLICANT

(By Advocate- Mr. S. Nagu)

Versus

1. Union of India through the
Secretary, Ministry of Defence,
South Bloc, New Delhi.
2. Director General Ordnance Service
(OS-'D), Master General of Ordnance
Branch, Army Headquarters,
DHQ PO New Delhi-11.
3. Commandant,
Central Ordnance Depot, Jabalpur (MP)
4. Controller of Defence Accounts,
Ridge Road, Jabalpur (MP)

-RESPONDENTS

(By Advocate- Mr. P. Shankaran for
Mr. S.C. Sharma)

O R D E R

By Sarweshwar Jha, Member (Admnv.):

The applicant has approached this Tribunal through this O.A. for directions to respondent No.4 to fix his pay as per the provisions of FR-22(I) (a) (1), and also to allow him consequential pension.

2. The facts of the case briefly are that the applicant, who was an Ordnance Officer Civilian (Stores) before he retired from the said post on superannuation on 28.2.1998, had been promoted to the said post from the post of Senior Store Superintendent in August, 1996

(8)

vide orders of the respondents dated 27.8.1996. On promotion to the said post, the applicant had expected that his duties and responsibilities as Ordnance Officer Civilian (Stores) would be higher and accordingly his pay would be fixed as per the provisions of FR-22(I) (a) (1). He has also submitted that his case was favourably recommended by the respondent No.3 as well as respondent No.2. However, respondent No.4, i.e., Controller of Defence Accounts, Jabalpur has failed to fix his pay as per the provisions of the said rule on the ground that these provisions should not be attracted in his case, as the scale of pay of both Senior Store Superintendent as well as Ordnance Officer Civilian (Stores) is the same. The applicant also submitted representation in the matter to the respondent No.2, i.e., Director General Ordnance Services, who is the Appointing Authority in his case, vide Annexure A/5. In the mean-time, the applicant retired on superannuation at a lower stage in the scale of pay of the post of Ordnance Officer Civilian (Stores). How the pay of the applicant should have been fixed has/explained in paragraph 4.12 by the applicant. As the pay of the applicant has not been finally fixed as yet, he has/receiving pension also at provisional rates.

3. The respondents in their reply have submitted that provisional fixation of pay in the case of the applicant was made vide their DO II No.32 dated 22.10.97 and his pay was fixed at Rs.6,900/- with effect from 31.8.1996. The details are given in paragraph 2 of their reply. They have submitted in the said paragraph that C.D.A., Jabalpur (Respondent No.4) vide their letter dated 24.12.1998 have informed them that fixation of

pay is not required to be made again in the case of the applicant, as the scales of pay of Senior Store Superintendent (Fitment) and Ordnance Officer Civilian (Stores) are identical. In the said paragraph, they have also submitted that while pay of the applicant with effect from 31.8.1996 has been fixed at Rs.6,900/-, in the scale of pay (Fitment) for the post of Senior Store Superintendent his pay has been fixed at Rs.6,500/- with effect from 1.1.1996 and the date of next increment is 1.3.1996, taking his basic pay to Rs.6,700/- per month. They have, therefore, submitted that excess, which has been paid to the applicant due to non-finalisation of pay fixation in his case, is not being recovered from him presently, as he has already retired from service with effect from 28.2.1998. But, at the same time his leave encashment and revised pension have not been finalised. It also transpires from their submissions that his promotion from the post of Sr. Store Superintendent to the post of Ordnance Officer Civilian (Stores) on regular basis was from a non-gazetted post to a gazetted post Group 'B' carrying higher status and responsibilities in which he was entitled to pay fixation as per FR-22 (1). However, the entire matter is pending finalisation and complete payment shall be made to him as soon as the same is finalised.

4. The applicant has also submitted a rejoinder to the reply of the respondents in which he has essentially maintained that the duties of the post of Ordnance Officer Civilian (Stores) are higher than those of the post of Sr. Store Superintendent. The applicant has also hammered the point that the respondents themselves had admitted that he had been given promotion

from a non-gazetted to a gazetted Group 'B' post.

Accordingly, he should have been given the benefit of pay fixation under FR-22(I).

5. However, from the additional documents/information submitted by the respondents, vide MA No.1969/2000, it is observed that the matter regarding fixation of pay under the above situations where the scales of pay have been merged as a result/the recommendations of the Vth Central Pay Commission have also been considered by the Ministry of Defence, who have referred to the views of the Department of Personnel and the Ministry of Finance in their communication dated 6.12.1996 annexed with MA No. 1969/2000 filed by the respondents. It is observed from the said communication of/Ministry of Defence that in cases where the pay-scale for the feeder post and the next promotional post has become one and the same, the concerned organisations were expected to take necessary action to merge the posts and amend the Recruitment Rules accordingly. The Ministry of Defence have also referred to the provisions of FR-22(III), which provide that 'the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance if the post to which it is made is on the same scale of pay as the post, other than tenure post, which the Government servant holds on a regular basis at the time of his promotion or appointment or on a scale of pay identical therewith.' They have, therefore, held that in such cases pay fixation under FR-22(I) (a) (1) is not admissible. They have also held that where the feeder category and promotional category are placed in a single scale of pay, the two posts should be treated to have been merged and

the recruitment rules amended accordingly. These views of the Ministry of Defence have been conveyed to the Army Headquarters etc. for compliance vide the said communication.

6. From the above, it is observed that the matter has already been considered by the Ministry of Defence and all concerned organisations under the said Ministry already informed accordingly. That being the case, it is not clear why the respondents have not been able to finalise the matter and have unnecessarily been holding up the final fixation of pay of the applicant and the consequential pensionary benefits including encashment of leave. The applicant has retired almost over four year ago and these payments should have been made to him ^{immediately} ~~thereafter~~. They ^{should} have also sorted out by now the question of amending the recruitment rules of the two posts in question necessitated by merger of their scales of pay into one scale of pay on the recommendations of the Vth Central Pay Commission, which became effective from 1.1.1996. It needs to be appreciated that the applicant was promoted from a non-gazetted post to a gazetted Group 'B' post and was quite naturally expecting fixation of his pay under FR-22 (I) (a) (1), as the post to which he was promoted carried higher duties and responsibilities, as admitted by the respondents themselves. Thus, it would have been in the fitness of things if a specific solution to this question had been found ~~... by the~~ respondents instead of dealing with this question under general dispensation, as conveyed by the Ministry of Defence in their communication referred to above.

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7. Under these circumstances, we are of the view that it would be appropriate on the part of the respondents to finalise fixation of pay in the case of the applicant and also consequential pension including encashment of leave as admissible under the rules at the earliest, in any case within a period of three months from the date of receipt of this order. They shall also endeavour to resolve the question of how the promotion of the applicant from a non-gazetted post to a gazetted post can be appropriately and rationally taken care of under the scheme of pay fixation, if necessary, in consultation with the Ministry of Defence/ Ministry of Finance/Department of Personnel and Training. This exercise should be completed within the period mentioned above. With this, this O.A. is disposed of in terms of the above directions with no order as to costs.

Sarweshwar Jha
(Sarweshwar Jha)
Member (Admnv.)

N.N. Singh
(N.N. Singh)
Vice Chairman

'MA'

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प्रांक्षण सं ओ/न्या..... जवलपुर, दि.....
प्रतिलिपि अस्ये दिता -
(1) समिति, उच्च व्यासान्वय नार उद्योगीय, जवलपुर
(2) अस्ये नार/विभागीय/वक्तु..... नो व्यासाल
(3) जनकी वी/विमानी/वक्तु..... नो काउंसल
(4) चैत्राया, रोपाय, जवलपुर व्यासाल
सूचना एवं आवश्यक कार्यवाही हु

W.M. (Signature)
उप सचिव
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