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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00629/2014

Order Reserved on **21.08.2015**
Pronounced on **26.8.2015**

...
CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)

...
RAGHUBIR SINGH, SON OF LATE SH. BHAG SINGH, RESIDENT OF H.NO.
209, NEW MODEL TOWN, LUDHIANA (PUNJAB).

... Applicant

Versus

1. UNION OF INDIA THROUGH THE SECRETARY, MINISTRY OF DEFENCE, SOUTH BLOCK, NEW DELHI.
2. THE DIRECTOR GENERAL, DE, GOVERNMENT OF INDIA, MINISTRY OF DEFENCE, DELHI CANTT.
3. THE PRINCIPAL DIRECTOR, DEFENCE ESTATES, WESTERN COMMAND, KENDRIYA SADAN, 5TH FLOOR, SECTOR 9-A, CHANDIGARH.
4. THE PCDA (P), DRAUPADI GHAT, ALLAHABAD.
5. THE PCDA, WESTERN COMMAND, KENDRIYA SADAN SECTOR 9A, CHANDIGARH.

... Respondents

Present: Sh. Rajiv Anand, counsel for the applicant.
Sh. Ram Lal Gupta, counsel for the respondents.

ORDER

BY HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

"8(ii) For setting aside the action of the respondent authorities in withholding the pensionary benefits and entitlements of the applicant and is seeking directions

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upon the respondents for the grant of various benefits such as pension, gratuity, earned leave and other benefits attached to the service of applicant, which he performed in the office of Military Lands and Cantonments with effect from 10/04/1945 till 31/08/1979 alongwith all arrears and interest thereon @ 18% p.a. till realization from the date due i.e. 01.09.1979."

2. Averment has been made in the O.A. that the applicant was initially appointed as 'Civilian Clerk' of the Government of India in the office of Military Lands and Cantonments, at its headquarters, Northern Command, Rawalpindi (now in Pakistan) with effect from 10.04.1945. The applicant continued to serve the Government of India, without any break in service at various stations and different establishments/departments up to 19.02.1968, when he was promoted to class II by the Director, Military Lands and Cantonments, New Delhi vide letter dated 17.02.1968. The applicant continued as such till 31.08.1979, when he was deemed to have been voluntarily retired from service as per the letter No. 40/12/ADM/ DL&C/68 dated 31.08.1979 of the Government of India, Ministry of Defence (Director General, Defence Lands and Cantonments). At the time of seeking voluntary retirement, the applicant was working as an Attached Officer in the office of Director, Military Lands and Cantonments, Shimla. The applicant performed his services with the respondent authorities on several designations and at several places. The copy of the history sheet reflecting the services

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rendered by the applicant with the respondent authorities is annexed (Annexure A-1).

3. As per the orders then prevailing, the record of service in respect of Class III Employees was to be recorded and Service Book was to be maintained by the Establishment Department concerned and the record of service of Officers in Class-II Cadre was required to be maintained by Controller of Defence Accounts concerned. Although the service book in respect of the applicant's service as Class III employee was available with the Defence Estates Department, covering the period from 10.04.1945 to 18.02.1968 (23 years), yet the record of service as Officer Class-II, which is maintained in the form of history sheet by the CDA concerned, for the period falling between 19.02.1968 to 31.08.1979 was not readily available with the CDA (Pay Section), Western Command, Chandigarh. The absence of service record has caused a long delay in preparation of pension papers despite efforts by the Department concerned. The applicant, who is in the last lap of his life is having serious ailments such as tuberculosis, cancer, loss of blood, loss of hearing, loss of eyesight has not received his pensionary entitlements. Although the respondents initiated the process of grant of pension to the applicant in 1983 itself, however, for the want of availability of service records, particularly of the period from 1968 to 31/08/1979 when the applicant was serving in Group 'B' (Class II), his pensionary entitlements

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remain unpaid. The respondent authorities, while taking action under Rule 59 (a) (IV) of the CCS (Pension) Rules, 1972, sought the documents available with the applicant. The applicant submitted the service book and personal file under cover of his letter dated 15.10.2010 so that his case could be pursued. Partly due to the non availability of service record with the respondents and partly due to the ill health of the applicant, there was a considerable delay in processing the case of the applicant. The applicant is over 90 years of age. Since the health of the applicant is deteriorating gradually without any pension being paid for the last 35 years since his retirement, therefore the case of the applicant deserves special consideration. The applicant is not having adverse circumstances or any disqualification so as to render forfeiture of the service so rendered or any ineligibility for the retirement and pensionary benefits.

4. It is admitted by the respondents that as per the available correspondence, the service record of the applicant was sent by the Controller of Defence Accounts, Southern Command, Pune by letter dated 13.07.1978, which was addressed to the Controller of Defence Accounts, Chandigarh. It was advised by the respondent authorities i.e. the office of the Director-General, Defence Estates, New Delhi in its letter no. 40/12/ADM/DE/87 dated 16.06.1987 that in the case of the applicant, the action be taken as per Rule 59 (a) (iv) of the CCS (Pension) Rules 1972, if the documents were not available (Annexure A-

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2). The time-barred sanction for preparing the pension papers was also issued by the said office with advice to treat the pension case of the applicant as a high priority one. The office of DGDE, Ministry of Defence, Government of India communicated an order whereunder sanction was accorded for the waiving of the time-barred limit under Rule 189 FRI Part 1, for investigation and payment of pensions and other benefits attached in respect of the applicant, consequent upon his retirement from government service, provided that his case was otherwise found in order. In the month of October 2011, various documents such as the working sheet for assessment of pension, family details of the applicant, outstanding dues, details of last 10 months pay in respect of the applicant, declaration regarding address after retirement of the applicant, form of option for medical allowance, form of undertaking to be furnished by the applicant, last pay certificate and so on were communicated to the respondent authorities (Annexure A-3). On 03.11.2011, the applicant swore an affidavit, thus bringing out the history of his case, so that his pensionary case could be processed further. The respondents, after examining the peculiar facts of the case of the applicant had formed an opinion that the case of the applicant needs to be processed under the Rule 59 1 (a) (iv) of the CCS Pension Rules. Rule 59 1 (a) (iv) provides as follows:

"59. STAGES FOR THE COMPLETION OF PENSION PAPERS

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(1) The Head of Office shall divide the period of preparatory work of two years referred to in Rule 58 in the following three stages :-

(a) First Stage. - Verification of service :

(i) XXX

(ii) XXX

(iii) XXX

(iv) If any portion of service rendered by a Government servant is not capable of being verified in the manner specified in sub-clause (i), or sub-clause (ii), or sub-clause (iii), the Government servant shall be asked to file a written statement on plain paper stating that he had in fact rendered that period of service, and shall, at the foot of the statement, make and subscribe to a declaration as to the truth of that statement, and shall in support of such declaration produce all documentary evidence and furnish all information which is in his power to produce or furnish.

(v) The Head of Office shall, after taking into consideration the facts in the written statement and the evidence produced and the information furnished by that Government servant in support of the said period of service, admit that portion of service as having been rendered for the purpose of calculating the pension of that Government servant."

In pursuance to the advice of the respondents and in accordance with the above produced rule, the applicant submitted his petition in the form of an affidavit (Annexure A-4). On 15.12.2011 the respondent authorities communicated to the PCDA, Western Command calling for the submission of various documents so as to process the case of the applicant for the grant of service pension (Annexure A-5).

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5. In the grounds for relief it has, inter alia, been stated as follows:

- i. As per the provisions of Rule 83 of the CCS (Pension) Rules, 1972, pension is payable from the date when the Government servant ceases to be borne on the establishment. In the case of the applicant he ceased to be on the establishment of the Government w.e.f. 31.08.1979 and was transferred to the pension establishment w.e.f. 01.09.1979 but inspite of same has not been paid pensionary and retirement benefits and there is no justification for the same. The provisions and the Government instructions even provide for the grant of provisional pension and the Head of Office is responsible for the same.
- ii. It is settled by a catena of judgments of the Hon'ble Supreme Court that pension payable to a retired government servant is no longer a bounty which is payable on the sweet will and pleasure of the government. It has been held to be a valuable right which flows to such an employee by virtue of the rules which governed his employment. Reference in this regard be made to **Deokinandan Prasad v. State of Bihar and others, AIR 1971 SC 1409** wherein the Hon'ble Supreme Court held this view. It is undisputed fact that upon retirement the grant of pension do not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may become necessary for the authorities to pass an order to that effect but the right to receive pension flows to the government servant not because of the said order but by virtue of the rules which have a statutory force. The same view was expressed by the Supreme Court in **State of Punjab v. Iqbal Singh - (sic) v. M. Padmanabhan Nair, AIR 1985 SC 356** the Supreme Court reiterated its earlier view and it will be of interest to quote the following observations from this judgment :-

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights

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and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

Thus, a right to pension has been held to be a right to property and till the Constitution (Forty Fourth Amendment) Act, 1978 was brought into force, property right was a fundamental right under Article 19(1)(f) of the Constitution. After the enforcement of the said amendment, property right is no longer a part of fundamental right and has been provided for as a constitutional right in Article 300-A and in terms thereof no person can be deprived of his property save by authority of law.

The Hon'ble Supreme Court in ***Delhi Transport Corporation v. D.T.C. Mazdoor' Congress, 1991(1) RSJ 152: 1991(1) SCT 675 (SC)*** and ***D.K. Yadav v. J.M.A. Industries Limited, 1993(3) RSJ 696: 1993(3) SCT 537 (SC)*** has held that the right to life as enshrined in Article 21 of the Constitution is wide enough not only to include the right of employment as part of right to life but also the incidental right to pension.

- iii. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. In the instant case, the grievance of the applicant relates to the grant of pension and other similar pensionary benefits, which is a recurring cause of action. As such, by the operation of the above said judgment, if the case of the applicant is found good on merits then it should not be rejected on the question of limitation/delay. Moreover, if the claim of the applicant is considered and allowed on merits, no third party rights shall be affected in any manner whatsoever. Similar observations have also been rendered by the Hon'ble Supreme Court in ***M.R. GUPTA VS. UNION OF INDIA*** AIR1996 SC 669.

6. In the written statement filed on behalf of the respondents it has been stated that the applicant served in various

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capacities and finally as Attached Officer Directorate, Defence Estates, Western Command upto 31.08.1979. The applicant submitted application for voluntary retirement w.e.f. 31.08.1979 alongwith leave preparatory to retirement. He remained absent from duty w.e.f. 01.06.1978 and was deemed to have voluntarily retired from service w.e.f. 31.08.1979 (DO Part II No.41/79 issued by Director Defence Lands & Cantonment, Western Command, Shimla as per authority of Govt. of India, Ministry of Defence (Director General, Defence Lands & Cantonments) letter No.10/12/ADM/L&C/68 dated 31.08.1979. The applicant was called upon to submit/return the documents duly completed vide letter No.32/ADM/DLC dated 17.02.1983 and No.32/ADM/DLC dated 30.03.1983 for processing his pension case. However, he failed to submit any documents. As such, the case for pensionary benefits to the applicant could not be processed due to non-availability of service record (i) from 1945 to 1968 when he was Class II i.e. Civilian Clerk and (ii) from 1968 to 31.08.1979 where he was in Group B (Class II). As per the available correspondence, the service record of the applicant was sent by Controller of Defence Accounts, Southern Command, Pune vide letter dated 13.07.1979 to Controller of Defence Accounts, Chandigarh. However, these could not be made available by the PCDA, WC to the Directorate DE WC, Chandigarh. Thereafter, as the grant of pension was getting delayed, DGDE, New

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Delhi vide letter No.40/12/ADM/DE/87(i) dated 16.06.1987 advised the Directorate to take action as per rule 59(a)(iv) of CSS (Pension) Rules, 1972, if the documents are not available. The time barred sanction for preparing pension papers was also issued by Director General, Defence Estates treating it as Pension High Priority. Reminders were also sent by DGDE in this connection to process the case. The PCDA, WC, Chandigarh was again requested vide this office letter No.32/331/ADM/DE dated 31.05.2011 to send the service record of the applicant in order to arrange for processing the case for payment of pension and gratuity to the officer. The applicant finally vide letter dated 15.10.2010 informed that because of illness he could not pursue his pension case and also handed over Service Book (I-IV Vol.) and personal file containing 46 pages for processing his pension papers.

7. (After obtaining the remaining requisite documents from the applicant, the pension papers were submitted to Principal Controller of Defence Accounts, Western Command, Chandigarh vide letter No.15/789/ADM/DE dated 15.12.2011 for verification and onward transmission to Principal controller of Defence Accounts, Western Command, Allahabad. The matter remained under correspondence with Principal Controller of Defence Accounts, Western Command for a while. Then the case was referred to Local Audit Officer (Army), Chandimandir, vide letter dated 24.07.2012, which was returned vide letter dated

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31.07.2012 with the observation that the Service Book be got audited from all LAOs as per the service record of the officer. As the officer served in Pakistan before partition and thereafter served in Jalandhar, the documents were sent to LAO, Chandimandir on 08.10.2012 for verification from 22.12.1948 to 05.07.1951. After verification by the LAO, Chandigarh, the case was then referred to Principal Director, Defence Estate, Eastern Command, Kolkata vide our letter dated 09.11.2012 for verification and audit of the Service Book from July 1951 to 1956 as the officer was posted there. The documents were returned unaudited vide letter dated 23.01.2013 stating that the old records are not readily traceable in their office. Based on this experience and with the presumption that the records will not be easily available/traceable being the old case, the matter was referred to Principal Controller of Defence Accounts, Western Command, Chandigarh vide letter dated 27.06.2013 to take immediate action in the matter. PCDA, WC vide letter No.P/III/DDE/CHD dated 16.08.2013 had made again observation stating that the Service Book be got audited up to date. The applicant served in Pakistan before independence and PCDA, EC, Kolkata has also given in writing that the service records of the applicant for the period of July, 1951 to 1956 officer posted at Kolkata cannot be verified, for the reasons being old records and are not readily traceable in their office. The service documents were sent to PCDA, Allahabad vide Directorate

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letter No.32/331/ADM/WC/DE dated 21.01.2014, the same were returned to the Directorate on 28.05.2014 with observation that Rule 59(iv) of CSS (P) Rules, 1972 is not applicable in voluntary retirement cases and pension cannot be granted without verification of service. The Service Book in respect of the applicant was sent to DEO, Agra for verification on 23.07.2014 and the same was returned to Directorate after audit for the period from 17.12.1968 to 16.09.1963. Now the Directorate has again sent the Service Book in respect of the applicant to Eastern Command, Kolkata for verification vide Directorate letter No.32/331/ADM/DE dated 18.09.2014. The verification/reply of the same is still awaited.

8. As per direction issued on 26.05.2015 PCDA (P) and PCDA Western Command (respondents no.4 and 5) were required to file their reply. In the short reply filed on behalf of respondent no.4 and 5 it has been stated that the pension case of the applicant could not be processed by PD DE WC CHD (i.e. respondent No.3) due to non-availability of service records/book of the applicant. The applicant handed over his personal file and service book on 15.10.2011 to his office for processing his pension case. The PCDA (P) Allahabad/PCDA WC Chandigarh (respondents no.4 and 5) are not responsible for delay in grant of pension/gratuity since the applicant kept his service book unauthorizedly with himself for a long time. The pension papers were

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forwarded by respondent No.3 vide letter dated 21.01.2014 to the replying respondents and further submitted to PCDA (P) Allahabad vide office (Respondent no.5) letter dated 04.02.2014. The pension case was returned unsanctioned by PCDA (P) Allahabad (respondent no.4) on 28.05.2014 (Annexure R-1) with the observation that Rule 59 (iv) of CCS Rules, 1972 is not applicable in voluntary retirement cases. Therefore, the pension cannot be granted without verification of service. The case was re-examined by PCDA (P) Allahabad who is a Pension sanctioning authority and it was intimated vide letter dated 08.09.2014 (Annexure R-2) that the applicant retired voluntarily and before acceptance of voluntary retirement, verification of service was required as per GOI decision No.1 below Appx. 5 of CCS (P) Rules, 1972 (Annexure R-3). As per information ascertained from PD DE WC CHD (Respondent No.3), the service of the applicant w.e.f. 17.09.1963 to 31.08.1979 still remains to be verified from the concerned audit office, under whose jurisdiction the applicant had served during the said period. Service records of the applicant for the period from 19.02.1968 to 31.08.1979 till retirement date is found to have not been properly maintained in service book of the applicant as per information gathered from PD DE Office (i.e. respondent No.3).

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9. Arguments advanced by learned counsel for the parties were heard when learned counsel for the applicant reiterated the content of the O.A. and the rejoinder.

10. Learned counsel for the respondents stated that while the PCDA office was insisting on the verification/pre-audit of service record of the applicant, such verification was proven to be not feasible. Hence services of the applicant prior to partition of India on 15th August 1947 were not available for verification. Besides, since there had been much delay in this case, some of the records may have been destroyed. He further stated that as per Service Book of the applicant, entries made therein had been attested by the Head of Office where the applicant was in service at that time.

11. We have given our thoughtful consideration to the matter keeping in view the submissions made by the learned counsel. In view of the discussion above regarding the stand of the audit authorities and infeasibility of verification/audit of the service of the applicant at this stage, the respondents are directed to release the pensionary benefits due to the applicant on the basis of the entries made in his service book and no further pre-audit/verification of the same may be sought by the respondents. Action to release the retiral benefits due to the applicant may be completed within a period of two months from a certified copy of

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this order being served upon the respondents. Since there has been much delay in finalizing the case of the applicant for release of his pensionary benefits and also appreciating that some delay was decidedly due to the applicant not having submitted requisite papers/documents, interest @6% p.a. only may be released to the applicant from due date of his retirement benefits till the date amount due to him on account of pensionary benefits is actually released. The O.A. is disposed of with these directions.

B. A. Agrawal
(DR. BRAHM A. AGRAWAL)
MEMBER (J)

Rajwant Sandhu
(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh.

Dated: 26.8.2015

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