

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4496/2014

Order Reserved on: 05.10.2015
Order pronounced on 27.10.2015

Hon'ble Justice Shri Syed Rafat Alam, Chairman
Hon'ble Shri P. K. Basu, Member (A)

Smt. Sunita Sharma, UDC (Retd.)
D/o Sh. M. Lal
C/o D(Est.I/GP-II) Sena Bhawan
New Delhi.
R/o H.No.40-B
Pocket-M & N, Janta Flats
Sarita Vihar
New Delhi.

.. Applicant

(By Advocate: Shri H.K.Chaturvedi)

Versus

1. Union of India through
The Secretary to the Govt. of India
Ministry of Defence
Room No.199-C, South Block
New Delhi – 110 011.
2. Director
Ministry of Defence
Room No.318
B-Wing, Sena Bhawan
Govt. of India
New Delhi.
3. The Joint Secretary (EST)
Room No.108-A,

Grievance and Vig. Cell
Ministry of Defence
South Block
New Delhi.

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Respondents

(By Advocate: Shri Ranjan Tyagi)

ORDER

By P. K. Basu, Member (A):

This application has been filed on a permission granted by the Hon'ble High Court of Delhi in Contempt Case (C) No.277/2013, in Writ Petition (C) No.246/2012 as the applicant was not given certain monetary benefits, which were to flow as a consequence of the orders dated 23.07.2013 and 26.07.2013, passed by the respondents.

2. The brief facts of the case, as gathered from the pleadings, are that the applicant was appointed as Lower Division Clerk with the respondents-Ministry of Defence on 11.03.1982 and later promoted to the post of Upper Division Clerk in the year 1989-1990. She was placed under suspension on 14.07.2003 and accordingly departmental proceedings were initiated against her on 31.10.2003. The inquiry officer submitted the report on 31.01.2005. Finally, after conclusion of the disciplinary proceedings, a penalty of

compulsory retirement from service was awarded vide punishment order dated 13.06.2005. She filed an appeal on 20.08.2005 against this order but the same was rejected by the appellate authority on 27.12.2005. Aggrieved by this, she approached this Tribunal in OA No.983/2006 and vide its order dated 29.11.2006, the matter was remanded back to the appellate authority to consider the case of the applicant on proportionality of punishment. The appellate authority again passed an order of punishment of compulsory retirement, vide Order dated 13.03.2007. The applicant again approached this Tribunal in OA No.1276/2007, and the Tribunal directed the respondents vide its Order dated 13.05.2008, to get the applicant examined in RML Hospital and after getting report pass appropriate order within a reasonable time. She was examined by the Medical Board and found to be normal and not suffering from any mental problem. The compulsory retirement order was confirmed vide fresh order dated 03.09.2008. She again approached the Tribunal in OA No.770/2009 on 19.11.2008 and on an interim order passed, ultimately the matter came before the Hon'ble High Court in WP(C) No.5350/2010, which remanded

the OA back to decide on merit vide order dated 27.09.2010. The Tribunal passed an order dated 11.05.2011 dismissing the said OA 770/2009, on which, the applicant approached the Hon'ble High Court in WP(C) No.246/2012. This Writ Petition was decided in her favour vide order dated 24.01.2012. The following order was passed:

"The learned counsel for the petitioner has taken instructions and so has the learned counsel for the respondents. It is agreed by them that the petitioner shall apply for voluntary retirement with immediate effect and she will not claim any reinstatement or backwages in future apart from the benefits already given and the benefits connected with voluntary retirement. The period from the date of suspension till the date of voluntary retirement will be computed for the benefits under voluntary retirement. This writ petition is disposed of in these terms. In view of these directions, the impugned order is set aside.

Dasti."

She filed a Contempt Case No.276/2013 in the Writ Petition No.246/2012 before the Hon'ble High Court. The Hon'ble High Court noted the following:

"Counsel for the petitioner, on instructions from the petitioner who is present in Court, submits that certain monitory benefits, which were to flow as a consequence of the aforesaid decision, have not been received by the petitioner, and the so called compliance order dated 10th October, 2013 remains deficient to that extent; he, therefore, prays for leave to seek appropriate relief in this regard from the Central Administrative Tribunal, and does not

seek to press this petition any further. He is permitted to do so.

The petition stands disposed off in the above terms."

and disposed of the petition in the above terms.

3. The applicant has now, therefore, approached this Tribunal with the following prayers:

- a) Direct the respondents to regularize the period from 14.07.2003 (Date of suspension from Government service) to 24.01.2012 (Date of voluntary retirement) of applicant as spent on duty and for the purpose of computing the benefits such as increments, promotions, re pay fixation as per VI pay commission, benefit of gratuity and also re fixing the pension by enhancing the same due to increments and re pay fixation by granting the benefit of VI pay commission which are the benefits under the voluntary retirement including all consequential retirement benefits and direct the respondents to release the aforesaid benefits within 3 weeks;

- b) Allow the cost of the petition in the interest of justice as the applicant has been compelled by the respondents to approach this Tribunal, and the same may be directed to be deposited with Delhi State Legal Services Authority;
- c) Pass such other and further orders, as this Tribunal may deem fit and proper in the facts and circumstances of the present case;

4. The respondents reply is that the applicant has been granted the following benefits vide PPO No.PAO-1/PPO 713170900343 dated 03.07.2009:

"Retiring Gratuity	Rs.96218/-
Pension	Rs.1645/- pm w.e.f. 14.06.2005 to 31.12.2005.
Revised Pension	Rs.3800/- pm w.e.f. 1.1.2006 (consequent to VI CPC)"

However, it was admitted that the Gratuity, Pension, etc. were calculated excluding the period of suspension. It is stated that as per the CCS (CCA) Rules, the period of suspension cannot be treated as qualifying service for pay and pensionary benefits unless, on conclusion of the disciplinary proceedings, the Charged Officer is fully

exonerated. In the present case, the applicant was not at all exonerated.

5. In their reply, the respondents have further stated that in compliance of the Hon'ble High Court, the PPO was revised granting an additional amount of Gratuity and changing her compulsory retirement (w.e.f. 13.06.2005) to voluntary retirement (w.e.f. 24.01.2012).

6. Heard both the learned counsel and perused the order of the Hon'ble High Court in Contempt Case No.277/2013 in Writ Petition No.246/2012. The order of the Hon'ble High Court dated 24.01.2012 was on the following specific issue for working out the pension:

"The period from the date of suspension till the date of voluntary retirement will be computed for the benefits under voluntary retirement".

7. The order is absolutely clear and unambiguous. The order is that for the purpose of voluntary retirement, **"the period from the date of suspension till the date of voluntary retirement has to be included for working out the voluntary retirement only"**, and, therefore, only

the pension will be revised by including this period. This has not been complied with fully by the respondents so far as they have left out the suspension period for working out pension. They have to, therefore, comply with this order and rework out the pension, including the period of suspension between 14.07.2003 to 13.06.2005, to be counted as eligible period to work out the revised pension. However, the order does not in any way include sanction for treating that period as spent on duty and for the purpose of computing the benefits such as increments, promotions, refixation of pay as per the 6th CPC. The applicant was not worked for this period at all and in fact after 13.06.2005, he was not even on the roles as he had been compulsorily retired. Therefore, the principle of "no work no pay" will apply and there is no question of including that period for purposes other than what the Hon'ble High Court has already directed.

8. The OA is, therefore, disposed of with a direction to the respondents to rework the pension including the period of suspension, i.e., from 14.07.2003 to 13.06.2005 as eligible period for the purposes of pension and issue fresh PPO. The

time frame fixed for this is two months from the date of receipt of a certified copy of this order. No order as to costs.

(P. K. Basu)
Member (A)

(Justice Syed Rafat Alam)
Chairman

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