

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.759/2017

New Delhi this the 4th day of October, 2018

Hon'ble Ms. Nita Chowdhury, Member (A)

Shri Prem Chandra, Age 61 years,
R/o B-10/1, IIInd Floor, Indira Enclave,
Neb Sarai, Maidan Garhi, IGNOU Road,
New Delhi-110068

- Applicant

(By Advocate: Mr. Vishwendra Verma)

VERSUS

1. The Secretary,
M/o Urban Development,
Nirman Bhawan,
New Delhi-110001
2. The Secretary,
Department of Pension & Pensioners Welfare,
M/o Personnel Public Grievances & Pensions,
Lok Nayak Bhawan, New Delhi
3. The Director General,
CPWD, Nirman Bhawan,
New Delhi-110001
4. Senior Accounts Officer,
Pay and Account Office,
CPWD, IP Bhawan,
New Delhi-110002
5. Delhi Central Circle-11,
CPWD, Pushpa Bhawan,
New Delhi through the
Account Office, New Delhi

- Respondents

(By Advocate: Dr. Ch. Shamsuddin Khan)

O R D E R (Oral)

This Original Application has been filed by the applicant,
seeking the following reliefs:-

“i) to set aside the office orders no.9(18) E-1/D.K.PRE-XI/2015-16/698 dated 29.03.2016 and Pension Payment Order no. 437291600709 dated 25.05.2016;

- ii) to direct the Respondents to fix the pension of the Applicant on the basis of basic pay drawn by him at the time of his retirement i.e. Rs.37,790/-;
- iii) to direct the Respondents to make payment of Rs.1,84,538/- deducted by the Respondents from the DCRG of the Applicant to the Applicant with interest;
- iv) to direct the Respondents to make payment of the arrears of pension to the Applicant with interest;
- v) to direct the Respondents to calculate the amount of gratuity, leave encashment and commutation of pension payable to the Applicant on the basis of pay drawn by him at the time of his retirement and make payment of the difference of the amount payable to him on the basis of such calculation and amount already paid to him with interest;
- vi) to direct the Respondents to pay interest to the Applicant on the amount of pension, gratuity, commutation of pension and leave encashment for the period from the date of retirement to the dates on which such payments were made to the Applicant; and
- vii) to pass any other and further orders as may be deemed fit and proper in the interest of justice.”

2. The salient facts of this case are that when the applicant had applied for pension, he was informed by the respondent – department that as he had failed to qualify the departmental examination meant for promoted Executive Engineers conducted by the department in July, 2011, no exemption from passing the departmental examination had been granted to him and his pension was thus fixed accordingly.

3. It is found at Annexure A/1 a copy of the impugned order dated 29.03.2016. In para 5.21 of the OA the applicant has sought to contradict the impugned order by stating that “*the applicant was not required to make an application to grant him exemption from passing the departmental examination when he had attained the age of 57 years. Rather, it was incumbent upon the Respondent No.3 to consider his case for exemption as provided in*

para 6.2 of the Manual of the CPWD." However, in para 5.26 of the OA, the applicant states that he gave a representation on 01.10.2016 to the respondents requesting them to treat the applicant to have passed the Departmental Examination within specified time and hence, not make any deduction on account of his not having passed the departmental examination.

4. The essence of what the respondents state is that as the applicant has never passed the departmental examination within the specified time for Executive Engineer/Assistant Engineer etc. Hence, the respondents have done nothing wrong in deducting the increments which should not have been given to him and the recovery made by them is on ground of refixation of pay. It was done on the basis of reducing the subsequent increments which were not admissible to him due to his non-qualifying of all papers of the departmental examination as per para 6.2 of the Manual on Regular Establishment and Office Procedure of CPWD. It is, thus, felt necessary to examine the Para 6.2 of the said CPWD Manual, which reads as under:-

“6.2 Exemption from Passing Departmental Examination:

The Executive Engineer/Assistant Engineer/Junior Engineer and equivalent are required to pass the departmental examination within 2 years from the date of promotion/joining the department for earning the 2nd increment. Exemption from passing the departmental examination will be considered on case to case basis after attaining age 57 years. Exemption will be granted by DG, CPWD subject to the officers having Very Good Service record."

(emphasis supplied)

5. Quite clearly, in Manual on Regular Establishment and Office Procedure of CPWD, while there is a provision requiring the

applicant to pass a departmental examination within two years from the date of his promotion, there is also an exception carved out therein, which reads as under:-

“Exemption from passing the departmental examination will be considered on case to case basis after attaining age 57 years. Exemption will be granted by DG, CPWD subject to the officers having Very Good Service record.”

6. Quite clearly, the departmental rules themselves provide an exemption for considering the case of persons like the applicant who have not passed the departmental examination. Hence, the respondents were required to take a decision under the aforesaid provisions of the Manual on Regular Establishment and Office Procedure of CPWD, before disallowing any increments granted to the applicant on the basis of not qualifying all the papers of the departmental examination meant for promoted Executive Engineers. Accordingly, the impugned order dated 29.03.2016 is set aside and the respondents are directed to first pass an order under Rule 6.2 of the Manual on Regular Establishment and Office Procedure of CPWD. Subsequent to passing of such an order, the respondents will then proceed to decide finally the payment of gratuity and retirement benefits of the applicant.

7. With the above directions, the OA is allowed. No order as to costs.

(Nita Chowdhury)
Member (A)

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