

**Central Administrative Tribunal
Principal Bench**

**OA No.17/2019
MA No.30/2019**

New Delhi, this the 10th day of January, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

Birendra Kumar Tiwary
S/o Late Rameshwar Tiwary,
aged about 67 years,
R/o D-25, Ayudh Vihar,
Sector-13, Plot 3,
Dwarka, New Delhi.
Retd. Regional Director,
Sr. Admn. Grade (SAG)
Regional Marketing Centre,
Ministry of Defence,
Govt. of India.

... Applicant.

(By Advocate : Shri Atul Kumar)

Vs

1. Union of India
Through Secretary,
Defence Production,
Ministry of Defence, South Block,
New Delhi 110 011.
2. The Chairman
Ordnance Factory Board
10-A, Shaheed Khudiram Bose Road,
Kolkatta (W.B.)
Pin Code 7000001.
3. Chairman, UPSC
Shahjahanpur Road,
New Delhi 110 069.
4. The Secretary
Defence Finance, Ministry of Finance,
South Block, New Delhi 110 001. Respondents.

(By Advocate : Ms. Harvinder Oberoi)

: O R D E R :**Justice L. Narasimha Reddy, Chairman:**

The applicant was working as Director/Ammunition, Ordnance Factory Board in the Ministry of Defence, in the year 2003. He was issued a charge memo dated 22.10.2003, wherein, three articles of charge were framed. The allegation was about the processing of tenders. While the disciplinary proceedings were pending, the applicant retired from service in the year 2011. Through an order dated 19.02.2013, the Disciplinary Authority, i.e., the President, imposed the penalty of withholding of 3% monthly pension for a period of one year.

2. The applicant submitted a representation on 07.01.2017 to the Hon'ble Defence Minister with a request to revoke the order of punishment dated 19.02.2013. It was mentioned that similar punishment was imposed against one Mr. Jacob David through an order of same date, and when Mr. Jacob challenged the order of punishment, in an OA before the CAT, Ernakulam Bench of this Tribunal, the punishment was set aside, and in that view of the matter, the same relief be extended to him.

3. Through a communication dated 13.07.2017, the applicant was informed that he was not a party to the OA before Ernakulam Bench of the Tribunal, and that he

cannot claim relief on those lines. It was also stated that no appeal lies against the order passed by the President and that his representation cannot be entertained.

4. In this OA, the applicant challenges the order of punishment dated 19.02.2013, and the order of rejection of his representation dated 13.07.2017. He contends that the charges against Mr. Jacob David were verbatim the same, and when the similar order of punishment was set aside by the Ernakulam Bench, he is also entitled for the same relief.

5. Since there is delay in filing the OA, the applicant filed MA No.30/2019 with a prayer to condone the same. He states that though he made an attempt to join as an applicant in OA No.1068/2017 before the Jabalpur Bench of this Tribunal, permission was not accorded and accordingly he approached this Tribunal. The delay is said to be not willful.

6. We heard Shri Atul Kumar, learned counsel for the applicant who elaborated the arguments on the same lines.

7. Ms. Harvinder Oberoi, learned counsel for the respondents submitted that the applicant did not feel the necessity of challenging the order of punishment obviously because the punishment was inconsequential in nature and

having waited for four years, he cannot institute the proceedings at this stage.

8. The subject matter of this OA filed by the applicant is the order of punishment dated 19.02.2013. Though the challenge is also made to an order dated 13.07.2017, it is of no consequence.

9. The applicant was imposed the punishment of withholding of a small portion of the pension after retirement, that too for a period of one year through order dated 19.02.2013. If he felt aggrieved by that, he was supposed to pursue the remedies shortly thereafter. He did not take any steps in that behalf. It was only on 07.01.2017 that the applicant submitted a representation to the Hon'ble Defence Minister claiming parity with one Mr. Jacob David. According to him, Mr. Jacob was also issued the charge memo with similar allegations and the order of punishment passed against him was set aside by the Ernakulam Bench.

10. A perusal of the documents filed in the OA discloses that Mr. Jacob was issued charge memo on 07.10.2003, whereas the applicant was issued a memo on 12.11.2003. The purport of charges is not identical, though similar to some extent. Mr. Jacob was imposed the punishment of reduction to a lower stage in the pay scale through an order

dated 12.10.2012. Promptly, he filed OA No.1038/2012 before the Ernakulam Bench of the Tribunal. The OA was allowed on 28.05.2013. At least then, the applicant could have thought of pursuing remedies. He did not chose to do so.

11. The department filed OP (CAT) No.3394 of 2013 (Z) before the Hon'ble High Court of Kerala challenging the order passed by the Tribunal in the OA No.1038/2012. The OP was dismissed on 09.11.2016. It is only in the year 2017 that the applicant made a representation. The long delay of six years was not at all explained. He was just watching the developments in the case of Mr. Jacob. He did not move at least when the OA filed by Mr. Jacob was allowed.

12. It is not, as if, the applicant is an illiterate person or was not conversant with the court procedure. Added to that, the punishment of cut in pension to the extent of 3% for a period of one year worked out from 2014 itself. The applicant cannot be said to have any genuine grievance.

13. We, therefore, dismiss the MA as devoid of merits. As a result, the OA also stands dismissed.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/