

FORM NO - 4
{SEE RULE 11(1)}
IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET
APPLICATION NO : O. A. No.58/2015

APPELLANT (S)	Shri Parmindra Kumar Das
RESPONDENT(S)	Union of India & 4Ors.
LEGAL PRACTITIONER FOR APPELLANT(S) Ms. Debjani Ghosal	LEGAL PRACTITIONER FOR RESPONDENT(S) Mr. Sandip Kumar Bhattacharyya

	ORDER OF THE TRIBUNAL
	Order No. <u>2</u> Dated: 04.08.2015
	<p>1. Ms. Debjani Ghosal, Id. advocate appears on behalf of the applicant and Mr. Sandip Kumar Bhattacharyya, Id. advocate for the respondents is present. Major Narender Singh, OIC, Legal Cell, HQ Bengal Area is also present.</p> <p>2. Heard Ms. Debjani Ghosal, Id. counsel for the applicant and Mr. Sandip Kumar Bhattacharyya, Id. counsel for the respondents assisted by Major N. Singh, OIC, Legal Cell.</p> <p>3. This is an application under Section 14 of the Armed Forces Tribunal Act, 2007 (in short 'Act') for payment of gratuity and other benefits by an ex-member of the Territorial Army (General Hospital) which has been disbanded with effect from February 20, 2014. Submission of the Id. counsel for the applicant is that while issuing the movement order, copy of which is filed as Annex.P4, it was observed that the applicant shall be entitled for payment of gratuity as per provisions contained under Para.54 & 55, Sub-Section III of Pension Regulations for the Army, Part I (2008) and the relevant documents have been handed over to the individuals for submission to RO AMC (Pension Group). Id. counsel further submits that in spite of conditions provided in the movement order the applicant was not paid gratuity. Attention has been invited to Order passed by Hon'ble Calcutta High Court in Writ Petition No.4451 (W) of 2014 – Shri Shiv Prasad Mishra and Others v. Union of India and Others – decided by judgment and order dated February 20, 2014 whereby the Calcutta High Court had directed to decide the</p>

controversy within a period of two months. Ld. counsel for the applicant also submits that the petitioners had discharged duties for nine years or more while serving at hospitals under Territorial Army. So, it is obligatory on the part of the respondents to ensure benefits referred to in the movement order. It is legitimate expectation of the applicants to avail the benefits of gratuity not only in pursuance of statutory regulation (Reg.54 & 55) and movement order but also to discharge applicants' legitimate expectation which is fundamental in nature. It is further submitted that respondents are estopped to take any adverse decision against the assurance given in the movement order.

4. On the other hand, Mr. Bhattacharyya, Id. counsel for the respondents submits that the applicant is not entitled to any benefit from the respondents and the claim made by them is based on unfounded facts and grounds. However facts remain that certain observations with regard to benefit of gratuity has been made in the movement order which requires to be looked into by the Government. Under Section 21 of the AFT Act it shall be obligatory for the litigants to approach the appropriate authorities to redress their grievance and in case no decision is taken with due communication petition may be filed before the Tribunal after expiry of six months. Attention has been invited to letter dated 28.09.2014 which seems to be a notice by an Advocate to the respondents to provide benefits. Notice cannot be equated with representation by the aggrieved party itself to the competent authorities. Of course, in case there is no response to the representation/statutory representation or claim advances, notice may be sent to the appropriate authorities through the Lawyer.

5. Movement order dated 03.02.2014 in its totality is reproduced as under :-

“(23)

Annexure – P/4.

WARNING : DO NOT TAKE ANY EATABLE/DRINK DURING JOURNEY
FROM ANY UNKNOWN PERS/UNAUTH SOURCE – IT MAY
BE POISON WHICH MAY CAUSE YOUR DEATH.

MOVEMENT ORDER

1. The under mentioned open market enrolled TA Pers of this unit are directed to report to Depot Coy, Adm Bn AMC C & C Lucknow for discharge drill due to disbandment of GH (TA) wef 13 Feb 2014 :-

(a) 12263705A Sep/WM Darshan Rajak - Temp I Card No-N-131

(b) 12322558X Sep/Chef Gopal Sahis - Temp I Card No N-66

(c) 12678337W Sep/BB Pancha Mallick - Temp I Card No M-86

(d) 12678030Y Sep/Bb Parmindra Kumar Das -Temp I Card No N-122

1. They will leave this unit on 03 Feb 2014 (AN) & will be SORS accordingly.

3. They are in possession of their Iden Cards & will be SOS from Corps wef 13 Feb 2014 (FN).

4. In case of any difficulty enroute, they will report to Military Police for necessary assistance y producing this movement order as an authority.

5. Anti malaria precautions & security measures will be observed by them enroute.

6. They are not in possession of their uniform, as their uniform & clothing items have been deposited due to disbandment of GH (TA).

7. Ser No 1 (a) to (c) have been completed more than ten year embodied service and are entitled for special pension as per provisions contained under para 56 Sub Sectin IV of Pension Regulation (2008) & their pension documents alongwith original IAFF-958 and connected documents have been handed over to the indls for submission to TO AMC (Pension Group). Ser No 1 (d) has been sent for his FSC and service gratuity before retirement.

8. They have been issued with return journey party warrant from Howrah to Lucknow for their journey, which will be exchanged for CST before commencement of their journey.

Auth : GOI, Min of Def letter No 686640/GH/TA-2/476/US/D(GS-III) DATED 14 Aug 2014, this unit letter No 14/Coy/Open mkt/2013 dt 31 Jan 2014, this unit signal No A-8009 dated 03 Jan 2014, A-8012 dated 29 Jan 2014, signal A-8014 Jan 31 & A-8015 03 Feb 2014 & Para 56 Sub Section IV of Pension Regulation 2008.

06/Coy/123/14

Sd/-

General Hospital (TA)

(AK Tapadar)

Military Block

Lt Col

138 AJC Bose Road

Registrar & Functional OC

Kolkata -14

03 Feb 2014"

6. We have almost gone through Para.54 and 55 Sub-Section III of the Pension Regulations. Relevant portion of the same is reproduced as under :-

"MINIMUM QUALIFYING SERVICE FOR SERVICE GRATUITY

54. The minimum period of qualifying service actually rendered and required for earning service gratuity shall be 5 years without weightage. The service gratuity shall be admissible only when the individual has not rendered the minimum qualifying service for earning service pension under these Regulations.

Provided a Personnel Below Officer rank who is remustered from a higher to a lower pay group on being rendered surplus after having rendered 5 years or more but less than 15 years qualifying service and who is discharged in circumstances entitling him to a service gratuity, will, where more favourable, be granted service gratuity which he had earned up to the date of being rendered surplus.

RATE OF SERVICE GRATUITY

55. The service gratuity shall be admissible at a uniform rate of half a month's reckonable emoluments last drawn, by the individual for each completed six monthly period of qualifying service. There shall be no reduction in the quantum of service gratuity so arrived at, in respect of those who are permitted to be discharged prematurely on compassionate grounds/personal reasons."

7. A combined reading of the provisions contained in Para.54 and 55 of Sub-Section III of the Pension Regulations(supra) there appears no room of doubt that certain benefits may be made available to the applicants in the form of gratuity. Moreover, in view of the assurance given in para.7 of the movement order (supra) applicants seems to have legitimate expectation to avail the benefit of special pension. Hon'ble Calcutta High Court (supra) while considering the similar controversy has held as under :-

"In the event and even without the respondents being required to justify the policy under which several general hospitals as territorial army units have been disbanded all over the country, it is volunteered that certain beds in general hospitals had been earmarked for war casualties and considerable expenses had been incurred from the late 1960s without any benefit. It is submitted that since conventional warfare as envisaged at the time of the Act being brought into force is not the same at the moment, no useful purpose would have served in keeping the units going and incurring wasteful expenditure. Since the reason proffered does not appear to be arbitrary or without basis, the policy decision of the Central Government does not warrant interference.

As to the petitioners' demand on account of payments due to the petitioners, it is submitted by the respondent authorities that all payments due would be cleared within a period of two months from date. In the event the legitimate dues of the petitioners are not paid within such time, the petitioners will have liberty to file fresh, restricted only to such aspect of the matter.

WP No.4451 (W) of 2014 is disposed of without any order as to costs.

Certified website copies of this order, if applied for, be urgently made available to the parties, subject to compliance with all requisite formalities.

26.06.2014. Sd/- S. Banerjee, J.
(Sanjib Banerjee, J.)"

8. We are of the view that the applicant should approach the appropriate authorities to ventilate his grievance who may look into the matter and adjudicate the controversy keeping in view the statutory provision as well as assurance given in the movement order. Already much time has elapsed and the litigants are running from pillar to post but without any outcome. Right to life and right to livelihood coupled with quality and dignity of life are fundamental in nature and without financial support, quality of life cannot be enjoyed by the citizens. It is not that for every statutory benefit citizen should approach the Court or Tribunal for order or direction. It is solemn duty of the authorities including the Army authorities to take care of their erstwhile brethren retired from Army even without any representation, only then it may be inferred that the Army is conscious for the welfare of its own erstwhile colleagues.

9. In view of the above, without going into the merit we dispose of the application finally permitting the applicant to submit representation to the appropriate authorities to ventilate his grievance and it shall be obligatory on the part of the authorities concerned as well as to the Government of India(Defence) to adjudicate the controversy in accordance with law by passing a reasoned order expeditiously say within a period of three months from the date of receipt of the representation along with certified copy of the present order. In case any excess payment is made it shall be taken into account and adjusted. It shall be open to the applicant to annex the copy of the application along with his representation while forwarding his statutory complaint to the respondent authorities.

Accordingly, the application is disposed of. Costs made easy.

A plain copy of the order, duly countersigned by the Tribunal Officer, be furnished to both sides after observance of usual formalities.

(LT GEN GAUTAM MOORTHY)
Member (Administrative)

(JUSTICE DEVI PRASAD SINGH)
Member (Judicial)