

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

22.

O.A. No. 490 of 2010

Ex Sgt.Ram Avtar Yadav

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. A.K. Trivedi, Advocate.

For respondents: Sh. Ankur Chhibber, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

16.11.2011

1. Petitioner by this petition has prayed that the Respondents may be directed not to reduce the basic pay of the Petitioner without issuing show cause notice and without passing appropriate order and affording opportunity to the Petitioner. It is also prayed that the basic pay of the Petitioner should not have been reduced to Rs.9,560/- from Rs.9,930.

2. The Respondents have filed their reply and invited our attention to the Special Air Force Instructions (SAFI) 1/S/08 issued by the Government of India that if any individual remains absent without leave ('AWL') during the first half of the year from 1<sup>st</sup> January 2006 to 30<sup>th</sup> June 2006, the increment of the year will not be authorised. This mistake was detected by the Jt. CDA Air Force during final audit of the case of the Petitioner. The increment of Rs.370/- from the year 2006 was reduced and accordingly the basic pay on date of discharge of the Petitioner was fixed as Rs.9,560.

3. We have heard learned counsel for the parties and perused the record.

4. We directed learned counsel for the Petitioner to justify any order under which on account of any person remaining absent without leave from 1<sup>st</sup> January 2006 to 30<sup>th</sup> June 2006 he will not be entitled to increment but he failed to do so. He has produced before us SAFI 1/S/08 but we do not find such instructions contained in that Air Force instructions and our attention was also invited to the order dated 15<sup>th</sup> February 2010. This was nothing but comments offered by the Air Force Implementation Cell and in that also it says that a similar circular of the Government of India is there and same may be introduced in the Air Force also. The copy of the order dated 15<sup>th</sup> February 2010 reads as under:

"Air HQ/99141/1/AFPC  
Dte of P&A

15 Feb 10

CLARIFICATION REGARDING DATE OF INCREMENT IN  
EOL CASES

1. Refer JCDA (AF) letter No. DCA/AM/VI/Misc dated 04 Sep 09.

2. The issue of shifting the date of increment to next year July in case of AWL period between 01 Jan to 30 Jun has been examined. The following comments are offered in this regard.

(a) As per extant rules applicable on the civil side, in case of EOL period being counted for determining 6 months residency for the purpose of increment, a notional increment is granted to the individual. The actual drawl of the increment

is effective from the date individual completes Six months of continuous service.

(b) This provision needs to be incorporated in Armed Forces also and all such cases regulated accordingly.

(c) In case this is not done then there will be an anomaly. In case of AWL period falling between 01 Jan to 30 Jun the increment will be withheld, whilst for those who are AWL between 01 Jul and 31 Dec, no such penalty will apply.

In view of the above it is recommended that provision as stated at Para 2(a) above be applied in Defence personnel cases too.

4. In this regard, DOPT letter No. DOP&T U No. 13/1/2009-Pay I dated 20 Feb 09 in respect of Civilians Central Govt. Employees refers."

5. A perusal of these instructions does not show whether Air Force has adopted this policy or not. The Petitioner was superannuated on 31<sup>st</sup> August 2009 as a Sgt. and was drawing a salary of Rs. 9,930/- and this was reduced to Rs. 9,560. This he came to know when the PPO was received by him. This, in our opinion, could not have been done if there is any circular having a bearing on the subject which has not been brought to our notice. So far as the circular which has been brought to our notice SAFI 1/S/08 that does not justify it and the documents dated 15<sup>th</sup> February 2010 is only the comments offered in this regard. Whether those comments have already been incorporated in Air Force Orders or not and even if they have been incorporated in 2010 that cannot be implemented retrospectively so far as Petitioner is concerned as he was retired in 2009.

6. In this background, we set aside the order of reduction of Petitioner's basic salary from Rs. 9,930/- to Rs. 9,560. In case any such circular has been issued or any such order exists prior to the retirement of the Petitioner then he may be given a show cause notice and action be taken in accordance with law. However whatever money which has been deducted from him may be released to him forthwith. This exercise should be done within a period of three months.

7. Petition is allowed with no order as to costs.

**A.K. MATHUR**  
(Chairperson)

**S.S. DHILLON**  
(Member)

New Delhi  
November 16, 2011  
dn