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RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

(COURT NO. 1)

O.A. No. 259 of 2013

Wednesday, this the 13th day of September, 2017

Hon'ble Mr. Justice Devi Prasad Singh, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

No. 1260351 Ex Nk Chun Bahadur son of
Bir Bahadur, Resident of House No. 138
Shiv Mandir Chandra Nagar, Nai Basti,
P.O. Arhat Bazar Dehradun- 248001 - Applicant

Vs

1. Union of India through the Secretary,
   Ministry of Defence,
   New Delhi.
2. The Chief of the Army Staff
   Integrated Head Quarter of Ministry of Defence
   South Block, New Delhi-170001.
3. The Office In-charge Records,
   Raksha Suraksha Corps Records,
   Defenc Security Corps Records Pin No.901277
   C/o 56 APO.
4. Deputy Dte. General DSC General Staff Branch
   IHQ of MOD (Army) West Block-III,
   R.K. Puram, New Delhi – 66.
5. Office of the CDA 618,
   Anna Salai Taynampet Chennai- 600018
6. PAO (Ors) DSC Mill Road,
   Kannur Kerla.

- Respondents

Learned counsel appeared for the applicant - Shri V.P. Pandey, Advocate

Learned counsel appeared for the respondents - Shri Namit Sharma, Advocate, assisted by Maj Salen Xaxa, OIC Legal Cell

ORDER

Per Hon'ble Mr. Justice Devi Prasad Singh, Member (J)

1. Instant petition under Section 14 of the Armed Forces Tribunal Act, 2007, for short 'Act' has been preferred being aggrieved with the denial of pensionary benefits after rendering almost 15 years plus continuous service in DSC.

2. We have heard learned counsel for the applicant Shri V.P. Pandey and learned counsel for the respondents Shri Namit Sharma, assisted by Maj Salen Xaxa, OIC Legal Cell and perused the record.

3. The admitted facts on record reveal that the applicant was enrolled in the Regt of Artillery on 28.05.1973 and attained the age of superannuation on 30.11.1998 with due service pension. He was again re-enrolled on 27.05.1989 in DSC. On 29.05.1989 the applicant completed his initial period of contract of 10 years and thereafter was granted extension of service for 5 years from 27.05.1999 to 26.06.2004. He was discharged on 30.06.2004 in low medical category P2 (P). However applicant's services were extended for 31 days from 27.05.2004 to 26.06.2004 and he was discharged on 30.06.2004. The respondents denied the pension for the service rendered in DSC on the ground that the applicant has not completed 15 years of continuous service in DSC being short by 2 days and there is no provision to condone the delay with regard to second pension.

4. On 01.05.2005, followed by another letter dated 27.05.2005, the applicant was informed that due to objection raised by the audit

authority, his case has been referred to the Army Head Quarters for regularization of extended period of 31 days' service. On 31.10.2006 applicant submitted a representation to the respondent no.3 for grant of second service pension on account of service rendered by him in DSC. However, later on he was informed that in view of the objection raised by audit department, applicant's case has been forwarded to Government of India for sanction. On 01.06.2009 the applicant was conveyed by the respondent no.3 that his case for regularization of 31 days of service for the purpose of payment of regular pension has been turned down, as the extension granted by the authority concerned for the second pension was not permissible under law. Extension has been treated as an incident of illegal order and in the absence of addition of 31 days in total period of service in DSC applicant was short by 2 days required for the grant of pension. Subsequent representations submitted by the applicant were forwarded to the Government of India on 06.04.2010 and 06.02.2012 but remained unattended for a long period. However, by letter dated 28.03.2013 applicant was informed that the competent authority has returned the applicant's case, stating that there is no provision of regularization of such service and such a short fall in the service tenure may not be condoned. Hence, being aggrieved with the denial of second pension, applicant has preferred the present O.A.

5. The learned counsel for the applicant submitted that since the applicant worked for 31 days during extended period of service, it shall be added in total period of service rendered in DSC and then the total length of service shall be more than 15 years, as required under Regulation 132 of the Pension Regulations, 1961, hence, he is

entitled for second pension. On the other hand respondents' learned counsel submitted that for the payment of second pension, the respondents lack power to condone deficiency of 2 days. Further submission is that the extension of service of 31 days was not permissible under the Army Regulations, hence also it may not be counted for the payment of second pensionary benefits.

6. We have considered the arguments advanced by the learned counsel for the parties and perused the record. Reliance has been placed on Regulation 132 of the Pension Regulations for Army, which is reproduced as under :-

> "The minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years."

7. A plain reading of the aforesaid provision indicates that Regulation- 132 speaks for continuous service for 15 calendar years and in case a person has served for 15 years continuously on the basis of order passed by the competent authority then he seems to be entitled for payment of pension for the reason that extension of service granted for any reason whatsoever by any authority may suffer from any illegality or irregularity but so far as the incumbent is concerned, in case he has not done any fraudulent act and the authority itself has given an extension for few days, like 31 days in the present case, then merely because the order has not been passed in compliance of any statutory provision, it shall not ordinarily deprive any person to avail the benefits of service rendered by him. Regulation 132 speaks for continuous earning service of 15 years. It does not indicate the condition of nature of service which an incumbent has rendered in DSC. Once 15 years have been

completed, in the present case, extended service, applicant seems to be entitled for pension.

8. Of course, in case it is a case of fraud or some manipulation then in such cases benefit may not be made available. This proposition of interpretation seems to have been fortified by Regulation -133 which is reproduced as under :-

> Regulation-133. "Service pension is assessed on the basis of the rank actually held by an individual regardless of whether it is held in a substantive or paid acting capacity and the lowest group for which he is paid, during the last ten months of his service qualifying for pension."

9. A combined reading of Regulations 132 and 133 further shows that these regulations do not provide any condition with regard to assignment of duty against regular vacancy or in stop gap arrangement of a rank while serving the Army. It means in case the drop in service is meager, like 2 days in the present case then the applicant may be treated to have discharged duty to complete 15 years of service, without any fraud on his part under bona fide permission or extension of service by the authorities. It is not open to apply causus omissus to read otherwise than what is borne out from the plain reading of the statutory provision. When Regulation 132 does not provide any condition with regard to nature of assignment of work and even acting services are permitted to be counted for the purpose of pensionary benefit then nothing may be added to interpret otherwise for payment of pension to the applicant, who worked more for 31 days and discharged on ground of disability.

10. A Constitution Bench of the apex Court in **S. Narayanaswami vs. G. Panneerselvam, AIR** 1972 SC 2284: 1973 (2) SCJ 242:

(1973) 1 SCR 172, considered the issue of interpretation of law where it is averred that there has been omission on the part of the Legislature while enacting the Statute. The Court held that "it could not possibly be said that the question to be dealt with was not known to the legislators, therefore, there can be no presumption that the framers of the Statute were not knowing the subject they had to deal with, the gravity of the menace created by dowry, and for which they failed to consider what should be the proper and adequate punishment. The Court further held that the Statute requires to be interpreted giving plain meaning of literal construction, and modification of words used in statutory provisions is not permissible. While deciding the said case, the Court placed reliance upon large number of judgments, particularly **Hira Devi vs. District Board, Shahjahanpur**, AIR 1952 SC 362: 1952 SCJ 533: 1952 SCR 1122; **Ram Ram Narain Medhi vs. State of Bombay**, AIR 1959 SC 459: 1959 SCJ 679: 1959 SCR Supp (1) 489; **British India General Insurance Co. Ltd. Vs. Captain Itbar Singh,** AIR 1959 SC 1331: 1960 SCJ 44: 1960 SCR 168; and **R.G. Jacob vs. Union of India**, AIR 1963 SC 550: (1963) 3 SCR 800: (1963) 1 Cr LJ 486).

11. The Court has to be alive of the fact that while interpreting the provisions of a Statute, it can neither add or subtract a word. Legal maxim "A Verbis Legis Non Est Recedendum" means from the words of law, there must be no departure. The said maxim was applied by the Supreme Court in **Balasinor Nagrik Co-operative Bank Ltd. Vs. Babubhai Shankerlal Pandya**, AIR 1987 SC 849: (1987) 1 SCC 606: 1987 1 UJ (SC) 379 holding that a section is to be interpreted by

reading all its part altogether and it is not permissible to omit any part thereof.

12. In **Nalinakhya vs. Shyam Sunder Haldar**, AIR 1953 SC 148: 1953 SCJ 201: 1953 SCR 533, the Supreme Court has taken a similar view placing reliance on various judgments particularly **Hansraj Gupta vs. Dehradun- Mussoorie Electric Tramway Co. Ltd**., AIR 1933 PC 63: 60 Ind App 13, wherein it has been held that the Court cannot proceed with the assumption that the legislature while enacting the Statute has committed mistake; the Court must proceed on the footing that the Legislature intended what it has said; even if there is some defect in the phraseology used by the legislature, the Court cannot add and amend or by construction, make up the deficiencies which are left in the Act.

Apart from above, the service in DSC seems to be a contractual assignment, which is extended from time to time and in case 15 years of period of service is completed while working in DSC during contractual assignment, he or she shall be entitled for pension. Undoubtedly, applicant has completed 15 years of service in view of extension done under disabled condition. He seems to be entitled for pension. Irregularity or illegality committed by the authorities while granting him extension of 31 days, by extending the contractual period, shall not deprive the applicant from counting the actual service rendered by him for the purpose of pension.

13. Accordingly, it is not open for the Court, Authority or Tribunal to presume that the services discharged for 31 days shall not be counted alongwith 15 years of service for the reason that there is some error or illegality in granting extension in service. Under

Regulations 132 and 133 the nature of appointment seems to not attract but crux is the time spent for 15 years while discharging duty in the Army.

14. The letter and spirit of Regulation 133 is that the pension shall be calculated on the basis of length of service rendered by such person on the rank actually he or she held regardless of the fact whether it is held in a substantive or paid acting capacity. In the light of Regulation 133 in case applicant's case is taken up then since he has rendered 31 days' additional service, extended by the competent authority he cannot be deprived to avail the benefit by not counting 31 days and adding it to actual service rendered by him in DSC. A person cannot be punished for no fault on his or her part. Once a service rendered in paid acting capacity has been permitted to be counted for pension by adding such period then we do not feel, merely because of an irregularity committed by the authority, applicant may be deprived from payment of pension. No one can take 'Begar' without payment of due salary as it shall be violative of Article 23 of the Constitution of India. Not only the applicant has been permitted to continue for extended period of 31 days but he has been given benefit of salary and perks entitled in accordance with the rules. Otherwise also if a combined reading of Regulations 132,133 and 133-A is harmoniously construed, applicant may be paid second pension by adding 31 days of service rendered by him with due salary.

15. Regulation 134 in normal circumstances permits the authorities to condone the deficiency of service not exceeding three months, except in voluntary retirement, which is reproduced as under :-

> "A competent authority may condone a deficiency of service in a particular rank not exceeding three months, except on voluntary retirement."

16. However, it has been submitted by the learned counsel for the Union of India that in re-employment in DSC though second pension may be paid on completion of 15 years but the respondents lack jurisdiction to condone any deficiency in service period. Even if it is so on account of additional duty discharged for 31 days, applicant's total period of service becomes more than 15 years. Hence he seems to be entitled for payment of second pension. There is no need of condonation of any period of deficiency.

17. One another argument advanced by the learned counsel for the applicant is that the controversy in question is fully covered under the de facto doctrine, according to which certain right exists on account of factual conditions, which may be enforced even though not formally or legally recognized. In **Black Law Dictionary** the word '**de facto**' has been defined as under:-

> "1. Actual; existing in fact; having effect even though not formally or legally recognized<a de facto contract>2. Illegitimate but in effect<a de facto government>.Cf. DE JURE."

18. The **de facto doctrine** and its history has elaborately been dealt with by the Hon'ble Supreme Court in (1981) 3 SCC 132, **Gokaraju Rangaraju vs. State of Andhra Pradesh.** The relevant portion of the judgment is reproduced as under:-

> **"4.** We are unable to agree with the submissions of the learned Counsel for the appellants. The doctrine is now well-established that "the acts of the officers de facto performed by them within the scope of their assumed official authority, in the interest of

the public or third persons and not for their own benefit, are generally as valid and binding, as if they were the acts of officers de jure" (*Pulin Behari* v. *King-Emperor*[1]). As one of us had occasion to point out earlier "the doctrine is founded on good sense, sound policy and practical expedience. It is aimed at the prevention of public and private mischief and the protection of public and private interest. It avoids endless confusion and needless chaos. An illegal appointment may be set aside and a proper appointment may be made, but the acts of those who hold office de facto are not so easily undone and may have lasting repercussions and confusing sequels if attempted to be undone. Hence the de facto doctrine" (vide *Immedisetti Ramkrishnaiah Sons* v. *State of A.P.*[2]).

5. In *Pulin Behari* v. *King-Emperor*[1], Sir Asutosh Mookerjee, J. noticed that in England the de facto doctrine was recognised from the earliest times. The first of the reported cases where the doctrine received judicial recognition was the case of *Abbe de Fontaine* decided in 1431. Sir Asutosh Mookerjee noticed that even by 1431 the de facto doctrine appeared to be quite well known and, after 1431, the doctrine was again and again reiterated by English Judges.

6. In *Milward* v. *Thatcher*[3], Buller, J., said:

"The question whether the judges below be properly judges or not, can never be determined, it is sufficient if they be judges de facto. Suppose a person were even criminally convicted in a court of record, and the Recorder of such Court were not duly elected, the conviction would still be good in law, he being the judge de facto."

7. In *Scadding* v. *Lorant*[4], the question arose whether a rate for the relief of the poor was rendered invalid by the circumstance that some of the vestry men who made it were vestry men de facto and not de jure. The Lord Chancellor observed as follows:

"With regard to the competency of the vestry men, who were vestry men de facto, but not vestry men de jure, to make the rate, Your Lordships will see at once the importance of that objection, when you consider how many public officers and persons there are who were charged with very important duties,

and whose title to the office on the part of the public cannot be ascertained at the time. You will at once see to what it would lead if the validity of their acts, when in such office, depended upon the propriety of their election. It might tend, if doubts were cast upon them, to consequences of the most destructive kind. It would create uncertainty with respect to the obedience to public officers and it might also lead to persons, instead of resorting to ordinary legal remedies to set right anything done by the officers, taking the law into their own hands."

8. Some interesting observations were made by the Court of appeal in England in *Re James* (*An Insolvent*)[5]. Though the learned Judges constituting the Court of appeal differed on the principal question that arose before them namely whether "the High Court of Rhodesia" was a British Court, there did not appear to be any difference of opinion on the question of the effect of the invalidity of the appointment of a judge on the judgments pronounced by him. Lord Denning, M.R., characteristically, said:

"He sits in the seat of a judge. He wears the robes of a judge. He holds the office of a judge. Maybe he was not validly appointed. But, still, he holds the office. It is the office that matters, not the incumbent.... So long as the man holds the office, and exercises it duly and in accordance with law, his orders are not a nullity. If they are erroneous they may be upset on appeal. But, if not, erroneous they should be upheld."

Lord Denning then proceeded to refer to the *State of Connecticut* v. *Carroll*[6] decided by the Supreme Court of Connecticut, *Re Aldridge*[7] decided by the Court of appeal in *New Zealand and Norton* v. *Shelby County*[8] decided by the United States Supreme Court. Observations made in the last case were extracted and they were:

"Where an office exists under the law, it matters not how the appointment of the incumbent is made, so far as the validity of his acts are concerned. It is enough that he is clothed with the insignia of the office, and exercises its powers and functions.... The official acts of such persons are recognised as valid on grounds of public policy, and for the protection of those having official business to transact."

9. Scarman, L.J., who differed from Lord Denning on the question whether the High Court of Rhodesia was a British Court appeared to approve the view of Lord Denning M.R. in regard to the de facto doctrine. He said:

"He (Lord Denning) invokes the doctrine of recognition of the de facto judge, and the doctrine of implied mandate or necessity. I agree with much of the thinking that lies behind his judgment. I do think that in an appropriate case our courts will recognise the validity of judicial acts, even though they be the acts of a judge not lawfully appointed or derive their authority from an unlawful Government. But it is a fallacy to conclude that, because in certain circumstances our courts would recognise as valid the judicial acts of an unlawful court or a de facto judge, therefore, the court thus recognised is a British Court."

10. The de facto doctrine has received judicial recognition in the United States of America also. In *State* v. *Gardner* (Cases on Constitutional Law by McGonvey and Howard, Third Edn., p. 102) the question arose whether the offer of a bribe to a City Commissioner whose appointment was unconstitutional was an offence. Bradbury, J., said:

"We think that principle of public policy, declared by the English courts three centuries ago, which gave validity to the official acts of persons who intruded themselves into an office to which they had not been legally appointed, is as applicable to the conditions now presented as they were to the conditions that then confronted the English judiciary. We are not required to find a name by which officers are to be known, who have acted under a statute that has subsequently been declared unconstitutional, though we think such officers might aptly be called de facto officers."

11. In *Norton* v. *Shelby County*[6] Field, J., observed as follows:

"The doctrine which gives validity to acts of officers de facto whatever defects there may be in the legality of their appointment or election is founded upon considerations of policy and necessity, for the protection of the public and individuals whose interests may be affected thereby. Offices are created for the benefit of the public, and private parties are not permitted to inquire into the title of persons clothed with the evidence of such offices and in apparent possession of their

powers and functions. For the good order and peace of society their authority is to be respected and obeyed until in some regular mode prescribed by law their title is investigated and determined. It is manifest that endless confusion would result, if in every proceeding before such officers their title could be called in question."

12. In *Cooley's Constitutional Limitations*, 8th Edn., Vol. 2, p. 1355, it is said:

"An officer de facto is one who by some colour or right is in possession of an office and for the time being performs its duties with public acquiescence, though having no right in fact. His colour of right may come from an election or appointment made by some officer or body having colorable but no actual right to make it; or made in such disregard of legal requirements as to be ineffectual in law; or made to fill the place of an officer illegally removed or made in favour of a party not having the legal qualifications; or it may come from public acquiescence in the qualifications; or it may come from public acquiescence in the officer holding without performing the precedent conditions, or holding over under claim of right after his legal right has been terminated; or possibly from public acquiescence alone when accompanied by such circumstances of official reputation as are calculated to induce people, without inquiry, to submit to or invoke official action on the supposition that the person claiming the office is what he assumes to be. An intruder is one who attempts to perform the duties of an office without authority of law, and without the support of public acquiescence.

No one is under obligation to recognise or respect the acts of an intruder, and for all legal purposes they are absolutely void. But for the sake of order and regularity, and to prevent confusion in the conduct of public business and in security of private rights, the acts of officers de facto are not suffered to be questioned because of the want of legal authority except by some direct proceeding instituted for the purpose by the State or by someone claiming the office de jure, or except when the person himself attempts to build up some right, or claim some privilege or emolument, by reason of being the officer which he claims to be. In all other cases the acts of an officer de facto are as valid and effectual, while he is supposed to retain the office, as though he were an officer by right, and the same legal consequences will flow from them for the protection of the public and of third parties. There is an important principle, which finds concise expression in the legal

maxim that the acts of officers de facto cannot be questioned collaterally."

13. In *Black on Judgments* it is said:

"A person may be entitled to his designation although he is not a true and rightful incumbent of the office, yet he is no mere usurper but holds it under colour of lawful authority. And there can be no question that judgments rendered and other acts performed by such a person who is ineligible to a judgeship but who has nevertheless been duly appointed, and who exercises the power and duties of the office is a de facto judge, and his acts are valid until he is properly removed."

14. The de facto doctrine has been recognised by Indian courts in other cases. In *Pulin Behari* v. *King-Emperor*[1] Sir Asutosh Mookerjee, J., after tracing the history of the doctrine in England observed as follows:

"The substance of the matter is that the de facto doctrine was introduced into the law as a matter of policy and necessity, to protect the interest of the public and the individual where these interests were involved in the official acts of persons exercising the duties of an office without being lawful officers. The doctrine in fact is necessary to maintain the supremacy of the law and to preserve peace and order in the community at large. Indeed, if any individual or body of individuals were permitted, at his or their pleasure, to collaterally challenge the authority of and to refuse obedience to the Government of the State and the numerous functionaries through whom it exercised its various powers on the ground of irregular existence for defective title, insubordination and disorder of the worst kind would be encouraged. For the good order and peace of society, their authority must be upheld until in some regular mode their title is directly investigated and determined."

15. In *P.S. Menon* v. *State of Kerala*[9] a Full Bench of the Kerala High Court consisting of P. Govindan Nair, K.K. Mathew and T.S. Krishna-moorthy Iyer, JJ., said about the de facto doctrine:

"This doctrine was engrafted as a matter of policy and necessity to protect the interest of the public and individuals involved in the official acts of persons exercising the duty of an officer without actually being one in strict point of law. But although these officers are not officers de jure they are by virtue of the particular circumstances, officers, in fact, whose acts, public policy requires should be considered valid."

16. In the judgment under appeal Kuppuswami and Muktadar, JJ., observed:

> "Logically speaking if a person who has no authority to do so functions as a judge and disposes of a case the judgment rendered by him ought to be considered as void and illegal, but in view of the considerable inconvenience which would be caused to the public in holding as void judgments rendered by judges and other public officers whose title to the office may be found to be defective at the later date. Courts in a number of countries have, from ancient times evolved a principle of law that under certain conditions, the acts of a judge or officer not legally competent may acquire validity."

19. In another case reported in (1991) 1 SCC 319, **Central Bank of India vs. C. Bernard** Hon'ble Supreme Court while applying the de facto doctrine held that it has two requisites, namely, (i) the possession of office and the performance of the duties attached thereto; and (ii) colour of title, that is, apparent right to the office and acquiescence in the possession thereof by the public. The de facto doctrine can be invoked in case there is an appointment to the office. The decision made by such an officer clothed with the powers and functions of the office would be as efficacious as those made by a de jure officer. The aforesaid proposition has been reiterated in number of other cases, like (1987) 3 SCC 693, **Beopar Sahayak (P) Ltd vs. Vishwa Nath,** (1991) 1 SCC 761 **Vasantkumar Radhakisan Vora vs. Board of Trustees of the Port of Bombay**, 1993 Supp (2) SCC 734 **A.R. Sircar (Dr) vs. State of U.P**., (1987) 3 SCC 367 **Pushpa Devi M. Jatia vs. M.L. Wadhawan**, 1987 Supp SCC 401, **State of U.P. vs. Rafiquddin** and (1983) 1 SCC 438 **Sheonandan Paswan vs. State of Bihar**.

20. In one another case reported in (2000) 5 SCC 742 **Union of India vs. Charanjit S. Gill** Hon'ble Supreme Court applied the principle of de facto doctrine arising out of necessity and held that the

judgments rendered by the Court Martial which have attained finality cannot be permitted to be reopened on the basis of law laid down in the said judgment. In the present case the competent authority, who extended the services for 31 days acted bona fide, hence benefit provided to the applicant on account of assigned work done is in consonance with Regulation 132 and since he was discharged prematurely on account of medical disability, his continuance for additional period from the date of original extended period may not be over looked or ignored under the de facto doctrine.

21. The learned counsel for the applicant has relied upon a decision of Constitution Bench of Hon'ble the Supreme Court reported in 2001 (7) SCC 231 **B.R. Kapur vs. State of Tamil Nadu & another**. In this case Hon'ble Supreme Court while applying the de facto doctrine saved the acts already done by the Chief Minister and her Government though her appointment was annulled. Payment of pension is a beneficial legislation and in the present case the de facto doctrine may be applied to validate the service rendered by the applicant for the purpose of payment of pension.

22. The rule of construction is well settled that when there are in any enactment two provisions, which cannot be reconciled with each other, it should be so interpreted, if possible effect may be given to both and that is known as **harmonious construction**, vide AIR 1958 SC 255 **Venkataramana Devaru & others vs. State of Mysore**, AIR 1992 SC 1789 **Krishan Kumar vs. State of Rajasthan and others**.

23. Thus, principle of harmonious construction is not to defeat the very purpose of the provision on flimsy grounds. Extension of service

is illegal or irregular, it is a question which falls within the domain of government but so far benefit of pension is concerned, it is a beneficial provision and Courts or Tribunals are obliged to construe the provision as harmoniously as far as possible to make available the benefit provided by the statutory provisions.

24. Apart from above, applicant also seems to be entitled for second pension on equitable ground since services rendered on the rank of acting assignment may be counted under the Regulations. Acting assignments are not regular assignment but meant to meet out the exigencies of service. 31 days' extension was not granted in conformity with law but fact remains that his service tenure is added by 31 working days, for which he has been paid salary. Instead of 2 days' short fall applicant has worked for 31 days more and completed the period of 15 years. His assignment may be treated as equitable assignment or otherwise also on equitable ground his case may be considered by Courts by extending fair and unbiased treatment irretrievable by technical necessities of the law.

25. The word equitable has been defined in Corpus Juris Secundum , referred by Hon'ble Supreme Court in the case reported in (1979) 3 SCC 229 **State of U.P. vs. Hindustan Alluminium Corpn. Ltd**. The equitable treatment, coupled with equitable assignment has been engrafted in English Common Law, followed by Indian Courts. In the absence of any statutory provision, like Regulations 132 and 133, doctrine of equitable treatment may be invoked to grant pension to the applicant.

26. Butterworths Wadhwa's Advanced Law Lexicon defines 'equitable right' and 'equitably' as under :-

> "**Equitable right**. A right which equity will protect, even though it is not a legal right or title. 27 Am J2d Eq § 63. A right recognized by a court of equity and enforceable only by a court of equity, except as statutes or modern rules of practice have wiped out the distinction between an action at law and a suit in equity. (Ballentine's Law Dictionary)"

> **"Equitably**. Fairly; justly; impartially; in an equitable manner (as), the laws should be equitably administered."

27. Accordingly, we are of the view that the applicant may be awarded pension on equitable ground also by including the services rendered by him for the period of 31 days in his total length of service, which was short by two days to make it 15 years.

28. In view of above, we are of the view that on combined reading of Pension Regulations, coupled with de facto doctrine, additional service of 31 days must be added to service rendered by the applicant before his discharge and the moment it is done, applicant shall exceed the service period of 15 years (supra) and shall be entitled to the payment of second pension. Accordingly, O.A. deserves to be allowed.

ORDER

29. In view of above O.A. is allowed and the impugned orders dated 28.03.2012, 28.02.2013 and 27.02.2013 as contained in Annexure A-1 are set aside with all consequential benefits. Let the applicant be paid pension keeping in view the observations made hereinabove with all consequential benefits expeditiously, say, within

a period of four months, failing which the applicant shall be entitled for the payment of interest @ 10% till the date of actual payment.

No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice Devi Prasad Singh)
Member (J)

Dated: 13th September, 2017

JPT