

Central Administrative Tribunal
Principal Bench: New Delhi

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OA No. 1077/97
OA No. 2682/96
OA No. 2683/96
OA No. 1154/97
OA No. 732/95

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New Delhi, this the 10th day of September, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri K.Muthukumar, Member (A)

OA No. 1077/97

Shri R.D. Sharma,
r/o House No. 358, Ward No. 12,
Quilla-Mohalla,
Bahadurgarh,
Distt/ Rohtak, Haryana State. ...Applicant

(In person)

Versus

Union of India through

1. Secretary,
Ministry of Home Affairs,
New Delhi. ...Respondent

(By Advocate: Shri V.K.Mehta)

OA No. 2682/96

Shri R.D. Sharma,
r/o House No. 358, Ward No. 12;
Quilla-Mohalla,
Bahadurgarh,
Distt/ Rohtak, Haryana State. ...Applicant

(In person)

Versus

Union of India through

1. Secretary,
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(By Advocate: Shri V.K.Mehta)

OA No. 2683/96

Shri R.D. Sharma,
r/o House No. 358, Ward No. 12,
Quilla-Mohalla,
Bahadurgarh,
Distt/ Rohtak, Haryana State. ...Applicant

(In person)

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Versus

Union of India through

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Ministry of Home Affairs,
New Delhi.

...Respondent

(By Advocate: Shri V.K.Mehta)

OA No. 1154/97

Shri R.D. Sharma,
r/o House No. 358, Ward No. 12,
Quilla-Mohalla,
Bahadurgarh,
Distt/ Rohtak, Haryana State.

...Applicant

(In person)

Versus

Union of India through

1. Secretary,
Ministry of Home Affairs,
New Delhi.

...Respondent

(By Advocate: Shri V.K.Mehta)

OA No. 732/95

Shri R.D. Sharma,
r/o House No. 358, Ward No. 12,
Quilla-Mohalla,
Bahadurgarh,
Distt/ Rohtak, Haryana State.

...Applicant

(In person)

Versus

Union of India through

1. Secretary,
Ministry of Home Affairs,
New Delhi.
2. Shri S.P. Nautiyal,
Steno Grade 'B',
DOD, Ministry of Home Affairs Cadre,
New Delhi.
3. Smt. Indu Masand, Grade 'B' Steno,
Ministry of Home Affairs,
North Block, New Delhi. o

...Respondents

(By Advocate: Shri V.K.Mehta)

O R D E R (ORAL)
[Dr. Jose P. Verghese, Vice-Chairman (J)]

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These matters came up for hearing on 22.7.1997

and orders were passed summarising the grievances of the petitioner contained in all the OAs so that these OAs can be disposed of together after obtaining responses from the respondents appearing in these cases. We also found that separately dealing with all these OAs at different times, no progress is made as far as the petitioner is concerned who is otherwise anxious to settle all his cases once and for all. Therefore, we decided to club all the cases together and requested the petitioner to give a list of all connected OAs. These OAs have been listed at his representation to that effect to this court and we presume, apart from this, no other OA or M.A. by this petitioner is pending in this Tribunal, except otherwise expressly mentioned in this order.

2. The petitioner initially joined as L.D.C. on 24.8.1955 and his normal date of superannuation would have been 28.2.1995. But at the time he was left with some more years of service, an order of premature retirement under FR 56 (J) was passed on 6.4.1988 and the said order was to take immediate effect. The said order was challenged by the petitioner in OA 593/88. By an order dated 9.8.1991, this court had recorded a finding that the review committee has noted the fact that there were disciplinary proceedings pending against him. They have also referred to various records relating to his performance after 1978 like his being granted 217 days "leave not due" in December, 1983, rejection of certain allegations made by the applicant at the level of the Home Secretary, complaints from almost all officers with whom the applicant was posted about his attending office,

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punctuality etc. The court by the said order did not agree with the contention of the applicant that the respondent is responsible for not having written the confidential reports for various periods in 1980, 1982 and for the whole of years in 1984, 1985 and 1986. It was recorded in the said order that since the applicant was frequently absent and because of the complaints of officers, he had to be frequently posted under various officers, under whom he did not work for three months continuously, and for that reason the confidential reports could not be written. Hence, the court was convinced that the review committee has based its recommendations on the basis of the records available after 1978, while also noting his performance as reflected in his entire service record.

3. Against the dismissal of this OA, the petitioner filed an SLP in the Hon'ble Supreme Court and the same is stated to have met with the same result. Thereafter, the petitioner seems to have filed various other OAs such as OA No. 1469/87 and 815/88, which were subsequently dismissed by an order dated 9.8.1991 by separate orders. Few more OAs, which have been filed by the petitioner, have come before us, now, for final disposal.

4. In OA 1077/97, the petitioner is seeking salary for the years 1984 to 1988 except for the period from December 1986 to December, 1987, for which period the petitioner claims that he has already been paid the salary. But the respondents in their counter affidavit filed in pursuance to our orders, stated that in view of the fact that the disciplinary proceedings then pending were subsequently dropped and that order was on the fact that he

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was prematurely retired thereafter but the claim of arrears of salary could not be entertained because the same was already subject matter of two other OAs, namely OA No. 815/88 and OA 1754/87, and the petitioner for the same purpose seems to have filed another OA being OA No. 2682/96 when the respondents proceeded to recover the salary already paid for the period from December, 1986 to December, 1987 alongwith other dues from the petitioner but in the said OAs, it is admitted by the petitioner that he has not challenged the order of the respondents dated 18 & 19.10.1993 by which the period of absence between 1984 to 1988 has been declared to be "dies-non" for certain periods as stated in the order. In view of the position that two OAs have already been dismissed and in OA No. 2682/96 as well the order of the respondents declaring the said period as "dies-non" dated 18.10.1993, has not been challenged, no further order is required to be passed in OA No. 1077/97 and as such the said OA is also now being disposed of for the reason stated above and as well as for the reason that the facts of the previous OAs for the same relief have not been referred to in para 7 of this OA, which is mandatorily to be mentioned by the petitioner, in accordance with the C.A.T. Rules.

5. The petitioner has also listed OA No. 731/95 alongwith the list supplied by him to this court which was a petition claiming back-dated promotion from the date his juniors have been promoted in this case. Since the petitioner has already stood retired w.e.f. 6.4.1988 the question of claiming back dated promotion at this stage does not, prima-facie, arise but we are saved from dismissing this OA, since the said OA has already been dismissed by an order dated 24.4.1995 and the petitioner

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stated that he has filed a review petition against the said order of dismissal. We have called for the original file and no such application is traceable even in the original file and as and when such application comes up for hearing, it shall be dealt with on its own merit. But, as on today the OA No. 731/95 is concerned the same stands dismissed by the order of this court dated 24.4.1995.

6. OA No. 2681/96 is admittedly said to have been dismissed on default and here again the petitioner stated that he has filed a review petition and the same is pending in this court. The issue raised by the petitioner in this OA is that he is entitled to personal hearing, to sort out all the service matters affecting the petitioner, with the Home Secretary. We are afraid that in view of the facts stated above in the OA in which the order of premature retirement of the petitioner has been allowed to stand, no further order is required to be passed in this OA especially because this court has already dismissed the same on default, on 13.4.1997. The petitioner had claimed that he has also filed a review petition against the said order and no such review petition is found to be available on the entire record, which we have perused today. However, if and when such a petition comes up for hearing, the same will be dealt with separately in accordance with law.

7. OA No. 2683/96 is said to have been filed for the purpose of seeking a direction to get the interest paid on the GPF advances even after the petitioner admits that he has received the GPF advance minus the interest. The respondents, on the other hand, stated that the claim for GPF was made in the year 1991 but handed over to the

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respondents only in the year 1995 and as soon as it reached to them, respondents had paid the GPF advances due to the petitioner amounting to Rs. 22,212/- alongwith six months' interest due, in accordance with the rules. In view of the statement, no further order is required to be passed in this OA itself and the same is disposed of in these terms.

8. The OA No. 1154/97 is also stated to be one filed for restoration of his lost seniority. Here again, the petitioner has not referred to the previous OA, which he had filed for the same purpose, in para No. 7 of the OA, which is a mandatory clause. It was stated on behalf of the respondents that the seniority under challenge in this petition is the one which has been preferred in the year 1985, and in OA No. 1469/87 this court has dismissed the same stating that the relief claimed therein by the petitioner is hopelessly time barred and we are afraid, another OA six years thereafter, cannot be said to be maintainable on any counts.

9. The only issue that has to be resolved in these OAs is perhaps a question whether the action of the respondents to recover the amount already paid by way of salary from the period December, 1986 to December, 1987, can be deemed to be a part of the period of unauthorised absence or not and thereafter recover it from the pensionary benefits of the petitioner or not. We are of the opinion that period of unauthorised absence can not include "unauthorised presence".

10. Counsel for the respondents stated that by an order dated 9.8.1991 in OA 815/88, this court had observed that since the petitioner has been prematurely

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retired w.e.f. 6.4.1988, the cause of action in the said application did not survive and since alongwith the settlement of dues, the pay, other allowance, and other monetary benefits due from 1.1.1988, will also be paid after due adjustments for the periods of unauthorised absence, if any. The respondents stated that the recovery of Rs. 22,212/- has been made in furtherance to orders passed by this court in OA No. 815/88 dated 9.8.1991 as well as the respondents' own order dated 18.10.1993 by which certain periods have been declared "dies-non" for the purpose of calculating the pension only. In the circumstances, we are of the opinion that if the petitioner has worked for some period which is not the subject matter of the order dated 18.10.1993, that could not have been considered as a period of unauthorised absence referred to in our order dated 9.8.1991 in OA 815/88. In case the recovery order dated 10.7.1995 by which Rs. 22,496/- has been stated to be as over-payment of pay and allowance, including leave salary from October, 1984 to April, 1988, includes the period in which the petitioner has been actually worked and payment had been made. It also includes the payment which are not in the purview of the respondents own order dated 18.10.1993, the recovery in such circumstances would not be proper in the circumstances of the case. In case the respondents finds that the recovery sought to be made by this order dated 10.7.1995, pertains to a period which is not covered by the order dated 18.10.1993, the respondents shall return the said amount since the said recovery is prima-facie illegal as the order of the respondents dated 18.10.1993 does not cover the said period while they declared the remaining period as "dies-non". Respondents, therefore, on their own shall examine whether the recovery now sought to be done by

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order dated 10.7.1995 includes the payment made during the period which is outside the purview of the order dated 18.10.1993 as well as 21.8.1995, and if found so, the amount thus calculated is hereby declared to be due to the petitioner and the same shall be refunded to the petitioner. We are of the prima-facie opinion that deduction of Rs. 22,212/- from the pensionary benefits of the petitioner is illegal and the same shall be restored to the petitioner, subject to the observations above. The repayment shall be made within two months from the receipt of the copy of this order.

11. One last issue to be dealt with, is the claim of the petitioner that he is entitled to the benefit of missing credits, for which it is stated by the respondents that the same cannot be paid unless the petitioner gives the details of the said missing credits. Petitioner states that he is unable to give details and requests for the perusal of the records. Counsel appearing on behalf of the respondents states that the records will be made available for the petitioner for scrutiny in his presence and the petitioner shall make a representation pointing out the details of the said missing credits, if any and the said representation shall be disposed of within two months of the receipt of the said representation.

12. We are disposing of all these OAs listed by this order in the presence of both the parties and it is assumed that no other issues are raised or controverted than what is stated in this order.

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13. Court would record its appreciation towards the cooperation of both the parties in arriving at a final conclusion as regards these OAs are concerned and that the disputes have finally come to an end.

(K. Muthukumar)
Member (A)

(Dr. Jose P. Verghese)
Vice-Chairman (J)

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