

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 2068/96 199
T.A. No.

DATE OF DECISION 11-9-97

Shri Kulwant Singh	Petitioner
Dr.D.C. Vohra	Advocate for the Petitioner(s)
Versus	
UOI & Ors	Respondent
Sh.Rajinder Pandita	Advocate for the Respondent(s)

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member(J)

The Hon'ble

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *x*

Lakshmi Swaminathan
 (Smt. Lakshmi Swaminathan)
 Member(J)

(16)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 2068/96

New Delhi this the 11th day of September, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri Kulwant Singh
Son of late Sardar Sardara Singh,
Resident of M-67, Hari Nagar,
Clock Tower, New Delhi-64

... Applicant

(By Advocate Dr.D.C. Vohra)

Vs.

1. Union of India through the
Secretary
Ministry of Home Affairs,
North Block, New Delhi.
2. Commissioner of Police
National Capital Territory of Delhi
Police Headquarters, Indraprastha Estate,
New Delhi.

... Respondents

(By Advocate Shri Rajinder Pandita)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant is aggrieved by the respondents' orders dated 7.7.95 and 8.12.1995 inasmuch as the period of his absence from duty has been treated as "leave of kind due."

2. The brief facts of the case are that the applicant who was working as Inspector in Delhi Police had submitted an application for voluntary retirement on 30.9.94 which was accepted by the competent authority by order dated 17.11.1994. Meanwhile, the applicant submitted another application requesting for withdrawal of his voluntary retirement notice due to material change in family circumstances, which the respondents state was considered and rejected vide letter dated 20.12.94.

B.

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Accordingly, the applicant was retired from service on 31.12.1994. The applicant had challenged the action of the respondents in his earlier OA 2569/94. The Tribunal vide order dated 8.6.95 quashed the impugned orders dated 17.11.1994 and 20.11.1994 in pursuance of which the order dated 7.7.95 has been passed which has been impugned in this original application.

3. In the impugned order dated 7.7.95, the respondents have stated that the earlier order retiring the applicant from service w.e.f. 31.12.1994 is cancelled and he should be deemed to have been continued in service w.e.f. the date of his voluntary retirement i.e. 31.12.1994 upto the date of joining duty. The applicant joined duty on 3.7.95. The applicant has impugned the last portion of the order dated 7.7.95 in which the respondents have stated that the absence period of his service from 31.12.1994 upto the date of joining duty i.e. 3.7.95 has been decided to be treated as 'leave of kind due'. Dr. Vohra, learned counsel for the applicant has submitted that this intervening period cannot be treated as leave of the kind due because the applicant had been reinstated in service by order of the Tribunal dated 8.6.95. He relies on the judgment of the Supreme Court in Balram Gupta V. UOI & Ors (SLJ 1988(1) SC 79) which was also relied upon by the applicant in OA 2569/94. He also submits that in another case of Ravjibhai Kanjibhai Satodia V UOI & Ors. (ATR 1989(1) CAT 518 Ahmedabad, the applicant had been allowed all the benefits which have been granted in Balram Gupta's case (supra). He has also submitted that on the analogy of FR 54-A(3), the applicant is entitled to be treated as on duty from the date of voluntary retirement upto the date of his reinstatement in accordance with the Tribunal's order.

4. The respondents have filed their reply in which they have taken a preliminary objection that the application is

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barred by the principle of res-judicata and there is no cause of action in favour of the applicant. This plea cannot be accepted on the ground that what has been impugned in this original application could not have been impugned in the earlier O.A. 2569/94. The impugned order has been passed in this case on 7.7.95 in pursuance of the directions of this Tribunal dated 8.6.95. Subsequent order dated 8.12.95 impugned by the applicant has also been passed after the judgment dated 8.6.95 rejecting his representation dated 21.8.95. In the facts and circumstances of the case it cannot be held that this application is barred by the principles of res-judicata and this plea is, therefore, rejected.

5. On merits, the respondents have submitted that since the applicant has not performed any duty/w.e.f. the date of voluntary retirement to the date of joining duty i.e. 3.7.95, the intervening period cannot be treated as spent on duty and, therefore, the competent authority treated this period as leave of ^{the} kind due. In the circumstances, learned counsel for the respondents has submitted that the case may be dismissed.

6. In the earlier OA 2569/94 filed by the applicant, the Tribunal had come to the conclusion that the impugned orders dated 17.11.1994 and 20.11.1994 should be quashed and set aside. The respondents were further directed to accept the applicant's notice withdrawing ~~the~~ voluntary retirement and take the applicant back on duty, treating the applicant's period of absence in accordance with rules. In a similar case of B.R.Gupta (supra.) while allowing the appeal, the Supreme Court has held that the applicant shall be entitled to be put back on his job with all consequential benefits ^{and} being treated as in the job from

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31.3.1981 i.e. the date of his voluntary retirement. Therefore, when the Tribunal had quashed the impugned orders and directed the respondents to take the applicant back on duty, that would have been from 1.1.1995, even though he might have joined duty only on 3.7.95. He was entitled to his pay and allowances and other benefits as due to him while in service which the applicant states has already been paid. In the circumstances of the case, the intervening period between the date of his voluntary retirement and the date of his reinstatement in service, in pursuance of the Tribunal's order dated 8.6.95 has to be treated as period spent on duty.

7. In the result this application succeeds and is allowed. The impugned orders dated 7.7.1995 and 8.12.95 are quashed and set aside. Respondents to pass appropriate orders in the light of the observations made above within a period of two months from the date of receipt of a copy of this order. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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