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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

...

OA.No.891 of 1996

Dated New Delhi, this 9th day of January, 1997.

HON'BLE SHRI A. V. HARIDASAN, VICE CHAIRMAN (J)
HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

D. R. Kapila
D/o Late N. L. Kapila
R/o A-179 Dayanand Colony
Lajpat Nagar
NEW DELHI.

... Applicant

By Advocate: Shri R. N. Chawla

versus

1. Government of National Capital Territory of Delhi
Old Secretariat
DELHI,

Through Chief Secretary
5 Sham Nath Marg
DELHI.

2. The Secretary
Department of Social Welfare
Government of Delhi.

3. Director
Department of Social Welfare
Government of Delhi
1 Kasturba Gandhi marg
NEW DELHI.

4. Joint Director (ADMN)
Department of Social Welfare
1 Canning Road
NEW DELHI.

... Respondents

By Advocate: Shri Surat Singh

O R D E R (Oral)

Shri A. V. Haridasan, VC(J)

This application is directed against the order dated 15.2.1995 of the 3rd respondent by which the applicant's notice of voluntary retirement was accepted with effect from 1.4.1994

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and the treatment of the period of 173 days as leave of the kind due to him. The facts to be put in a nutshell are as follows:-

The applicant vide his notice dated 6.9.1993 sought voluntary retirement with effect from 1.4.1994. The respondents did not communicate to the applicant any reply either accepting or rejecting his request for voluntary retirement. In the meanwhile, the applicant was served with a memorandum of charges on 14.1.1994 alleging that he was unauthorisedly absent during 1.8.1993 till the date of the chargesheet excepting from 1.9.1993 to 6.9.1993. The 3rd respondent had also issued an order on 17.8.1993 stopping the salary of the applicant. The case of the applicant is that he continued to perform his duties but was prevented from marking his attendance in the Attendance Register as the Register was withheld from him. The chargesheet was subsequently dropped by the respondent by the impugned order dated 15.2.1995. However, the order stated that the period during which, according to the memorandum of charges he was unauthorisedly absent, would be treated as the leave of the kind due to him. The case of the applicant is that as the applicant remained present in the office and performed his duties, the decision to treat this period as leave, is

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arbitrary, irrational and unsustainable. Therefore the applicant has filed this application seeking to have the impugned order quashed.

2. The respondents have filed a reply in which they contend that the order for stoppage of pay was made as the applicant did not perform his duties; that the applicant's request for voluntary retirement has been accepted, he had been retired with effect from 1.4.1994 and that he is not entitled to any of the reliefs prayed for.

3. We find that there is scope for adjudication of the issue involved in this case and, therefore, we admit this matter. As the issue involved in this case is quite simple and as agreed to by the learned counsel on either side, we proceed to dispose of this matter simultaneously. We have heard the counsel on either side.

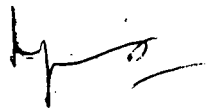
4. The learned counsel for the applicant, under the instructions of the applicant who is present in the court, says that the applicant restricts his claim in this application only to challenge that part of the impugned order dated 15.2.1995 (Annexure-E) which says that the period between 1.8.1993 till date excepting 1.9.1993 to 14.1.1993 would be treated as leave of the kind due.


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5. We are of the considered view that the applicant is right in claiming that there was no reason or justification for treating the period from 1.8.1993 excepting from 1.9.1993 to 6.9.1993 as unauthorised absence and further regularising the same as leave of the kind due because the applicant's case throughout has been that he had been present in the office and performing his duties and that he was not allowed to mark his attendance. The chargesheet was issued by the respondents alleging that the applicant was absent from duty and the proceedings in the departmental enquiry has been dropped by the respondents unconditionally. Therefore, to say that the applicant was unauthorisedly absent for the period in question and to deny him the pay and allowances for that period treating that period as leave of the kind due, is irrational, unwarranted and wholly unsustainable.

6. In the light of what has been stated above, we allow this application in part. The impugned order dated 15.2.1995 is sustained to the extent that by this order the voluntary retirement of the applicant has been accepted and that the applicant stood retired with effect from 1.4.1994. The decision contained in the impugned order that the period from 1.8.1993 excepting from 1.9.1993 to

6.9.1993 would be treated as leave of the kind due, is set aside and the respondents are directed to treat the applicant to be in continued service till the date of voluntary retirement, i.e. 1.4.1994 and disburse ^{to} him full pay and allowances ^{including} ~~as~~ the period ^{as} spent on duty, within a period of two months. In the light of what has been stated, retirement dues due to the applicant shall also be ^{accordingly} computed and made available to the applicant within the said period. There shall be no order as to costs.


 (K. Muthukumar)
 Member(A)


 (A. V. Haridasan)
 Vice Chairman (J)

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