

(35)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.1039/96

New Delhi: this the 19<sup>th</sup> day of May, 1999.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MR. T. N. BHAT, MEMBER (J)

R. Y. Sharma,  
S/o Shri Vaid Ram Kumar Sharma,  
R/o C/o quarter NO. EF-648,  
Sarojini Nagar,  
New Delhi ..... Applicant.

(By Advocate: Shri B. B. Raval )

Versus

Union of India  
through  
the Secretary,  
Ministry of Human Resources and  
Development,  
Govt. of India,  
Shastri Bhawan,  
New Delhi - 0001

2. The Director-General,  
Archaeological Survey of India,  
Govt. of India,  
Janpath,  
New Delhi.

3. Shri D. B. Guha,  
Chief Horticulturist,  
Archaeological Survey of India,  
Govt. of India,  
Taj Mahal,  
Agra.

4. Shri RRP Sinha,  
Senior Horticultural Asstt.  
Division No.1, Taj Mahal,  
Agra, C/o Respondent No.2.

5. Shri P. V. Muslekar,  
Senior Horticultural Asstt.,  
Division No.3, Mysore,  
C/o Respondent No.2.

6. Shri A. M. Jain,  
Senior Horticultural Asstt.  
Division No.1, Lucknow,  
C/o Respondent No.2 ..... Respondents.

(By Advocate: Shri K. R. Sachdeva).

ORDER

HON'BLE MR. S. R. ADIGE VICE CHAIRMAN (A)

Applicant prays for

- i) classification of his leave in both spells, and after completion of service records, constitution of a DPC to consider his promotion;
- ii) fixation of pay, allowances and increments, including difference in pay etc. with arrears;
- iii) costs.

2. His case is that while posted as Horticultural Asstt. in Agra he was summoned to appear in a court case against R-3 on 14.8.87 whom he had seen physically manhandling a colleague in office. He states that he made a truthful deposition in that case despite his being called by R-3 to his office earlier and asked not to say anything against him (R-3) on pain of dire consequences if he did. Applicant contends that this deposition made R-3 very annoyed, upon which a concocted charge sheet was served on him on 8.12.87 and he was placed under suspension. He states that thereupon he challenged the DE in OA No. 622/90 which was disposed of by order dated 8.1.93 (Annexure-A3) with a direction that R-3 should not be the Disciplinary Authority in the case, and the enquiry should be completed as soon as possible, so far as the suspension allowances were concerned, it was left to applicant to work out his rights in accordance with law.

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3. Applicant states that the DE ended in his exoneration vide order dated 16/12/96 (Annexure-A-2). Meanwhile his suspension had been revoked on 8.7.88, and upon receiving the order he had reported for duty at Agra on 23.9.88 from where he was transferred to Fatehpur Sikri without proper authority, where he joined on 30.7.90. He states that while posted in Fatehpur Sikri he fell ill and meanwhile was transferred to Delhi vide office order dated 7.4.93 (Annexure-A-5). Thereafter another order dated 3.12.93 issued (Annexure-A6) to the effect that applicant who was posted at Fatehpur Sikri and had been transferred by orders dated 7.4.93, stood relieved from his duties in Fatehpur Sikri with immediate effect to enable him to join in Delhi, upon which he reported for duty in Delhi on 10.1.94.

4. Applicant states that after joining in Delhi he submitted a representation on 17.1.94 (Annexure-A7) giving a gist of the alleged malafide attitude of R-3 as a result of which his legitimate dues had been withheld. Representations were also made on 9.1.94 (Annexure-A8), but despite that applicant alleges that R-3 did not send his service book, L PC etc. despite letter from Delhi to do so expeditiously. Applicant states that meanwhile he learnt that his juniors working as Horticultural Asstt. Gr.I had been promoted to the post of Sr. Horticultural Asstt. ignoring his case, in respect of which he also represented on 7.2.94 (Annexure-A11).

5. Applicant contends that because of this attitude of R-3, he was receiving only provisional pay,

though he joined duty in Delhi on 3.1.94, and meanwhile as he fell ill, he proceeded on leave from 11.4.94 to 23.4.96, and he rejoined duty in Delhi on 23.4.96 but as his L.P.C, Service Book and other service records were withheld by R-3 in Agra, the Office in Delhi was not able to classify his leave. He contends that as the D.E. ended in his exoneration, and the suspension was revoked, the suspension period has to be treated on duty and he has to be considered for promotion from the date his juniors were promoted.

6. Respondents in their reply challenge the OA. In the reply filed on behalf of all the respondents, it is stated that the charge sheet was submitted not at the instance of R-3, but on the complaint of applicant's immediate controlling officer, i.e. Dy. Superintendent Horticulturist in regard to gross financial irregularities and tampering with official records by applicant as a result of which he was also suspended. It is stated that the suspension was revoked on 8.7.88 (Annexure-RIII) and applicant was asked to report to Fatehpur Sikri Garden immediately, but he did not receive the order by hand at his residence and also by registered post as a result of which it had to be published in the local newspaper on 19.7.88 and 6.11.88 (Annexure-R VIII), and he eventually joined duty at Fatehpur Sikri only on 30.7.90.

7. Thereafter by order dated 7.4.93 (Annexure-A-5) he was transferred from Fatehpur Sikri to Delhi and stood relieved from his duties at Fatehpur Sikri vide order dated 3.12.93 (Annexure-<sup>A</sup> 6). Respondents

reply states that although he was required to hand over complete charge of records, files etc. he did not report for duty in Delhi within the joining period and did so only on 10.1.94. In the reply it has been denied that applicant's service records, service book, L PC etc. are with Respondent No.3 and it is stated that the same are with the Controlling Officer i.e. Dy. Supdt. Horticulturist, Div. II, New Delhi where he is presently posted. Regarding his annual increments etc. it has been stated that applicant had absented himself frequently from duty without prior sanction of leave, and had not complied with the instructions of the competent authority by not producing the prescribed medical certificates as a result of which his leave/absence has not been regularised and payment of his dues could not be settled so far.

8. Respondents admit that by order dated 16/1.9.96 ( Annexure-R-XIV ) applicant has been exonerated in the D.E. of the charges against him. They state that applicant's case for promotion as Sr. Horticultural Asstt. was considered by the D.P.C. , but he could not get his promotion on the basis of assessment recorded in his ACRs and vigilance clearance from the competent authority and his case was kept in a sealed cover.

9. In our order dated 3.6.98 we had observed that the entire period in question fell into two parts viz.

i) 15.4.91 to 8.1.94

ii) 5.4.94 to 22.4.96.

and we had sought to know from respondents how they had classified the above 2 periods. In their reply affidavit filed on 12.3.99 they have stated that the period from 15.4.91 to 8.1.94 would be classified as unauthorised absence from duty entailing loss of pay for the period in question under the proviso to FR 17 while the period from 5.4.94 to 22.4.96 has been sanctioned as commuted leave, earned leave, and E.O.L-LWP on medical grounds.

10. As regards applicant's prayer for review DPC to consider him for promotion from due date or the date his juniors were promoted, respondents state that applicant could not be promoted as the DPC assessed him as 'Not Fit/unfit' and the matter has been kept in sealed cover.

11. We have heard both sides.

12. During hearing applicant's counsel Shri Rawal has dwelt at considerable length on the contents of applicant's MA No. 628/97 and has vehemently urged that although the Bench in its order dated 2.12.96 while disposing off MA No. 2455/96 had noted the submissions made by R-3 before it on 9.7.96 that he would file an affidavit in regard to matters stated by him in open court, and in the affidavit dated 18.12.96 filed by R-3, he had submitted that he had already filed an affidavit on 9.7.96, in actual fact he had not submitted any affidavit on 9.7.96 and had intentionally delayed despatching applicant's L.P.C, service book etc. from Agra to Delhi with a view to subject him to harassment. These assertions have been vigorously denied by respondents' counsel Shri Sachdev

13. Although respondents in their reply affidavit filed on 18.3.99 have stated the manner in which applicant's periods of absence from duty are to be treated, formal order in this regard has not been shown to us. Furthermore it has been stated that applicant's case for promotion has been placed in sealed cover. Now that the departmental proceedings against him have concluded, the sealed cover has to be opened. Under the circumstances this OA is disposed of with a direction to respondents

(i) to pass orders in accordance with rules and instructions regulating the periods of applicant's absences from duty;

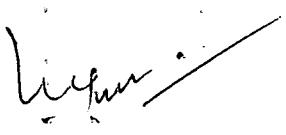
(ii) thereafter to calculate and pay to applicant the emoluments admissible to him together with arrears, if any, less what has already been paid to him;

(iii) bring his service records up to date;

(iv) to open the sealed cover and thereafter to act in accordance with rules and instructions on the subject;

(v) to complete (i), (ii), (iii) and (iv) above as expeditiously as possible and preferably within 4 months from the date of receipt of a copy of this order.

14. The OA is disposed of in terms of para 13 above. No costs.

  
( T.N. Bhat )  
MEMBER(J)

  
( S.R. ADIGE )  
VICE CHAIRMAN (A).