

32

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1144/2000

New Delhi this the 9th day of April, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI S.K.MALHOTRA, MEMBER (A)

Shri Lakshmi Chand, ASK
S/o Shri Tulli Ram
Posted at 56 ASP/361
No. 56 ASP Air Force
Faridabad (HR)

...Applicant

(By Shri M.K. Bhardwaj, Advocate)

vs.

1. Union of India
Through the Secretary
Ministry of Defence,
Vayu Bhawan
New Delhi.
2. The Chief of Air Staff
Vayu Bhawan,
New Delhi.
3. The Air Officer Commanding in Chief
HQ Maintenance Command
Indian Air Force,
Nagpur-440 007.
4. The Group Captain (CO)
No.56, ASP Air Force
Faridabad (HR) Respondents.

(By Shri D.S.Mahendru, Advocate)

O R D E R (ORAL)

Justice V.S.Aggarwal:-

By virtue of the present application, Lakhmi Chand seeks a direction to fix his pay from 12.7.1990, allow him arrears with interest and quash the order of the respondents fixing his pay with effect from 31.12.1997.

Ms Ag

2. Some of the relevant facts are that the applicant had joined as Lascar at Faridabad with effect from 22.8.1984. Vide order of 12.7.1990, he was appointed as Assistant Store Keeper in temporary capacity in the Air Force. He had to undergo training course at Material Management School at Devlalli which he completed. On 18.2.1991, the respondent No.4 revoked the appointment of the applicant as Assistant Store Keeper and ordered his reversion. Against the said order, the applicant preferred OA No.2569/1992 and this Tribunal had quashed the said order.

3. After the service of the order passed by this Tribunal, the applicant had been issued a show cause notice dated 29.5.1998 as to why he should not be reverted from the post of Assistant Store Keeper to that of Lascar. The applicant submitted a reply. Thereupon the applicant was reinstated with effect from 18.2.1991.

4. The applicant contends that on his restoration/reinstatement, he is entitled to fixation of his pay as Assistant Store Keeper from 12.7.1990 with all increments and arrears of pay. However, the respondents have fixed his pay as Assistant Store Keeper with effect from 31.12.1997 while the juniors of the applicant have since been

18 Ag

promoted. Alleging that the action of the respondents is illegal, the present application with reliefs as already referred to above has been filed.

5. In the reply filed, the application has been contested. A preliminary objection has been raised that the relief claimed in the present application is identical to the one pending before the Delhi High Court in Civil Writ Petition No.1483/2002 filed by the applicant wherein he has challenged the order passed by this Tribunal in OA No.2054/1998 dated 13.2.2002.

6. On merits, it has been contended that there is one vacancy of Assistant Store Keeper. The eligibility conditions of the post are:-

- (a) selection should be made through a departmental examination confined to such Group 'D' employees who fulfil the qualifications;
- (b) 5 years service in Group 'D' post; and
- (c) maximum age should be 50 years.

A Board of officers was convened to conduct the examination. Only three persons appeared including the applicant. He was appointed on 12.7.1990 since he topped the list. It is pointed that in terms of the Air Headquarters letter dated 25.11.1983, a candidate obtaining the minimum

M Ag

qualifying marks fixed by the unit for passing the examination would be placed in the list in accordance with the seniority as Lascar and not on the basis of the marks obtained in the examination. 60% were the qualifying marks. When the mistake was pointed out, the appointment of the applicant was revoked against which the applicant had preferred an original application in this Tribunal and the order of the department was quashed. It has been admitted that the applicant has not been granted the arrears claimed on basis of 'no work no pay'.

7. After hearing the learned counsel for the parties, we are of the considered opinion that in the facts of the present case, the impugned order is required to be quashed and the applicant is held entitled to the relief claimed.

8. It is not in dispute that the applicant was appointed as Assistant Store Keeper by the respondents. Thereafter, he was reverted and he preferred OA No.2569/1992. On 31.12.1997, the order passed by virtue of which the applicant was reverted was quashed and the operative part of the same reads:-

"4. In the facts and circumstances of the case, therefore, this application succeeds and is allowed. The impugned order dated 18.2.1991 reverting the applicant to the lower post of Lascar from his appointment as Assistant Store

Ab Ag

Keeper is quashed and set aside leaving it open to the respondents to take action in accordance with law. No order as to costs."

It is thereafter that a notice to show cause was issued and on 22.6.1998, the applicant was reinstated with effect from 18.2.1991. The said order reads:-

"Reference is made this park letter No.56 ASP/6702/1/PC dated 18 Feb 91.

2. In view of court Decree issued by CAT New Delhi against Case No.2569/92 Sh Lakhmi Chand Vs. Union of India, the reversion order issued vide this park ibid letter is hereby cancelled in toto.

3. Further you are hereby reinstated as ASK wef. 18 Feb 91."

The applicant thereupon represented for pay and arrears for the period during which he was reverted and the said request was turned down. The department's opinion is in the order dated 15.6.1999, a copy of which is Annexure A2, the operative part of which reads as under:-

"8. Shri Lakhmi Chand, ASK is not entitled for pay and allowances from the date of his reinstatement i.e. wef 18.2.91 based on the principle of 'No Work No Pay'. However, he is entitled to draw pay and allowances wef the date of Hon'ble CAT (PB) New Delhi Judgement i.e. 31 Dec 97 after fixing his pay as per rules.

9. Shri Lakhmi Chand is entitled to other benefits such as seniority and promotion in his own turn."

9. On behalf of the respondents, it was pointed that there is already a litigation pending before the Delhi High Court i.e. Civil Writ

MS Ag

Petition No.1483/2002 filed by the applicant whereby he had challenged the order of this Tribunal dated 13.2.2002 passed in OA No.2054/98 filed by one Shri Jagan Nath. However, once the matter which has some reflection on the present decision is pending, it would be appropriate to dispose of the present application subject to the decision of the pending litigation in the Delhi High Court.

10. All the same as is apparent from the nature of the facts recited above, the applicant had been reverted. The order of reversion was quashed and thereafter the department issued a show cause notice. The applicant had been reinstated with effect from 18.2.1991. Once the applicant has been reinstated with effect from 18.2.1991 when he was reverted, it is obvious that the department realised the mistake, if any, on their part.

11. So far as the principle of 'no work no pay' is concerned, it cannot be attracted in the facts of the present case for the reason that the applicant had been reverted. The said order has already been held to be illegal and the applicant had been reinstated from the date when he was reverted. When such is the situation, the applicant cannot be made to suffer for the fault

M Ag

of the department. It is not that the applicant was not willing to discharge the duties as Assistant Store Keeper. Therefore, he is entitled to the arrears of pay i.e. the difference of pay drawn by him and the pay of the Assistant Store Keeper.

12. For these reasons, the present application is allowed and the impugned order dated 15.6.1999 is quashed. The respondents are directed to fix the pay of the applicant as Assistant Store Keeper with effect from 12.7.1990 and pay him arrears of pay preferably within 4 months from the present order. However, this is subject to pending litigation or any direction of Delhi High Court. No costs.

Announced.

Omrao
(S.K. Mathotra)
Member (A)

VS Ag
(V.S. Aggarwal)
Chairman

/sns/