

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 554/89

DATE OF DECISION 21.7.93

Sh. S. C. Anand Petitioner

v/s

U.O.I. & Ors. Respondents
Through The Secy.
Ministry of Supply.

FOR THE APPLICANT ... PETITIONER IN PERSON

FOR THE RESPONDENTS Sh. M. L. Verma, counsel

CORAM

Hon'ble Sh. I. K. Rasgotra, Member (A)
Hon'ble Sh. B. S. Hegde, Member (J)

JUDGEMENT (ORAL)

(delivered by Sh. I. K. Rasgotra, M(A))

In this petition, the petitioner is seeking
for the following reliefs:-

- (i) That consequent to setting aside of transfer of applicant from Bombay to Calcutta, vide A-2 the respondents be directed to treat the entire intervening period as duty at Bombay for all purposes, including pension and retirement benefits.
- (ii) Respondents may be directed to give all consequential benefits, including pay and allowance, and consideration for further promotion for the relevant period
- iii) The respondents may be directed to pay interest at the rate of 18%
- iv) To compensate the applicant for Income Tax payable at higher rates on account of delay payment by the respondents.
- vi) Exemplary costs be awarded.

Annexure A-2 is annexed to the OA is the

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judgement delivered by Bombay High Court in appeal
No. 479/85, Writ Petition No. 2727/1982 on 30.1.1986.

The operative parts of the said judgement reads as
under:-

"23 In these circumstances, the transfer order
of 23rd September, 1982 is set aside and the
rule is made absolute accordingly. The
respondents will pay to the petitioner costs
of the petitioner as well as appeal fixed at
Rs 600/-".

"24 The Petitioner had applied for stay of the
order of transfer during the pendency of his
petitioner. In notice of Motion No. 2555 of
1984 taken out in this Writ Petitioner K.
Madhav Reddy C.J. by his order of 25.1.1985
rejected the notice of motion which was to
direct the respondents to assign work to the
petitioner in Bombay and pay him salary and
allowance till the decision in the Writ Petition.
An appeal from this decision being Appeal No.
284 of 1985 is still pending. In view of this
appeal, at the request of the petitioner we are
passing any orders relating to the payment of
salary or allowance during the pendency of the
petitioner. This question is left open and may
be argued at the hearing of Appeal No. 284 of
1985".

"25 On the application of Mr. Advani respondents
are permitted not to allot any work to the
petitioner for a period of 6 weeks from today
on condition that the respondents pay to the
petitioner in full his salary and allowance for
the said period. *N*

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Shri M.L.Verma, learned counsel for the respondents at the outset drew our attention to explanation 5 below order 11, Code of Civil procedure, according to which if any relief is not expressly granted in a decree passed by the court, the same will be deemed to have been refused by the court.

Learned counsel for the respondents further submitted that the petitioner had prayed for the reliefs set out the O.A. before us earlier in appeal No.479/85 in WP 2727/1982 filed in the High Court of Bombay. The Bombay High Court however, did not pass any specific order in this behalf. The petitioner is therefore barred from seeking these reliefs as they are deemed to have been refused by the Bombay High Court. The OA, therefore, deserves to be dismissed.

The contention of the learned counsel for the respondents was, however repelled by the petitioner. He wanted as to traverse with him the various litigations he is/ involved to appreciate the background of his claim. The petitioner contended that the background of the litigation would convince us that the doctrine of res judicata and provisions of order 11 C.P.C. are not applicable in this case.

After careful consideration of the submissions

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made and perusal of the record. We are of the opinion that in view of the Judgement of Bombay High Court it is not necessary for us to go through the background and other material of the multiple litigation, which the petitioner instituted against the respondents. The intent of the judgement has to be understood by a plain reading of the language used to express it. It is not possible to go beyond the scope of what is written in words in the judgement of the High Court of Bombay. In that view of the matter all that survives for our consideration is as to how the period when the petitioner continued to remain in Bombay from 25.12.82 to 29.1.86 although he had been transferred to Calcutta is to be treated. The contention of the petitioner is that said order of transfer was set aside by the Bombay High Court and once the impugned order is set aside, it is tantamount to restoration of status quo ante. Accordingly, the petitioner is to be deemed to have never been transferred and the period in question has to treated as spent of duty. He should, therefore, be held to be entitled to payment of full salary and allowance for the said period.

Shri M.L.Verma, learned counsel for the respondents in this connection referred us to

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paragraph 24 of the judgement of the Bombay High Court wherein it has been stated that appeal No. 284/85 was still pending and in view of the pendency of the appeal the learned judges did not pass any orders relating to the payment of salary and allowance. The High Court further observed that at the request of the petitioner this question is left open and may be argued at the hearing of appeal No. 284/85.

The petitioner and the respondents had contradictory view whether the said appeal had been decided or not. The petitioner contended that the appeal was still pending. The learned counsel for the respondents on the other hand submitted that the appeal No. 284/85 was dismissed on 17.9.87. This statement is also on record vide para 4.63 and para 6& 7 of the counter affidavit (Page 79 and 80 of the paper book) filed by the respondents.

We have no good reason to disbelieve the clear averment made by the respondents in this behalf. In these circumstances, we are of the opinion that apparently the petitioner did not pursue the payment of salary and allowance for the period in question before the Bombay High Court in appeal No. 284/85. The petitioner, however, contends that, if any, order has been passed by

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by the Bombay High Court in the said appeal it has been passed ex parte, as he had no notice of the hearing. The fact remains that the Bombay High Court has dismissed the said appeal. It was for the petitioner to have ensured that he was present in the Bombay High Court when his appeal came up for final disposal. The moot point however, is that consequent to the dismissal of his appeal, the respondents have not taken any follow up action by way of passing any order as to how the period 25.12.82 to 29.11.86 is to be treated for various purposes. It was submitted on behalf of the respondents that a charge-sheet was issued to the petitioner for unauthorised and wilful absence from duty. The petitioner however, submits that the said disciplinary proceedings against him were dropped sometime in 1987. This is clear from his averments made in para 7 of the O.A. (page 19 of the paper book) This averment is not denied in the counter affidavit. There is, therefore, no difficulty in drawing the inference that the disciplinary proceedings were either dropped or not pursued. Once the decision to not to pursue the disciplinary proceedings had been taken, it was the duty of the respondents to pass an order as to how the period in dispute was to be treated for various purposes including pension etc.

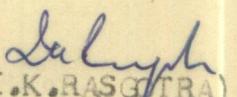
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At this stage the learned counsel for the respondents fairly conceded that no order appears to have been passed by the respondents so far.

In the above facts of the circumstances of the case, we order and direct the respondents to pass an order in regard to the treatment of the period for various purposes from 25.12.82 to 29.1.1986.

We, further direct that such an order shall be passed with utmost expedition and preferably within a period of three months from the date of receipt of a copy of this order. The petitioner will be at liberty to agitate the matter further, if he is aggrieved by the order so passed if so advised, in accordance with law. This O.A. is disposed of as above. No costs.


(B.S. HEGDE)
MEMBER (J)


(I.K. RASGOTRA)
MEMBER (A)