

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 823/1988. 198
F.A.-No.

DATE OF DECISION 1st May, 1989.

S. S. Mehra

Petitioner

In person.

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Mrs. Raj Kumari Chopra

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND-12 CAT/86-3-12-86-15,000

(KAUSHAL KUMAR)
MEMBER (A)

(AMITAV BANERJI)
CHAIRMAN.

1.5.1989.

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 823/1988.

DATE OF DECISION: 1st May, 1989.

S. S. Mehra Applicant.

v/s.

Union of India Respondents.

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.
Hon'ble Mr. Kaushal Kumar, Member (A).

Applicant In person.

Respondents Through Mrs. Raj Kumari
Chopra, Counsel.

(Judgement of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member.)

JUDGEMENT

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was prematurely retired from service as Superintendent Group 'A', Office of the Collector, Central Excise, Kanpur, and subsequently reinstated in service, has claimed that the period between premature retirement and reinstatement should be treated as one on duty and he should be paid full salary for the said period.

2. The facts of the case may be briefly noticed below:

The applicant was working as Superintendent in Central Excise under the Collector of Central Excise, Kanpur. He was prematurely retired from service in public interest under F.R. 56(j) on the recommendations of the Review Committee by order dated 20th December, 1975. However, the order took effect from the date of service of the order viz., 23.12.1975 (A.N.). His representation against premature retirement was rejected by the President vide letter No. A.38013/9/77-CERC(Adm)(M), dated 4th March, 1977 addressed by the Department of Revenue and Banking (Revenue Wing), Government of India, New Delhi to the Collector of Central Excise, Kanpur. However, he was

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subsequently reinstated in service on 26th July, 1977, and the period intervening between the date of his premature retirement and reinstatement was regularised by sanction of leave on full pay and half pay as due to the applicant. The applicant filed a writ petition in the High Court of Delhi under Article 226 of the Constitution praying that the order passed by the Collector, Central Excise, Kanpur dated 30.3.78 treating the period between his premature retirement and reinstatement as leave on full and half pay should be set aside and he should be considered to be on duty during that period. The said writ petition stood transferred to this Tribunal under Section 29(1) of the Administrative Tribunals Act, 1985 as T.A. No.1056/85 and was disposed of by a Bench of this Tribunal by judgement dated 31.12.1986. The Application was allowed in part and the impugned order dated 30.3.1978 was set aside; but the respondents were directed that a decision about how the period between ^{the} petitioner's premature retirement and reinstatement should be treated should be determined after giving a show-cause notice to the petitioner and considering his representation thereon. In pursuance of the aforesaid judgement, the Central Excise Collectorate, Kanpur issued a show cause notice to the applicant on 23.2.87 (filed as Annexure A-(VI) to the Application). The applicant submitted his reply to the show cause notice on 4.3.1987 (filed as Annexure A-VII to the Application). The Collector, Central Excise, Kanpur, after considering the reply of the applicant passed ^{the} order dated 14.7.1987 that the intervening period between the date of premature retirement and the date of reinstatement shall be treated as leave of the kind due to him i.e., as Earned Leave for 109 days and half pay leave for 471 days. The applicant filed an appeal against the said order which was rejected by the President vide order dated 2.3.1988.

Mr. Mehta It is this order which has been impugned in the present O.A.

3. The applicant who argued his case in person contended that he having been reinstated in service was entitled to full salary for the intervening period between the date of premature retirement and reinstatement since the premature retirement was founded on pseudonymous complaints and it was a case of personal victimisation by the Department. In this connection, he also referred to the instructions issued by the Government of India, Ministry of Home Affairs, vide Office Memorandum No. 25013/14/77-Estt. (A), dated 10th August, 1978 on the subject of "PREMATURE RETIREMENT OF CENTRAL GOVERNMENT SERVANTS". Para 2 of the instructions envisages that "where the review / representation committee records a definitive finding that the premature retirement of the Government servant was on account of political or personal victimisation, the intervening period should be treated as duty with full pay and allowances."

4. Learned counsel for the respondents Mrs. Raj Kumari Chopra, on the other hand, pleaded that the applicant was reinstated in service as a matter of grace and this was not a case of personal victimisation. Accordingly he was not entitled to claim that the intervening period should be treated as one on duty.

5. We have examined the relevant files and find that the Review Committee had taken into account various factors relating to his performance and integrity before recommending his premature retirement. His representation against premature retirement was rejected by the President vide letter dated 4th March, 1977 extracted below: -

" F. No. A.38013/9/77-CERC(Adm)(M)
Government of India
Department of Revenue and Banking
(Revenue Wing)

New Delhi, the 4th March, 1977.

To


The Collector of Central Excise,
Kanpur.

Subject: Representation from Shri S. S. Mehra,
Superintendent of Central Excise, Group B
against his premature retirement.

" Sir,

I am directed to say that after careful consideration of the matter, the President has decided to reject the representation submitted by Shri S. S. Mehra, Supdt. of Central Excise, Group B of your Collectorate against his premature retirement. He may please be informed accordingly.

2. The C.C. Roll of Shri S. S. Mehra, is returned herewith. Its receipt may please be acknowledged.

Yours faithfully,

Sd/- V. Aiyaswamy
Under Secretary to the Govt. of India."

In view of the above letter, the contention of the applicant that he was reinstated in service on the recommendations of the Representation Committee cannot be upheld. The background of his reinstatement is explained in the note dated 21st July, 1977 recorded by the Finance Secretary, Government of India, in file No.A.38013/25/77-CERC(ADMN)(N), which is extracted below: -

" I have discussed this matter with F.M. While F.M. is agreeable to the re-instatement of Shri Mehra, he is rather alarmed at the suggestion that in these cases we are proposing to treat the entire period as duty entitling the officer to the benefit of both pay and allowances from the date of pre-mature retirement to the date of re-instatement. F.M. feels that this is not at all necessary. The pre-mature retirements which were ordered were done on a regular basis following regular procedures. Our re-examine and review of these cases does not imply that there was any irregularity in the previous orders passed. It only means that we have exercised our discretion a little more liberally than was done in the past. This is an act of grace to the concerned Government officials...."

6. Paras 1 and 2 of the O.M. dated 10.8.1978 (filed as Annexure R-II to the counter-affidavit) are extracted below: -

" The undersigned is directed to refer to paras (4) & (5) in Part III of this Department's O.M. No.25013/14/77-Estt. (A), dated 5th January, 1978, which inter alia provides that the authority ordering

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reinstatement of a prematurely retired Government servant can treat the period intervening between the date of premature retirement and the date of reinstatement as duty or as leave due or dies non as the case may be, taking into account the merits of each case.

"2. It has been represented to this Department that wherever an employee, on consideration of his representation, is reinstated, the intervening period should be treated as duty and he should be paid full salary on the ground that it could be safely concluded that but for the emergency, the Government servant would not have been prematurely retired at all. The matter has been considered carefully in consultation with the Ministry of Finance and it has been decided that where a Government servant had been prematurely retired on account of political or personal victimisation, there would be some justification in treating the period as duty with full pay. As such, where the review / representation committee records a definitive finding that the premature retirement of the Government servant was on account of political or personal victimisation, the intervening period should be treated as duty with full pay and allowances. In other cases, it would not be appropriate to treat the period during which the employee had not worked, as duty and allow him duty pay for the same. In such cases, the period may, as hitherto, be treated as leave due and admissible or dies non as the authority ordering reinstatement decides."

7. We are satisfied that this is not a case where the premature retirement of the applicant can be considered as one of personal victimisation. The same view was expressed by another Bench of this Tribunal while deciding T.A. 1056/85 in its judgement dated 31.12.1986. In para 4 of the judgement, the Bench observed "It will, thus be clear that the petitioner was not a victim of political victimisation or personal vendetta on the basis of which alone he could have claimed the period in question to be treated as on duty."

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The short ground on which the Bench quashed the order treating the intervening period as leave of the kind due was that the decision had

been taken without giving a show cause notice to the petitioner and considering his representation in accordance with the principles of natural justice. Now that the show cause notice had been issued to the applicant and his reply duly considered, we do not find any infirmity either in the order dated 14.7.1987 passed by the Collector of Central Excise, Kanpur or the order dated 2.3.1988 of the Ministry of Finance (Department of Revenue), rejecting his appeal. The applicant has failed to establish that his premature retirement was based on political or personal victimisation and, therefore, he cannot claim the protection of the Office Memorandum dated 10th August, 1978 for treating the said period as one on duty. The Bench of this Tribunal which gave its judgement on 31.12.1986 also held:

"It will thus be clear that even though the impugned order was passed on 30.3.78 the case of the petitioner will have to be covered by the aforesaid C.M. of 10.8.78. According to this O.M. the period in question can be treated as on duty if the representation committee which recommended his reinstatement had given the finding that the petitioner's case was a case of victimisation."

8. The applicant also raised the plea of discrimination and infringement of Articles 14 and 16 of the Constitution. He stated that officers S/Shri H. S. Siddique and D.C. Ahuja like the applicant were prematurely retired from service and reinstated afterwards and that in their cases the intervening period was treated as one on duty. In reply to para 6.12 of the Application where this ground has been urged, the respondents have stated in the counter-affidavit as follows:

"It is submitted that the order dated 2.3.88 does not suffer from any infirmity or vice. A distinction has to be maintained between the case of S/Shri H. S. Siddique and D.C. Ahuja on the one hand and Shri Mehra on the

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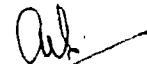
other. While both S/Shri Siddique and Ahuja had been re-instated vide orders dated 24.6.77 and 29.4.77, after their retirement was held as bad and the intervening period between retirement and re-instatement treated as duty, in the case of Shri S.S. Mehra, his retirement had not been held as bad but he was re-instated as an act of grace."

9. Unless it is established that the applicant is similarly situated as the other officials referred to by him, the protection of Articles 14 and 16 of the Constitution cannot be claimed.

10. In view of the above discussion, we do not find any merit in the present application, which is accordingly dismissed with no order as to costs.



(KAUSHAL KUMAR)
MEMBER (A)



(AMITAV BANERJI)
CHAIRMAN

1.5.1989.