

Central Administrative Tribunal
Principal Bench New Delhi.

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Date of decision: 16.5.1989

Regn. No. O.A. 889/86.

Shri Amar Chand Arora ... Applicant

vs.

Union of India & Ors. ... Respondents.

CORAM:

Hon'ble Mr. P.Srinivasan, Member (A)

Hon'ble Mr. T.S. Oberoi, Member (J)

For the applicant: Shri Randhir Jain, Advocate.

For the respondents: Shri N.S. Mehta, Sr. Standing counsel

ORDER.

This application has come up before us for hearing today. Shri Randhir Jain, learned counsel for the applicant and Shri N.S. Mehta, learned Senior Standing Counsel for the respondents have been heard.

2. This application was filed on 9th October, 1986. In this application, the applicant is aggrieved with three orders dated 18.10.1967, 25.11.1972 and 2.1.1973 passed by the respondents. By the first mentioned order, the respondents decided that the applicant would be paid only an amount equal to the subsistence allowance for the period 8.11.1963 to 30.7.1967 when he was under suspension pending institution of departmental enquiry. By the second mentioned order, the respondents decided to exclude the aforesaid period from 8.11.1963 to 30.7.1967 from the service of the applicant and to reduce his seniority accordingly. In other words, the date of his appointment,

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which was 10.9.1951 was postponed to 3.6.1955 for the purpose of determining his seniority. The next order of 2.1.1973 was also to the same effect but this order was passed by the Government of Arunachal Pradesh, under whom the applicant was working, while the earlier order dated 25.11.1972 was passed by the Government of India at Delhi.

3. During the course of hearing of the Original Application with the prayers mentioned above, it transpired that the applicant's review petition against the penalty imposed upon him in the disciplinary enquiry had been disposed of on 18.7.1985 by the Reviewing Authority. The applicant averred at that time that a copy of this order had not been served on him. He was given liberty to challenge this order a copy of which was actually filed alongwith the reply of the respondents dated 4.3.1987 filed in these very proceedings. The applicant was allowed to file an amended application adding one more prayer challenging the review order dated 18.7.1985. The net result of all this is that as on today, the following orders are under challenge:-

- (i) Order dated 18.10.1967,
- (ii) Order dated 25.11.1972,
- (iii) Order dated 2.1.1973 and
- (iv) Order dated 18.7.1985

all of which have been referred to above.

4. At one stage, the applicant went to the High Court of Gauhati contending that he may be paid full pay and allowances for the period 8.11.1963 to 30.7.1967. This was the subject-matter of Civil Rule No. 203 of 1975 before the said High Court which was disposed of by a Single Judge Bench of that High Court on 21.3.1980. The operative portion of the judgment reads as follows:-

"...It is directed that orders at Annexure H dated 18.10.1967, Annexure I dated 25.11.72 and Annexure J dated 2.1.73 would remain inoperative till the revision/review petition, which is said to be pending before the President relating to these matters is disposed of after giving the petitioner an opportunity of being heard..."

5. It may here be mentioned that the suspension of the applicant during the period 8.11.1963 to 30.7.1967 was made in connection with the departmental proceedings initiated against him and the said disciplinary proceedings ended in an order of penalty dated 21.1.1965 removing the applicant from service by the Disciplinary Authority. The applicant thereupon filed an appeal which was disposed of by an order dated 18.7.1967 by which the penalty of removal was reduced to withholding of one increment for three years without cumulative effect. As against this order, the applicant made a review petition to the President on 8.2.1974. This was the review petition pending when the Single Judge Bench of the Gauhati High Court passed the order referred to above. In effect, therefore, the High Court directed that the application for review filed in the disciplinary proceedings be first decided after giving the petitioner an opportunity of being heard and thereafter, the question as to how the period of suspension from 8.11.1963 to 30.7.1967 should be treated and how much amount should be paid to the applicant by way of pay and allowances for this period, which was the subject matter of the three orders dated 18.10.1967, 25.11.1972 and 2.1.1973, be decided.

6. As we have already indicated, the review application against the appellate order was filed by the applicant on 8.2.1974 and this was decided by an order dated 18.7.1985. We need not enter into the controversy as to whether this order was served on the applicant or not at the time when it was passed. Suffice it to point out that when disposing of the review application, the reviewing authority did not give the applicant an

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opportunity of being heard, as was directed by the High Court of Gauhati. That has to be done. The question of treatment of the period of suspension and the pay and allowances to be paid to the applicant for that period will have to be considered under F.R. 54 after the review application is decided and here also, F.R. 54 requires a notice to be given to the Government servant before passing final orders which the respondents will have to do.

7. In view of the above, we pass the following orders:-

i) We set aside the order in review dated 18.7.1985 passed by the reviewing authority and direct him to give the applicant an opportunity of being heard and dispose of the review application thereafter. The reviewing authority is directed to dispose of the review application in this manner within three months from the date of receipt of this order.

ii) After the review application is disposed of, the competent authority under F.R. 54 will determine, after giving the applicant a notice and considering the representation of the applicant, i

any, in reply to that notice, the quantum of pay and allowances payable to the applicant for the period of suspension from 9.11.1963 to 30.7.1967 and as to how the suspension period ~~shall~~ ^{should} be treated for all purposes. This should be done within a period of two months from the date of disposal of the review application. To enable them to do so, the impugned orders dated 18.10.1967, 25.11.1972 and 2.1.1973 are also set aside.

iii) Needless to say that if the applicant is still aggrieved with the orders to be passed by the reviewing authority or by the competent authority under F.R. 54, he will have the liberty to

challenge those orders before this Tribunal,
if he deems fit.

8. The application is disposed of in the above
terms, leaving the parties to bear their own costs.

T.S. Oberoi
(T.S. Oberoi)
Member (J)

P.S. Srinivasan

(P.Srinivasan)
Member (A)