

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 910/87
T.A. No.

198

DATE OF DECISION 7th July, 1988.

Shri Jai Prakash Gupta

Petitioner

Shri Sant Lal

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent(s)

Shri P.P. Khurana

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judicial)

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *N*
4. Whether to be circulated to all the Benches ? *N*

S.P. Mukerji
(S.P. Mukerji)
Member

P.K. Kartha
(P.K. Kartha)
Vice-Chairman.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

DATE OF DECISION: 7-7-1988.

Regn. No. O.A. 910/87.

Shri Jai Prakash Gupta ... Applicant
Vs.

Union of India & Ors. ... Respondents.

CORAM:

Hon'ble Mr. P.K. Kartha, Vice-Chairman.

Hon'ble Mr. S.P. Mukerji, Administrative Member.

For the applicant: Shri Sant Lal, counsel.

For the respondents: Shri P.P. Khurana, counsel.

JUDGMENT
(delivered by Hon'ble Mr. S.P. Mukerji, AM)

The applicant was promoted from the post of Postal Clerk to the higher scale of lower selection grade with effect from 30.11.1983. He was placed under suspension on 12.4.1985 in contemplation of disciplinary proceedings, but the order of suspension was revoked within less than a month on 29th/30th April, 1985. No charge-sheet has so far been issued against the applicant. However, by a Memo. dated 28.7.1986, the applicant was ordered to be prematurely retired.

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after the expiry of three months from the date following the service of notice or 29th October, 1986, whichever was later. During the period of notice, the applicant filed an appeal to the Post-Master General on 28.8.1986, followed by another representation on 24.9.1986. No decision was communicated on the representations to the applicant. The applicant was retired with effect from 29.10.1986. The representations were returned to the applicant on 19.11.1986 with the direction to submit them again to be addressed to the Member (P), Postal Services Board. The applicant submitted further representation on 3.12.1986 alongwith his earlier appeals but no decision was communicated to him till he moved the Tribunal with this application dated 29th June, 1987. However, it appears that during the pendency of this application before us, the respondents passed an order (Annexure R-1 to the counter affidavit) dated 20th July, 1987 on his representations, in the following terms:-

"I am directed to refer to your office D.O. No. Staff/H-1/60/86 dated 25.6.87 on the subject mentioned above and to say that the representation of Shri J.P. Gupta has been considered by the representation Committee and it has been decided to retain the official in service. The official may, therefore, be informed accordingly.

The period of absence from duty may be treated as leave due and admissible. The CR dossier and service book F.N. BJ-53 is enclosed as they are no longer required by us. Compliance of these orders may please be reported."

2. The applicant has prayed that the impugned order of premature retirement should be set aside and the period from the date of retirement to the date of joining duty should be treated as period spent on duty for all purposes, alongwith several consequential benefits.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The learned counsel for the respondents argued that since the order of premature retirement has been withdrawn and the period of absence from duty from the date of premature retirement to the date of joining duty has been treated as on leave, the application should be dismissed as infructuous. The learned counsel for the applicant, however, has argued that even though the order of premature retirement has been withdrawn, the consequential relief claimed by him to the effect that the intervening period of absence should be treated as on duty, has not been granted. The learned counsel for the respondents argued to say that since the applicant did not discharge any duty during this intervening period, he is not entitled to get this period counted as on duty with full pay and allowances.

4. We are not inclined to accept the argument of the learned counsel for the respondents that having rendered no work, the applicant is not entitled to be considered to be on duty during the intervening period subsequent to the date of premature retirement. The respondents have themselves unreservedly withdrawn the impugned order of premature retirement. Accordingly, the applicant is entitled to get all the benefits of pay and allowances etc. as if the impugned order had not been passed. As a matter of fact, in accordance with Section 19(4) of the Administrative Tribunals Act, 1985, once the application has been filed, the respondents are debarred from passing any order on his representations, favourable or unfavourable to him. In the instant case, by passing an unfavourable order on his representation regarding premature retirement, to the respondents seem to deprive him of getting the intervening period counted as on duty. The respondents cannot be allowed to frustrate the reliefs claimed by him from the Tribunal by passing an order, which is partly favourable and partly unfavourable to him, during the pendency of the application before us.

5. Otherwise also, there is no reason why the applicant be deprived/full pay and allowances for the intervening period merely because the respondents had passed an order of premature retirement of the applicant which they subsequently withdrew.

The Supreme Court, in A.L. Kalra Vs. Project & Equipment Corporation, (1984) 3 SCC 316 (para. 33), observed that where removal from service is bad in law, no other punishment in the guise of denial of back wages can be imposed. The instant case is on a much stronger footing inasmuch as the respondents themselves have unreservedly withdrawn the impugned order of premature retirement of the applicant.

Having done so, they cannot deprive him of the full pay and allowances during the intervening period.

6. In the circumstances indicated above, we allow the application with the direction that the impugned order dated 28.7.1986 should be deemed to have been non est and the applicant should be given all consequential benefits with full pay and allowances during the period of his forced absence from the date of retirement to the date of his reinstatement, as if the impugned order did not exist. The period of absence shall be considered to be the period spent on duty for all other purposes also. The payment

of arrears of pay etc. should be made good to the applicant within a period of one month from the date of communication of this order. There will be no order as to costs.

Surya P. Mukerji
(S.P. Mukerji)
Administrative Member

P.K. Kartha
7/7/88
(P.K. Kartha)
Vice-Chairman.