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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1236 198 7
T.A. No.

DATE OF DECISION 24.10.1988

Shri Har Lal

Petitioner

Shri G.N.Oberoi,

Advocate for the Petitioner(s)

Versus

Union of India & others

Respondent s

Shri M. L. Verma,

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. Ch.Ramakrishna Rao, Member(J)

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 to be circulated to all the Benches ? No

(CH.RAMAKRISHNA RAO)
MEMBER(J)

(KAUSHAL KUMAR)
MEMBER(A)

24.10.88

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

REGN.NO. OA 1236/87

Date of decision: 24.10.1988

Shri Har Lal Applicant

Vs.

Union of India & others Respondents

CORAM: Hon'ble Mr. Kaushal Kumar, Member(A)
Hon'ble Mr. Ch. Ramakrishna Rao, Member(J)

For the Applicant Shri G.N.Oberoi, Counsel.

For the Respondents Shri M.L.Verma, Counsel

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

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was serving as a Fitter in the ESD, Delhi Cantt. under the Ministry of Defence and retired on 31.10.76 has prayed that his pensionary benefits should be finally settled after counting the entire period of his service from 1.1.47 to 31.10.76 as pensionable service including the period when he served as a Casual Labourer. In paragraph 6.5 of their counter affidavit, the Respondents stated that ".... The period of Casual Service from 1.1.47 to 31.7.49 has already been counted to his pensionary benefits and service from 27.4.1968 to 8.5.72 has been treated as dies-non." Learned counsel for the applicant disputed this position and contended that the period of service as Casual Labourer has not been taken into account in computing the pension of the applicant. Accordingly the Respondents were asked to file a detailed calculation sheet showing as to how his pension had been worked out indicating inter alia the period of service which had been taken into account for the said purpose.

The Respondents have filed a copy of the letter dated 7.10.1988 from the office of CDA(P), Allahabad, explaining the position in this regard and Annexure 'A' thereto shows the calculation of the pension in respect of the applicant. A copy of this letter has been furnished to the learned counsel for the applicant. It clearly shows that the period of Casual Labour service from 1.1.47 to 31.7.49 has been taken into account for the purpose of pension.

2. The only contention of the learned counsel for the applicant which remains to be considered is regarding the period from 27.4.1968 to 8.5.1972 which has been treated as dies non. Learned counsel for the applicant contends that this should not have been excluded for the purpose of calculation of pension of the applicant and that this amounts to double jeopardy. In the present case the applicant had earlier been dismissed from service with effect from 27.4.1968 on grounds of conduct which led to his conviction by a Criminal Court. Subsequently, this order was reviewed vide order dated 28.4.1972 filed as Annexure 'A-3' to this application. The last paragraph of the said order is extracted below:-

"Now, therefore, the President, in exercise of the powers vested in him under Rule 29(1)(i) of CCS(CC&A) Rules, 1965, hereby sets aside the order of dismissal dated 14.6.68 passed by GE Engineering Park, Delhi Cantt. and both order that the penalty of dismissal from service be reduced to that of "Withholding of increments for two years without cumulative effect." Consequently, Shri Har Lal is reinstated in

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service from the date he resumes duty. The intervening period, between the date of dismissal to the date preceding his reinstatement will be treated as dies-non.*

3. From the above order, it is seen that whereas the order of dismissal dated 14.6.1968 was set aside and the penalty of dismissal reduced to that of withholding of ~~two~~ increments for two years without cumulative effect, the period between the date of dismissal and the date of reinstatement in service was ordered to be treated as dies-non vide order dated 28.4.1972. This order was never questioned by the applicant at any subsequent stage even till the date of his retirement. It is not open now to the applicant after a period of fifteen years to challenge that order as being void or illegal as contended by the learned counsel for the applicant. The calculation of pension based on qualifying service as per service record of the applicant having been found to be correct, the period which was ordered to be treated as dies-non on 28.4.1972 cannot be questioned at this stage.

4. This application is accordingly dismissed with no order as to costs.

Ch. Ramakrishna Rao

(CH. RAMAKRISHNA RAO)
MEMBER(J)

Kaushal Kumar

(KAUSHAL KUMAR)
MEMBER(A)

24.10.1988