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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA No.10/90.

New Delhi, this the 24th day of May, 1994.

SHRI J.P. SHARMA, MEMBER(J).

SHRI B.K. SINGH, MEMBER(A).

Shri I.K. Nihalani,  
Ex-Director/Superintending Engineer,  
Central Water Commission, Sewa Bhavan, R.K.Puram,  
New Delhi.

...Applicant

By advocate : Shri B.S.Mainee.

VERSUS

Union of India: Through:

1. The Secretary,  
Ministry of Water Resources,  
New Delhi.
2. The Chairman,  
Central Water Commission,  
R.K. Puram, New Delhi.

...Respondents

By advocate : Shri K.L. Bandula.

ORDER (ORAL)

SHRI J.P.SHARMA:

The applicant who initially joined as Research Assistant in October, 1956 was promoted as Dy. Director sometimes in the year 1970 and from 1982 he was given ad hoc promotion to the post of Director/Superintending Engineer. Initially, he applied 120 days' leave from 21-5-84 to 17-9-84 and went abroad on domestic affairs. The applicant thereafter applied for sanction of further leave from 18-9-84 for 120 days which was not sanctioned and the applicant was, therefore, asked to join and explain. The applicant, however, sought advice for seeking voluntary retirement from service and asked for the necessary form. The respondents considered the request of the applicant and by the order dated 9-12-87, his request was accepted w.e.f. 31-10-1986. The terminal

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benefits of the applicant were prepared including the pension as per chart filed by the applicant as annexure A-4. The grievance of the applicant is that the period of the sanctioned leave from 17-5-84 to 17-9-84 should have been treated as a period when the applicant was on the post of Superintending Engineer/Director. The respondents cannot affect a deemed reversion of the applicant without passing a specific order. The contention of the applicant is also that those Deputy Directors along with the applicant on ad hoc basis continued to work without any reversion. The applicant, therefore, has prayed for the grant of the relief that his salary for 308 days of half pay leave which was at the credit of the applicant be paid to him which has been debited against the leave. The qualifying average emoluments of the applicant be calculated treating the applicant as Director/Superintending Engineer for the period from 21-5-84 to 17-9-84. The salary of the applicant be directed to be re-fixed by giving benefits of 20 per cent as per Fourth Pay Commission's report.

2. A notice was issued to the respondents. The respondent no.1 has been issued wrongly designated by name as Union of India through Secretary, Ministry of Energy, has been arrayed as party while it should be Secretary, Ministry of Water Resources. The Chairman, Central Water Commission, R.K. Puram, New Delhi, however, contesting this application. There is no contest on behalf of respondent no.1 obviously because he was not impleaded by correct designation. Respondent no.2 opposed the grant of the relief to the applicant on a number of grounds. It is stated that the applicant went to America while he took leave for his domestic affairs. He has not taken proper permission before leaving for abroad. The leave application dated 19-5-84 Annexure-I has been filed. In this leave application, the applicant has not mentioned that he is leaving for abroad. The grant of this leave was, however, conditional. The letter of sanction dated 27-4-84 goes

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to show that he has been sanctioned leave of 120 days that if he had not gone on leave, he has remained on the post of Superintending Engineer. Another person was made in-charge for the work being discharged by the applicant during this period. The applicant was informed by letter dated December 14, 1984 that his request for further grant of leave was considered and not acceded to and he shall be treated on unauthorised overstay w.e.f. 17-9-84. He was also advised to return to India immediately. In a communication addressed by the applicant dated 15-12-84 to Under Secretary, CWC, R.K. Puram, New Delhi he said that he is willing to take voluntary retirement. By the letter dated 23-1-85, the applicant was asked to reply to four queries of his notice of voluntary retirement which are (1) that he has not approached any foreign agency for financial assistance; (2) that he has not entered into any type of correspondence with any foreign agency; (3) that he has not taken employment with any foreign employer; and (4) that he has not taken part in any activity abroad which contravenes the provisions of CCS (Conduct) Rules, 1964, as amended from time to time. In a note appended to that letter, it is also mentioned that the applicant went abroad without any permission and it was mandatory on his part to take 'No objection' from this office. A copy of the letter was also forwarded to the Embassy of India, New York. The applicant replied to this memo by his letter dated 15-2-84. He omitted to answer any of the aforesaid four queries and only pressed for voluntary retirement. It is in this manner that the applicant has been paid retirement benefits according to rules and the applicant though promoted on ad hoc basis to the post of Director/Superintending Engineer was deemed to have been reverted to his substantive post of Deputy Director w.e.f. 17-5-84 as he did not join his duties after availing of 120 days' leave granted on half pay.

3. We have also seen the rejoinder filed by the applicant. We heard the learned counsel for the applicant at length and Shri

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K.L. Bandula, counsel for respondent no.2. None is present on behalf of respondent no.1. During the course of the arguments, the counsel for the applicant has mainly pressed the grant of salary for the period from 17-5-84 to 17-9-84 of the post of Superintending Engineer/Director while he has been paid of the post of Deputy Director. In fact, the applicant should have been considered to be on duty during this period but the fact remains that he obtained the sanction of the leave by concealing material fact. In the leave application, he only mentioned the necessity of leave on account of domestic affair. But he went out of India without observing the formalities required to be undergone by an employee of Union of India and particularly of the rank of the applicant who was at the relevant time Director/Superintending Engineer. The respondents have taken the stand that unless the applicant has not joined after 17-5-84 and he sought voluntary retirement even while he was abroad w.e.f. 30-1-1986, he is not entitled to claim salary for the post of Superintending Engineer/Director as he has not joined that post till his voluntary retirement. As regards the calculation of pension, the applicant should have no grievance as for determining qualifying average emoluments under rule 34 of the CCS (Pension) Rules, 1972, in Note 2, it is mentioned :

" If, during the last ten months of his service, a Government servant had been absent from duty on extraordinary leave, or had been under suspension the period whereof does not count as service, the aforesaid period of leave or suspension shall be disregarded in the calculation of the average emoluments and equal period before the ten months shall be included. "

4. Under rule 25 of the CCS Rules, 1975, a Government servant who remains absent after the end of leave is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account though it was half pay leave, to the extent such a leave is due, the period in excess of

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that leave being treated as extra ordinary leave. While making calculation of the pension of the applicant, the period of ten months has been taken into account of the basis of the scale of pay he has drawn of the post of Deputy Director. There is no illegality in this regard nor the counsel for the applicant has referred to any other material relevant applicable rule, order or notification to support the claim of the applicant. The learned counsel for the applicant only argued on the point of reversion and he has also referred to the case of P.L.DHINGRA that reversion may amount to punitive action which can only be after drawing departmental disciplinary proceedings and not otherwise. Here the case is not of reversion though the respondents have used the phrase 'deemed reversion'. In fact, it is a case where the officer has gone on leave got it sanctioned on certain grounds for four months, overstayed, does not return to join the post and seeks voluntary retirement while out of India. Here, the question of payment of salary for the period when the applicant was on sanctioned leave has been considered by the respondents. Since the sanction of the leave was obtained on certain representation which, according to the respondents, was not correct expression of facts as the applicant has concealed of his going abroad, so order of sanction of leave by itself became <sup>en</sup>unforceable. In such an event, the scope for interference of the Tribunal is limited on the principles of equity. The applicant has not done equity, so he cannot also earn equity in his favour. He has not been straight forward and also suppressed material fact. It may amount to misrepresentation. Though normally, we would have held that for the sanction leave, a person is entitled to wages of the post on which the leave sanctioned but in the particular circumstances of the case, we are not inclined to interfere in the order of the respondents.


5. We have already considered the grant of the calculation


of the pensionary benefits to the applicant and there is nothing wrong in the same.

6. The relief for treating 308 days as on leave by the applicant, the relief is totally misconceived. He was expressly told when he applied for sanction of leave that his case was considered for grant of leave and not acceded to and he was asked to join the post. The respondents have accorded under rule 25 of the CCS (Leave) Rules, 1972.

7. Regarding the relief that the salary of the applicant be fixed giving the benefits of 20 per cent benefit as per Fourth Pay Commission's report, the same has not been pressed nor we get any idea of this relief from the averments in the pleadings of the applicant. The applicant cannot get the fixation of pay on the recommendations of the Fourth Pay Commission under the Pay Rules of 1987 because he remained totally out of active duty after 21-5-84. The period beyond 21-5-84 has been adjusted against any kind of leave due to calculate his qualifying service upto the date of pre-mature retirement, i.e., 30-1-1986.

8. The application is, therefore, totally devoid of merit and is dismissed, leaving the parties to bear their own costs.

  
(B.K.SINGH)  
MEMBER(A)

  
(J.P.SHARMA)  
MEMBER(J)

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