

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

...

R.A. No. 261 of 1995 in
O.A. No.1183 of 1991.

(25)

Dated New Delhi, this 07th day of December, 1995

Hon'ble Mr A. V. Haridasan, Vice Chairman(J)
Hon'ble Mr K. Muthukumar, Member(A)

Shri D. Kumar
R/o 2F, MSD Flat
Minto Road
NEW DELHI-110 002.

Review
... Applicant

versus

1. Council of Scientific & Industrial Research
Through its President
Anusandhan Bhawan
Rafi Marg
NEW DELHI-110 001.
2. The Director General
Council of Scientific & Industrial Research
Anusandhan Bhawan
Rafi Marg
NEW DELHI-110 001.
3. Indian Institute of Petroleum
Through its Director
P.O. Mokhampur
DEHRADUN-248 005.

... Respondents

O R D E R (By circulation)

Mr K. Muthukumar, M(A)

By this Review Application, the applicant prays for review/recall of the order dated 28.7.95 passed in O.A.1183/91. The main ground adduced is that the judgement in K. L. Anand Vs CSIR (1992 (2) ATC 46) cited by the learned counsel for the applicant during his arguments has not been considered and that the said judgement has a crucial bearing on the issue involved. The applicant also submits that the conditions laid down under Order 47 Rule 1 of CPC are also satisfied in the present case.

Contd...2

W

26

2. The issue involved is regarding the order of the competent authority treating the period from the date of compulsory retirement to the date of reinstatement as dies non. In the O.A. it was argued that the period from the date of compulsory retirement to the date of reinstatement was unauthorisedly treated as dies non by the modified order of the Reviewing Authority and no opportunity was provided to the applicant before such order was passed. In our order we had clearly pointed out that the case of the applicant is well under the provisions of sub rule (4) of F.R.54. There is no dispute about this. We had also pointed out that the aforesaid sub rule was subject to sub rule (5) and sub rule (7). Sub rule (5) of the aforesaid rule clearly provides as follows:

"In a case falling under sub rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be treated so for any specified purpose:

Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant."

(Emphasis added)

Since the order of the competent authority was in accordance with the aforesaid sub rule (5) of F.R.54 which did not provide for any opportunity to the applicant before passing such an order, We held that the contention of the applicant was untenable.

Contd...3

h

27

Besides, it was open to the Government servant to make suitable submissions before the competent authority regarding the period of absence from duty for conversion into leave of any kind due and admissible. It has not been pleaded in the O.A. that the applicant had desired so and inspite of that, the competent authority had refused. We found that the order passed by the competent authority treating the period from the date of compulsory retirement to the date of reinstatement as dies non could not be held to be illegal as it was quite within the provisions of the aforesaid sub rule. Regarding the contention that the Tribunal had not taken into account the judgement in K. L. Anand (supra), we had seen the aforesaid decision. In the aforesaid case, it was pointed out that in the final orders passed by the Director General, C.S.I.R. on 30.10.86 no mention had been made as to how the period of absence from 1981 to 1986 should be treated and the order only mentioned that the period from the date of removal from service to the date of reinstatement should be regularised as E.O.L. and that according to rule 25 of the Leave Rules whether such break should be ~~condoned~~ or not and ^{treated as} ~~dies-non~~ should be considered after conclusion of disciplinary proceedings and ^{that too} after the Government servant represents in this regard. The above decision is with reference to facts and circumstances and arguments in that case. In the present case however the applicant in the O.A. had pleaded that the order of the competent authority

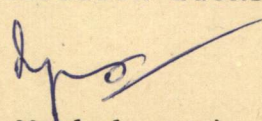
h

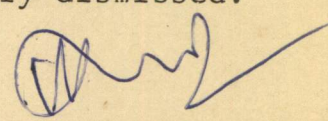
23

treating the period of absence from duty as dies-non without providing an opportunity was illegal and arbitrary. There is no provision in the aforesaid sub rule for providing an opportunity to the applicant. On the other hand, the rule specifically provides that the period of absence from duty shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be treated so for any specified purpose. However, by the proviso to the aforesaid sub rule it was open to the Government servant, if he so desires, to move the competent authority for converting the period of absence from duty into leave of any kind due and admissible. There was no averment in the O.A. to the effect that the competent authority had denied such conversion of the period of absence from duty into leave of any kind due and admissible although the applicant so desired.

3. In the light of the above, it cannot be said that the order passed by the competent authority would be illegal and unjust.

4. In the light of the above, we find the Review Application lacks merit and is accordingly dismissed.


(K. Muthukumar)
Member(A)


(A. V. Haridasan)
Vice Chairman(J).

dbc