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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

CP 168/1994 in OA 114/91

New Delhi, this 18th day of January, 1995

Hon'ble Shri Justice S.C. Mathur, Chairman
Hon'ble Shri P.T.Thiruvengadam, Member (A)

Shri R.N. Narula
C28/70-C, Janapuri
New Delhi

.. Applicant

By Shri S.S.Duggal, Advocate

versus

1. Shri K.A. Nambiar
Secretary
Ministry of Defence, New Delhi

2. Lt. General J.S. Ahluwalia
DGEME, Army Hqrs., New Delhi .. Respondents

By Shri M.K.Gupta, Advocate

ORDER(Oral)

By Shri Justice S.C. Mathur, Chairman

CP 168/94, MA 3535/94, MA 3416/94 and MA 145/95 all
arise from OA 114/91, which was disposed of on 29.9.93.

2. In the OA, the claim of the applicant was that he sought voluntary retirement before reaching actual age of superannuation and later on he withdrew it and still he was allowed to continue in service only upto 3.10.90 by order dated 9.10.90. The applicant filed an OA which was allowed. The operative part of the judgement in OA 114/91 decided on 29.9.93 brings out as follows:

"We, therefore, quash Annexure A-8 order dated 9.10.90 rejecting the applicant's request to withdraw of his voluntary retirement and Annexure A-9 Signal dated 17.10.90 communicating that decision to him and declare that the applicant shall be deemed to be in service from 3.10.90 till the date of superannuation i.e. 31.8.93 and we direct the respondents to give him all consequential benefits within four months from the date of receipt of the order."

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3. In view of the above judgement, the applicant became entitled to payment of salary from 3.10.90 till 31.8.93. He also became entitled to consequential benefits. The salary mentioned therein was not paid to the applicant within the period of 4 months mentioned in the judgement. The applicant accordingly filed CP 168/94.

4. During the pendency of this application, an amount of Rs.1,71,827/- was paid to the applicant on 1.12.94. This amount covers the salary for the period 3.10.90 to 31.10.92. The submission of the learned counsel for the applicant is that the applicant was entitled to all consequential benefits also. One of the consequential benefits was promotion which was due to him before 31.8.93.

5. It is not disputed that the promotion order was issued to the applicant on 18.9.90 and it was served upon him on 20.9.90. It is not disputed by the respondents's counsel that the applicant has not been paid salary of this higher post. This is justified on the ground that the applicant did not take charge of the higher post.

6. The learned counsel for the applicant has not invited our attention to any averment in any application listed before us in which mention has been made that the applicant had actually joined or he was prevented by the respondents from joining the higher post. The learned

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counsel for the applicant says that 23.9.90 was Sunday and that there was no question of joining on that date. We may accept that. However there is no explanation for 21.9.90 or 22.9.90. It is therefore established that the applicant was not prevented from joining the higher post by any action or inaction on the part of the respondents and yet he did not join that post. The promotion order therefore did not take effect. Accordingly, the applicant is not entitled to salary of the higher post. The respondents can not therefore be said to have committed contempt of the Tribunal if the applicant has not been paid the salary of the higher post.

7. In MA 145/95, the applicant has prayed for a direction to the respondents to make payment of certain amount. This amount is related to the promotion to the post of Workshop Superintendent. Since we are of the opinion that the applicant is not entitled ~~for the~~ salary for the post of Workshop Superintendent, this claim is liable to be rejected.

8. In MA 3535/94, the respondents have requested for extension of time to comply with the judgement of the Tribunal. By order dated 31.10.94, extension of time by one month was granted. It was however provided that the applicants' claim for interest will be considered later. Within the period of one month the payment referred to above has been made to the applicant. In the facts and circumstances of the case, we feel that there is no necessity for a direction to pay interest.

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9. In view of the above, CP 168/94 and MA 145/95 are rejected. MP 3535/94 has already been disposed of finally on 31.10.94. No further orders are required on this application. All the applications are thus disposed of. No order as to costs. Notice is discharged.

P. T. Thiruvengadam

(P.T.Thiruvengadam)
Member(A)

S. C. Mathur

(S.C. Mathur)
Chairman

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