

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1272/2004

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New Delhi this the 28th day of July, 2004.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Shri Sutender Kumar,
S/o Sh. Sarup Singh,
R/o C-236, Albert Square,
Gole Market,
New Delhi-1

-Applicant

(By Advocate Shri B.B. Raval)

-Versus-

1. Union of India through
the Secretary (A&C),
Ministry of Agriculture,
(Dept. of Agriculture & Cooperation),
Krishi Bhawan, New Delhi-110 001.
2. Shri K.D. Upreti,
Under Secretary (Admn),
Ministry of Agriculture,
(Department of Agriculture & Cooperation),
Krishi Bhawan, New Delhi-110 001.
3. Shri R.R. Sharma,
Chief Administrative Officer,
Ministry of Agriculture,
(Directorate of Economics & Statistics),
Shastri Bhawan, New Delhi-110 001.

-Respondents

(By Advocate Shri M.K. Bhardwaj)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

The following reliefs have been sought:

"to direct the respondents to clear 15 month pay and allowances w.e.f. 10.3.1998 till 20.6.1999, arrears of increment, and details of payments claimed in the 'grounds' forthwith to the applicant with 24% interest till realization and to be recovered from pockets of those found responsible/accountable and not to make the public exchequer suffer unnecessarily;

ii) award exemplary cost and pass any other Order(s) and issue direction(s) as deemed just and proper in view of the facts of the case."

2. Earlier being aggrieved by treatment of the

period from 10.3.98 to 20.6.99 as break in service under FR

(2)

17 (A) this Tribunal quashed the order for violation of principles of natural justice and without expressing any opinion on the merits of the case passed the following directions:

"22. In the result and having regard to the reasons recorded above, we set-aside Annexure 'E' order dated 12.4.1999 and direct the respondents to enquire into the misconduct of the applicant of remaining absence from 10.3.1998 to 20.6.1999 through a detailed enquiry to be held in accordance with rules where the applicant shall be accorded of a reasonable opportunity to produce his defence and thereafter take a final decision. Respondents are also directed to consider the grievances of the applicant regarding pay and allowances, etc after the proceedings are finalised by passing a detailed and speaking order in accordance with law. We also direct the applicant to extend his fullest cooperation in the disciplinary proceedings. The aforesaid exercise shall be completed within a period of six months from the date of receipt of a copy of this order. It goes without saying that applicant is still aggrieved shall be at liberty to approach this Court in accordance with law."

3. The MA filed for extension of time was turned down.

4. As neither the disciplinary proceedings were finalised by the final order no order has been passed by the respondents regarding pay and allowances to applicant, which gives rise to the present OA.

5. Learned counsel for applicant Sh. B.B. Raval contends that by not finalising the proceedings by issuance of a final order upto 1.5.2003 as the orders passed by the Tribunal were served upon respondents on 1.11.2002 the proceedings are abated and the applicant is entitled for payment of allowances by treating the period

(3)

as spent on duty, as the order of the modified transfer has never been served upon applicant and he was prevented from joining duty without any fault of his.

6. The right of respondents to file reply has been forfeited. However the list of dates have been filed by Sh. M.K. Bhardwaj, learned counsel for respondents. According to him there cannot be an abatement of proceedings and declaration to that effect. As the same has not been prayed for by applicant no direction can be issued on that.

7. It is further stated that after the preliminary inquiry as applicant has adopted dilatory tactics inquiry has been delayed. It is stated that after the preliminary inquiry a regular inquiry is yet to be concluded.

8. We have carefully considered the rival contentions of the parties and perused the material on record.

9. Though we find that applicant in this OA has prayed for payment of pay and allowances and any other order which is deemed just and proper.

10. A Full Bench of this Tribunal in J.M. Burman v. Union of India, 2004 (2) ATJ 340 has answered the reference by observing that:

"failure to comply with the order passed by the Tribunal within the prescribed time the authorities can pass appropriate order and it will not render the order so passed as illegal and not binding if there is an inordinate delay which causes prejudice to the concerned person."

ii. We find from the facts that applicant during the period of leave was transferred to DES, the transfer order was served on 20.2.98, though he reported for duty but was not allowed to join. Subsequently the transfer was modified and the same was not served upon him. During this interregnum the memo treating the period as absence has been issued, which has been set aside.

12. Though the order passed by the Tribunal was served upon respondents on 1.11.2002 the period of six months expired on 1.5.2003. The respondents filed MA-1742/2003 for extension of time to comply with the direction was rejected as there was no justification on 21.8.2003. The order was not challenged before the High Court of Delhi and had attained finality.

13. What to talk of final order passed on conclusion of the proceedings the proceedings are not even finalised till the expiry of six months on 1.5.2003. No material has been produced before us to conclude that any delay was attributable to applicant.

14. In this view of the matter, having regard to the Full Bench decision (supra), the delay of about more than one year is inordinate in the circumstances and prejudices applicant whose pay and allowances have been withheld. Applicant has not absented wilfully or unauthorisedly but the modified transfer order has not been served upon him.

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(5)

15. Accordingly, we have no hesitation to hold that by not concluding the disciplinary proceedings and failure of respondents to pass a final order within six months the inquiry is redundant and would not affect payment of pay and allowances to applicant.

16. In the result, for the foregoing reasons, OA is allowed. Respondents are directed to pay to applicant his pay and allowances for the period from 10.3.1998 to 20.6.1999 alongwith consequential benefits but without interest, within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)

Member (J)

'San.'

V.K. Majotra
(V.K. Majotra)
Vice-Chairman(A)

28.7.04