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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2046/1992

New Delhi this the 25th Day of July 1997.

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)
Hon'ble Shri S.P. Biswas, Member (A)

Shri A.D. Khandpal,
son of late Shri P.N. Kandpal,
Resident of Kamal Niwas,
Uttranchal Bihar,
Donaharia, Bhutiapadav,
Haldwani, Nainital (UP) Petitioner

(By Advocate: Shri K.C. Mittal with
Shri Harveer Singh)

-Versus-

1. Union of India through,
The Secretary,
Ministry of Defence,
South Block
New Delhi-110 011.
2. The Military Pension Branch,
Indian Embassy,
Kathmandu (Nepal) Respondents

(By Advocate: Shri P.H. Ramachandani)

O R D E R

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

The petitioner in this case was initially appointed in the year 1961 and subsequently the status of the petitioner was determined as that of India-base-employee and the grievance of the petitioner is that on the basis of the said declaration the petitioner may be declared a Central Government employee working in Class III category. The petitioner in support of the said contention submitted that the Ministry of Defence had decided to open Pension Disbursing Office in Nepal and while recruiting staff locally, they also recruited staff from India and at the initial stage those recruited from Nepal or from India were treated local recruits but subsequently those persons of India origin were treated as India-based-employee. This legal position was confirmed by a Division Bench of Himachal

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Pradesh of High Court and a Special Leave Petition was filed against the said decision which was also dismissed and as such the decision of the Himachal Pradesh High Court has become final. Therefore, the claim of the petitioner is that on the basis of the Government of India based terms and conditions, and the benefit of the same accrued to the applicant with effect from September 1980, the same should relate back to his original appointment in the year 1961. The respondents in their counter-affidavit stated that even if the status of the petitioner had been changed with effect from September 1980, and even if the petitioner is treated as an India-based-employee, that will not entitle him to be declared as a Central Government employee. In support of this contention, they relied upon a decision of this Tribunal given in OA 3012/92 decided on 19.2.1993 which was a case originally filed in the Hon'ble Supreme Court under Article 32 of the Constitution of India, subsequently transferred to Principal Bench of this Tribunal. It was decided that in the circumstances of the case, the petitioner therein being a person locally recruited and working in the Pension Disbursing Office in Nepal, is not entitled to any pensionary benefits.

2. The respondents also stated that even otherwise the petitioner is not entitled to any pensionary benefits nor a declaration that he is a Central Government employee at this stage since the service of the petitioner have been dispensed with, by an order of termination passed on 11.7.1989. It was also stated that these orders were passed after the respondents had issued a show cause notice on 2.5.1988, stating that the petitioner has wrongly altered

his date of birth from the year 1933 to 1938. In reply to the said show cause notice petitioner stated that his date of birth is 1938 and he has not altered his date of birth at any time or at any place. After the receipt of the reply, the respondents gave another show cause notice on 7.7.1989 alleging that the petitioner had tampered with his own service record. In reply to this show cause notice, the petitioner did not deny any of the allegations; on the contrary he tendered an apology. short show cause notice is also on the file, dated 10.7.1989, the reply to which also contains no denial of any allegation. In view of these three consecutive notices and reply, the termination order issued on 11.7.1989 has become final, for want of any appeal against the said order. It was also contended by the respondents on the basis of the above cited decision that the petitioner remained a non confirmed employee and as such the termination order issued was in accordance with law.

3. The learned counsel for the petitioner, on the other hand, submitted that the impugned order of termination was wrong since the same was passed on the basis of a misconduct and no enquiry was held specifically in this regard and as such no opportunity was given to the petitioner in accordance with the principle of natural justice. The contention of the respondents to these submissions was that the three show cause notices and the replies thereto as well as apology tendered are in substance, in sufficient compliance of the principle of natural justice and in the absence of the denial of the allegations in the reply to the show cause notices, no useful purpose was to have serve by instituting an formal

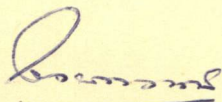
inquiry. Moreover, the petitioner remained as a temporary employee without any confirmation, and as such termination is accordance with law.


4. We are in agreement with the contention of the learned counsel for the respondents. In the circumstances of the case, a formal institution of disciplinary proceedings would not be a requirement to comply with the principles of natural justice and as such the impugned order is found to be valid. And since no other ground has been raised against the impugned order of termination, the relief of quashing the impugned termination order dated 11.7.1989 is rejected.

5. It was also contended by the learned counsel for the petitioner that since the petitioner has already earned his pension prior to the commencement of the alleged tampering incidence took place, and as such he is entitled to pension on the ground that the pension which accrued to him already, by efflux of time under the rules, could not be denied to him due to a subsequent commission of alleged misconduct. There is some force in the legal submission contained in the above statement of the petitioner, but since the services of the petitioner stands terminated on the basis that his services were not regularised, and since we are not inclined to regularise the services of the petitioner nor declare him to be a Central Government employee on the basis of the decision referred to by a Coordinate Bench of this Court, cited above, we are afraid the benefit of the above said legal submission is not available to the petitioner in this case. Moreover, it is not evident from the records as to what is the time when

this alleged charge incidence had taken place i.e., to say when was the falsification of the records at the incidence of the petitioner had taken place. In the absence of definite facts and in the absence of the pleadings to that effect, we are afraid that we will have to reject the claim of the petitioner arising out of the said legal ground as well.

6. In the circumstances this OA is dismissed with no order as to costs.


(S.P. Biswas)
Member (A)


(Dr. Jose P. Verghese)
Vice Chairman (J)

Mittal