

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 3093/92
T.A. No.

199

(5)

DATE OF DECISION 9.7.98

Sh.M.C.Agarwal

....Petitioner

Present in person

....Advocate for the
Petitioner(s)

VERSUS

Director General of Works
C.P.W.D. New Delhi.

....Respondent

Shri K.R. Sachdeva

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)
The Hon'ble Shri K.Muthukumar, Member(A)

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other Benches of the Tribunal? NO.

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 3093/92

New Delhi this the 9th day of July, 1998

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Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

M.C. Agarwal.
Assistant Surveyor of Works.
Delhi College of Engg. Project.
Bawana Road.
Delhi-42.

...Applicant.

Applicant in person.

Versus

Director General of Works.
C.P.W.D. Nirman Bhawan.
New Delhi. ...Respondent.

By Advocate Shri K.R. Sachdeva.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant who was working as Assistant Engineer with the respondents has filed this application under Section 19 of the Administrative Tribunals Act, 1985 claiming increments which fell due to him during his suspension period from 7.1.1963 to 12.4.1966 and for a direction to the respondents to dispose of his representation dated 3.6.1991 for inspection of the relevant file in which he states his appeal dated 6.1.1966 against the suspension order was dealt with in 1966.

2. The brief facts of the case are that the applicant while in service as Section Officer (now designated as Junior Engineer) was placed under suspension vide order dated 7.1.1963. The chargesheet was served on him on 19.3.1963. He states that he had filed an appeal against the suspension order on 6.1.1966 and he was reinstated in service

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on 12.4.1966 pending inquiry. During the inquiry, he was paid subsistence allowance. His grievance is that the annual increments which fell due to him during the period of suspension were not granted. He has submitted that he had submitted hundreds of reminders for this purpose which were rejected by the impugned order dated 20.8.1992.

3. The respondents have taken a preliminary objection that the application is barred by limitation and jurisdiction under Sections 20 and 21 of the Administrative Tribunals Act, 1985 to which the applicant has replied that the impugned memo dated 20.8.1992 gives him a fresh cause of action as his case has been considered for release of increments during the suspension period and rejected by the respondents in consultation with the DOP&T. The applicant has also submitted that the order passed by the respondents dated 1.10.1976 shows that his appeal dated 6.1.1966 against the suspension order is still pending. According to him, another reason why the application is not barred by limitation is that it is only on 1.6.1991 he came to know that before any orders were passed by the appellate authority on his appeal dated 6.1.1966 against the suspension order, the disciplinary authority had revoked the suspension order on 12.4.1966 was not correct. He claims that he had actually been reinstated in service on 12.4.1966 as a result of the decision of the appellate authority on his appeal and that he is, therefore, entitled for treatment of his suspension period as duty for all purposes in terms of Rule 27 and 28 of the CCS (CCA) Rules, 1965 read with FR 54. He submits that this information was given to him by Shri P.K. Ghosh, then Section Officer (Vigilance). In his several representations including the one dated 3.6.1991 he has narrated these facts and also stated that Shri P.K. Ghosh had

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demanded Rs.10,000/- from him for making available to him the relevant notings in the file. In the circumstances, he has also sought a direction to the respondents to produce the relevant file in which his appeal had been dealt with. failing which he has submitted that adverse inferences should be drawn against the respondents who have stated that the relevant file of 1966 is not traceable. The applicant has also relied on the judgement of the Allahabad High Court in **Mritunjai Singh Vs. State of UP and Ors.** (1971 SLR P-523) (Annexure-6) and **State of U.P Vs. Jai Dev Ram** (1985 (1) SLR 787), **U. Gangaraju Vs.D.R.M. South Central Railway & Ors.** (1992(8) SLR P-468) and the other cases referred to in the O.A.

4. The respondents have submitted that in the order dated 1.10.1976 it has been clearly stated that before any orders were passed on the applicant's appeal dated 6.1.1966 against the suspension order, the disciplinary authority had himself revoked the suspension order on 12.4.1966. The applicant's appeal dated 6.1.1961 was thereafter disposed of as being time barred by the respondents by order dated 6.7.1987 though the appellate authority has stated that the same has been considered afresh.

5. Since the applicant was appearing in person, he was heard at length. We have also heard Shri K.R. Sachdeva, learned counsel for ^{the} respondents and perused the pleadings.

6. The main contention raised by the applicant in this case is that his appeal dated 6.1.1966 against the suspension order dated 7.1.1963 is still pending decision by the appellate authority. He has relied on the judgement of the Allahabad High Court in **Mritunjai Singh's case (supra)** which

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Would not assist him as that case dealt with the Financial Hand Book Volume II issued under the authority of the Government of U.P. He has also relied on the D.O.P&T O.M. dated 3.12.1985, the relevant portion of which reads as follows:

'Accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under F.R. 54-B.'

2. These orders will become effective from the date of issue. Past cases already decided need not be reopened".

7. The contention of the applicant that his case should be decided in accordance with the judgement of the Allahabad High Court and the O.M. dated 3.12.1985 as his appeal against the suspension dated 6.1.1966 is still pending cannot be accepted as Mritunjai Singh's case (supra) is only with regard to the State Government rules and the O.M. of 1985 clearly stipulates that past cases are not to be reopened. The applicant has very vehemently contended that he had never received a reply to his appeal against the suspension dated 6.1.1966. In the order dated 1.10.1976 Shri V.R. Vaish, Engineer-in-Chief has stated as follows:

"Shri Agarwal had made an appeal to the Chief Engineer (now Engineer-in-Chief) for revocation of his suspension order, but before any orders were passed by the Chief Engineer (now Engineer-in-Chief). Additional Chief Engineer (now Chief Engineer) had revoked the suspension on 12.4.1966, and had made it clear that the order regarding treatment of suspension period will be issued in due course. The contention of Shri Agarwal that his suspension was held by the appellate authority as unjustified is not correct. Even if the suspension is revoked the Government servant does not become automatically entitled to full pay and allowances unless the competent authority passes an order under FR 54(2) that suspension was wholly unjustified.

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There is no mention contrary to this in any rules or paras of the Vigilance Manual quoted by Shri Agarwal".

The applicant made a further representation on 10.3.1977 against the order of Shri V.R. Vaish dated 1.10.1976 in which the applicant has stated as follows:

"I have also not received any other communication on my said appeal dated 6.1.66 so far. Your honour would kindly agree that it would not sound probable to any one whosoever that the action on my said appeal dated 6.1.66 regarding the justification or otherwise of my placement under suspension as required under Rule No. 27 of CCS (CC&A) Rues 1965 has not been taken so far. My humble submission is that this is again a proof of the fact that my revocation of suspension by ACE (now C.E) on 12.4.66 was only an implementation of the orders of CE (now E-in-C) on my said appeal dated 6.1.66".

8. On a careful perusal of the aforesaid order dated 1.10.1976 and the representation dated 10.3.1977 we are unable to agree with the contention of the applicant that his appeal dated 6.1.1966 has not been dealt with so far by the appellate authority or he has not received any communication on it till date. If the later statement is to be believed, there is also no reason why the applicant could not have challenged the order dated 1.10.1976 wherein it has been mentioned that the contention of Shri Agarwal that his suspension was held by the appellate authority as unjustified is not correct'. We are also unable to accept the contention of the applicant that his appeal is still pending and he has not received any communication on it. It was clearly open to the applicant even as far back as October, 1976 to have asked for the copy of the order passed by the appellate authority, referred to in the order dated 1.10.1976. The further contention of the applicant that his case should also be dealt with on the basis of the O.M. dated 3.12.1985 is also without any basis as that O.M.

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clearly states that cases dealt with earlier need not be reopened and no good reasons have been given by the applicant as to why an exception has to be made in his case.

9. In this application, the applicant has made the Director General of Works, CPWD, Nirman Bhawan as the sole respondent. Neither the Union of India through Secretary, Ministry of Urban Development nor Shri P.K. Ghosh, then Section Officer (Vigilance) against whom the applicant has made certain personal allegations that he had told him that he has certain records which are useful to the applicant but he will not give give him those unless he is paid Rs.10.000/-, have been made parties in this application. The allegation against Shri P.K. Ghosh is of a serious nature. In the absence of the party being impleaded, we reject these allegations of mala fide which appear to be an after thought in order to bring this application within the period of limitation. Therefore, on this ground also that necessary parties have not been impleaded in this application, the same is liable to be dismissed.

10. Taking into account the totality of the facts and circumstances of the case, therefore, we see no good grounds justifying grant of increments to the applicant during his suspension period from 7.1.1963 to 12.4.1966 merely on the basis of the DOP&T O.M. dated 3.12.1985. In view of what has been stated in para 8 above, we are also unable to accept the contention of the applicant that merely because of the O.M. dated 20.8.1992 rejecting his claims for the suspension period from 7.1.1963 to 12.4.1966, this application is also not barred by limitation. Having regard to the provisions of Sections 20 and 21 of the Administrative Tribunals Act, 1985 and for the reasons given above, particularly in para 8 above, we are also

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of the view that this application is not only barred by limitation but in addition jurisdiction. We also find no merit in this application besides the fact that the application is totally belated and suffers from laches and delay.

11. In the result, the O.A. fails and is dismissed.

No order as to costs.



(K. Muthukumar)
Member(A)



(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'