

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

O.A. NO.43/1992.

(29)

NEW DELHI THIS THE 23rd DAY OF MAY, 1997.

HON'BLE SHRI JUSTICE K.M. AGARWAL, CHAIRMAN

HON'BLE SHRI S.P.BISWAS, MEMBER (A)

Dr. Jagdish Bahadur
S/o Late Shri R.C.L. Saxena,
resident of 10, Shubh Niketan, A-4, Paschim Vihar,
NEW DELHI-110063.

... Applicant.

(BY ADVOCATE SHRI GYAN PRAKASH)

Versus

Union of India
Through

1. Indian Council of Agricultural Research

Through
Secretary, ICAR, Krishi Bhawan, New Delhi-110001.

2. Secretary, Deptt. of Agricultural Research &
Education, Ministry of Agriculture, Krishi Bhawan,
New Delhi- 110001.

3. Secretary, Department of Personnel & Training,
North Block, New Delhi - 110001.

4. Secretary (ER), Ministry of External Affairs,
South Block, New Delhi-110011.

... Respondents.

(BY ADVOCATE SHRI V.K. RAO)

ORDER

JUSTICE K.M. AGARWAL, CHAIRMAN:

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer for quashing the impugned order dated 22.4.1991, as also the directions or decisions as contained in para 5 of another impugned order dated 22.2.1988 passed by the respondents. He has further made a prayer for directing the respondents to reinstate him as Scientist S-3 in IARI with retrospective effect from 12.12.1979 with all consequential reliefs and without any break in service. Further reliefs by way of proforma promotion etc. have also been claimed.

2. Briefly stated, it appears that in 1972, the applicant was appointed as Radiation Physicist at Nuclear Research Laboratory, IARI, New Delhi under the Indian Council of Agricultural Research (in short, 'ICAR'). He went to Libya on deputation on 11.12.1978 for one year. However, it appears that he overstayed the period of

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deputation and, therefore, on his return from Libya, he was chargesheeted and thereafter removed from service with effect from 27.6.1981 'for his unbecoming act of unauthorised absence'. Somehow the applicant was successful in obtaining alternative employment as Director in the Department of Science and Technology under the Ministry of Science and Technology with effect from 25.2.1982. Thereafter, he went on making representations for reinstatement with retrospective date after withdrawing the order of removal passed against him. It appears, that by order dated 10.2.1988, the competent authority, in respect of his earlier employment took sympathetic view on the representation made by the applicant and accordingly allowed him the benefit of doubt and ordered that the period of absence from 12.12.1979 to 24.2.1982 be treated as dies non and condoned for pension purposes only. Not satisfied with this order, the applicant went on pursuing the matter and ultimately filed this O.A. for the aforesaid reliefs. The O.A. is resisted by the respondents.

3. We have before us three Misc. Applications to be decided before we decide the case on merits. M.A.1284/96 is for condoning the delay in filing this application under Section 19 of the Act. Although there has been an extraordinary delay in filing the O.A., there is no reasonable ground for condoning it. We allow the Misc. Application, because we heard the case at length and, therefore, we do not think it now fit to dismiss the O.A. only on the ground of delay. M.A. 1283/96 is for production of certain records. The Misc. Application is rejected as we do not consider it necessary to direct the respondents to produce any document or record for disposal of this application on merits. The third M.A. No.1393/96 for filing of additional documents also does not appear necessary to be allowed, because we do not feel that any further document is necessary for coming to a just conclusion on merits of the case.

4. Having, thus disposed of all the Misc. Applications filed on behalf of the applicant, we proceed to examine the case on merits.

5. After hearing ^{the} learned counsel for the parties and perusing the materials brought on record, we are of the view that no case is made out for granting any relief to the applicant in this application. The applicant has not disputed that the order of removal passed against the applicant by the respondents was not preceded by a departmental enquiry. Under these circumstances, if the disciplinary authority *Tm* came to the conclusion that it was an unbecoming act of unauthorised absence

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on the part of the applicant, that finding cannot be said to be bad or perverse. We are not sitting in appeal against the order of the disciplinary authority. We cannot, therefore, substitute our own order in place of the order passed by the disciplinary authority on the basis of the materials brought on record against the applicant during the departmental enquiry. There is added reason to refuse the reliefs claimed by the applicant in his application under Section 19 of the Act. The respondents in his case appear to be most considerate and sympathetic towards him. Even after passing an order of removal against him on the ground of unauthorised absence from service, he was given the benefit of treating the period between 12.12.1979 to 24.2.1982 as dies non and condoned the absence for the purpose of pension. The applicant also appears to have started alternative employment with another department of the Government and that might be motivating circumstances for giving him the benefit of the period of his absence by directing that period as dies non for the limited purpose of post retirement benefits.

6. We, therefore, find no case for quashing the impugned order passed by the respondents. In fact, the applicant has got what he was not ordinarily entitled to only because of sympathetic attitude adopted by the respondents. The applicant deserves no indulgence from this Tribunal.

7. For the foregoing reasons, we find no merit in this application and accordingly it is hereby dismissed but without any order as to costs.


(K.M. AGARWAL)
Chairman


(S.P. BISWAS)
Member (A).