

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

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C.A. No. 1535 of 1993 decided on 9.9.1999

Name of Applicant : Dr. Pandurang G. Adyalkar

By Advocate : Shri Randhir Jain

Versus

Name of respondent/s Union of India

By Advocate : None

Corum:

Hon'ble Mr. Justice K.M. Agarwal, Chairman.

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes

2. Whether to be circulated to the -No
other Benches of the Tribunal.

N. Sahu

(N. Sahu)
Member (Admnv)

Central Administrative Tribunal, Principal Bench

Original Application No.1535 of 1993

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New Delhi, this the 9th day of September, 1999

Hon'ble Mr.Justice K.M. Agarwal, Chairman
Hon'ble Mr.N.Sahu, Member (Admnv)

Dr.Pandurang G. Adyalkar, S/o L.Shri
Ganpat Rao Adyalkar, Ex Chief
Hydrogeologist (Wrongly designated by
the Respondent as Director), Central
Ground Water Board, Ministry of Water
Resources, Govt. of India, R/o 265,
Bajaj Nagar, Nagpur-440010 AND BF/7D
Munirka Phase II, New Delhi-110067 - Applicant

(By Advocate - Shri Randhir Jain)

Versus

Union of India through the Secretary,
Ministry of Water Resources, Shramshakti
Bhawan, Rafi Marg, New Delhi-110001 - Respondents

(By Advocate - None)

O R D E R

By Mr.N.Sahu, Member(Admnv) -

This Original Application was filed mainly against the order dated 3.2.1992 by the Ministry of Water Resources ordering that the monthly pension and Death-Cum-Retirement Gratuity (in short 'DCRG') admissible to the applicant be withheld on permanent basis for the grave misconduct committed by him during the period of his service i.e. seeking undue advantage in Govt. service by submitting a false declaration that he belonged to 'Halba' Scheduled Tribe (in short 'ST'). He challenges the order dated 2.4.1983 passed by the Commissioner for Departmental Enquiries holding that charge no.1 of gaining an employment as Assistant Geologist in Geological Survey of India against a ST vacancy on misrepresentation that he belongs to Halba, although in actual fact he belongs to Koshti caste as proved. The applicant also challenges the order passed on 4.10.1985 by the

Shri Randhir Jain

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respondents. Although this order cancelled the dismissal order dated 8.7.1983 and reinstated the applicant in service, yet it was also conveyed that the disciplinary proceedings shall be deemed to be continued under Rule 9 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'the Pension Rules'). He also challenges the order dated 29.11.1989 which cancelled the suspension order dated 3.7.1986 but left the question of regularisation of the period from 13.7.1983 and 30.6.1985 as duty or otherwise to be considered in the light of the final order to be passed under Rule 9 ibid.

2. It is unnecessary to recount all the facts in this case. Suffice it to say that the applicant sent an application dated 26.12.1952 falsely declaring therein that he belonged to Halba ST in response to an advertisement dated 6.12.1952. Basing on this declaration, he was selected by the UPSC and recommended for appointment as Assistant Geologist - a post exclusively reserved for a ST candidate. In response to another advertisement dated 10.12.1955 for the post of Junior Geologist he submitted another application dated 20.12.1955 similarly declaring falsely that he belonged to Halba ST. His application was forwarded and the required experience of five years was relaxed as a special case because of his ST status. He was selected by the UPSC but appointed to a general post. He joined this post on 3.5.1957. He was confirmed in the post of Assistant Geologist with effect from 1.7.1957 against one of the 10 permanent posts reserved for SC/ST candidates. The charge is

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that by this false declaration he gained undue advantage, thereby exhibiting lack of integrity and violating Rule 3 of the Central Civil Services (Conduct) Rules, 1964. Initially, charges were framed. The enquiry officer submitted a report on 2.4.1983. The disciplinary authority considered the report; consulted the UPSC; and imposed the penalty of dismissal from service by an order dated 8.7.1983. The Delhi High Court by its order dated 24.9.1984 quashed this order on the ground that it was not a speaking order with liberty to the respondents to pass a fresh order. The Letters Patent Appeal and the Special Leave Petition filed by the respondents failed. Accordingly, the applicant was directed to be reinstated in service with effect from the afternoon of 13.7.1983 and continued in service up to 30.6.1985 i.e. the date of retirement on superannuation, vide order dated 4.10.1985. In the order dated 4.10.1985 it was further directed that the matter as to how the pay and allowances for the period from 13.7.1983 (AN) to 30.6.85 were to be admitted and allowed was to be decided separately; and the disciplinary proceedings initiated against the applicant, when he was in service and which remained inconclusive till his date of superannuation on 30.6.1985, was held to be continued to be proceedings under Rule 9 of the Pension Rules. After the conclusion of the said proceedings, the disciplinary authority, namely, the President of India in consultation with the UPSC vide order dated 2.2.1988 directed that the entire monthly pension shall be withheld on permanent basis as also the DCRG. Against these orders dated 2.4.1983, 4.10.1985 and



3.7.1986 the applicant filed OA 620/1986 before this Tribunal. As a copy of enquiry report was not made available to the applicant to enable him to make a representation, the Tribunal by its order dated 14.9.1988 quashed the order of punishment with liberty to pass fresh orders in accordance with Rule 9 of the Pension Rules. SLP against this order was dismissed by the Supreme Court by an order dated 13.3.1989. The respondents again met this deficiency and continued the proceedings after obtaining again the advice of the UPSC. The objections of the applicant were considered at length. The disciplinary authority was of the view on the material on record that the applicant was appointed against a post exclusively reserved for a ST candidate, on the basis of the false certificate given by him. The Collector, Nagpur confirmed that the certificate was false and thus charge 1 was held to be proved against the applicant. With regard to the other two charges, the guilt was confined only to the extent of filing a false certificate but not that he gained any undue advantage out of it. Thus, the final orders reiterated the penalty of withholding the entire monthly pension permanently including DCRG.

3. The applicant has raised several grounds in this OA but mainly he claims relief for setting aside the impugned orders mentioned earlier. He claims the benefit of salary and allowances upto the date of his superannuation beginning from the date of reinstatement on the ground that the applicant was never placed under suspension. He contends that the

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order of the respondents :: 5 :: by which he was deemed to have been placed under suspension between 13.7.1983 to 30.6.1985 is liable to be quashed, because the dismissal order was set aside pursuant to the orders of the High Court. He accordingly claims that he is entitled to full emoluments up to 30.6.1985. He cites the undertaking given by the respondents before the Hon'ble High Court of Delhi that he was to be promoted as a Chief Hydrologist with effect from 8.2.1983. He claims a proforma promotion to the post of Chief Hydrologist. His main ground is that no ex post facto order of suspension can be passed against the applicant. His next ground is that the appointing authority proposed the penalty of compulsory retirement but this was not considered and acted upon.

4. The reliefs claimed by the applicant fall to be decided in two categories. One category is the punishment order; and the other category is the claim of the applicant for grant of salary for the period from 13.7.1983 to 30.6.1985.

5. We have carefully considered the pleadings and the arguments of the rival counsel when they appeared for hearing on 9.8.1999. We are satisfied that the order of punishment issued by the disciplinary authority, after consulting the UPSC; the material on record; and hearing the applicant fully, does not call for any interference. That the applicant had knowingly furnished a false certificate and derived undue advantage by way of employment against a ST post showed lack of integrity and is an

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instance of grave misconduct. We have considered at length the various submissions made and we are satisfied that the order of punishment cannot be interfered with.

6. With regard to the other submission about the status of the applicant between 13.7.1983 and 30.6.1985, we are of the opinion that the applicant is entitled to all the benefits which are due to him under law in terms of pay and allowances. The fact remains that the order of dismissal was quashed by the High Court and the Supreme Court did not interfere with this order of the High Court. The fact also remains that three years after the retirement of the applicant the Tribunal also quashed the order of dismissal as late as in 1988 on the ground that a copy enquiry report was not furnished to the applicant. The High Court earlier quashed the order on the technical ground that no speaking order was passed. The CAT quashed the order on the ground of non-fulfillment of the principle of natural justice. In the entire disciplinary proceedings the applicant had not been suspended. It was only by an order dated 29.11.1989 that the President of India in terms of Rule 10(4) of CCS(CCA) Rules, placed the applicant under suspension from 13.7.1983(AN) to 30.6.1985. The first date is date of original order of dismissal from service and the second date is the date of his superannuation from Government service. It was held that during this period the applicant would be entitled to payment of subsistence allowance as per provisions of FR 53 and other adjustment that may be



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found necessary and the question of regularising the above period of suspension shall be considered in the light of the final order that may be eventually passed in the case under the Pension Rules. Accordingly, the respondents held that the applicant would be entitled to only subsistence allowance between 14.7.1983 to 30.6.1985.

7. We have to read Rule 10(3) and 10(4) of the CCS (CCA)rules which are extracted hereunder -

"10(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

10(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders: Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.



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8. :: 8 :: Rule 10(3) speaks of a penalty of dismissal imposed upon a Government servant under suspension and Rule 10(4) speaks of the consequential results when a Court of law sets aside a penalty of dismissal and the disciplinary authority decides to hold a further enquiry against him. The question at issue is that when there was no order of suspension on the applicant, can there be a deemed suspension order? Both Rules 10(3) and 10(4) cover different situations. One covers a case of a Government servant under suspension and the other covers a case where he was never suspended. The foundation of a suspension order is the disciplinary proceedings, which in this case were pending against the applicant. An order of suspension is passed basically to prevent the delinquent employee from abusing the powers of his office and interfering with the evidence gathered. The idea is to allow a proper enquiry to be conducted without the interference of the delinquent employee. A deemed suspension under Rule 10(2) from the date of detention or from the date of conviction can also be justified as there is an intelligible nexus between this and the order of suspension. We have a case here where there was no case made out for his suspension when he was in service. It was not a case of detention in police custody or conviction. The disciplinary authority never took the decision of suspending him during his service and when order of punishment was set aside, he was logically taken back into service. We are of the view that there can be no deemed suspension in such a state of affairs. Such an act is contrary to all known canons of law. The

first principle is that law does not create a fiction just for the pleasure of it. The fiction has a purpose. A fiction is not created in a void. It has to be clothed with substance. When the penalty order is set aside and the respondents have undertaken to continue the applicant in service granting him proforma promotion also, it illbehoved them not only to deprive him of his monetary benefits but to deem him under suspension. This deeming under suspension was done as late as 1988 i.e. three years after his retirement. It served no purpose to suspend a person from service when he was no longer in service and deeming a person to be under suspension after his retirement has no meaning and no substance. Till 1989 there was no order of punishment. The orders of dismissal were set aside by the High Court and the High Court's orders were not interfered with by the Apex Court. Similarly, the CAT's order of 1988 was upheld by the Apex Court. Without an order of dismissal, or removal or compulsory retirement, the provision of 10(3) and 10(4) would not apply. What finally stands is the impugned order dated 3.2.1992 withholding on a permanent basis his monthly pension and DCRG otherwise admissible to him. We have already held that this order does not call for any interference. We, therefore, hold that the respondents should pass a reasoned order for the period from 1983 to 1985 in conformity with their commitment before the High Court that the services of the applicant would be continued and pay him his full

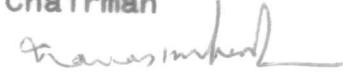
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pay and allowances in accordance with law because he
was reinstated in this period and as we held above,
there cannot be a deemed suspension after retirement.

9. In the result, the OA is disposed of with
the above directions. No costs.


(K.M. Agarwal)

Chairman


(N. Sahu)
Member(Admnv)

rkv.