

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1129 OF 1997

ALLAHABAD, THIS THE 9<sup>th</sup> DAY OF JANUARY, 2004

HON'BLE MR. V.K. MAJOTRA, V.C.  
HON'BLE MRS MEERA CHHIBBER, J.M.

A.B.L. Srivastava,  
son of Late Shri Ishwar Dayal,  
737 Daryabad, Allahabad.

.....Applicant

(Applicant in Person)

V E R S U S

1. Union of India through the Secretary,  
Govt. of India, Department of Personnel & Training,  
North Block, New Delhi-110 001.
2. Shri A.K. Bhattarai,  
Deputy Secretary (Admin.)  
Department of Personnel & Training  
North Block, New Delhi-110 001.
3. The Hon'ble Chairman,  
Central Administrative Tribunal,  
Principal Bench, New Delhi.
4. The Hon'ble Vice-Chairman,  
Central Administrative Tribunal,  
Allahabad.
5. The Registrar,  
Central Administrative Tribunal,  
Allahabad.

.....Respondents

(By Advocate : Shri Amit Sthalaker)

O R D E R

By Hon'ble Mrs. Meera Chhibber, J.M.

By this Original Application, applicant has sought  
the following reliefs:-

A. (i) that the Hon'ble Tribunal may graciously be  
pleased to direct the respondents no.3 & 4 to pay  
the pay & allowances for 01.06.1989.

(ii) to declare that the period from 01.03.1989 to 01.06.1989 was an extension in service and grant the annual due on 01.03.1989 and accordingly revised the average emoluments for revision of pension, Gratuity, commutation of pension, Leave Encashment etc.

(iii) to pay 3 months pay and allowances towards notice in view of abrupt terminals of his service wide order dated 01.06.1989.

(iv) to pay 10% deputation (duty)allowance on his basic pay from 01.09.1988 to 01.06.1989 as per para 9-5-1 and 9-5-2 of appendix-5 of FR and SR.

B. to accord promotion as Dy. Registrar (Admn) against the existing vacancies.

C. to pay the last LTC for the block of 4 years admissible to applicant.

D. to award any other relief as may be deemed fit in the circumstances along-with cost of the present application."

2. Applicant's whole case is that he came on deputation to the Central Administrative Tribunal in 1985 from Ministry of Urban Development and was continued thereafter from year to year. He was due to superannuate on 28.02.1989 but vide order dated 26.02.1989 (Pg.39) he was given extension by the till further orders. It is submitted by the applicant that since he was granted extension beyond the period of superannuation and he worked till 01.06.1989 he is entitled to the pay & allowances of 01.06.1989 and increment w.e.f March & other relief(s) as mentioned above.

3. It is submitted by the applicant that he had given number of representations to the authorities for claiming following reliefs:-

(a) Denial of last LTC claim for the block year 1986-89

(b) 3 months pay and allowances in lieu of abrupt termination of the term of extension/re-employment as per FR-56(d) for Para VII of Appendix 8 of compilation of FR & SRs-Page 483.

(c) Finalisation of provisional fixation of pay depending on decision awaited whether the period from 01.03.89 to 01.06.1989 was an extension of service or re-employment.

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- (i) Grant of increment due on 01.03.1989;
- (ii) Revision of Pensionary Benefits. Lately representation on 12.12.1997, respondent No.5 letter dated 12.11.1997 and also forwarded by PAO/CAT New Delhi letter dated 07.01.1998 to respondent No.3
- (d) Non-promotion against vacant post of Deputy Registrar-Letter No.A-11013-18/88-AJ dated 31.01.1989 from respondent No.1 to respondent No.3 and letter dated 05.10.1988 from respondent No.3 relied.
- (e) under payment of deputation allowance from September 1988.
- (f) Encashment of Half Pay Leave at Credit as per DOPT OM No.14020/1/90-Estt.(L) dated 06.04.1993 sought under representation dated 18.05.1994, still unsettled.
- (g) denial of the benefit of special casual leave for 10 days or salary therefore in lieu without speaking order vide letter No.CAT/Alld/Admn/PF-S/89/896 dated 30.07.1996 and dated 11.08.1997 from respondent No.5 and further perused vide my representation dated 26.08.1996.
- (h) Non-payment of duty pay for 01.06.1989.

But his representations were rejected by non-speaking order. Therefore, he gave detailed representations stating therein how he is ~~not~~ entitled to the encashment leaves but till date his representations have not yet been decided by passing any reasoned order, Thus, he had no other option but to file the present original applicant.

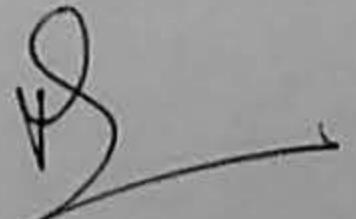
4. Respondents on the other hand have opposed this O.A. by stating <sup>that</sup> this O.A. is barred by limitation and it is settled law that successive representations do not extend the limitation as limitation has to be counted from the date when first representation was decided.

5. They have further explained that the applicant while on deputation as Accounts Officer in Central Administrative Tribunal Allahabad Bench, Allahabad reached the age of superannuation and retired from the afternoon of 28th February 1989 vide order



number 801 dated 27.02.1989 (Annexure CA-I). It is also submitted that pending appointment of the successor of the applicant he was asked to continue as a stop gap arrangement till his successor is selected and appointed. It was made clear that no commitment can be given for his reemployment for any specific period and he was asked to continue until further order. (Annexure CA-2). It is further submitted that Shri P.K. Sharma of Ministry of Finance his successor joined as Accounts Officer in the Allahabad Bench of the Tribunal in the forenoon of 1st June 1989. Consequently the applicant was relieved of his duties as re-employed Accounts Officer in the forenoon of 01.06.1989. Only the person could draw salary for 01.06.1989 against the post of Accounts Officer. Therefore, the applicant is not entitled for salary from 01.06.1989 (Annexure CA-3). After the retirement of the applicant vide order dated 27.02.1989, he cannot be treated on extension of service beyond the date of superannuation. His case, after superannuation, for all purposes can be treated as re-employment. The period of re-employment of the applicant after the age of superannuation was not for specified period and it was intended as a stop gap arrangement till his successor is selected and appointed. <sup>Therefore he</sup> there was no requirement of notice as it was made clear that he would be relieved of his duties, the moment his successor is appointed. Therefore, the applicant is not entitled to any relief sought for <sup>by</sup> him and the O.A. deserves to be dismissed.

6. Counsel for the respondents further submitted that the present application is barred by limitation and successive representation will not give any cause of action. The limitation is to be counted from the date of order the first representation was decided and in this case the first representation was decided long back. It is denied that the applicant retired from service



with effect from 01.06.1989 (A.N.). It is stated that in fact the applicant has retired from service on 28.02.1989. However, as stop gap arrangement he was allowed to continue further. It is further stated that in the office order by which handing over and taking over the charge was performed, no where reflected that the applicant continue till after noon of 01.06.1989. Copy of the office order dated 01.06.1989 whereby the handing over and taking over of the charge was performed, is filed as Annexure CA-3. Thus, from the aforesaid it is clear that though the applicant retired on 28.02.1989, but he was allowed to continue as stop gap arrangement, thereafter till he handed over charge in the forenoon on 01.06.1989.

7. They have specifically denied that applicant retired from service on 01.06.1989 fore-noon as he had already retired from service on 28.02.1989. The further continuance of applicant according to them was only a stop gap arrangement. That in Annexure CA-3 that is the hand over charge after noon is in anywhere on the said annexure. Thus it is clear that he retired on 28.02.1989 and thereafter continued as a stop gap arrangement till 01.06.1989 fore-noon. They have further given in details of the claim made by the applicant by giving the following reply:-

(a) Advance for availing L.T.C. by the applicant was applied during the last week of his retirement, which was not sanctioned by the competent authority

(b) All the claims of the applicant due were rightly settled as per rules keeping in view the period of re-employment w.e.f. 01.03.1989 to 01.06.1989 (F.N) as per D.O. No.1/21-86/Estt/13 dated 27.02.89, received from Principal Bench, New Delhi. Question of granting increment does not arise for his re-employment for a short period.

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(c) Provisions of the recruitment rules for the post of Deputy Registrar provide that a deputationist is not eligible to be considered against promotional channel. The applicant was on deputation and hence, he cannot claim promotion to the post of Deputy Registrar as a matter of right. Moreover, he belongs to Accounts Cadre and hence not eligible for consideration for promotion to the post of Deputy Registrar governed by different set of recruitment rules.

(d) Encashment of E.L for 240 days i.e. maximum entitled days has already been paid to the applicant. Moreover, he was advised on his claim for encashment of 1/2 pay leave to furnish his claims in prescribed format, but the same has not been complied with by him till date.

(e) Question of sanctioning special casual leave for 10 days w.e.f 01.06.1989 does not arise as the applicant was already relieved of his duties w.e.f. 01.06.1989 (FN) from the period of his re-employment.

8. We have heard both the counsel and perused the pleadings as well.

9. The whole case of applicant in this case is that he was granted extension by the respondents, therefore, he would be entitled to certain benefits as <sup>claimed by</sup> named by him. Whereas respondents have stated that it was only a stop gap arrangement after his retirement, therefore, moot point that we are required to decide is, whether his continuance in service beyond 28.02.1989 was a stop gap arrangement or an extension as claimed by the applicant. In this connection, it would be relevant to refer to some of <sup>the</sup> annexures namely Annexure-I office order dated 27.02.1989 which for ready reference reads as under:-

"Consequent on attaining the age of superannuation Shri A.B.L. Srivastava presently working as Accounts Officer in the Allahabad Bench of Central Administrative Tribunal will be retired from the Government Service in the afternoon of 28.02.89.

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Further annexure CA-2 is a most important letter as  
that is <sup>the</sup> starting point as to how applicant was allowed to  
continue after his retirement. This for ready reference reads  
as under:-

"This is regarding re-employment of Shri A.B.L. Srivastava, Accounts Officer in Allahabad Bench of the Central Administrative Tribunal. While we are taking steps to select his successor it is proposed to continue Shri Srivastava as stop gap arrangement till his successor is selected and appointed. Therefore, no commitment can be given at this stage for his re-employment for any specific period of time. However, he may be asked to continue until further order.

His request for re-employment can be processed further after his particulars are furnished in the enclosed proforma. He may be asked to do the needful and return the proforma to the Principal Bench immediately along with CR Dossier.

10. Thus, perusal of these two documents makes it abundantly clear that applicant was indeed retired w.e.f. 28.02.1989 which was his date of superannuation in normal course, thereafter he was allowed to continue only as a stop gap arrangement till his successor was selected for the post of Accounts officer. Moreover, it is also to be kept in mind that admittedly applicant was on deputation to Central Administrative Tribunal and his parent department was Ministry of Urban Development. Therefore, the borrowing authority in any case could not have granted him extension in service and if at all he was allowed to continue in service in the borrowing department after his actual date of superannuation, it can only be by way of re-employment or stop gap arrangement and by no stretch of imagination, it can be said to be an extension. We say so because in the order dated 26.02.1989 neither any period was fixed nor it was stated that his



services are being extended. It was a simplicitor order allowing the applicant to continue to discharge the duties as accounts officer beyond 28.02.1989 after-noon till further orders(Pg.89). This obviously has to be read with Annexure CA-2 as that was the starting point of the proposal itself for continuing him beyond 28.2.1989. The contention of the applicant therefore, is ~~wrong to~~ absolutely ~~suggest~~ that he was granted extension by the Tribunal. Nobody can be granted extension for unlimited period after he has superannuated from the service. In this case, since we are holding that it was only a stop gap arrangement ~~and would not~~ <sup>therefore it could</sup> ~~and would not~~ have been termed as extension, therefore, naturally applicant ~~also not~~ <sup>Accordingly</sup> would be entitled to claim increment w.e.f. March 1989.

11. As far as the applicant's contention that his services were terminated abruptly, therefore, he is entitled to salary in lieu of 3 months notice is also to be rejected because when he was allowed to continue. It was specifically stated that the arrangement is till further orders. Therefore, the moment next order was issued asking him to handover the charge to a regularly selected person, <sup>to</sup> ~~the~~ arrangement had to come <sup>an end</sup> automatically. Since this order cannot give him a right to continue in service <sup>in</sup> definitely, it is absolutely mis-conceived to claim the salary for 3 months in lieu of notice, <sup>This</sup> contention of the applicant is therefore, rejected. Applicant has next contended that he should be promoted as Deputy Registrar.

12. Once again it is admitted position that applicant was working in the Central Administrative Tribunal only on deputation and his parent body was the Ministry of Urban Development. <sup>It is not understood how a</sup> ~~therefore, a~~ deputationist could ~~not~~ have claimed further promotion in the borrowing department as a matter of right. <sup>when</sup> ~~However,~~ as per the recruitment rules for the post of Deputy Registrar, there was no provision to consider a deputationist <sup>belonged to</sup> against the promotional channel. He admittedly ~~was~~ going to

Accounts cadre. Therefore, he was not even eligible for consideration ~~for~~ promotion to the post of Deputy Registrar. Therefore, this contention of the applicant is also to be rejected. As far as the advance for availing LTC during the last week of his retirement is concerned, respondents have stated categorically that same was not sanctioned by the competent authority. Therefore, <sup>if</sup> he was aggrieved, he ought to have approached the court at that relevant time. Whereas the present O.A. has been filed <sup>in the year</sup> 17.09.1997 which is almost after 8 years of his retirement. Therefore, this relief cannot be granted at this belated stage. As far as claiming the revised pension gratuity and other benefits are concerned, since we are holding this was not a case of extention naturally the applicant cannot get those reliefs as well. As far as his encashment leave is concerned, respondents have stated that he was already given encashment leave for 240 days i.e. the maximum entitled days but as far as encashment of half pay leave is concerned, applicant was asked to furnish his claim in the prescribed format but that was <sup>complied</sup> not completed by the applicant, therefore, no definite direction can be given to the respondents on this aspect as well. If he was asked to make to a proper claim, it was his duty to do so in case he was interested in getting his encashment for half pay leave. As far as his pay and allowances for 01.06.1989 are concerned, respondents have annexed Annexure 3 office order dated 01.06.1989 whereby it was stated that Shri A.B.L. Srivastava re-employed Accounts Officer will be relieved of his duty in the fore-noon of 01.06.1989 and even in handing over the charge (which is filed by the respondents at Pg.19) <sup>afternoon</sup> is not mentioned anywhere. In any case, since the newly appointed accounts officer <sup>has</sup> taken over the charge on 01.06.1989, therefore, naturally he would be entitled to get

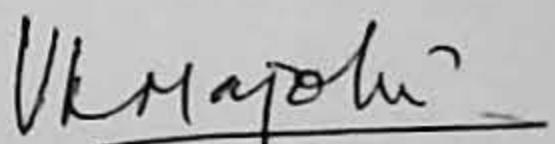
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the salary from 01.06.1989. It is ~~commencing~~ <sup>comes to</sup> that against ~~the~~ one post, salary can be drawn only in favour of one person and two persons cannot be paid for the same day. Since applicant was required to handover the charge on 01.06.1989 fore-noon itself therefore, naturally applicant could not have been given the salary for 01.06.1989. Therefore, this contention is also rejected.

13. In view of the above discussion, there is no merit in original application, the same is accordingly dismissed. No order as to costs.



Member (J)



Vice-Chairman

shukla/-