

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 17th day of April 2001

C O R A M :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr. S. Biswas, Member- A.

Original Application No. 1070 of 1997

with

Original Application No. 766 of 1999

(Captain) S.C. Gulati

H. No. 18 HG (D) A.D.A, Awantika

Naini, Allahabad- 211008

.....Applicant

Inperson

V E R S U S

1. Union of India through the D.C (SSI)

Nirman Bhawan , New Delhi- 110011

2. Shri Shambhu Shingh, Jt. Dev. (Commissioner,

CVC and DA (Small Scale Industries)

Nirman Bhawan, New Delhi- 110011

.....Respondents

Counsel for the respondents :- Km. S. Srivastava

O R D E R

(By Hon'ble Mr. S. Biswas, Member- A.)

In this application No. 1070/97, filed under
section 19 of the Administrative Tribunal's Act. 1985,
the applicant has sought the following reliefs :-

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- i) direction to the respondents to pay the salary for the period from 01.02.93 to 08.02.93 and from 09.02.93 to 31.07.95 with interest.
- ii) direction to the respondents to pay stagnation salary w.e.f 01.03.93
- iii) direction to the respondents to pay promotion increments in the grade of Rs. 3700-5000/- to be added w.e.f November, 1994 when the juniors got the said scale.
- iv) direction for payment of full pension value with 18% interest w.e.f 01.08.95
- v) direction to restore illegal cut in pension with 18% interest w.e.f 01.08.95
- vi) direction for payment of full gratuity amount with 18% interest w.e.f 01.08.95
- vii) direction for payment of L.T.C for the block year 1994-1997, which was wrongly denied.
- viii) direction for payment of Rs. five lacs as damage.

2. By another O.A No. 766/99, under section 19 of the Administrative Tribunal's Act, 1985, the applicant has sought the following reliefs :-

- i) to quash the impugned order dt. 16.03.99/02.06.99 by which Presidential order, the entire pensionary benefits including monthly provisional pension and gratuity is withheld as a penalty.
 - ii) direction to respondents for payment of arrears of full (authorised) pension and the provisional pension with 18% interest w.e.f 01.08.95, after taking on to consideration of stagnation
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increment w.e.f 01.03.93 and promotional increments and full length of service.

iii) direction to respondents for payment of full gratuity with 18% interest

iv) to allow damage @ Rs 100/- Per day w.e.f 01.03.99 and cost of litigation.

3. The reliefs sought in the O.A No. 1070/97 namely reliefs (i) to (vii) are more or less similar to reliefs (ii) to (iv) in O.A No. 766/99. The applicant sought the additional relief of quashing of the impugned order dt. 16.03.99/02.06.99 in O.A No. 766/99. Therefore, it is just and expedient to take up both the O.As 1070/97 and 766/99 together for consideration in this order.

4. The facts giving rise to the O.A No. 1070/97 are briefly as follows .

5. The applicant statedly joined as Airman (Tech. Branch) in the Central Government Service in 1957 and after about 5 to 6 years he was commissioned in the Army. Statedly through a process of " Earn and Learn", the applicant passed Mechanical Engineering. He was, thereafter, selected by the U.P.S.C as an Asstt. Director Gr. I (Mech) against a Military Services quota post and employed with the Small Scale Industries (SSI) Department under the Ministry of Industry. Eventually he became Dy. Director incharge of SISI in Allahabad on 01.06.91. The things began sour up for the applicant soon after Mr. Prabhat Kumar joined as the then Development Commissioner ,SSI (respondent No. 1) in 1993, the applicant allegedly started facing certain unholy politico- bureaucratic link, caste scheme and intereference and even threats in his day to day works.

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6. With barely 3 years of service left before his retirement, the applicant was transferred to Chennai (then Madras) vide order dt. 02.02.93. The relieving order was admittedly delivered on 08.02.93 (AN). The applicant applied for transfer advances on 17.02.93. Instead of paying the said entitled advance allowances, he and his family were allegedly subjected to harassment and robbing.

7. The applicant first time moved this Tribunal under O.A No. 232/93 on 13.08.93 for expediting a reply to his representation which the applicant had statedly made for sympathetic consideration by respondent No.1. A direction was statedly given by the Tribunal saying ^{that} "the applicant shall not be compelled to comply with the order of transfer." The applicant, thereafter, appeared in person before the new Development Commissioner Mr S.A.T Rizvi in the first week of April, 1995, when it was disclosed to him that an inquiry in the matter was on the anvil and the petitioner should co-operate. He was asked by the respondents vide letter dt. 01.02.95 viz dt. 01.05.95 to furnish his explanation by 08.05.95. The applicant gave his reply on 10.05.95 to O.M 01/02/95 dt. 23.03.95 (annexure - 2) by which a disciplinary enquiry in to the allegations of unauthorised absence of the applicant from duty etc. was initiated under Rule 14 of CCS (CCA) Rules 1965. In this letter dt. 10.05.95, the applicant statedly pointed out that the documents said to be annexed to the memo of charges dt. 23.03.95 were not actually annexed or served. In the meantime on 31.07.95 the applicant got superannuated from service.

8. After six months thereafter one Sri Lalit Krishna was appointed as E.O and the first sitting of the enquiry took place at Allahabad Naini office on 21.12.95.

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According to the applicant it was revealed that there was no formal charge-sheet with the enquiry memo, which ought to have been supplied to the charged officer (C.O), the applicant, as well as one copy should have been received by the E.O. This was a requirement under C.C.S (CCA) Rule 14 (3) and 14 (4).

9. In reply to applicant's letter of query, the E.O gave him a letter dt. 11.03.96 long thereafter stating inter alia that certified copies of wanted documents not be supplied, as these could be always got authorised by the applicant by perusal of originals as would be available with the presenting officer. The applicant was further directed to note the proceedings himself without insisting on a copy of the proceedings from E.O. Even so, a copy was supplied. The E.O. further clarified that the defence assistant to the C.O is not provided. Defence assistant is to be found by the C.O and on information about this fact the department only facilitates his availability. He was also informed that for attending enquiry, T.A/D.A is admissible to C.O. and he had not submitted them.

10. At this stage the applicant filed another O.A. No. 661/96 challenging the validity of the impugned memo dt. 23.03.95. An interim order (annexure- 4) was obtained on 18.06.96. Until further orders, it is also provided that further proceedings pursuant to O.M 23/03/95 shall not be held. We also find that the next date is fixed on 24.06.96. It is, therefore, provided that on the said date the applicant shall be furnished with attested copies of the four annexures referred to in para I of O.M 23/03/95. It is alleged by the applicant that this order of Tribunal was not executed. Only on 24.06.96 the applicant could get the attested copies but not authenticated and without file number (annexure- 5).

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On 10.07.96 (annexure- 6) the applicant submitted a 14 pages reply to the charges covering all factual and legal aspects. Soon thereafter on 23.12.96, the Tribunal decided the O.A No. 661/96 that " appoint another officer (as E.O.) who has no nexus with the charges, against the applicant as an Enquiry Officer. " Further, " the copies of the annexures to the charge memo if not supplied to him within a period of two weeks..... In case however, there is irrefutable evidence with the respondents of having furnished copies of relevant documents to the applicant no further action in this regard need be taken." The Tribunal also ordered that the "proceeding should be brought to a conclusion with all reasonable expedition." (annexure- 7). According to the applicant the operation of the order dt. 18.06.96 was allowed to be continued. The order of Tribunal was ^{also} termed as conjecture and surmise and violative of Supreme Court's order and principles as laid down by it.

11. Though only three months were prescribed for electing a new E.O., The respondents nominated a fresh E.O on 23.07.97 after 8 months. This appointment was also challenged by the applicant in terms of provisions of rule 14 of CCS (CCA) Rules, 1965. The applicant urged the D.A that he should furnish him evidence that the charge-sheets as defined in sub rule (3) and (4) were furnished to him.

12. The E.O. was allegedly resorting to threat, fraud, bluff, changing venue and the like and three representations were filed before the prescribed authority by the applicant without any result. A reference was made in enquiry proceedings dt. 29.12.97 against him. The applicant had been consistently representing for salary, full pension without any avail and things were prejudged against him

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in his counter by respondent No. 2 in O.A 661/96. The applicant had statedly sent a representation dt. 17.07.97 and 29.07.97 under Art. 309 and 311 (2) of the Constitution and ^{in the} reply as contained in letter dt. 08.08.97, it was only informed that the salary and pension was subjudice to the disciplinary process initiated for alleged unauthorised absence and the case would be decided after consideration of the said proceedings. This interim non-payment of salary and full pension amounted to a prejudged penalty on him. On 27.03.98, the disappointed applicant again made a representation before the President of India against illegal and unfair trial, exparte proceedings under CCS & CCA) 1965 (rule 14).

13. The applicant obtained a mandamus dt. 07.02.98 (annexure- 11) by filing a W.P No. 4756/1998 before Hon' High Court which directed the respondents " to complete the inquiry within a period of three months from the date a copy of this order is filed" was not complied with. The applicant filed in compliance with the Hon'ble High Court's order dt. 07.02.98 his submission on 27.03.98 with the prescribed period (annexure- 12). The applicant alleged several illegality, omission and commission in the inquiry proceedings like i) statement of charges was not furnished by the disciplinary authority ii) Hon'ble Tribunal's order dt. 18.06.96 and 23.12.96 were not taken note of iii) the Inquiry Officer was an alleged usurper, and hence his report not acceptable. The enquiry was exparte iv) the E.O's report dt. 28.12.97 (annexure- 9) was illegal. The report was furnished overlooking his allegation that the charge-sheet as defined in the rules was not given. So were the requisite documents.

14. The applicant further alleged that the record of

proceedings at Delhi was not furnished. The applicant alleged that there was ~~no~~ shred of evidence before the E.O to hold the transfer in " public interest". There was no authority, ^{that there was no authority} it is further alleged, ^{for} P.K. Chaudhury ^{to} sign the ~~reliving~~ order. According to the applicant the proceedings dt. 29.12.97 were, therefore, liable to be held as illegal. The applicant also alleged that the respondents filed false affidavits in O.A 1333/96 which the applicant had filed for direction to pay leave salary, non payment of salary , full pension which was reduced by 35% and non payment of gratuity, salary etc. were liable to be held ~~illegal~~ and suitable directions were prayed for.

16. The O.A No. 766/99 has been filed to challenge the vires of the order of the President dt. 02.06.99 by which a penalty of withholding the entire pension including the provisional pension and gratuity was imposed on the applicant on conclusion of the disciplinary case which was initiated against him prior to his retirement, on 23.03.95 following his ^{alleged} unauthorised absence from duty but the report was sent for order on pension etc. by the President due to intervening retirement of the applicant.

17. The applicant has also reiterated his claims ^{for} full pension, salary, stagnation allowances apart from cost. By and large the same facts and the similar allegations have been vented in this O.A, seeking direction to set-aside the order of the President dt. 02.06.99 (date of issue)

18. The applicant repeated the main grounds in this petition as well which are ~~as follows~~ briefly as under :-

- 1) In order to enable him to carry out the impugned

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transfer order dt. 02.02.93, no TTA entitlement advance was paid.

ii) various interim orders and even orders of the Hon'ble C.A.T and Hon'ble High Court's were not appreciated in spirit and implemented. The applicant him self found these orders not helpful and legally inadequate. ^{though}

iii) The formal charges on charge sheet containing the allegations and imputation ^{on} defined in the CCS (CCA) Rules 14 were not furnished and authenticated copies of documents relied upon were not provided and despite ^{the} proceedings were continued against court's order. The applicant himself ^{made} no mistake in giving his reply to the changes. On 27.03.98 he had filed several other representations too.

iv) The second E.O engaged as per the direction of the court's order was not fair. He used threats and coercive means to hurry up with the an exparte process without giving him opportunity to participate. In the same context he also alleged that court's order for expedition; enquiry was not carried out.

v) Court direction to complete the enquiry within three months was not complied with even after 10 months (by 11.05.98) Even Hon'ble Supreme court has pointedly laid down the ^{other} limit of 6 months in S.S. Rathora vs. U.O.I & Ors. case 1990 SC 0100

vi) pending enquiry withholding of salary w.e.f 03.12.93 to 01.02.95 and pension for 23 years six months clear service was illegal and high handed.

vii) reliving order was issued by Sri P.K. Chaudhury, Director, SISI, Kanpur who was having no jurisdiction on Allahabad.

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viii) The transfer order dt. 02.02.93 statedly in public interest was illegal as no public interest was involved in affecting transfer order of a public servant with barely 3 years left for superannuation.

ix) The enquiry report of E.O. did not contain the statutory documents such as charge-sheet, 5 numbers of proceedings and statement of defence.

x) The final order of the President was issued on 02.06.99 but provisional pension was not w.e.f 01.03.99

19. The applicant appearing personally argued the case for an hour or half an hour every day for eleven days (30.10.00, 03.11.00, 13.11.00, 20.03.01, 21.03.01, 22.03.01, 27.03.01, 28.03.01, 29.03.01, 03.04.01 and 04.04.01). He has also submitted a written brief which has been taken on record and gone through.

20. Kr. Sadhna Srivastave, learned counsel appearing for the respondents has submitted elaborate written counter and later on she also submitted written brief and argued in the case at length rebutting the charges of the applicant both on facts and law points.

21. We have heard learned counsel for the respondents Kr. Sadhana Srivastava and the applicant Capt. S.C. Gulati, appearing in person along with their detailed submissions on facts and law points.

22. The learned counsle for the respondents contended that the applicant right from 13.08.93 till date has filed several petitions before Hon'ble C.A.T or before Hon'ble High Court contesting each and every issue which

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are now being raised in the present O.A No. 1070/97 and O.A. No. 766/99. The later O.A is truly fresh as in addition to common reliefs, in this O.A, the applicant has further sought to get the order of the President dt. 02.06.99 quashed ^{but} other allied or unallied issues stand judicially settled in several O.As and W.Ps. Therefore, no fresh arguments are required on matters already settled in these O.As and W.Ps but raised again in O.A No. 1070/97 and O.A No. 766/99. Notwithstanding, learned counsel for respondents gave a detailed point by point and issue by issue refutation to the allegations and clarified in detail ^{led} the circumstances, which had the respondents to transfer the applicant to Chennai vide order dt. 02.02.93 in public interest and subsequent issue of the charge-sheet under CCS (CCA) Rules 1965 and Rule 14 thereunder, for the applicant's failure to comply with the transfer order and going on unauthorised leave, as no leave application under the rules was submitted. Each and every legal and factual objections were taken care of as per Tribunal's directions or Hon'ble High Court's orders in these earlier petitions and there upon, all these cases stopped finally decided and closed. The applicant accepted them as no appeals were filed, if he was not satisfied. The respondents acted on those orders and directions. The impugned order of the president dt. 02.06.99 was issued after that, as it could be seen from the protected proceedings which were dragged to the Tribunal and High Court at every conceivable introductory stage for direction. The proceedings were concluded, U.P.S.C was consulted and their considered opinion were critically assessed and applied to decide upon facts and law points before the same were forwarded for President's order. This method was warranted to be adopted as the applicant after issue of charge-sheet retired on 31.07.95 before the enquiry and adjudication of the case could conclude. The order is factually well

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determined and legally correct to be contested now. The points which the applicant has all the same raised now are by and large are settled issues and do not warrant any fresh consideration. The learned counsel for the respondents further admitted that except the case of payment of leave salary dues, which like G.P.F were not withheld by the order of the President is liable to ^{be} paid. Other than these, every other dues, pension, gratuity stand withheld by this order. This being non appealable, no other remedies are available to the applicant. She also pointed out that the applicant made unsubstantiated allegations against the various authorities which are unrelated and stand rejected in the final decision in the OAs and WPs.

23. We have carefully considered the submissions of the learned counsel for the respondents also and have scrutinised the O.As and W.Ps which were filed by the applicant in connection with his transfer to Chennai and subsequent enquiry proceedings for his alleged unauthorised absence from duty and other allegations.

24. In the first application filed in O.A No. 232/93, the applicant impugned his transfer order from Allahabad SISI to Madras R.T.C stating that the said transfer was malafide, punitive and not in public interest. He alleged that certain caste cliques and political- bureaucratic links were in the back-ground of all this, leading ultimately to his transfer. Following one Mr. Ajay Kumar of the same office giving certain complaint, following enquiry, the applicant was warned in Oct. 1992. In this application the applicant traced the genesis of his trouble in as much as he had earlier to this also filed another O.A No. 1291/92 agitating non-re-imbursement of certain amount paid by him to Military Hospital, Ranchi under Military attendance Rules. As the amount was not

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paid and the respondents were pulled up in a contempt petition No. 1025/92 in another O.A No. 1099/89^{ly} One Sri A.K. Srivastava, the Joint Development Commissioner, New Delhi was annoyed and he was informed about his annoyance by the P.A of the former.

25. A guide line on transfer/posting (1991) was also filed by the applicant to show that it was a transferable job and in the exigency of public interest an officer could be transferred to any part of the country. Though officers " who are within three years of their superannuation will not be transferred unless it involves promotion or unless exigencies of public interest specifically demand such transfer."

26. There was an interim order in this case on 11.02.93 which was vacated on 25.02.93. The case was finally decided on 13.08.93. It was inter-alia held that there was no conclusive findings on malafide or of colourable exercise of power in making the impugned order of transfer. The operative part of the order dt. 13.08.93 is reproduced below :-

" In view of the above discussions and in the circumstances of this case, I deem it fit to direct and do hereby direct that respondent No. 2 shall consider the representation dt. 08.02.93 of the petitioner sympathetically and decide the same with due application of mind having regard to the fact whether the Joint Development Commissioner had anything to do in making of the decision to order of transfer of the petitioner as well as the fact of personnel difficulties as stated by the petitioner and having regard to the normal expectation arising from the organisations' guide lines for transfer of not being disturbed within last three years of his date of superannuation. It is also directed that the petitioner shall not be compelled to comply with the order of transfer before aforesaid representation is decided. "

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27. The applicant however, filed no appeal or S.L.P against this order. Arguing the case before us on 04.04.01 Km. Sadhana Srivastava, learned counsel for the respondents informed that the applicant's pending representation dt. 08.02.93 was decided on 06.10.93 and he was directed to join at Madras by 25.10.93, which direction was never complied with by the applicant. But the letter made no mention about the said decision in his present O.A under consideration.

28. Close on the heads of the decision^{of u} the Tribunal in 232/93 on 13.08.93, the applicant filed the second O.A No. 1617/93 to vindicate an allied cause of action, arising out of the order in O.A 232/93 itself, by stating that his representation dt. 08.02.93 pending before the respondent No.1 be disposed of on compassionate ground in the light of transfer posting guide lines (1991) and till then he would not be compelled to go to Madras on transfer.

29. As already mentioned, the representation of the applicant dated 08.02.93 was already disposed on 06.10.93. The second O.A No. 1617/93 filed in this connection was finally decided by a 8 page order on 01.02.94. It was inter-alia found in this order that the respondents^u in their follow-up action to the decision of Tribunal dt. 13.08.93 in O.A No. 232/93, disposed of applicant's pending representation. After going through the submissions of the applicant about whether his transfer to Madras with less than 3 years to go was proper in the background of the pronounced transfer policy of the concerned Ministry of Industry, particularly the SISI organisation or not, the O.A was decided.

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30. It was finally held in this decision dt. 01.02.94 " that being so the guide lines regarding transfer of the officer who has less than 3 years of service can not override the interest of administration." The disposal of the applicant's representation dt. 06.10.93 was also found to be by way of a speaking order.

31. We, therefore, find that all factual and legal points which the applicant kept raising even in his subsequent O.As including O.A 1070/97 and O.A 766/99 on his transfer to Madras in public exigency stood verily disposed of by the order dt. 01.02.94 in O.A No. 1617/93 and the applicant visibly filed no legal appeal or S.L.P against it nor he complied with the transfer order. In the result, these facts, legal points or cited case laws can not be further subject matter of the present O.As for reconsideration, the above case being finally decided, the applicant himself concluded that the interim orders which were granted in his favour do not survive by norm of " dissolution". The applicant had made this averment in para 19 (b) of his own O.A No. 766/99.

32. The applicant filed a third application in O.A No. 661/96 before this Tribunal more or less on the same beaten tract, seeking quashing^{of the}/charge-sheet dt. 23/30.03.95 proposing a disciplinary enquiry under CCS (CCA) 1965, Rule 14 (a) on the alleged unauthorised absence from duty. Other monetary reliefs like salary and pension etc. were also sought.

33. By an interim order dt. 18.06.96, the Tribunal suspended the proceedings under memo dt. 23.03.95. The O.A 661/96 was finally disposed of on 23.12.96 giving direction to the respondents that the charge memo allegedly ~~not~~ be given within two weeks. However, the Tribunal ⁱⁿ further held that if there be "irrefutable evidence"

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of the charge memo being furnished to the applicant no further action was necessary. The Tribunal further ~~Conceded~~ ^{Conceded} ~~contended~~ the prayer of the applicant and gave direction to appoint another person as the E.O. The proceedings were directed to be 'completed within reasonable time'.

34. We find that when the pleading as well ^{as} hearing in this case was going on, the applicant had filed a W.P. No. 4756/98 before Hon'ble High Court challenging certain order of Tribunal dt. 09.12.97 and obtained an order on 07.02.98 which is reproduced below :▼

" After hearing the petitioner who appeared before us in person. At length and on perusal of the order dt. 09.12.97, we do not find any illegality calling for our interference under Art. 226 of the Constitution. However, considering the facts that disciplinary proceedings are initiated against the petitioner in March, 95 it appears appropriate that the respondents may be directed to conclude the enquiry within a period of three months from the date a copy of this order is filed. Petitioner has undertaken that he will extend full co-operation in concluding the enquiry within the aforesaid period.

Subject to aforesaid observation, the petition is disposed of finally."

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35. The order of Hon'ble High Court granting 3 months time for concluding the enquiry is dt. 07.02.98, whereas in the O.A 661/96 which was disposed of by C.A.T on 23.12.96, The time was granted up to "reasonable period". The applicant agitated in O.A 766/99 that the enquiry was not completed within 3 months time as obtained by him from Hon'ble High Court but he has made no mention regarding the order of Tribunal dt. 23.12.96 in O.A 661/96. The learned counsel for the respondents also pointed out that the enquiry was indeed completed within 3 months though the applicant did not co-operate but this stipulation of time is not binding on the other formalities like taking

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the advice of U.P.S.C, dispatching the papers ~~to~~ to the President etc. which are time taking. Additional time was taken in these formalities. In our view the alleged 8 months time taken for all these formalities, including the enquiry is justified ~~in the pleadings on~~ ⁵³ record. 53

36. Further, it had come in para 4 of the order in O.A 661/96 that the memo containing articles of charges, statements of imputations, list of documents and list of witness were delivered to the applicant by memo dt. 23/30.03.95 and the applicant had acknowledged the same by his letter dt. 12.05.95.

37. The applicant sought the order dt. 23.12.96 in O.A 661/96 to be reviewed on the plea that certain decisions of Hon'ble Supreme Court be considered and the case be readjudicated. As that was not an error apparent in deciding the case the said review application was rejected. The said order was ^{reinstated} ~~deleted~~ by the applicant as inconsistent with law (Para 18 of O.A 766/99).

38. The Tribunal further observed " admittedly the impugned charge memo was served on the applicant much before his retirement thus the disciplinary proceedings initiated prior to his retirement and continuation of such proceedings is lawful in Rule 9 (2) (a) CCS (pension) Rules. We, therefore, see no irregularity in the proceedings being continued after retirement"

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39. By still another O.A No.1333/96 the applicant inter-alia agitated for payment of dues like leave salary encashment on retirement till then were not disbursed to him by the respondents. The case was finally decided on 29.07.98. It was held that [^]deferment of payment of leave salary pending disciplinary proceedings were a

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valid act. Otherwise the O.A was dismissed. The said order was issued after the learned counsel had pointed out that a sum of Rs. 31209/- was the outstanding dues against the applicant as per the following break-up:-

Library Books	Rs. 1403/-
Stores not returned	Rs. 4501/-
Unauthorised telephone calls	Rs. 4980/-
Advance not settled	Rs. 8237/-
TA + LTC advance not settled	Rs. 11,225/-
C.G.H.S Card contribution	Rs. 862/-

Total Rs. 31,209/-

40. It is brought to our notice that Leave Rule 39 authorise, the respondents to both withhold and adjust as under :-

" The authority competent to grant leave may withhold whole or part of cash equivalent to earned leave in case of a Govt. servant who retires from services on attaining the age of retirement, while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him, he will ~~be~~ become eligible to the amount so withheld after adjustment of dues if any."

41. This also stands as a settled issue in the order dt. 29.07.98 passed in O.A No. 1333/96. The applicant filed no appeal. We however, notice that after conclusion of the disciplinary proceedings the respondents have so long slept over it, whereas, it was promised that conclusion of the disciplinary proceedings i.e. from the date of issue of the impugned order dt. 02.06.99 which was actually approved on 16.03.99, the applicant would become eligible

to get the leave salary dues and the same would ^{be} disbursed to him after necessary adjustment of ~~out~~ standing dues by the competent authority as per rule leave salary like G.P.F are earned income, not ^{the} ~~the~~ gratuity ^{or} ~~was~~ exgratiation ^{payment}. Hence, the same is liable to be disbursed to him in this case from the date ^{he} ~~he~~ became due on 16.03.99, when the disciplinary case ended. Now that no extra financial dues or burden has been imposed on him by the order, the same is liable to be paid with 12% interest from the said due date. For whatever reason it was, the applicant assiduously saved the earned leave and never asked for any leave for the unauthorised period of absence from duty. He deserves the leave salary encashment facility most.

42. The ^{learned} ~~learned~~ counsel for the respondents pointed out that the applicant retired during the intervening period after the charge memo was served and enquiry under Rule 14 of CCS (CCA) Rules, 1965 was initiated, thereafter, only provisional pension as admissible under the CCS (pension) Rules was paid and accepted by the applicant. After the order of the President dt. 02.06.99 was received and as ordered, full pension including the provisional pension now stands withheld w.e.f 16.03.99. The payment of provisional pension was, therefore, stopped with effect from the same date. By the same order the applicant is not liable to receive any gratuity. Grant of salary w.e.f 09.02.93 or 01.02.1993 promotion, stagnation pay or L.T.C etc. are out of question in view of the order of the President. The learned counsel for the respondents, however, acknowledged the admissibility of the claim of leave salary encashment dues.

43. The learned counsel further clarified that initially the salary for ~~the~~ same time was intended to be disbursed but the applicant did not file the income tax statement to facilitate preparation of his income tax liability

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as required in the year ending exercise.

44. The applicant asked for a T.T.A advance of Rs. 26,000/- which was much higher than he was eligible ^{for} ~~that~~ ^{which} only about Rs. 15,100/- was admissible and sanctioned, when he was asked to receive the disbursement, he declined.

45. The relief sought by the applicant in O.A No. 1070/99 and 766/99, except quashing of the impugned order dt. 02.06.99 are partly settled issues. Now that the order dt. 02.06.99 has been passed on conclusion of the disciplinary enquiry and the retirement benefits including gratuity have been withheld by the President, the reliefs are not admissible. Order of the President is not ~~affordable~~ ^{so} ~~applicable~~. The learned counsel for the respondents also brought to our notice that question of payment of all other salary or monetary reliefs except leave salary for the period he was unauthorisedly absent from duty, would demolish the allegation of the unauthorised absence from duty. We basically agree with this argument.

46. We have also looked in to a couple of basic allegations made by the applicant alongwith the connected materials. These are: ~~articles namely~~ i) articles of charges and relied upon documents were not supplied alongwith the memo dt. 23.03.95 ii) the enquiry was exparte and uncalled for iii) delay in completing the enquiry iv) enquiry after retirement was uncalled for.

47. The order of the President dt. 02.06.99 has dwelt at length on all these, particularly, the advice of the U.P.S.C is self contained on all the issues. This forms a part of the order. We have also noticed that these issues repeatedly come up in the several O.As. All these were settled step by step by issue of appropriate

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directions. In the aftermath of all these cases which were decided finally, it is not the case of the applicant that these directions to bridge the loopholes, even if any, pointed out by him, were not complied with. None of these orders of C.A.T or High Court were appealed against or any S.L.P filed. The respondents have acted in accordance with these directions. The case laws have become factually distinguishable against this case.

48. We, however, do not agree ^{with} ~~to~~ the submission that ^{the} disciplinary process initiated before retirement can not be pursued after retirement. This issue was already settled by this Tribunal. The provisions in the pension rules clearly provide that pension can be withheld pending disciplinary process. Hence, ~~continuity~~ is inherent in the rules.

49. We have carefully considered the first allegation even by going out side what was decided in O.A 661/96 that the articles of the charges ^{and} ~~relied~~ upon documents were not furnished. In O.A 766/99, the applicant filed these documents, said to have been omitted to be annexed to charge-sheet or supplied in O.A 661/96 also, ^{say} ~~we came~~ ^{across} ~~these documents~~. In compliance with the order in O.A 661/96 the respondents vide their letter dt. 24.06.96, ^{furnished} ~~attested~~ copies of these documents ^{they were} ~~in~~ all four, ~~were furnished~~. A copy of this reference was annexed by the applicant in O.A 1070/97. In compliance with order dt. 18.06.96 of the Tribunal, the E.O. also provided him with a set of these documents duly attested.

50. We are also not able to accept the plea that the applicant was not satisfied with the second E.O. also after the first E.O was changed at his prayer. Except once out of six times on 28.07.97, the applicant did not

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attend the proceedings though he assured that he will co-operate. It has also ^{come} ~~been~~ on record that he did not comply with the order of transfer after it was held as valid order by the Tribunal in it's order dt. 01.02.94 (O.A 1617/93) nor he submitted any ^{leave} application at any stage. The absence from duty ~~became~~ decisively unauthorised and rightly taken cognisance of under the service conduct rules.

51. We also find that the applicant was ^e ~~reliv~~ed by the Director of Kanpur holding charge of Allahabad on 04.02.93. There could be no objection in this arrangement ~~transfer order~~ ^{order}.

52. The applicant has intervened at every stage and event like his transfer, questioned it's maintainability, ^{and} the issue of charge sheets/questioned it's legality, non-payment of salary etc. Pensions and L.T.C, promotion, leave salary by filing application after application and also file writ petition which have all been decided. Direction given in these behalf have been ^{scrupulously} ~~undoubtedly~~ complied with by the respondents by which process we are satisfied that no illegality overtly or covertly in the process of disciplinary action survives, on which the order dt. 02.06.99 can be legally or factually questioned We have also gone through the well-reasoned and speaking advice given by the U.P.S.C leaving practically no factual or legal issue ~~uncovered~~ in the order. We find no procedural lacuna in the order. The advice is self-contained. On a ^{dispassionate} ~~unbiased~~ and critical appreciation of the same, the order dt. 02.06.99 was passed by the competent authority. ² Except directing the respondents to pay the applicant his leave salary encashment dues, as we already observed in para 41, we find no merit in both O.As to interfere with the order dt. 02.06.99. By another ^{order} ~~prayer~~

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S. O. 21/99

The prayer for interim stay of the order dt. 02.06.99 was also rejected. The O.A No. 1070/97 and O.A No. 766/99 are dismissed on merits.

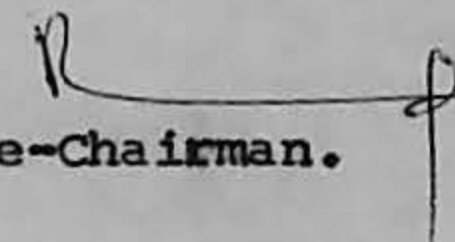
53. The order dt. 02.06.99 is a legally proper order though, we would like to observe that on the face of it, there is no record to show that the concerned authorities including the U.P.S.C, who played an advisory role, went in-to the question of quantum of penalty. This is decisively a case of unauthorised absence from duty. Excepting that the applicant did not apply for any leave nor he complied with the order asking him to join at the new place of posting, even after court's decision confirming the transfer order, no culpability of any kind was alleged against the applicant. According to the applicant, he had put in more than 23 years of service and became eligible for pension. The beneficiaries of pension are not only the applicant but also the member, of his family as the policy of pension stands to help ^{them as well as} ~~him~~. Often after death of the Govt. servant, it is this family pension ~~on~~ which sustains the surviving members of the family. In deciding the case of retired charged officer, their fate also needs to be borne in mind. It would be an imperative act to further consider, ^{how} ~~but~~ for a bland order of denial of pension, is going to deprive the members of the family of their social right of sustenance. In our view to deprive them of the incidence of pension is harsh when no reasons for this bland deprivation of members of the family has been discussed or brought on record. Little distinction has been made between a case of culpable corruption/ criminal commission and a simple case of unauthorised absence. The life-serving legalism warrants that a balancing exercise on the quantum of penalty to be adjudged, be

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made, which fact is not & obvious in the order. For this purpose only, the applicant is given the liberty to submit a "Memorial" to the President through the departmental 'Head', Notwithstanding the fact that we found the order of the President as legally ^{sound} ~~stand~~ and factually profound. The 'memorial' if filed shall be considered and decided expeditiously. sB

54. There will be no order as to costs.

S. B. Rao
Member- A.


Vice-Chairman.

/Anand/