

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

ORIGINAL APPLICATION NO. 787 OF 1998.

ALLAHABAD THIS THE 5th DAY OF January 2007.

HON'BLE MR. JUSTICE KHEM KARAN, V.C
HON'BLE MR. P.K. CHATTERJI, A.M

Virendra Mohan Tewari, UPC (adhoc), Office of the Dy. Director General of Foreign Trade, L-416 Model Town, Panipat, Haryana.

.....Applicant

(By Advocate: Sri S. Dwivedi)

Versus.

1. Union of India, through the Secretary, Ministry of Commerce, Udyog Bhawan, New Delhi-110 001.
2. The Joint Director General of Foreign Trade, B-38, 1-A/2, Tulsipur, Mehmoor Ganj, Varanasi.
3. The Director General of Foreign Trade, Udyog Bhawan, New Delhi-110 011.

(By Advocate: Sri A Mohiley)

O R D E R

BY MR. JUSTICE KHEM KARAN, V.C

The applicant is praying that the order dated 9.11.1994 (Annexure A) by which the Joint Director General of Foreign Trade, Varanasi allotted him the work of L.D.C., order dated 12.11.1994 by which the Joint Director directed that the period from 9.10.1994 onwards till the applicant resumed his duties would be treated as 'dies

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non' and order dated 17.5.1995 (A-C) by which the applicant was superseded and his juniors were given adhoc promotion to the post of U.D.C., be quashed and respondents be directed to release withheld salary of the applicant for dies-non period, together with the interest at the rate of 12% per annum.

2. The applicant entered in service as Lower Division Clerk, and after some time, was given adhoc promotion to the post of Upper Division Assistant. It transpires that vide order dated 22.5.1984, he was reverted and thereafter transferred, which he challenged, by filing a writ petitions that petition was transferred to this Bench and was registered here as T.A. No.1480/1987. This Tribunal disposed of the same vide its order dated 30.3.1988 (A-1). The relevant portion of this order is as under:-

"On the above considerations, we make the following orders:

(i) The petitioners will get protection in matter of officiating on the post of UDC vis-à-vis their juniors. The order of reversion issued on 22.5.1984 in case of V.M Tewari and 13.12.1983 in case of S.K. Malik will stand modified accordingly.

ii) The transfer vide orders dated 31.5.1984 will be subject to protection to which they are entitled in matter of officiating as UDC even on adhoc basis.

iii) They will get protection for officiating in the CCI&E's organization on the basis of their seniority in the Kanpur Office and to consequential benefits as may become due.

iv) The period the petitioners have stayed away from duty from the date of relief to the date they join duty will be treated as leave due. They will be given suitable posting in terms of the above observation within 10 days of receipt of these orders".

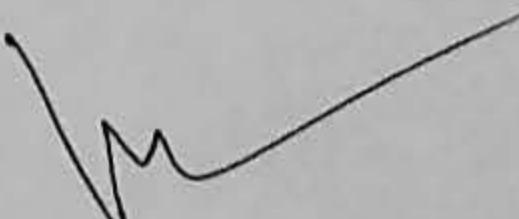
The respondents transferred him to Ludhiyana office as L.D.C. vide order dated 8/5/90 (Annexure 2). He joined at Ludhiyana under protest and was given adhoc promotion to the post of U.D.C. w.e.f 27.4.1992, vide order dated

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30.4.1992 (Annexure 2). Later-on, he got himself transferred to Varanasi Office vide order dated 17.5.1994 (Annexure 4) where he joined on 2.7.1994 as adhoc U.D.C. The Joint Director Foreign Trade, Varanasi issued an office order dated 9.11.1994, distributing the business amongst various employees. The applicant was assigned the job of "record and listing". He represented the respondent NO.2, to recall this order as the work given to him was that of L.D.C., and it transpires he restrained from work, so the respondent NO.2 passed the impugned order dated 12.12.1994 (Annexure 7) providing that the period of absence from duty will be treated as "dies-non". Aggrieved of order dated 9.11.1994 and 12.11.1994 of respondent No.2, the applicant approached the respondent No.3, who observed in his order dated 8.11.1996, that the order dated 12.11.1994 was bad, for want of specification of "dies non" period. It is alleged that the respondent NO.3, directed the respondent No.2 to release the entire salary of "dies non" period. In the meantime there came into existence order dated 17.5.1995, by which the applicant was declared unfit for adhoc promotion, to the post of U.D.C. His Juniors were promoted. He moved application under section 17 of the Administrative Tribunal Act, 1985, (Case No. 90/95), alleging that by passing orders dated 9.11.1994 and order dated 17.11.1995, the respondent No.2, committed breach of orders dated 30.3.1998, passed in T.A. No.1480/1987. This Tribunal passed an order on 1.7.1998, holding that no case for contempt was made out, and dropped the proceedings.

3. Now he has filed this O.A. with an application for condonation of delay under section 21 of the Act of 1985.

4. In their reply, the respondents have stated that the O.A. is highly time barred and is liable to be rejected on the ground of limitation itself. It has also been said that applicant has already filed one O.A. before



Chandigarh Bench of this Tribunal almost on the same cause of action, and so this O.A. is not maintainable. According to them, the applicant has had been creating administrative problems ever since his induction in service and is in habit of fouting the orders of his superiors. They say that on his own request, the applicant was transferred to Varanasi, but here also his performance was not upto mark and was wanting in so many respects. They say that vide order dated 9.11.1994, the Joint Director General of Foreign Trade, shifted him to record Branch but he did not obey those orders and so the Authority had no option but to pass order dated 12.12.1994 treating the period of absence from duty as "dies non". They say that Departmental Promotion Committee under Chairmanship of Joint Director General of Foreign Trade met on 24.1.1995, to find out as to who of the L.D.Cs. was fit to be promoted to the post of U.D.C and it found him unfit. It is said that vide order dated 27.4.1995, formal disciplinary proceedings were initiated against the applicant for gross misconduct and dereliction of duty and chargesheet was issued, but the applicant avoided to accept the same. According to them, even on adhoc promotion seniority and fitness is to be seen. As regards the applicant's claim for salary of "dies-non" period is concerned, it is said that Joint Director General of Foreign Trade has, vide his letter dated 28.4.1997 re-examined the case and found that the order of "dies-non" passed by of Joint Director General of Foreign Trade was fully justified. Copy of this order dated 28.4.1997 has been annexed to the reply. They say that it is true that vide order dated 10.11.1995, "dies non" period was vacated w.e.f 10.11.1995 but salary for the period between 10.11.1994 to 9.11.1995 was not directed to be paid.

5. In his rejoinder, the applicant has tried to say that the O.A. filed at Chandigarh Bench relates to the period from 16.5.1984 to 27.4.1992 whereas the present O.A.

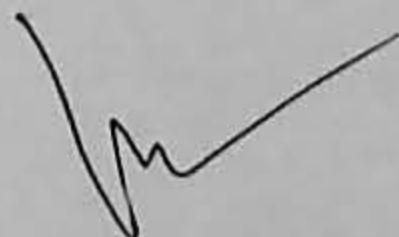
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relates to the period starting from 17.5.1995 and so the two are different. He, however, concedes in para 2 of this rejoinder that cause of action for filing the O.A. at Chandigarh as well as here at Allahabad, has arisen out of judgment dated 30.3.1988 in T.A. No.1480/88.

6. In para 5 of the Supplementary counter affidavit, the respondents have tried to say that the applicant is confusing the whole issue. According to them in O.A. at Chandigarh, the applicant is also challenging the order dated 4.12.1996, passed by Appellate Authority by which Joint Director General of Foreign Trade, Udyog Bhawan, New Delhi considered the grievance of the applicant in the context of orders dated 9.11.1994 and 17.5.1995 and thereafter rejected the same, finding no good grounds. They say that when the applicant is challenging that order dated 4.12.1996 passed by Joint Director General of Foreign Trade then it is implied that his grievance in the context of orders dated 9.11.1994, 12.12.1994 and 17.5.1995 is before the Chandigarh Bench and he cannot be permitted to maintain two O.As for the same relief at different Benches of this Tribunal.

7. By filing the supplementary affidavit dated 1.9.2006, the applicant has tried to say that the "dies-non" period has also been regularised by the Disciplinary Authority vide, office Order No. 29/2001 (Annexure A) as such imposing of "dies-non" has become infructuous.

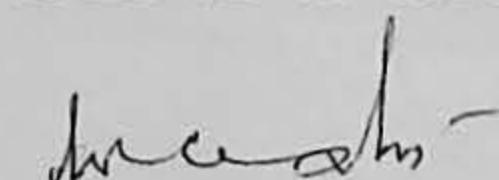
8. We have heard the parties counsel quite at length and have perused the entire pleadings and the papers on record. The first question that arises for consideration is as to whether the delay in filing this O.A can be condoned. It is stated that the time consumed in prosecuting the contempt proceedings before this Tribunal deserve to be excluded, as he did no in good faith. It is said that whatever delay has been caused in challenging



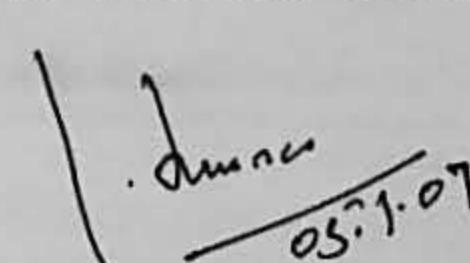
these orders of 1994-1995 is due to the reason that the applicant remained engaged in prosecuting those contempt proceedings. There appears to be some substance in this plea of the applicant. He was of the view that the impugned orders dated 9.11.1994, 12.12.1994 and 17.5.1995 were passed in disobedience of the direction dated 10.3.1988 given by this Tribunal in T.A. NO.1480/1987 and so would be attacked on contempt side and when he discovered that the same was not possible, he filed this O.A. It is difficult to say that he wilfully avoided to challenge those orders within the period of limitation, so the delay in filing this O.A. is condoned.

9. The second point for consideration is as to whether, this O.A. is maintainable in the face of another O.A. at Chandigarh Bench. Unfortunately copy of that O.A. at Chandigarh has not been placed on record. It is stated in para 5 of the supplementary counter affidavit, that in O.A. at Chandigarh, the applicant has challenged the order dated 4.12.1996 (Annexure C to Compilation NO.2 passed by Appellate Authority). It is said that annexure C deals with four grievance of the applicant, one relating to order dated 9.11.1994, second, two relating to order dated 17.5.1995, third, relating to order dated 12.12.1994 and fourth relating to non-release of salary for a "dies non" period and by this order dated 4.12.1996, the Joint Director General of Foreign Trade has refused to give any relief to the applicant in the context of those four grievances. They say that the relief sought for quashing the order dated 4.12.1996 of the Appellate Authority, impliedly covers the validity or invalidity of orders dated 9.11.1994, 12.11.1994 and 17.5.1995 etc. and so the present O.A. being for the same purposes, has to be rejected as not maintainable. Sri S. Dwivedi, learned counsel for the applicant has tried his best to explain all this but we find it difficult to agree with him. When the applicant himself concedes in para 2 of the rejoinder

that the cause of action at Chandigarh and for filing O.A. at Allahabad is the same (arising out of judgment and order dated 30.3.1988 in T.A. NO.1480/88) and when it is not denied that order dated 4.12.1996 passed by the Appellate Authority is under challenge before Chandigarh Bench and by the same order, his grievance in respect of payment of salary for "dies non" period and in respect of non-promotion to the post of U.D.C etc have already been dealt with, we fail to understand as to how he can maintain this O.A. almost for the same purpose and that too by concealing the factum of filing of O.A. at Chandigarh in the original O.A. here at Allahabad. In all fairness, he ought to have clearly stated in the O.A. itself that he had filed one O.A. at Chandigarh but the relief sought therein were different and had nothing to do with the matter raised in this OA. In case the averment in para 5 of supplementary affidavit, as referred to above was incorrect, he ought to have clearly said so in rejoinder or supplementary rejoinder or in supplementary affidavit. He appears to have confused the whole issue. We agree with Shri Mohiley this O.A. is not maintainable for the reasons that almost for the same reliefs, the applicant is already before Chandigarh Bench of this Tribunal. So the O.A. is dismissed for the reasons stated above. No order as to costs.



Member-A



Vice-Chairman

Manish/-