

31/12
OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 30th day of April 2002.

QUORUM : HON. MR. S. DAYAL, A.M.

HON. MR. RAFIQUDDIN, J.M.

O.A. No. 813 of 1998.

Sri Virendar Singh a / a 55 years s/o Late Sri Sadhu Ram, Daftry
Records the Jat Regiment, Bareilly Cantt. r/o 714, Janakpuri,
Bareilly..... Applicant.

Counsel for applicant: Sri P.L. Shama.

Versus

1. Union of India through Secretary Defence, Govt. of India,
New Delhi.
2. The Officer Incharge Records, Records the Jat Regiment,
Bareilly Cantt.
3. Headquarters Uttar Pradesh Area, Bareilly Cantt.

..... Respondents.

Counsel for respondents : Sri/Km. S. Srivastava.

ORDER (ORAL)

BY HON. MR. S. DAYAL, A.M.

The applicant has filed this application for a direction to the respondents to implement Army Hqrs. Letter No.B/05007/100/Inf-6 (Personnel) dated 8.3.95 and re-instate the applicant on the post of LDC w.e.f. 13.12.69 and grant consequential benefits. The applicant also seeks the fixation of his pay in the grade of LDC in continuation of the pay at the time of illegal discharge. The re-fixation of pay from 1973 on the basis of recommendations of Third Central Pay Commission is also asked for. The re-fixation of pay on the basis of recommendation of Fourth Central Pay Commission and Fifth Central Pay Commission is also sought. The applicant seeks the payment of pay and allowances w.e.f. 13.12.69 and less amount paid since 1981. The applicant seeks seniority in the C.

in the cadre of LDC with promotion due to him on the basis of seniority w.e.f. the date of earlier appointment as LDC.

2. The applicant has claimed that he was working as Lower Division Clerk in Hqrs. UP Area Bareilly Cantt. He was wrongly discharged from service w.e.f. 13.12.69. The discharge was termed as irregular by AG's branch Army Headquarters vide their letter dated 16.3.81. The applicant claims that he was not restored to his original situation but was given re-employment as Peon. The applicant was not satisfied with the reduction from Group 'C' to Group 'D' and filed O.A. No.465/91. It is claimed that the Central Administrative Tribunal directed that the applicant be given benefit of continuity of pay, pension, restoration etc. instead of re-appointment. As the directions of the tribunal were not followed in letter and spirit, the applicant filed another O.A. No.1761/93. It is claimed that Army Hqrs. had in pursuance of the judgment, directed the sub-ordinate formation to re-instate the applicant. The applicant has stated that he was working as a Peon before joining as LDC and had resigned from the post of Peon and was recruited on the post of LDC. He claims that on 29.8.81, the Jat regiments had pressurised him and obtained illegal consent to join as peon and have denied re-instatement. It is claimed that the applicant was discharged from the office on 9.6.68 while he was working as Peon and from the service on the post of LDC on 13.12.69. He claims that the relief allowed to him was not for re-instatement as Peon.

3. We have heard the arguments of Sri P.L. Sharma for applicant and Km. S. Srivastava for respondents.

4. The Annexures to the O.A. throw light on the controversy. We find that the applicant was given notice of termination with Rule 5(1) of Central Civil Services (Temporary Service) Rules 1965. The notice was to the effect that the

services of the applicant shall stand terminated w.e.f. the date of period of expiry of one month from the date of notice served on the applicant. It appears that there was some correspondence between the Hqrs. of Central Command, Lucknow and the organisation of Adjutant General, Army Hqrs., Delhi and by letter dated 16.12.81, the Assistant Adjutant General wrote to Hqrs. Central Command that the applicant was wrongly discharged from service due to administrative lapse and his case was to be dealt with in accordance with instructions contained in Ministry of Home Affairs Secret Memo No.9/49/54-RPS dated 24.4.58 received under Ministry of Defence Memo dated 4.7.58. The applicant's wife was informed on 8.3.95 that in pursuance of judgment dated 26.11.92 in O.A. 465/91 and 1761/93, the Army Hqrs. has directed Records, the Jat Regt. Bareilly to reinstate Sri Virender Singh with restoration of seniority, service increment areas of increment and pension etc.

5. We have perused the order of the tribunal in O.A. 465/91. The tribunal relying on the letter of Army Hqrs. held that the discharge of the applicant was irregular. The applicant should have been reinstated and there is no question of re-appointment. It was also mentioned that the respondents should rectify the mistake and give the benefit to the applicant of continuity of pay and pension, restoration etc. instead of re-appointment.

6. In the second O.A. 1761/93, the applicant had mentioned that he had submitted a representation for making compliance of the order passed by the tribunal in O.A. 465/91. It is claimed by the respondents that the applicant was informed that there has been no mistake in discharging the applicant from service by Hqrs. Uttar Pradesh Area w.e.f. 13.12.69. The respondents had been directed to dispose of the representation of the applicant by a reasoned and speaking

order in the light of observations made in the O.A.

7. The respondents have, on the other hand, maintained that the applicant had been employed as LDC in lieu of combatant clerk and had been discharged from duties as clerk w.e.f. 10.6.68. He was discharged from service by giving one months notice with termination to take effect from 13.12.69. The petitioner's employment as LDC ~~on~~ ^{on} temporary basis came to an end and combatant clerk had been posted on the post previously occupied by the applicant. Therefore, there is no mistake in termination of his service. It is claimed that as per the Army Hqrs. letter dated 16.3.81, the applicant was re-appointed on the post of Peon and not re-employed as LDC. It is claimed by the respondents that the break in service between 13.12.69 to 28.8.81 has been condoned by Govt. of India, Ministry of Defence letter dated 20.9.84 and 2.3.95 and the applicant was restored to his original post of Peon with all the benefits. The whole period of break has been counted as continuity in his service for pension, gratuity, leave entitlement etc. ^{claimed that respondents have} Thus, it is ^{claimed that respondents have} complied with the order of tribunal in letter and spirit, by part II of the order dated 5.4.95 and it has been mentioned that the period will be counted for continuity in service, restoration of seniority in service and increment. The period of break has, however, will not count for pension or for arrears of increment. We find from Annexure No.4 that ^{ment} re-instate^{ment} of Sri Virender Singh as Peon on account of consent given by him, was ^{not} the correct implementation of the orders of C.A.T. We again find from letter dated 8.3.95 written by Directorate General of Infantry 6 general staff branch Army Hqrs. that the following instructions were given to Records, Jat Regiment, Bareilly :-

"In pursuance of the judgment of Honourable CAT, Allahabad on 26 Nov.92 in OA No.465 of 1991 and 07 Dec.93 in OA No. 1761 of 93 in case of Sh. Virender Singh V/S UOI, Govt. Corrigendum No.R/05007/100/Inf-6(Pers/44/CS/D/Lab) dated 02 Mar.93 to MOD letter No.R/05062/11/Org-1(Pers)(a)/19696/D

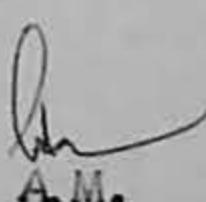
(Lab) dated 20 Sep. 1984, for reinstatement of Sh. Virender Singh Peon, Records The Jat Regiment Bareilly, with restoration of seniority, service increment arrears of increment and pension etc. is forwarded herewith for further necessary action. He may be re-instated and granted remaining benefits i.e. service increment etc. and court verdict may please be implemented at the earliest."

8. It is clear from the contents of letter dated 8.3.95 (Annexure 4 to the OA) that this was in response to the directions given in O.A. 1761/93 as well as directions given in the earlier O.A. 465/91. The direction was clear - to reinstate the applicant with restoration of Seniority, increment and pension etc.

9. Since the applicant was deprived of his appointment as LDC by order of termination which was found to be irregular by the Army Hqrs. vide letter dated 16.3.81 required his re-appointment. However, the order passed by the Tribunal in OA 465/91 was that in case it was found that the termination was by mistake, the applicant should be given benefit of pay, pension by his reinstatement instead of re-appointment. The respondents themselves have admitted in order dated 16.3.81 that he was wrongly discharged due to administrative lapse. Therefore, the applicant is entitled to reinstatement as LDC along with all consequential benefits. We, therefore, direct the respondents to treat the applicant as reinstated as LDC w.e.f. the date he was granted reappointment and give him all consequential benefits within a period of three months from the date of receipt of a copy of this order.

There shall be no order as to costs.


J.M.


A.M.

Asthana/
2.5.02