

Central Administrative Tribunal, Allahabad Reserved  
Registration No. TA-16 of 1986

Dr. Dhum Singh                      .....                      Appellant

Vs.

Union of India . . . . . Respondent

CONNECTED WITH

Registration No. TA-17 of 1986

Union of India ..... Appellant

 $V_S$ 

Dr. Dhium Singh . . . . . Respondent.

Connected with

Registration No. O.A.-170 of 1986.

Dr. Dhum Singh ..... Applicant

 $V_S.$ 

Union of India . . . . . Respondent.

Hon. D.S.Misra, Member (A)

Hon. G.S.Sharma, Member(J)

(By Hon. G. S. Sharma, Member (J) )

These are 3 connected cases between the same parties and are proposed to be decided by this common order. Registration Nos T.A.-16 and T.A.-17 of 1986 are 2 cross civil appeals (nos. 33 of 1985 and 183 of 1985) filed by the parties against the judgment and decree dated 30.11.1984 passed by the Civil Judge, I Meerut in suit no. 424 of 1980 filed by Dr. Dhum Singh for a number of reliefs decreeing the suit in part with costs and have been received by transfer from the Court of IX Additional District Judge, Meerut under section 29 of the Administrative Tribunals Act XIII of 1985 ( hereinafter referred to as the Act XIII of 1985). O.A.no.170 of 1986 is <sup>an</sup> application under section 19 of ~~the~~ Act XIII of 1985 filed by the applicant before us with a prayer that it should be considered with the aforesaid 2 cross appeals and one writ petition filed by him in the Allahabad High Court.



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2. The material facts of suit no.424 of 1980 filed by Dr. Dhum Singh may be stated first. This suit was filed by the plaintiff on 21.7.1980 for the following 12 reliefs :-

- A. that through the decree of the court a declaration to the effect that the plaintiff is permanent Asstt. Research Officer in Military Farm w.e.f. 21 April 1975 be granted in favour of the plaintiff and against the defendant,
- B. that a declaration to the effect that the plaintiff is still continuing as Fodder Specialist with benefits of pay and allowances and other benefit admissible on the post be granted in favour of the plaintiff and against the defendant,
- C. That a decree of Rs.3600/- for recovery of arrears of pay and allowances and their interest due to the plaintiff on pay fixation as Asstt. Research Officer upto 30th June 1980 and further amounts due with 12% interest till date may be passed in favour of the plaintiff and against the defendant,
- D. that a decree of Rs.3600/- for recovery of the difference of the pay and allowances of the post of Fodder Specialist and Asstt. Research Officer for period of 1 January 1978 to 30 June 1978 and their interest at the rate of 12% due upto 30 June 1980 and further interest till date may be granted in favour of the plaintiff and against the defendant,
- E. that a decree for the recovery of Rs.92.50 as travelling allowance plus 12 per cent interest till date may be granted in favour of the plaintiff and against the defendant
- F. that a decree of Rs.38/- plus interest due till date for recovery of illegal deduction made from the pay of the plaintiff treating him absent on duty illegally may be granted in favour of the plaintiff and against the defendant and further a declaration to the effect that the plaintiff is not treated as absent from



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duty on 8.8.1979 and 24.1.1980 may be granted in favour of the plaintiff and against the defendant,

G. that a declaration to the effect that treating the plaintiff on leave w.e.f. 25.3.80 to 2 April 1980 is illegal and he is on duty from 25.3.80 to 9 June 1980 with all benefits as admissible on duty be granted in favour of the plaintiff and against the defendant,

H. that a decree of Rs.33 00/- for recovery of pay and allowances from 1 April 1980 to 9 June 1980 subsistence allowance from 10 June 1980 to 30 June 1980 and additional dearness allowance from Nov. 79 to March 80 plus 12% interest till date and further recovery of subsistence allowance at the rate of Rs.725/- per month or as admissible even more from 105ka/3 time to time with 12 percent interest till date may be passed in favour of the plaintiff and against the defendant,

I. that a decree of Rs.120/- with interest till date for recovery of expenditure incurred by the plaintiff to meet unlawful demand of his superior officer for submitting extra copies of appeals to higher authorities and sending letters by regd.post when refused to be received may be granted in favour of the plaintiff and against the defendant,

J. that a decree of Rs.1500/- with 12 percent interest till date for the recovery of damages caused due to the capricious and malafide orders of placing the plaintiff under suspension by the incompetent authority subsequently cancelled by the competent authority after filing writ petition may be granted in favour of the plaintiff and against the defendant,

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K. that decree of the cost of suit may be passed in favour of the plaintiff and against the defendant, and

L. that any other decree or declaration which the court may deem fit under the circumstances of the case may kindly be granted in favour of the plaintiff and against the defendant.

3. It is not in dispute that the plaintiff was appointed as Assistant Research Officer (hereinafter referred to as ARO) in the grade of Rs.650-1200 in the Military Farm, Meerut on 21.4.1973 through a selection by Union Public Service Commission (hereinafter referred to as the UPSC). It has been alleged that according to the terms and conditions of his service, he should have been considered for confirmation on this post after completing the probation period of 2 years on 21.4.1975. Despite his certain representations and personal interview with the Director of Military Farms under whom the plaintiff was working, he was neither confirmed on that post nor any reply was sent to the plaintiff. On 1.11.1974, the plaintiff further alleges, complete charge of the post of Dairy and Agriculture Chemist (hereinafter referred to as DAC) in the pay scale of Rs.1100-1600 was handed over to him in a clear vacancy. The claim of the plaintiff for getting the officiating pay and allowances of the post of DAC was however turned down by the Director of Military Farms (hereinafter referred to as DMF). The DMF was not competent to turn down the request of the plaintiff as such powers vested in the Ministry of Defence only. On 27.3.1975 when the plaintiff was holding the charge of ARO and DAC, he was also given the complete charge of Fodder Specialist (hereinafter referred to as FS) carrying the pay scale of Rs.1100-1600.



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On the repeated requests of the plaintiff, he was appointed as FS in November 1977 on ad-hoc basis and the period of his working on this post was extended from time to time upto 30.6.1978 with the concurrence of the UPSC. In April 1978, the plaintiff had remained on medical leave for one month. On his return to his office in May 1978, he found losses in his section which were caused by a superior officer Additional DMF Lt.Col.S.N.Datt by misusing his position. The plaintiff had reported the losses to DMF which annoyed the ADMF and he began to harass the plaintiff and find fault in him. On the repeated representations made by the plaintiff against the Lt.Col.S.N.Datt, Brig. B.S.Dahiya, DMF, gave a personal hearing to the plaintiff on 12.6.1978 and showed his annoyance on the complaints made by the plaintiff against Pri Datt and unduly threatened the plaintiff to use his official authority to discontinue his ad-hoc appointment.

4. It is further alleged that on account of this vindictive attitude of the ADMF and DMF, the plaintiff reported the matter to the Secretary to the Government of India, Ministry of Defence, New Delhi for his protection vide letter dated 9/11 June, 1978 but he received no reply despite his two subsequent reminders. Vide his letter dated 1.7.1978, the ADMF Meerut informed the plaintiff that ad-hoc arrangement for the post of SF has been discontinued and the plaintiff should be deemed to have relinquished the ad-hoc appointment of FS w.e.f. 30.6.1978. According to the plaintiff, this <sup>order</sup> was without any authority and and was passed as a result of policy of victimization and malafide exercise of the official authority. The plaintiff again moved the Ministry of Defence to restore his ad-hoc appointment but he received no reply.



5. As a part of the policy of victimisation, the departmental authorities, as alleged by the plaintiff, did not fix the pay of the plaintiff in the lower post of ARO to his advantage while reverting him w.e.f. 1.7.1978 and also stopped the future increment, from 21.4.1977, when the plaintiff had to cross the efficiency bar in that scale. Counting the officiation of the plaintiff on the higher post, the plaintiff should be deemed to have crossed the efficiency bar but on account of hostile attitude of his superiors, he was not allowed to cross the efficiency bar. This arbitrary refusal of the ADMF Lt.Col.J.L.Koul caused a loss of Rs.3600/- to the plaintiff upto 30.6.1980. The plaintiff claims interest @12% per month on this amount as well as monthly increment @Rs.200/- per month with interest. The plaintiff claims Rs.3830.10P as difference of pay in the two posts of SF and ARO from 1.1.1978 to 30.6.78. Claiming interest @12% per annum on this amount, the plaintiff has claimed Rs.3600/- as the difference in his pay upto 30.6.1980.

6. It is further alleged that in 1978, 1979, and 1980, the plaintiff was not provided Government vehicle for performing official duties and he has claimed Rs. 92.50P with interest @12% per annum as a sum spent on journeys.

7. The plaintiff is alleged to have been marked wrongly absent from duty on 8.8.1979 despite his sending an application for restricted leave and a sum of Rs.38/- on that ground was deducted from his pay of October 1979 illegally. The plaintiff has claimed this amount with interest @12 percent per annum in the suit.



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It is further alleged that the defendant did not pay any heed to the several representations and legal notices sent by the plaintiff bringing to its notice the heavy loss caused by superior officers in his absence nor took any step to redress his legitimate grievances and on 25.3.1980, he received a charge sheet for a departmental proceeding for the alleged false and fabricated reports made by him against his superior officers. On 25.3.1980, the plaintiff was directed to proceed on leave till the finalisation of the disciplinary case by ADMF Sri Koul. In his defence statement submitted on 2.4.1980, the plaintiff had exposed ADMF Sri Koul for his fabricating a false case against the plaintiff. Sri Koul without any authority, placed the plaintiff under suspension thereafter on the same date. The plaintiff had served the defendant with a legal notice dated 10.4.1980 for revoking the illegal suspension order as well as the order dated 25.3.1980 directing the plaintiff to proceed on leave, which were passed in vengeance by Sri Koul without any authority. Even the pay and subsistence allowance as well as dearness allowance were denied to the plaintiff for certain period. When the pay and subsistence allowance were not paid to the plaintiff from 1.4.1980, he filed a writ petition in the Allahabad High Court on 23.5.1980. On receiving the notice of the said writ, which was listed for hearing on 2.7.1980, the defendant passed the orders on 6.6.1980 cancelling the order of suspension of the plaintiff. The plaintiff was, however, not paid any pay or allowance and he had claimed Rs.3277/- in the suit as arrears of pay and Rs.725/- as subsistence



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allowance upto 30.6.1980 with interest at 12% per annum In view of the order dated 23.5.1980 passed by the defendant, the writ petition listed for hearing on 2.7.1980 was not found maintainable and the plaintiff had to suffer Rs.1500/- as damages due to capricious and mala-fide orders passed by ADMF Sri Koul and plaintiff is entitled to get the same with interest @12% per annum.

9. The plaintiff claims Rs.120/- as the expenses incurred by him in submitting appeals to the Quarter Master General in triplicate and to the Government of India in quintuplicate with interest @12 per cent per annum from the date of the notice given by him for the same.

10. It is further alleged that the fourth CDS instalment payment due to the plaintiff from Aug. 1979 has not been paid to him despite a prereceipted bill dated 21.7.1980 and it is alleged that in case the bill amounting to Rs.471/- is not paid, the plaintiff will be entitled to get the same through suit.

11. It is also alleged that since Dec. 1979, the plaintiff was not supplied the adequate quantity of water despite charging Rs.10/- per month from him. The urgent repairs required to be made in his official residence were not got effected by ADMF Sri Koul and the plaintiff and his family were caused all sorts of inconvenience and damages. The plaintiff was also not allowed to have the supply of milk on payment from the regimental dairy of Military Farm. The plaintiff was otherwise harassed and the communications sent by him were not received and were ordered to be received only during the specified period between 8 and 8.30a.m. when delivered personally. The defendant did not appoint any inquiry officer since 25.3.80 after service of the charge sheet on the plaintiff despite repeated applications given by the plaintiff. He ultimately gave



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notices under section 80 Code of Civil Procedure on 12.8.1979, 12.3.1980, 10.4.1980 and 9.5.1980 and filed the suit for the reliefs mentioned above.

12. The suit was contested by the defendant and admitting the fact that confirmation of the plaintiff as ARO was due on 21.4.1975 and the plaintiff had approached the authorities for his confirmation, it was pleaded in its written statement that the confirmation of the plaintiff is receiving consideration and could not be finalised due to procedural delay. Regarding the charge of DAC, it was admitted that on the retirement of former incumbent Sri Harilal, the plaintiff was given temporary charge of this post on adhoc basis till some permanent incumbent was posted. On the taking of the charge by the regular candidate Dr. T.D.Puri on 1.4.1975, the plaintiff was relieved of this charge and he had worked on this post from 1.11.1974 to 31.3.1975. As the plaintiff was not promoted to the post of DAC, he was not allowed the pay of that post as the plaintiff was looking after the work of DAC in a routine arrangement in addition to his own duties as ARO. The defendant admitted the fact that the plaintiff was given charge of FS when this post fell vacant till some permanent incumbent was posted. As this post was Class I post and could be filled only by an officer selected by the UPSC, the plaintiff is not entitled to get any benefit of his working on this post for any period in addition to his own duties. Regarding the losses, it was pleaded by the defendant that the losses were caused on account of <sup>the</sup> negligence of the plaintiff himself and he wrongly blamed his senior Lt.Col.S.N.Datt for the same and wrongly cast aspersions on him. The DMF Brig.Dahiya had given a personal hearing <sup>to the plaintiff</sup> on his request.



but the allegation that he had ever threatened the plaintiff is false. He had simply advised the plaintiff to behave properly with his superiors and not <sup>to</sup> create indiscipline in the institution. Instead of accepting the advice, the plaintiff continued unreasonable attitude and flouting the orders of his superiors on the termination of his ad-hoc arrangement as FS. After the termination of his ad-hoc arrangement on the post of FS, he was never asked to perform the duties of that post and the allegation to the contrary is not correct. Since the disciplinary proceedings were pending against the plaintiff, his case for crossing the efficiency bar could not be considered by the Departmental Promotion Committee (DPC) and the cause of delay alleged by the plaintiff is not correct. The plaintiff is not entitled to claim any daily allowance for local journeys and he never forwarded his bill for actual expenses incurred by him on official journey alleged by him. His claim for the travelling allowance is thus not tenable. The plaintiff remained absent from duty on 8.8.1979 and he was granted leave without pay for this date. His pay for his this absence was deducted later on on the objection of the Audit Authorities. The plaintiff was correctly charge sheeted for his various acts of indiscipline and there was never any attempt to fabricate false evidence against him. The allegations to the contrary are not correct. The plaintiff was paid his pay and other allowances including the subsistence allowance as permissible under the rules. } The plaintiff had been getting the supply of water



in his official residence and is not entitled to claim Rs.10/- per month on this account. He was also never denied the supply of milk on payment. The receipts of notices under section 80 Code of Civil Procedure were admitted but it was pleaded that the plaintiff had no cause of action to file the suit. He was appointed on the post of ARO which is a class II post, while the post of DAC and FS are class I posts and the appointment on these posts are made only on the recommendation of the UPSC. The plaintiff was charge sheeted only when the repeated warnings failed to have any effect on him. The allegation that he was charge sheeted on account of illwill or malice is not correct. The plaintiff cannot claim his confirmation on the post of ARO or the privilege of crossing efficiency bar as of right. He is not entitled to the reliefs claimed and his suit deserves to be dismissed with costs.

13. The plaintiff filed a replication and reiterating the pleas taken in the plaint alleged that he was made to take over the complete charge of the post of DAC and is entitled to draw the officiating allowance for working on that post in addition to his duties as ARO according to the rules. Similarly the plaintiff was given the complete charge of the post of FS and his appointment on that post was approved by the competent authority from 27.3.1975 to 31.12.1977 after the concurrence of UPSC. The plaintiff is entitled to recover his interest as per his legal notice as the defendant did not pay his dues despite repeated representations. The plaintiff was forced to travel by his own Scooter in Government interest and he is entitled to be paid for the same according to rules. Despite his sending an application for Restricted Leave, he was wrongly marked absent on 8.8.1979. His leave



being due, any other kind of leave could not be granted to him under the rules. Lt. Col. Koul had no authority to place the plaintiff under suspension and his action amounts to an offence. It was admitted that the plaintiff has been paid his pay and allowances and subsistence allowance after the filing of the suit and he is entitled to <sup>interest and</sup> recover ~~the~~ costs of the suit in respect thereof. In fact the plaintiff was not supplied even a drop of water since long and even the necessary repairs to his official residence were not got done in order to cause inconvenience to the plaintiff and his family members.

14. The learned trial Court framed 11 issues in the case and held that the plaintiff was given complete charge of DAC. The plaintiff was promoted as FS as alleged in the plaint and he was not given merely the routine charge of this post in addition to his own duties but his appointment was discontinued from 30.6.1978 and he is not continuing on this post since then. He was found entitled to the pay and allowances of the post of FS from 1.1.1978 to 30.6.1978 and as the said dues were paid by the defendant, the issue to this effect became infructuous. The plaintiff was found entitled to count the service on the higher post of DAC and FS for the fixation of his pay in the grade of ARO upto 30.6.1980 and onwards. The plaintiff was also found entitled to get 92.50P as travelling expenses. The plaintiff was further found entitled to get Rs.1500/- as damages claimed by him. He was also found entitled to confirmation w.e.f. 21.4.1975.



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He was ~~further~~ not found entitled to get any interest. His claim for getting the pay for 8.8.1979 was accepted and in view of these findings, the suit was decreed in part for the reliefs (a) to (h) and (j). He was further awarded interest on the amount found due @6% per annum in case the payment found due were not paid to him within 2 months. The costs of the suit were also awarded. The declaration that the plaintiff was still continuing on the post of FS was, however, refused.

15. Aggrieved by the findings against him, the plaintiff filed civil appeal no. 33 of 1985 for getting a declaration that he still continues to be in service as FS with all benefits and he was entitled to claim interest at 12% per annum on the amount found due to him. The other appeal no. 183 of 1985 was filed by the Union of India challenging the correctness of the findings given by the Court below against it. Both these appeals are now before us under the changed law.

16. Case no.170 of 1986 under section 19 of Act XIII of 1985 has been filed by the applicant Dr. Dhum Singh for treating him as DAC from 1.11.1974 to 31.3.1975 with all benefits of pay and allowances admissible in connection with that post, for treating him as FS even after 30.6.1978 upgrading the post in the rank of Deputy Director of Military Farm with all consequential benefits and for being awarded Rs.1 million as damages. He further prayed that this application be heard along with the aforesaid 2 cross appeals and his writ petition no. 13881 of 1985 pending in the Allahabad High Court. He also claims compound interest at 12 per cent per annum on all his claims from their



due date of payment. It has been alleged that he discharged his duties on the higher post of DAC from 1.11.1974 to 31.3.1975 in addition to his own duties but his claim for getting the pay and allowances ~~of~~ this post was wrongly rejected by the authorities on the wrong ground that the matter was subjudice. In fact, the applicant had not made this prayer in his civil suit. The ad-hoc appointment of the applicant on the post of FS was discontinued by the respondents on the ground of his causing indiscipline and subsequently he was removed from the post of even ARO in a departmental proceeding after his suspension for 4 years. The respondents later on allowed full pay and allowances to the applicant for the period of suspension treating the whole suspension period on duty for all purposes. The alleged indiscipline of the applicant could not be established and as such he is entitled to his reinstatement on the higher post. The post of FS and ARO are in advisory cadre and as the general cadre post of local head of office has been upgraded one rank above, the applicant is also entitled to the upgradation of his post but his representation to this effect was wrongly rejected by the respondents. On account of the various orders passed by the respondents, the applicant was harassed and put to mental agony due to the malafide and negligent attitude of the respondents. In addition to the filing of the appeal aforesaid, the applicant also filed a writ of mandamus for the redressal of his grievances and the said writ



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petition be heard with this application. In addition to the reliefs claimed by the applicant in his suit and the writ petition, he is entitled to damages amounting to atleast Rs. one million. The repairs to his Govt. residence were stopped for 5 years from April 1980 to July 1985 in vengeance. He was not supplied the required quantity of milk for about 2 years before his removal from service and during the period he remained removed from service, even the canteen and milk facilities were stopped. He was not granted increment after 1.4.1977 while under the rules, the efficiency bar has to be considered before the same falls due.

17. The respondent contested <sup>even</sup> this case of the applicant and in the counter affidavit filed on its behalf pleaded that the applicant did not possess the essential qualifications for the post of DAC and SF and only in a stop gap arrangement, he was asked to look after the work of DAC on the retirement of Sri Hari Lal. The ad-hoc arrangement of the applicant on the post of FS was not approved by the UPSC after 30.6.78. The post of FS is a selection post and the applicant had not even applied for this post when the post was advertised by the UPSC. Further, this post is an ex-cadre post and after 30.6.1978, he neither worked on this post nor can he claim his continuity on this post under the rules. On the relinquishment of the charge of the post of FS, the applicant started creating troubles and became quarrelsome. The disciplinary proceedings against him were accordingly started as he was not amenable to the norms and discipline of the office and the directions issued by superiors. The Allahabad High Court had set aside the order of removal of the applicant on the technical ground that



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reasonable opportunity of defence was not allowed to the applicant as required by Article 311(2) of the Constitution of India. The matter of crossing the efficiency bar at the stage of Rs.810/- has been decided in favour of the applicant and a bill for about Rs.25,000 to be paid to him as arrears of his salary has already been sent to the Audit Authorities. His claim for crossing the efficiency bar at the stage of Rs.1000/- is under active consideration of the authorities. The applicant cannot claim the benefits of the post of DAC as he was never approved by the UPSC for this post. The applicant was too junior to officiate as DAC. Ad-hoc appointment of the applicant on the post of FS was purely temporary in nature till the new incumbent joined or till a certain date and after 30.6.1978, he cannot claim this post as of right. He was suspended on 10.6.1980 and after his reinstatement, he is not entitled to this post. The applicant is not entitled to get his post of ARO upgraded under the rules. The applicant is in the habit of filing cases in the Court and so far he has filed 18 cases in various Courts against the respondent and in such a case, the Delhi High Court has passed a stricture against him. The applicant has been allotted a very good living accommodation in which he is living since long. As and when needed, the same was got repaired and <sup>recently</sup> ~~reasonable~~ major over-hauling/repairs have been done. The grounds taken by the applicant in this case for seeking the reliefs are not sustainable in the eyes of law and he is not entitled to any



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relief. The applicant thereafter filed a long rejoinder running into 28 pages and alleged that he is entitled to the reliefs claimed by him under the rules and he was wrongly given rough treatment by the departmental authorities on account of ill-will and the various allegations made by the respondent in the counter affidavit support his case.

18. The respondent thereafter filed a supplementary counter affidavit stating that the applicant had accepted in his charge report dated 12.7.1978 that he had handed over complete charge of the post of FS and his claim for working on this post continuously is false. An officer of the rank of Major alone is now entitled to work on the post of FS under the directions issued by the President and the applicant is not qualified for that post. The applicant thereafter filed a supplementary rejoinder and stated therein that he had handed over the charge of FS on his proceeding on leave and he is still looking after the work of the post of FS as none else can do the work of soil lab established by the applicant for the post of FS. The appointment of a Major on the post of FS is in violation of the fundamental right of the applicant and the applicant is entitled to work on this post.

19. Record of the writ petition no.13881 of 1985 alleged to have been filed by the applicant in the Allahabad High Court has not been received from the High Court so far. The applicant wanted his remaining 3 cases to be disposed of expeditiously and he did not like to wait for the receipt of



the record of the writ petition. We, therefore, heard the arguments of the parties in the aforesaid 3 cases together and will now like to consider the case of the applicant in respect of his each claim.

20. Before entering into the discussion on the point <sup>in</sup> of controversy, it will be convenient to point out that the parties did not adduce any oral evidence in the Court of the Civil Judge. A set of the documents filed by the parties before the trial Court are common and some of such documents were again filed with the application under section 19 of the Act XIII of 1985 before us. Thus, where reference to any document is made by quoting exhibit number, the same shall mean the document filed in the suit and where the reference is made quoting the annexure number, it will relate to the papers filed before the Tribunal. It will be convenient to consider the case of the plaintiff as taken in <sup>the</sup> suit no.424 of 1980 <sup>first</sup> and I will like to consider the same with reference to the reliefs claimed by him :-

(A) DECLARATION REGARDING CONFIRMATION AS ARO

It is an undisputed fact that the plaintiff was appointed as ARO on 21.4.1973 on the basis of the selection made by the UPSC. Paper no.12-A on the record of the trial court is the letter of appointment of the plaintiff stating that on the recommendation of the UPSC, the President is pleased to offer the plaintiff the temporary post of ARO. Clause (i) of paragraph 2 of this letter further shows that the post is temporary and in the event of its becoming permanent, the claim for permanent absorption will be considered in accordance with



rules. The plaintiff will be on probation for a period of 2 years from the date of appointment which may be extended at the discretion of the competent authority. The appointment letter though speaks that the appointment of the plaintiff was on probation it clearly shows that the post on which the plaintiff was appointed, was temporary and as such unless the post was made permanent, the plaintiff could not be absorbed on that post. Clause (v) of paragraph 2 further speaks that the plaintiff will be subject to the conditions of service as applicable to the temporary civilian Government servants. The trial Court had treated the appointment of the plaintiff on probation and as such it was of the view that on the completion of the period of probation, he became entitled to confirmation and his confirmation could not be delayed on account of disciplinary action against him in the subsequent years. I am, however, of the view that unless the Government passes the specific order of confirmation after seeing the performance of an employee appointed on temporary basis, there could not be an automatic confirmation after the expiry of the alleged period of probation, as held in Chief Conservator Vs. D.A. Lyall (A.I.R. 1961 Allhabad-450); Sukhbans Singh Vs. State (A.I.R. 1962 SC-1711 and State Vs. Dharam Singh (AIR 1968 SC-1210)). It has been contended on behalf of the respondent-Union of India that the matter of confirmation of the plaintiff is under the active consideration of the Govt. and he will be confirmed in due course at an early date. I am of the view that the right of confirmation vests in the Union of India and it will be exercised in accordance with law in due course and the finding given by the trial Court to the contrary is not correct.

(B) DECLARATION REGARDING THE POST OF FS

The stand of the plaintiff in this case is



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that though he was appointed as ARO, the respondent handed over the responsibility of the office of the FS to him in late March, 1975 when this post fell vacant on the reversion of its former incumbent. It is an undisputed fact that the post of ARO is group 'B' post in the grade of Rs.350-900 (revised grade Rs.650-1200) but the post of FS is group 'A' post in the grade of Rs.1100-1600. When the post of FS fell vacant the respondent had <sup>sent</sup> ~~made~~ a requisition to the UPSC for recommending some candidates for this post and in the meantime, the approval was sought for the working of the plaintiff on this post on ad-hoc basis. The UPSC gave its approval from time to time for the ad-hoc appointment of the plaintiff as FS from 27.3.1975 to 30.6.1978 as appears from papers 13-A and 14-A on the record of the trial Court. It will further appear from Annexure C.A.-7 that vide its letter dated <sup>15.2.1978</sup> ~~25.2.1978~~ the UPSC asked the respondent to send a fresh requisition in the prescribed proforma for <sup>the</sup> ~~necessary~~ recruitment of FS against the vacant post intimating that the offer of appointment to Dr. M.S.Tewana, who had not joined despite giving sufficient time, has been cancelled. It may be useful to point out in this connection that the plaintiff was allowed to hold the post of FS on ad-hoc basis for such a long period as the earlier candidate, namely, Dr. M.S.Tewana recommended by the UPSC had not joined despite seeking extension and the new selection took some time. Last time when the UPSC approved the ad-hoc appointment of



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the plaintiff as FS vide its letter dated 18.5.1978, annexure C.A.-12, for 6 months from 1.1.1978, it was again advised that a fresh requisition as advised earlier be sent to fill the post on a regular basis. The UPSC was thus insisting for making a fresh selection and it was not in a mood to extend the ad-hoc arrangement any further.

The UPSC accordingly advertised the post again on the requisition of the respondent and in response to the advertisement made by the UPSC for this post, the plaintiff admittedly did not apply. His stand is that his appointment on ad-hoc basis was approved by the UPSC till a regular appointment was made and no officer below the rank of Secretary in the Ministry of Defence could terminate his ad-hoc appointment. His further contention is that even after 30.6.1978, the respondent has been taking the work of FS from him and as such, he continues to hold this post and the Court below committed an error in not granting the necessary declaration.

The contention of the plaintiff on this point is neither correct factually nor sound legally. It appears from annexure C.A.-11 that on 22.7.1977, the UPSC had approved the ad-hoc arrangement of the plaintiff till 31.12.1977 or till Dr. M.S. Tewana reports for duty whichever is earlier. When the offer given to Dr. Tewana was cancelled, the UPSC vide its letter dated 18.5.1978 (annexure CA-12) had approved the ad-hoc arrangement for a further period of 6 months w.e.f. 1.1.78 or till the post is filled on a regular basis, whichever is earlier. No approval of the UPSC laying down different terms of approval



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of the ad-hoc arrangement of the plaintiff has been placed on record by him. These documents amply make it clear that both the times, the UPSC extended the approval to a definite date and on no occasion, the ad-hoc arrangement was to continue till the regular appointment was made. Thus, irrespective of the fact whether any regular appointment on the post of FS was made or not, the ad-hoc arrangement of the plaintiff could not continue beyond 30.6.1978 in view of the order Annexure CA-12. It is, therefore, not correct to say that the plaintiff had to continue on this post till a regular appointment was made. As it was not a question of the termination of ad-hoc arrangement before the date approved by the UPSC, the question of the competence of the authority which could terminate his appointment simply did not arise in this case and his ad-hoc arrangement came to an end automatically on the expiry of the extended period of 6 months.

Regarding the nature of work being taken from the plaintiff, it has been brought to our notice that some of the duties of the ARO and FS are of similar nature. The plaintiff has also not disputed this fact. Both the ARO and FS have to deliver lectures to the students in the Military Farms School and Research Centre and both have to do research work as appears from paper nos. 31-C and 32-C on record of the trial Court. It is the further duty of the plaintiff, ARO to carry out other duties entrusted by the Officer Incharge of the Military Farms School and Research Centre connected with research work.

The plaintiff, is therefore, supposed to do the research work and the teaching work which are also done by



FS and merely on the ground that he is doing the similar work to some extent, he cannot claim his appointment on the post of FS ~~merely~~ on the basis of his ad-hoc arrangement in the past.

It is further an undisputed fact that the post of FS is the ex-cadre post and the plaintiff cannot claim his promotion on this post merely on the basis of his seniority or past experience. It is also an undisputed fact that the post of FS is a selection post and the selection on this post has to be made through UPSC. According to the qualification for the post of FS, 5 years research experience in agronomical problems relating to fodder crop production is necessary. Knowing fully well that he did not possess the minimum qualification prescribed for this post, the plaintiff did not apply to the UPSC for his selection and ~~and~~ does not lie in his mouth to say that on the basis of his doing the similar work and past ad-hoc arrangement, he continues to be the FS. It appears that when his ad-hoc arrangement came to an end, he had handed over the complete charge of the post of FS on 12.7.1978 vide annexure 1 to the supplementary counter affidavit. The explanation of the plaintiff that he had handed over the charge of this post on his proceeding on leave is not correct. In that case, he should have handed <sup>over</sup> the charge of the post of ARO also as he was also holding the charge of that post. Further, there is nothing on record to show that on his return from leave, he ever took the charge of FS. I am, therefore, clearly of the



that neither the ad-hoc appointment of the plaintiff was approved by the UPSC beyond 1.7.1978 nor does he possess the minimum qualification for this post nor he can be appointed in this post without the selection or recommendation by the UPSC. The finding given by the trial Court that he does not continue to hold the post of FS after 30.6.1978 is correct and there is no force in the appeal of the plaintiff against this finding.

(C) CLAIM FOR Rs.3600 IN RESPECT OF INCREMENTS

The plaintiff has claimed Rs.3600 being the difference in the pay to which he was entitled on <sup>his</sup> reversion to the post of ARO and the amount actually paid to him by the respondent upto 30.6.1980. This difference is on account of not taking into consideration the increments earned by the plaintiff. The case of the respondent on this point is that in the grade of ARO, the plaintiff had to cross efficiency bar at the stages of Rs.810 and Rs.1000. He has already been allowed to cross the efficiency bar at the stage of Rs.810/- and on this basis, a sum of Rs.25,000 is being arranged to be paid to him and necessary action for his crossing the efficiency bar at the stage of Rs.1000/- is being taken. Much more amount than claimed by the plaintiff has been paid to him after allowing him to cross the efficiency bar at the stage of Rs.810/- and the step for crossing the second efficiency bar at the stage of Rs.1000/- is being taken as the same can be done only on the recommendation of the Departmental Promotion Committee (DPC). It will suffice to say in this connection that the sum of Rs.3600 claimed by the plaintiff is now no more in dispute.



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Much stress was laid ~~and~~ on behalf of the plaintiff on the point that he is entitled to cross the efficiency bar even at the stage of Rs.1000/- by lapse of time as he has officiated on higher post for several years and his period of suspension and removal from service has been regularised by the respondent. It has also been contended that in such a case, there was no need to obtain report from DPC and in any case, the report of the DPC could be obtained by circulation. The point of crossing the efficiency bar at the stage of Rs.1000/- is directly <sup>in this case</sup> not in issue and even if it is so, the respondent is looking to this aspect and as, in my opinion, the report of the DPC is required, I would simply like to observe that the respondent shall expedite the DPC proceedings and take its decision in the matter at an early date.

(D) CLAIM FOR Rs.3600 AS ARREARS OF PAY

The plaintiff had claimed Rs.2830.10 as the difference in the pay of ARO and FS from 1.1.1978 to 30.6.1978 and it was alleged that after his reversion, he was paid only the pay of ARO though he was entitled to the pay of FS till June 1978 and on this ground, he claimed interest at 12 percent per annum and thus a total sum of Rs.3600 has been claimed as arrears of pay. Issue no.3 was framed on this plea by the trial court and it was held that the plaintiff has already been paid the pay of the post of FS from January to June 1978 and this issue has become infructuous. Though despite this finding, the suit for relief (D) was wrongly decreed by the trial Court, the correctness of the observations made by the trial Court on issue no.3 has not been challenged on behalf of the plaintiff and I am of the view that the amount claimed has



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been received by him without interest.

(E) CLAIM FOR Rs.92.50 AS T.A.

The plaintiff has claimed Rs.92.50 as T.A. for the journeys performed by him in 1978, 1979 and 1980 in connection with his official duties on his own Scooter. The plaintiff did not furnish the necessary details of the amount in his plaint. The contention of the respondent on this point is that the CDA Pension did not allow the claim of T.A. for journeys of less than 8 kms., within the municipal limits vide Annexure C.A.-19 and under the rules, the plaintiff could claim only the actual travelling expenses but he never submitted his bill for such expenses and as such, he could not be paid this amount. The trial Court did not accept the contention of the defendant on this ground <sup>with</sup> ~~that~~ the observation that no rule was quoted in support of such contention. In my opinion, the view taken by the trial Court is not correct and it appears from the rejoinder filed by the applicant before us in the case under section 19 of Act XIII of 1985 that he does not dispute the fact that he is entitled to the actual travelling <sup>expenses</sup> ~~allowance~~ only for the journeys performed by him for the distance of less than 8 kms., within the municipal limits. He has, however, showed his readiness in paragraph 12 of the rejoinder that he is prepared to submit his claim for travelling expenses to the respondent in any proforma as is done for the current journeys of other employees of the department. I am, therefore, of the view that it was due to the laches of the plaintiff himself that his claim for travelling expenses could not be paid to him and the finding given by the Court below on this point is



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erroneous and cannot be upheld. The plaintiff will be free to put forward his claim for this amount before the competent authority in accordance with the T.A. Rules.

(F) CLAIM FOR Rs. 38 FOR PAY

In paragraph 19 of the plaint, it has been alleged by the plaintiff that on 8.8.1979, he could not attend his duties due to heavy rains and had sent an application for granting restricted holiday as it was Raksha Bandhan day and on 24.1.1980, he was ill and had sent a medical certificate and he was wrongly marked absent on both these days and a sum of Rs. 38/- was deducted from his salary illegally. The case of the respondent is that the plaintiff was absent on both these days and his salary was rightly deducted due to his absence from duty. In its reply to the application under section 19 of the Act XIII of 1985 moved before us by the applicant, the respondent has confined its case only in respect of the absence of the plaintiff on 8.8.1979 and not for 24.1.80. It also does not appear from the record that the salary of the plaintiff for 2 days could amount to Rs. 38/- only. There is no oral evidence on the record and it appears to me that this claim of the plaintiff is only in respect of his pay for 8.8.1979. In any case, it appears from the own documents of the plaintiff that he had not attended to his duty on 24.1.1980 and he was not issued any medical certificate for that day vide medical prescription paper no. 43-A recommending rest for 3 days w.e.f. 21.1.80 and letters Ex. 27, 28 and 29. The authorities of the respondent, therefore, committed no error if the medical leave applied for by the plaintiff for 24.1.1980 was not granted.



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Regarding his absence on 8.8.1979, the plaintiff was also charge sheeted with certain articles of charge as appears from the charge sheet paper no. 51-A on record. The plaintiff was once found guilty of the charges and was dismissed from service on the basis of this charge sheet but later on when his order of dismissal was set aside by the Allahabad High Court in a writ petition on technical ground, the respondent did not pursue the matter further and not only reinstated him but also ordered to pay all his dues and to count the period of his absence as on duty. In view of this background, it will be just and equitable that the absence of the plaintiff on 8.8.1979 is regularised and he is granted ~~/~~ restricted holiday or any other leave due to him.

It may be pointed out that the authorities of the office of the respondent had not withheld his pay for 8.8.1979 but it is only on the report of the C.D.A. (Ex.A-5) that a sum of Rs.38/- already paid to him in respect of his absence without leave on 8.8.1979 was deducted from his pay. The amount claimed is small and when the long absence of the plaintiff from duty due to suspension or termination has been regularised, this absence should also be regularised and the plaintiff should be paid Rs.38/- deducted from his pay for his absence on 8.8.1979. This deduction was not in connection with the absence of the plaintiff on 24.1.1980 as appears from Ex.A-5 and his allegation to the contrary in the plaint is thus not correct.



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(G) CLAIM FOR TREATING THE PLAINTIFF ON DUTY FROM 25.3.1980 to 2.4.1980

The case of the plaintiff is that after serving the charge sheet on him on 25.3.1980, he was directed to proceed on leave till the disciplinary proceeding was finalised vide order dated 25.3.1980 (Ex.32) and he was suspended on 2.4.1980. The intervening period during which the plaintiff remained suspended and removed from service has been regularised and it was ordered to be <sup>counted</sup> on duty vide order dated 6.12.1985 (annexure 1 to the application under section 19 of the applicant before us). There, thus remains only the question of his pay for a few days from 25.3.1980 to 2.4.1980. The reply of the respondent in this connection is that the direction for proceeding on leave was given to the plaintiff by the competent authority in accordance with rules and he cannot challenge the same. In my opinion, without entering into the competence of the authority issuing such direction, when even the period of suspension and removal from service of the plaintiff has been treated on duty, this short period from 25.3.1980 to 2.4.1980 should also be treated on duty and the plaintiff should get his pay and allowances for this period according to rules.

(H) CLAIM FOR Rs. 3300 AS ARREARS OF SUBSISTENCE ALLOWANCE ETC.

In connection with this claim, issue no.6 was framed by the trial Court and it was observed that during the pendency of the suit, its amount has been paid to the plaintiff and the issue has become infructuous. The correctness of these observations



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has not been disputed before us and as such, I am of the view that the amount claimed in this connection, has already been paid to the plaintiff and the suit was wrongly decreed even for relief (H).

(I) CLAIM FOR EXPENSES MADE FOR REPRESENTATIONS AND DEPARTMENTAL APPEALS

This relief claimed by the plaintiff was denied to him by the trial Court. In his appeal no. 33 of 1985, the plaintiff has not re-agitated this point and as such no finding is <sup>required</sup> ~~necessary~~ on this point.

(J) CLAIM FOR Rs.1500 AS DAMAGES

The allegations for this claim appear in paragraphs 26, 27 and 28 of the plaint wherein it has been alleged that by issuing notice dated 9.5.1980, the plaintiff had demanded Rs.10,000 as damages from the defendant for the series of vindictive actions of the superior officers but he received no reply. He was accordingly forced to file a writ petition in the High Court on 23.5.1980. Before 2.7.1980, the date fixed for hearing in that writ petition, A.M.F. passed the order dated 6.6.1980 revoking his suspension and as such the writ petition became infructuous. As a result, the plaintiff had to suffer damages of Rs.1500/- due to capricious and malafide order passed by A.M.F. Lt.Col. J.L.Koul. The claim of the plaintiff on this point is thus little vague. According to him, he claimed Rs.10,000/- as damages vide his notice dated 9.5.1980 and on account of the rectification made by the AMF, his writ petition



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became infructuous and he had to suffer a damage of Rs.1500/-. <sup>Thus</sup> it can be safely inferred that the amount of Rs.1500/- claimed by the plaintiff has nothing to do with the amount of Rs.10,000/- claimed as damages vide notice dated 9.5.1980 and the plaintiff has claimed the sum of Rs.1500/- solely as the expenses incurred by him on his writ petition which became infructuous by the malafide and capricious orders by Lt.Col. J.L.Koul. Considering the case of the plaintiff on this point in issue no. 7, it was observed <sup>by the trial court</sup> that the amenities of the plaintiff were curtailed and he was harassed on account of complaints against his superior officers, which was not proper and the sum of Rs.1500/- claimed by the plaintiff in this connection is not excessive and the amount was accordingly awarded to the plaintiff. I find myself unable to agree with this view.

It appears from the allegations made in paragraphs 26, 27 and 28 of the plaint and relief (J) claimed by the plaintiff that his claim for Rs.1500/- is solely based on his writ petition becoming infructuous on the revocation of his suspension by Lt.Col.JL.Koul. In case his writ petition had become infructuous due to the revocation of his suspension by the departmental authorities, the plaintiff could raise the question of costs before the High Court but he does not seem to have done so. The order of the High Court holding his writ petition infructuous has also not been placed before us to appreciate his contention. In my view, the costs of the writ petition or other amount incurred by the



plaintiff in filing the writ petition cannot be claimed by filing separate suit under the law. In any case, there is not an iota of evidence on record to show that the plaintiff had incurred Rs.1500/- or had suffered the damages amounting to so much in connection with the writ petition. This claim was, therefore, wrongly decreed in favour of the plaintiff by the trial Court.

In case, for the sake of argument, it is assumed that the plaintiff had claimed the sum of Rs.1500/- even on account of harassment caused to him by the departmental authorities, I am of the view that his claim for such damages on the basis of tort can hardly be sustained under the law. Reversion from higher post to lower post, suspension from duty, removal from service etc., of any Government servant are the sovereign acts of the Government. In M/s. Kasturi Lal Ralia Ram Jain Vs. The State of Uttar Pradesh ( A.I.R. 1965 S.C.- 1039), the plaintiff had filed a suit for the return of his gold wrongly seized by the U.P. Police and in the alternative, for the recovery of its price. The defence of the U.P. State was that the Head Constable, who had taken the seized gold in his custody, misappropriated the same and fled away to Pakistan, with some other property from Police Malkhana and there was no negligence on the part of the Police and in any case, the U.P. State could not be held responsible for the negligence committed by the Police officers in such cases. The suit was decreed. In appeal, the Allahabad High Court reversed the judgment of the trial Court. On appeal



the Hon'ble Supreme Court dismissed the appeal with the following observations :-

" In the present case, the act of negligence was committed by the police officers while dealing with the property of Ralia Ram which they had seized in exercise of their statutory powers. Now, the power to arrest a person, to search him, and to seize property found with him, are powers conferred on the specified officers by statute and in the last analysis, they are powers which can be properly characterised as sovereign powers ; and so, there is no difficulty in holding that the act which gave rise to the present claim for damages has been committed by the employee of the respondent during the course of its employment; but the employment in question being of the category which can claim the special characteristic of sovereign power, the claim cannot be sustained."

I am of the view that the various actions, with which the plaintiff is aggrieved, were of the characteristic of the sovereign powers exercised by the departmental officers and no claim for damages on the basis of tort or otherwise can be made by the plaintiff against the respondent under the law.

In a later case - Syamsunder Vs. State of Rajasthan ( A.I.R. 1974 S.C-890), the Hon'ble Supreme Court had observed that today, hardly any body agrees that the stated ground for exempting the sovereign from suit is either logical or practical but it did not specifically consider the principles laid down by the Hon'ble Supreme Court in the case of M/S. Kasturi Lal Ralia Ram Jain Vs. State of Uttar Pradesh (Supra). The earlier judgment of the Hon'ble Supreme Court was handed down by 5 Hon'ble Judges while the latter judgment is of 2 Hon'ble Judges only. No other case on this point has come to my notice. I am, therefore,



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of the view that the claim of the plaintiff for damages against the respondent is not maintainable under the law.

CLAIM FOR INTEREST

The plaintiff had claimed interest at 12 per cent per annum on every amount claimed by him in the suit and as the same was not allowed to him, he has claimed the interest in his appeal. The plaintiff seems to have claimed interest on the basis of notice given by him. I have read the various notices given by him, the copies whereof are available on the record. In none of the notices, he mentioned that in case the amount is not paid by certain date, he shall claim interest under section 3 of the Interest Act. In all the notices, he claimed his dues with interest at 12 per cent per annum. The Hon'ble Supreme Court has permitted interest to the Government servants in respect of their claims for pension and gratuity as they are to be finalised well in time before the Government servant retires and they should be paid to him immediately as he may be in urgent need of money after his retirement. No claim for interest for arrears of pay, as is the case of the plaintiff, has so far been recognised under the law. In the case of the plaintiff, there seems to be no deliberate delay in clearing his dues and in some matters, delay was caused due to his suspension and removal from service for a number of years in departmental proceedings. I am,



therefore, of the view that the plaintiff is not entitled to any interest in this case.

21. Now I come to the case of Dr. Dhoom Singh (hereinafter referred to as the applicant) taken in his application under section 19 of Act XIII of 1985. The first relief claimed by him in his application is that he should be treated as DAC from 1.11.1974 to 31.3.1975 with benefits of pay and other allowances admissible on that post. It is not disputed that when the applicant was working on the post of ARO, the post of DAC fell vacant and he was given the charge of this post on 1.11.1974. This was the post of senior scale. The stand of the respondent in this connection is that the applicant was not given the full charge of the post of DAC but in addition to his own work as ARO, the applicant was not asked to look after the work of that post. In this connection, reliance has been placed on annexure C.A.-1 and C.A.-2. Annexure C.A.-1 speaks that Sri Hari Lal, DAC will hand over the charge of Stores, Accounts and duties (Public and Regimental) to Sri Dhum Singh, ARO and the handing and taking over certificates will be submitted to office. Annexure C.A.-2 speaks that with a view to gain experience, Sri Dhum Singh, ARO will start taking the Dairy Bacteriology practicals with immediate effect and will obtain necessary guidance from Sri Hari Lal, DAC. He was also asked to submit a report that he has made himself fully conversant with the dairying work in the laboratory both in respect of students as well as the corps and he will continue to perform these duties till a permanent incumbent reports. The further stand of the respondent is that the post of DAC, though a promotion post for the applicant, required a minimum



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service of 8 years as ARO vide gazette notification C.A. Annexure 17 and the appointment on this post was to be made on the recommendation of the UPSC.

22. It has been contended by the applicant that while working as ARO, he was holding the full charge of the post of DAC as he was required to take the practicals of Dairy Bacteriology and acquired the knowledge of Dairy work in the laboratory and he had to do this work till a new arrangement was made. He has further contended that in any case, he is entitled to officiate pay for the post of DAC under Article 162 and 162-A of the Civil Service Regulations Vol.I. Art.162 lays down that the Central Government may appoint one officer to hold substantively as a temporary measure or to officiate in two or more independent appointments at one time. In such cases the officer will draw the highest salary to which he would be, entitled if he held or, as the case may be, officiated in, any one of the appointments alone. Art.162-A lays down that Art.162 does not apply to the case of an officer discharging the duties of more than one appointments in the same office or in the same establishment. An officer so employed is entitled to the highest salary to which he would be entitled, if he held or officiated in any of the appointments alone and to nothing more. The applicant did not claim the benefits of his acting as DAC for this period in his regular suit. Despite my efforts, I could not find any document on record prescribing the duties of DAC on which post, the applicant has stated to have acted on the retirement of the former incumbent Sri Hari Lal from 1.11.1974 to 31.3.1975. On his reinstatement as ARO vide order dated 15.1.1985, paper no.16 filed in



civil appeal no. 183 of 1985, the applicant was required to perform the following duties :-

- (a) to assist the Dairy and Agricultural Chemist in research and instructional work under his guidance,
- (b) to deliver lectures to students under-going various courses in Dairy and Agricultural subjects,
- (c) to carry out any other duties assigned by the Commandant, Military Farms School and Res. Centre.

The post of DAC is the next higher promotional post for incumbent working on the post of ARO and as such, I am of the <sup>opinion</sup> ~~view~~ that in view of the scant evidence available on the record, it is not established that the applicant was given the full fledged charge of the post of DAC on the retirement of the former incumbent but he was given only the current charge of the post of DAC and he was required only to look after the urgent work of that post. In view of this, the Art.162 and Art.162-A relied upon by the applicant have no application in this case.

23. As the plaintiff was given the charge of the current duties of the vacant post of DAC, Articles 88, 165, 169-A, and 174-A of Civil Service Regulations Vol.I will apply to him. As while looking after the current work of the post of DAC, he was not relieved of his charge as ARO and he was doing that work in addition to his own duties, he is entitled to a charge allowance <sup>not exceeding</sup> ~~under existing~~ 1/10th of the pay of the office of DAC. This could be paid to the applicant upto 26.3.1975 as from 27.3.1975, he had worked as FS on ad-hoc appointment. It is, therefore, held that the applicant cannot be treated as DAC from 1.11.1974 to 31.3.1975 but he is entitled to charge allowance to the extent of 1/10th of the starting pay of the DAC for the



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period 1.11.1974 to 26.3.1975.

24. Other relief claimed by the applicant is that he should be treated to be continuing as FS even after 30.6.1978 upgrading the post further in the rank of Dy. Director, Military Farms. I have already considered the claim of the applicant for the post of FS after his ad-hoc arrangement was terminated w.e.f. 1.7.1978 and for the reasons given above, the applicant is not entitled to continue on this post and the question of upgrading the post does not arise.

25. The applicant has further claimed Rs. 1 million as damages for the various hardships and harassment suffered by him at the hands of his departmental officers. His case is that, he was suspended and removed from service unlawfully. The water supply was not made to his official residence and the ~~rental~~ <sup>usual</sup> water charges were realised from him and his house was not kept in proper repairs. The supply of milk from the Military Dairy was stopped to him and in many other ways, he suffered irreparable damage to mind, physique and prestige and his family members ~~were~~ also suffered on account of him. Without investigating the various grounds taken by him in this connection in detail, I am of the view that most of the grounds taken by the applicant are not factually correct. In the plaint, he had admitted in paragraph 31 that he is getting a few buckets of water in a pit in his quarter but later on he took ~~taking~~ the stand that he is not getting even a drop of water. On the other hand, it appears from the letter dated 7.3.1980 (Ex. 43) of Maj. Radha Krishna that the water supply to the quarter of the applicant was quite adequate. In addition to a water tap,



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there was a hand pump in his house and the water supply was more than his domestic requirement. It further appears from the letters (Ex.35 to 37) that the authorities never refused to supply the milk to the applicant and the necessary milk was being supplied to him. Necessary repairs to his house were also carried out as appears from the letter Ex.41. The departmental authorities further took precaution to extend the water supply to him as appears from the letter Ex.44.

26. The applicant had not claimed such damages in his regular suit. In the application under section 19, he has not given the specific heads under which the damages have been claimed. I am further of the view that the various grounds on which the claim for damages of the applicant is based, relate to sovereign powers of the respondent and for the reasons given above, the applicant is not entitled to recover any damages from the respondent. There is another practical difficulty in our way in awarding the damages to the applicant. To our query, the applicant, who had argued his case personally, replied that he has claimed the damages in his application on the basis of tort. I am of the view that the Central Administrative Tribunal has no jurisdiction to award any damages based on tort. This is clear from the provisions of Section 14 of Act XIII of 1985 which provides that the Tribunal shall exercise all the jurisdiction, powers and authority in relation to recruitment and all service matters concerning the employees of the Central Government. Service matters have been defined by clause (q) of Section 3 of Act XIII of 1985 and it



lays down that service matter means all matters defined in <sup>sub-</sup> clauses (i) to (v). Sub-clause (v) is wide enough to cover "any other matter whatsoever". Sub-clause (v) has to be read in the context of the other sub-clause (i) and (iv) of clause (q) and it cannot include any claim which is not based on service matter but is based on tort. Sometimes, even such a wide phrase "whatsoever and wheresoever" will receive a restricted meaning as observed in Maxwell Vs. Maxwell (22 LJ Ch. 43). I am, therefore, of the view that a claim based on tort is not a claim relating to service matter and no compensation can be claimed by the applicant in an application under section 19 of the Act XIII of 1985. The application has, thus, no case for damages even on this ground.

27. There is no other point for determination in this case. In the result, the appeal filed by the plaintiff Dr. Dhoom Singh totally fails and it has to be dismissed. The appeal filed by the Union of India has to be allowed in part and the application under section 19 of the Act XIII of 1985 filed by Dr. Dhoom Singh has also to be allowed in part as discussed above.

Member (J)

Hon. D.S. Misra, AM

I agree. [Signature] 20.2.86  
Member (A)

BY THE BENCH : The judgment and decree passed by the I Civil Judge Meerut are accordingly modified and the



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suit no.424 of 1980 shall now stand decreed for the recovery of Rs.38/- as pay for 8.8.1979. The plaintiff has already been paid the amounts claimed in clauses 'C', 'D', 'G' and 'H' of relief paragraph 38 of the plaint. He is not entitled to get reliefs 'A', 'B', 'I' and 'J' of this paragraph. The plaintiff is further found entitled to recover the travelling allowance claimed in clause 'E' on furnishing the proper bill of his expenses according to law and rules and the parties are directed to bear their own costs of the civil suit and the cross-appeals. The applicant Dr. Dhhom Singh is further found entitled to get 1/10th of the starting salary (including allowances) of DAC from 1.11.1974 to 26.3.1975 as charge allowance. The respondents shall pay the same to the applicant within 3 months. The applicant is not entitled to any other relief claimed in his application under section 19 of the Act XIII of 1985. The parties shall bear their own costs even of the application u/s. 19 of the Act XIII of 1985.

*[Signature]*  
20.10.86  
Member(A)

Dated 20.10.1986  
kkb

*[Signature]*  
20/10/86  
Member(J)