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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration (TA)No. 885 of 1986

V.L.Varma

appellant.

Versus

Union of India and others

Respondents.

Hon'ble D.S.Misra,A.M.

Hon'ble G.S.Sharma,J.M.

(Delivered by Hon'ble D.S.Misra)

This is an appeal No. 245 of 1984 which was pending in the court of IV Addl. District Judge, Kanpur and has come on transfer under Section 29 of the A.T Act XIII of 1985.

2. This appeal was filed against the judgment and decree passed in the original suit filed by the plaintiff(appellant) before 9th Addl.Munsif Kanpur seeking a declaration that he was entitled to receive rent free accommodation or compensation in lieu of quarters(herein after referred to as CILQ) w.e.f.17.10.1962 to 31.12.1972 and to get an increment of 10 per cent of pay on the refixation of his pay w.e.f. 1.1.73.

3.The facts of the case in brief are that the applicant was appointed as Chargeman(non technical) on 17.10.1962 and before his retirement w.e.f. 31.12.1980 was promoted as Asstt. Foreman, and Foreman; that he was entitled to rent free accommodation or CILQ from the date of his promotion as chargeman; that this facility was abolished w.e.f. 18.1964 to newly appointed non-gazetted officers but was continued to the employees who were availing of this facility on 28.2.1962 and while refixing their salary w.e.f. 1.1.1973,10 per cent of basic pay was added to their

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emoluments; that the General Manager, Ordnance Factory had proposed fixation of his pay w.e.f.1.1.1973 after taking into consideration 10 per cent of basic pay as addition; that CDA(Fys) Calcutta did not agree to the pay fixation done by the General Manager and fixed his pay at a lower rate causing loss to the plaintiff.

4. The suit was contested by the defendant-respondents who stated that claim of the plaintiff for rent free accommodation was not admissible w.e.f. 18.1964 that the plaintiff was receiving house rent allowances from the date of his promotion as chargeman and therefore, he was not entitled to increase in the matter of refixation of his pay w.e.f. 1.1.1973. On the basis of the pleadings of the parties, the trial court had framed several issues. However, for the purpose of deciding the appeal it would be sufficient to consider issues nos.1 to 5, as below.

1. Whether pay fixation made by General Manager Ordnance Factory is legal and valid as alleged in para 5 of the plaint?

2. Whether the plaintiff's claim for compensation in lieu of rent free accommodation is valid?

3. Whether the deductions made by the defendants is illegal and invalid?

4. Whether the plaintiff is entitled for loss of pay and bonus as alleged, if so, what amount?

5. Whether the plaintiff's claim for leave travel concession is genuine?

Issues nos. 1 to 3 and 4 and 5 were grouped and decided against the plaintiff and the suit was dismissed. Aggrieved against the judgment of the Munsif, the plaintiff filed an appeal in the court of District Judge, Kanpur, which is before us for consideration.

5. We have heard the arguments of the plaintiff-appellant, who has also filed a written argument and the learned counsel for the defendant-respondents and have carefully perused the

documents on record.

6. Regarding issues nos.1 to 3, the appellant's contention that he was entitled to rent free accommodation or compensation in lieu of accommodation was examined by the trial court and decided against him after relying on the clarification contained in the circular letter dated 22.12.1982 issued by the Government of India, Ministry of Defence Ordnance Factory Board Calcutta. The contention of the appellant is that the copy of the circular filed by the respondents before the trial court did not bear the signature of any officer and the trial court's reliance on this circular was misconceived. The trial court had overruled this objection on the ground that the appellant had dispensed with its formal proof earlier and this being a true copy of the original was a valid document for placing reliance. A photo copy of this circular dated 22.12.1982 bearing the signature of Smt. Nibha Deb, Assistant Director/NG, For Director General, Ordnance Factories was filed before us and was examined by the appellant. The contention of the appellant is that this circular being of a later date could not have retrospective effect. We have examined this matter and we find that para 3 of this circular states as follows:

" It has since been clarified by M of D in consultation with Ministry of Finance (Def/AG) and C.G.D.A. that N.T. N.G.Os appointed/promoted between 1.3.62 and 31.7.64 will not be eligible for pay fixation on 1.1.73 with 10% boosting of pay and rent free accommodation for the period from 1.8.64 to 31.12.72 and that the 10% boosting of pay plus dearness allowance pay will be admissible only to those N.T. NGOs who were in receipt of CILQ/rent free accommodation as on 31.12.1972 "

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We have considered the matter and we are of the opinion that the reliance placed by the trial court on the above mentioned instructions is correct. The appellant's contention regarding fixation of his pay w.e.f. 1.1.73 after adding 10 per cent of his basic pay was correctly rejected by the trial court.

7. The appellant's second contention before us is that the CDA(FY) Calcutta was not competent authority regarding fixation of his pay and that the General Manager, Ordnance Factories was the competent authority. The appellant failed to cite any authority in support of this contention. We accordingly hold that the pay fixation of the appellant w.e.f. 1.1.73 done under the instruction of the CDA(FY) Calcutta does not suffer from any illegality and there is no justification for interfering with the finding of the trial court on this matter.

8. The appellant had also claimed interest on the arrears of dearness allowance from June, 1974 to August, 1975 and the trial court has held that the arrears of dearness allowance was paid in the Public Provident Fund Account of the appellant and as the appellant was entitled to receive interest on deposits under Public Provident Fund, his claim for payment of interest separately does not appear to be correct. The appellant failed to point out any loss caused to him due to the arrears of dearness allowance having been deposited in his Public Provident Fund Account. We are of the opinion that the observation of the trial court in this regard does not suffer from any illegality.

9. Regarding rejection of his LTC claim, the appellant has contended that the claim was rejected without any opportunity of being heard before the rejection of the claim. The appellant failed to indicate any rule or instruction

of the government which provided for a show cause notice or personal hearing before rejecting LTC claim. The trial court examined this matter in some detail and held that the appellant's claim of performing journey from Kanpur to Kanyakumari, a distance of about 6 thousand kilometers in the private car of a Vakil between 3.11.1980 and 14.11.1980 appears to be most improbable as such a journey would require covering a distance of 500 Kilo meters per day. The appellant also /produce receipt for petrol purchased, tax paid, the name and licence number of the driver, who drove the car etc, required by the controlling authority, who have rejected the claim. The trial court held that the trial court not being the appellate authority, against the order passed by the controlling authority, the claim made by the plaintiff on this account could not be granted. We have considered the matter and we are of the opinion that the observation of the trial court does not suffer from any illegality, or perversity.

For the reasons mentioned above, we are of the opinion that there is no merit in the appeal and the same is rejected. Parties shall bear their own costs.

Bhima
A.M. 30.3.88

S. Narayana
J.M.