

A2

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration No. 933 of 1986(T)

K.N.Singh ... applicant.

Versus

Union of India and others ... Respondents.

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

Hon'ble G.S.Sharma, JM.

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

This is an original suit (no. 1097 of 1982) which was pending in the court of II Addl.

Munsif Kanpur and has come on transfer under 29 of the ATAct XIII of 1985.

2. The brief facts of the case are that the plaintiff had served Royal Indian Force between the period 23.2.1943 and 4.5.46 as Wireless Operator Mechanic and was employed in the same capacity at No.1 Base Repair Depot, Air Force Station, Kanpur as a civilian in the year 1958. He retired on 31.8.1980. The plaintiff was confirmed in the civilian service w.e.f. 4.7.65 and became entitled to get his previous war service counted for pensionary gratuity benefits. The suit has been filed for redressal of various grievances, some of which have been removed during the pendency of the present suit. The original plaint was amended in the year 1982 and additional written statements as well as addl. replication were filed by the parties.

3. The first relief sought by the plaintiff is a declaration that the period between 12.3.60

68

and 25.6.1969 during which the plaintiff remained under suspension/removal from service, be treated as qualifying service for the purpose of calculating pension and gratuity. The plaintiff had filed a case under Section 15(2) of the payment of Wages Act and the same was decided in his favour and the defendants have already passed orders treating the above mentioned periods as qualifying period for the purpose of pension and gratuity. As the plaintiff has already got the relief, there is no necessity to discuss this issue.

4. The second relief claimed by the plaintiff is that the period between 23.2.1943 and 4.5.46, the period of war service, be counted as qualifying period for calculation of pension and gratuity. The defendants have admitted in para 12 of the written statement that a sum of Rs.63/- paid to the plaintiff as gratuity has been recovered from him and the plaintiff's case for granting the war service gratuity and civil service pension is under consideration of the Air Force Accounts Office New Delhi. As the defendants have accepted the claim of the plaintiff, they are directed to grant this relief.

5. The third relief sought by the plaintiff is regarding grant of selection grade from 1.8.76 to 31.8.1980 and consequential increase in pension and gratuity. The fourth relief sought by the plaintiff is seeking declaration that the punishment order dated 23.8.1980 passed by the Officer Commanding no.4 BRD Kanpur imposing penalty of reduction of pay by two stages in the time scale of pay of the plaintiff

51

by Rs.30/- per month from 23.8.80 to 31.8.1980 and the order of the appellate authority dated 12.1.1981 rejecting the appeal is illegal, null & void and not binding on the plaintiff. The fifth relief sought by the plaintiff is for a declaration that the deduction of Rs.690/- from the salary of the plaintiff for the month of August, 1980 is towards the alleged recovery of the LTC advance is illegal and not binding on the plaintiff. The sixth relief sought by the plaintiff is a direction to the defendants to rectify the mistakes in the calculation of pension and gratuity and to fix the pension/gratuity of the plaintiff taking into consideration the other reliefs sought by the plaintiff.

6. We have heard learned counsel for the parties. Written argument was filed by the learned counsel for the plaintiff. We will now examine reliefs nos. 3 to 6, mentioned above.

Relief No.3: The plaintiff has based his claim on the fact that he was the seniormost WOM(A) and was entitled to promotion in the selection grade w.e.f. 1.8.76. The defendants have stated in para 10 of the written statement that selection grade was denied to the plaintiff as a disciplinary proceeding was pending against him and he was also not considered fit for selection grade according to the rules. The contention of the plaintiff is that the sanction for the selection grade was received in the year 1978 and the selection grade was to be granted w.e.f. 1.8.76 retrospectively. We have considered the matter and we find that defendants have failed to indicate the

rules under which the selection grade was denied to the plaintiff on the ground that disciplinary proceedings were pending against the plaintiff. We also find that the present suit was filed in the year 1982 and the relief has been claimed w.e.f. 1.8.1976. The suitability of the applicant for grant of selection grade should have been considered with reference to 1.8.1976 and if the suitability of the applicant was considered with reference to any other date after 1.8.1976, the same would be illegal, and inoperative. We are of the opinion that the applicant was entitled to be considered for the grant of selection grade with reference to his suitability on or before 1.8.1976. We accordingly direct the defendants to consider the matter afresh, and if he is found suitable with reference to 1.8.1976, he should be given the selection grade. We also direct that the payment of increase salary will be limited to the period of limitation of 3 years 2 months preceding the date of filing of this suit.

(ii) Relief no.4 : In the month of June 1975. the plaintiff availed LTC benefit for travel along with his family from Kanpur to Kanyakumari and back. He received 80% of advance before undertaking the journey and remaining 20% was paid to him on the submission of the bill in the month of June, 1975. A disciplinary proceeding was initiated against the plaintiff under Rule 14 of the CCS (CCA)

51

Rules 1965 vide memo dated 3.11.1979 on the allegation that the plaintiff exhibited lack of integrity and conduct unbecoming of a government servant and thereby violated Rule 3(1) and (i) (iii) of the CCS Conduct Rules, 1964. The plaintiff has alleged that the inquiry was initiated by some interested officers of the Air Force Station Chakeri, Kanpur to harass and harm the plaintiff as the plaintiff has been an active office bearer of the civilian employees union, Indian Air Force Chakeri, Kanpur. The Board of Inquiry gave its finding that the plaintiff had misappropriated public money insofar as his daughter for whom LTC advance was drawn by the plaintiff did not proceed to Kanyakumari. The disciplinary authority imposed the punishment of reduction of pay by two stages ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~. The appeal against the order of punishment was also rejected by the appellate authority. The plaintiff has challenged the inquiry proceedings and alleged that he was not given reasonable opportunity to make his defence. The respondents have denied various allegations made by the plaintiff in the conduct of inquiry and have alleged that the plaintiff failed to avail of the facilities given to him. The first contention of the plaintiff in this regard is that the Board of Inquiry had not given any opportunity to dispute the report of Principal Mahila Mahavidyalaya Kanpur regarding the

attendance of his daughter who was a student of B.A. of that College. The plaintiff has alleged that out of the 4 subjects of B.A. class of the College, in which the plaintiff's daughter was studying, she was found marked absent throughout the relevant period of LTC journey in three subjects and she was marked present in the lecture register of the subject of English literature by some mistake of the teacher concerned, who was in the habit of marking on the attendance register not during the period, but on a later date. The second contention of the plaintiff is that he was not allowed the assistance of a person of his choice. On his own admission, the plaintiff had nominated one Santokh Singh, posted as vehicle mechanic at Army Base workshop Delhi Cantt. and two other persons who were posted at Kanpur in the order of preference. The inquiry had to be adjourned on several dates due to the nonavailability of Sri Santokh Singh, Defence Assistant of the plaintiff. The plaintiff has made various allegations against the inquiry officer for not taking adequate steps to obtain the presence of the nominated defence assistant Sri Santokh Singh. The defendants have alleged that the plaintiff had misquided the Board of Inquiry by giving wrong address of the defence assistant Sri Santokh Singh. The defendants have also alleged that it was in the knowledge of the plaintiff that Sri Santokh Singh never gave his willingness to defend the case, yet the plaintiff

insisted on his presence and asked for being sent on duty to bring Sri Santosh Singh. It is added that this was contrary to all norms and practice. The plaintiff has alleged that Sri D.P. Singh the second choice of the plaintiff in the priority list of defence assistant was also not called by the inquiry officer to assist the plaintiff. The defendants have explained that Sri D.P. Singh could not be called as he did not convey his willingness to appear as a plaintiff's defence assistant. It is further stated that the plaintiff was allowed 3 days further time vide letter dated 16.1.1980 to submit the name of some other defence assistant along with his willingness certificate and the plaintiff was also informed that if he failed to do so, it would be presumed that he did not wish to have any defence assistant and the proceeding would continue. By his own admission instead of submitting the name of ^{another} person to work as defence assistant, the plaintiff wrote to the inquiry officer on 17.1.80 that he was acting in a prejudiced manner in the inquiry. By another letter dated 22.1.1980 to the disciplinary authority, the plaintiff made a complaint against the Chairman of the Board of Inquiry requesting him to change the inquiry officer as he was biased and not expected to do justice. By a letter dated 28.1.1980, the Acting Officer Commanding no. 4 BRD informed the plaintiff that the allegation of bias of the inquiry officer was unfounded and the plaintiff was advised to cooperate with the inquiry officer. Instead of participating in the inquiry, the

plaintiff submitted a review petition on 1.2.80 to the AOC in C Head Quarter's Maintenance Command Nagpur requesting him to review the said order of the Acting Officer Commanding no.4 BRD dated 28.1.1980. By an order dated 9.2.1980, a new Board of Inquiry was constituted by the Officer Commanding no.4 BRD. The plaintiff challenged the appointment of a new Board of Inquiry by filing a review petition to the AOC in C H.Q.'s Maintenance Command, Indian Air Force Nagpur. The Acting Officer Commanding no.4 B.R.D. by his letter dated 22.2.1980 directed the plaintiff to participate in the inquiry. The plaintiff challenged the authority of the Acting Officer Commanding no.4 BRD to appoint a fresh Board of Inquiry and continued to make various representations alleging illegality of the constitution of the Board of Inquiry and making a request to keep the inquiry in abeyance till the decision of the reviewing authority in the matter. The plaintiff also wrote to the Chief of the Air Staff H.Q. New Delhi on 12.3.1980. The plaintiff was informed by the Officer Commanding no.4 BRD vide letter dated 11.3.1980 that the plaintiff's request to keep the inquiry in abeyance was considered and rejected and the inquiry was ordered to proceed ex parte. In reply the defendants have stated that the plaintiff was throughout interested in delaying the inquiry and with that end in view made various representations including a representation dated 8.3.80 requesting that he be sent on duty to obtain

the willingness of defence assistant, although it was his personal responsibility to obtain the willingness of the defence assistant.

The sequence of events that followed thereafter need not be enumerated. We have gone through the report of the Board of Inquiry and we find that the new Board of Inquiry informed the plaintiff vide letter dated 9.6.1980 that the board will reassemble at 8 A.M. on 19.6.1980 and the plaintiff was directed to ensure the presence of defence assistant on that date. Information was also sent to the controlling authority of Sri Santokh Singh, defence assistant of the plaintiff vide telegram dated 9th June, 1980 with a copy to Sri Santokh Singh. Sri D.P.Singh, alternative defence assistant, named by the plaintiff was also informed vide letter dated 9th June, 1980. The plaintiff submitted an appeal to the President of India on 18th June, 1980 suggesting to keep the inquiry in abeyance. As such requests had been considered in the past, no notice was taken of this appeal. The plaintiff was again given a week's time vide letter dated 20.6.80 to appear before the Inquiry officer along with his defence assistant to appear before the inquiring authority on 27.6.1980. The plaintiff was informed that if he failed to present himself before the inquiry officer, the proceeding will continue in accordance with the rules. The inquiry was then adjourned to 1.7.1980 and due intimation was given to the plaintiff vide letter dated

15

28.6.1980. On his own admission, the plaintiff applied for grant of leave to go out of station to his village home to attend some urgent work but did not go out on the ground of having fallen sick. The plaintiff did not appear before the inquiry officer on 1.7.1980 and the inquiry proceeded ex parte. It was only on 5.7.1980 that the applicant reported for duty along with the medical certificate. The inquiry was completed by the inquiry officer. The disciplinary authority considered the inquiry report and passed the impugned order of punishment dated 23.8.1980. The Officer Commanding no.4 BRD in his capacity as the disciplinary authority had come to the conclusion that the penalty of reduction to a lower stage in the time scale of pay be imposed on the plaintiff and in exercise of the powers conferred by Rule 15 (4) of the CCS (CCA) Rules 1965, the pay of the plaintiff was reduced by Rs.30/- per month from 545 to 515 per month for the period upto 31.8.1980, the date on which the plaintiff retired from service. We have given due consideration to the various points raised by the plaintiff and we are of the opinion that the above narration of events in the conduct of inquiry does not disclose any illegality on the part of inquiry officer in conducting the inquiry. The plaintiff was due to retire on 31.8.1980 and it appears to us that the various objections, review petitions and appeals to the higher authorities including the President

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of India were with a view to delay the process of inquiry. We are also of the opinion that the plaintiff was afforded full and reasonable opportunity to defend himself and if he failed to avail of the same, the plaintiff himself was at fault. We also find that the order of the disciplinary authority as well as the appellate authority does not suffer from any illegality. Accordingly the plaintiff is not entitled to this relief.

(iii) The fifth relief sought by the plaintiff regarding deduction of Rs.690/- from the salary of the plaintiff towards the recovery of LTC claim in respect of his daughter has also been examined by us. We find that the decision of the competent authority was based on the report of the principal of Mahila Mahavidyalay Kanpur and its reliability is free from any doubt. There is no substance in the allegation of the plaintiff that his daughter's attendance in the school was due to the mistake on the part of the particular teacher. As the plaintiff was retiring on 31.8.1980, the deduction had to be made from the salary of the month of August. We are of the opinion that the plaintiff is not entitled to this relief.

(iv) The sixth relief sought by the plaintiff is regarding rectification of mistake in the calculation of pension and gratuity without any details thereof. However, as a result of our finding on relief no.3, the plaintiff may become entitled to get some arrears of pay

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-12-

and allowance and consequential adjustment in his pension and gratuity amount. Similarly the plaintiff is also entitled to the revision of his pension and gratuity under relief no.2. Accordingly we direct the defendants to refix the pension/gratuity and arrears of salary etc, of the plaintiff taking into consideration the reliefs provided within a period of four months from the date of receipt of a copy of the order.

In view of the above discussions, the suit of the plaintiff is disposed of accordingly with a direction that the parties shall bear their own costs.

~~B.M.~~ 31/5/88
A.M.

J.M.
J.M.

JS. 31.5.88