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CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD.

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REGISTRATION T.A.NO.1015 of 1986
(O.S.No. 194 of 1984)

Keshav Prasad Pandey . .vs. . The Controller and Auditor
and Auditor General
of India and others.

Hon.Justice Shri S.Zaheer Hasan,Vice Chairman.

Suit No. 194 of 1984 filed by Keshav Prasad Pandey in the court of the Civil Judge, Allahabad, has been transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985.

Applicant's case is that he was working as Daftari and due to his activities as Union worker the authorities were annoyed with him. When the emergency was proclaimed the authorities got an opportunity to take revenge and as such on 17.9.1975 the applicant was compulsorily retired. On 12.10.1978 he was reinstated with the direction that the intervening period will be treated as leave of the kind due. According to the Government Order dated 10.8.1978 the applicant should have been given full salary for the relevant period. The applicant made several representations to the authorities for payment of full salary without any success. His representations were rejected. So the applicant was compelled to file this suit on 24.4.84 for a declaration that the applicant is entitled to full salary and allowances for the period 18.9.1975

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to 16.10.1978.

The defence is that the applicant has completed 30 years of service and he was compulsarily retired in public interest and not due to malice etc. as alleged by the applicant. Vide order dated 12.10.78 the applicant was reinstated and the relevant period was treated as leave of the kind due. Ultimately the applicant joined the duty of 17.10.1978. The applicant was not retired due to political reasons or personal victimisation, but he was retired in public interest. So, the provisions of the Government Order dated 10.8.78 regarding payment of full salary cannot be applied to the case of the applicant. The applicant was entitled to full pay leave for 120 days, he was entitled to ^{ave} ~~l~~ave on half pay for 262 days and then he could take leave without pay for the remaining period. He never moved any application in this connection. The applicant did not move any court for six years. So, the suit was barred by time. The applicant filed a writ in the Hon'ble High Court in January, 1981 in which the following order was passed:-

"This petition is highly belated. The petitioner is not granted any of the reliefs taken on the ground of laches in pursuing his remedies before the authorities. The petition is accordingly dismissed."

The applicant was paid pension, gratuity and three month's pay to the tune of Rs. 8543.65 after his compulsory retirement. On his reinstatement the applicant

was asked to refund the said amount but he did not repay the same and preferred to file the present suit on incorrect facts. So the suit is liable to be dismissed.

The applicant was working as Daftari in the Office of the A.G., U.P., Allahabad. He had a qualifying service of 30 years on 17.9.1975 when an order of his compulsory retirement was passed in public interest and he was paid salary and allowances for three months in lieu of notice. On 12.10.1978 he was reinstated and the intervening period was ordered to be treated as leave of the kind due. In the Government Order dated 10.8.1978 it was laid down that where a definite finding that premature retirement of the Government servant was on account of political or personal victimisation the intervening period should be treated as duty with full pay. It was further observed in this Order that in other cases the period may be treated as leave due and admissible. There is no finding that the applicant was retired on political ground or there was any personal victimisation. A simple order was passed that the applicant was being reinstated and the intervening period would be treated as leave due. The second part of the Government Order dated 10.8.1978 lays down that in other cases the intervening period will be treated as leave due and admissible. So, in short, there was no finding regarding victimisation etc. as laid down in the first part of the Government Order. The second part of the Government Order has been complied with in case of the applicant. He was retired compulsarily in public

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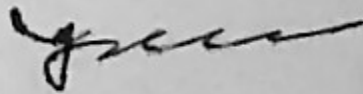
interest and, therefore, the authorities rightly ordered that the intervening period should be treated as leave due.

The applicant is challenging the correctness of the reinstatement order dated 12.10.1978 by which the intervening period was treated as the leave of the kind due and admissible. He made representation against this order on 24.11.1978 which was rejected as far back as 15.2.1979. He again made a representation on 26.2.1979 which was rejected on 5.3.1979. Then he filed a writ petition in the Hon.High Court in January, 1981 which was rejected in the same month on the ground of laches. Thereafter he sent a representation to the President on 24.4.1981 which was rejected on 23.10.1981. Ultimately this suit was filed on 24th of April, 1984. By making successive representations for the same relief the running of the limitation could not be arrested. When the writ petition was filed in January 1981 he could have filed the suit within a reasonable time but he did so on 24.4.1984. So the applicant cannot challenge the correctness of the order dated 12.10.1978 because in that respect his claim is barred by time. However, even if we ignore this aspect, the applicant cannot get salary for the entire period as stated above.

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Applicant's claim may be time-barred so far as challenge to the correctness of the order of reinstatement dated 12.10.1978 is concerned. But this order has to be complied with by the Department and they should have made the payment according to this

order after adjusting the payments already made to the applicant. The technicalities of moving a formal application in this respect should not be permitted to defeat a just claim. So far as the compliance of this order dated 12.10.1978 by the Department is concerned, there is no question of any limitation. The Department should make the payment, ^{as} mentioned in the order dated 12.10.1978 after adjusting the amount already paid to the applicant when he was compulsarily retired.

This application (Suit No. 194 of 1094) is accordingly disposed of in terms of the directions given above. Parties are directed to bear their own costs.


VICE CHAIRMAN.

July 24¹⁵, 1987.

R.Pr./