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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 29 of 1987

N.K. Nair

.....

Petitioner.

Versus

Union of India & others

....

Respondents.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

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This writ petition has been received on transfer from the High Court of Judicature at Allahabad under Section 29 of the Administrative Tribunals Act XII of 1985. The petitioner, who was appointed as a Type-writer Mechanic in the Central Ordnance Depot, Cheeki, Allahabad in 1956 was removed from service as a result of a departmental enquiry in April, 1971. He challenged his removal in a court of law and the order of removal was set aside in September, 1979 and the suit was decreed in toto declaring him to be in service since the date of his removal. The Second Appeal filed by the Union of India in the High Court of Judicature at Allahabad was dismissed and thus the order of the lower appellate court was affirmed by the High Court. The petitioner was reinstated on 16.6.1981. He was allowed full salary and allowances from the date of his removal to the date of his reinstatement. The petitioner's payment were, however, restricted to a period of three years only and the personal pay which was allowed in view of the Pay Commission's report of 1973 was also denied to him. The petitioner was also not given any productivity bonus

on the ground that he was removed from service ³⁴ and as ³⁴ such the period of absence between the date of removal and reinstatement disentitles him for the same. According to the petitioner, respondent no.4, i.e. Local Audit Officer has been deliberately and maliciously interpreting the ³⁴ ~~the~~ departmental rules with deliberate intent to cause financial harm to him. The petitioner also represented for the grant of selection grade and refixation of his pay on 28.7.1983, but nothing has been done. The petitioner thereafter retired from service in October, 1983. He has, therefore, made a prayer in this petition for the issue of a writ of mandamus commanding the respondents to decide his representations dated 12.2.1983 and 28.7.83 in accordance with law and any other suitable order, direction or writ that may be deemed fit and proper in the circumstances of the case.

2. In the reply to the writ petition the respondents have said that after the petitioner had the decree in his favour in regard to his reinstatement the matter regarding payment of his dues for the periods between removal and reinstatement was considered by the competent authority and by the Audit authorities, who look into financial matters in order to decide the legitimate entitlements to the petitioner. The Audit authorities has raised ³⁴ ~~the~~ query asking for confirmation whether any remuneration from any other source was paid to the petitioner during pendency of the court case. The petitioner was in fact employed by the Chheoki Depot Cooperative Society and had drawn a payment of Rs.13,372.67. The objection raised by the financial authorities regarding the claim was under the Civil Service Regulations Article 193 clause 4(b)(i). But they allowed three years' payment precedent to the date of the court judgment. As

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far as the personal pay is concerned it is admissible only when the employee is present physically and in regard to the bonus it is not admissible to any employee who is not physically on duty. It is admissible on attendance. ^{and} ~~and~~ the question of granting selection grade to the petitioner on the strength of COD, Chheoki did not arise as there was no post of Typewriter Mechanic and ~~the~~ post was abolished immediately after he was removed from service. According to the respondents the question of prestige is baseless as they are responsible for passing the correct bill with regard to the admissibility of claim. The representations sent to the Commandant by the petitioner have been considered and disposed of. In fact the representations should have been made to respondent no.2, who is superior authority to respondent no.5. No representation lay to the Commandant against the decision taken by the Audit authorities as they are controlled by respondent no.2. The question of reinstatement and payment of the petitioner's wages, etc. for the period are ~~two~~ different questions and are dealt with ^{separately} by ~~the~~ authorities whose orders become final. The Audit authorities have not found the bill in order and if the petitioner was aggrieved by the decision he should have made a representation to respondent no.2. The decisions of the Commandant taken on both the representations made by the petitioner have been since communicated to the petitioner.

3. We have heard the learned counsel for the parties. The learned counsel for the petitioner contended that the petitioner has been given the salary, but productivity bonus has not been given to him and the selection grade has not been given to him. He has also been denied the personal pay. According to the learned

counsel the petitioner was not able to be physically present not on his own ^{3/}v~~z~~olation but he was prevented from joining duty on account of the order of removal. We have also perused the petition and other papers filed along with it.

3/ 4. The prayer made by the applicant in the petition is for a writ of mandamus commanding the respondents to decide his representations dated 12.2.1983 and 28.7.1983 in accordance with law. In his representation dated 12.2.1983 the petitioner had submitted the claim for payment of arrears of salary and other allowances for the intervening period from the date of his removal to the date of his reinstatement. He had challenged the jurisdiction of the Audit authorities. In regard to the non-payment of the full pay and allowances for the period between his removal and reinstatement. This representation is addressed to the Commandant, C.O.D., Chheoki. In the counter affidavit/^a~~xxx~~ copy/has been annexed as Annexure 'CA-1'. This reply was issued on 25.4.1983 and it says that the matter was taken up with the Audit office and the same has not agreed to make the payment as requested by the petitioner. His case was also referred to the Central Commandant, Meerut who has advised that the matter be taken up with the higher authorities through staff channel. Accordingly the case has since been taken up with the Army Headquarters on 25.4.1983. Similarly in respect of his representation dated 28.7.1983 the Commandant had made a reference to the Director of Ordnance Services, Army Headquarters, New Delhi on 6.9.1983. In this reference the Director of Ordnance Services was advised about the abolition of the post of Typewriter Mechanic and about the fact that the petitioner was kept on supernumerary strength for a

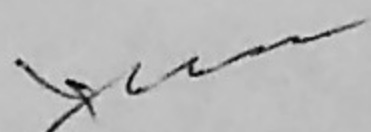
period of six months and after the expiry of the same he was posted to Jabalpur and the fact that the selection grade came into force when there was no post of Typewriter Mechanic in the Depot and, therefore, the appeal was not considered genuine or within rules. The representation dated 28.7.1983 was on the subject of grant of selection grade and refixation of pay. It would thus appear that the prayer made by the petitioner in the writ petition about the respondents deciding the representations of the petitioner dated 12.2.1983 and 28.7.1983 in accordance with law has been partly met. It is not known whether the petitioner has been advised the final out come of these two representations as Annexures 'CA-1' & 'CA-2' to the counter affidavit only indicate that a reference was made by the Commandant to the Army Headquarters on 25.4.1983 and to the Director of Ordnance Services on 6.9.1983. We, therefore, direct that the respondents will, if they have not yet finalised these two representations, take immediate action to finalise them and advise the final position to the petitioner within three months from the date of receipt of these orders.

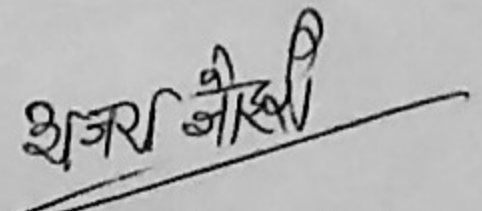
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5. At the Bar contentions were made that though the salary has been given, but productivity bonus, selection grade and personal pay have not been given. In the writ petition though there is a reference about these three, but no relief has been asked for on these except ^{for the prayer} that the representations dated 12.2.1983 and 28.7.1983 should be decided in accordance with law. The petitioner is, therefore, ^{31/}estopped from seeking a new relief which he has not asked for in the writ petition and his requests on the three accounts, i.e. for grant of productivity bonus, selection grade and personal pay

cannot be adjudicated at this stage and is, therefore, rejected. ² He can have a fresh cause of action when his representations are finally replied. ³ 34

6. ² Accordingly the writ petition is disposed of in terms of the above paras. Parties will bear their own costs.


Vice-Chairman.


Member (A).

Dated: January 12, 1988.

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