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CENTRAL ADMINISTRATIVE TRIBUNAL

Allahabad.

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JUNE , 1989

Registration T.A. No. 1390 of 1987(T)

Lal Bahadur Singh Applicant

Vs.

Union of India and ors ... Respondents

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

Hon' Mr. D.K. Agrawal, J.M.

(By Hon ' Mr. D.S. Misra, A.M.)

This is an original writ petition No. 3080 of 1989 which has come on transfer under section 29 of the Administrative Tribunal Act, 1985. The relief in this writ petition is for quashing the ~~order~~ orders dated 29-11-83 and 19-12-83 respectively directing payment of entire salary from 7-7-1969 promotion, increment and other emoluments which are due to him.

2. The admitted facts of this case are that the petitioner while working in the Small Arms Factory, Kanpur was alleged to have committed theft of Government material from the factory premises and after holding disciplinary proceedings, an order was passed on 1-12-1969 removing him from the service of the Factory. The petitioner filed a civil suit in the Court of Additional Munsif, Kanpur challenging the removal order. The Court in its judgement dated 9-3-1976 held the removal order illegal on the ground that the order of the General Manager was not a

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speaking order and the disciplinary authority has not applied its mind to the material on record. The Department filed an appeal before the Civil Judge Kanpur who by his order dated 26-2-1977 set aside the decree of the lower court by holding that the disciplinary authority had afforded reasonable opportunity to the plaintiff and that it was not necessary for the disciplinary authority to record its own reason while agreeing with the findings of the Inquiry Officer. The petitioner preferred an appeal before the High Court which was allowed on 4-10-1982 with the remark that the order of the removal was illegally passed. In compliance with the order of the High Court the petitioner was allowed duty with effect from 15-2-1983. The petitioner was, however, placed under suspension by an order dated 29-11-1983 (copy Annexure - 3) and by an other order dated 19-12-1983 (copy Annexure - 5 to the petition) the petitioner has been informed that it is proposed to hold an inquiry against him under rule 14 of the Central Civil Service (CCA) Rule, 1983. The substance of the imputation of misconduct and misbehaviour in respect of which the inquiry^{is} proposed to be held, are contained in articles of charge annexed to the above mentioned letter. The contention of the petitioner is that the order of suspension and holding of another inquiry on the same facts which form^{ed} the subject of inquiry leading to the order of removal from service on 1-12-1969, is illegal and must be quashed. The second grievance of the petitioner is that he has not been paid salary, increment and promotion etc. w.e.f. 7-7-1969, the date on which he was initially placed under suspension for the alleged charge of committing theft of government material. The contention of the respondents

is that the order dated 4-10-1982 of the High Court was passed purely on technical ground without going into the merits of the case. It has been decided in consultation with the Ministry of Defence to hold a de-novo inquiry. It is also contended that holding a de-novo inquiry is permissible under the CCS (CC&A) Rule, 1964. Regarding payment of salary claimed by the petitioner it is stated that the matter was under consideration of the Director General, Ordnance Factories. Regarding petitioner's claim for promotion, it is stated that the Small Arms Factory being an industrial undertakings, promotions are made after passing of requisite Trade test and the same will be considered after the conclusion of the disciplinary proceedings against the petitioner.

3. We have heard the arguments of the learned counsel for the parties and carefully perused the records of the case. The short points for consideration in this case is, whether a ~~fresh~~ ^{de novo} inquiry is permissible under the rules. The first contention of the petitioner is that he has been exonerated of the charges which form the basis of the de novo inquiry. The petitioner relied upon the judgment dated 09-3-76 of the Additional Munsif, Kanpur and the Hon'ble High Court of Allahabad dated 4-10-1982. The judgment dated 9-3-76 of Additional Munsif Kanpur was set aside by the Civil Judge by his order dated 26-2-1977. The High Court allowed the appeal of the petitioner with the following observations :-

" In view of the fact that I am accepting the first submission of the learned counsel and holding that the order of removal was illegally passed, I need not decide whether the second submission on behalf of the Appellant is legally sound or not. "

4. We have considered the contentions of the parties and we are of the opinion that the above quoted observation of the Hon'ble ^{Single} Judge of the Allahabad High Court has not dealt with the entire facts of the case and has held that the removal order was illegally passed. As the order has not dealt with the allegations against the petitioner, the respondents are within their right to institute a fresh disciplinary proceedings against the petitioner. The allegations of committing theft of government property by an employee working in the same establishment is a very serious charge and the respondents would be failing in their duty if they do not initiate fresh disciplinary proceedings against the petitioner. They are also within their right to place the petitioner under suspension. We are of the opinion that the order of suspension dated 29-11-83 and the service of a charge sheet dated 19-12-83 on the petitioner does not suffer from any illegality and the prayer of the petitioner on this account is rejected.

5. The second relief sought by the petitioner for promotion to the next higher grade has also no merit as the petitioner has failed to substantiate that he is entitled to promotion merely by virtue of length of service without passing the requisite trade test for promotion to the higher post. So far as the prayer for grant of salary for the period of 7-7-69 onwards is concerned, the same has to be examined in accordance with the rules. After the judgment dated 4-10-82 of the Allahabad High Court, the petitioner was reinstated in service with effect from 15-2-83 and he continued to work under the respondents until he was placed under suspension under the order dated 29-11-1983. If the

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petitioner has not been paid salary and allowance as admissible under the rules for the period from 15-2-1983 to 29-11-83, the same is payable by the respondents. Similarly, the applicant is also entitled for subsistence allowance as admissible under the rules for the period from 7-7-69 to 14-2-83 and again from 29-11-83 onwards. Under the rules it is the duty of the respondents to make payment of subsistence allowance to the petitioner on a regular basis subject to fulfilment^{of} the production of requisite certificate of being unemployed by the petitioner. The respondents are directed to make payment of suspension allowance as indicated above and salary for the period from 15-2-83 to 29-11-83 to the petitioner, if the same has not already been paid within a period of 3 months from the date of receipt of a copy of this order. The petition is disposed of accordingly without any order as to costs.

Dr. Aggarwal
MEMBER (J) 5.7.89

Bhm
MEMBER (A)

(sns)

JUNE 5th, 1989.