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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A.No.916 of 1987

Onkar Singh Applicant

Versus

Union of India, through
Senior Supdt. of R.M.S. 'G'
Division, Gorakhpur Respondent

Hon.Mr.Justice K.Nath, V.C.

Hon.Mr. K.Obayya, Member (A)

(By Hon.Mr.Justice K.Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 was filed on 28.9.87 for a direction to the respondent to take back the applicant Onkar Singh in service as Mail Guard in the Department as per decree dated 15.12.80 in Original Civil Suit No.451 of 1978 of the Court of Munsif Mathura. There is also a prayer for a direction to the respondent to pay all the arrears of salary and other emoluments of the applicant as per scale of pay revised from time to time.

2. The applicant was working as a Porter in the Railway Mail Service at Kathgodam when departmental disciplinary proceedings started against him for alleged misconduct and in due course an order was passed on 30.11.62 terminating the services. He filed Original Civil Suit No.451 of 1978 in the Court of Munsif Mathura for a declaration that the said order terminating his services was illegal and ineffective. That case was decreed ex parte by judgement dated 15.12.80, Annexure-1 and it was held that the termination order was void and the applicant continued to remain in the service of the Department. The respondent then

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filed a Civil Suit No. 271/91 in the Court of Munsif Mathura for setting aside the decree dated 15.12.80 in Original Suit No.451/78 on several grounds including the ground of fraud. That Suit was dismissed. The defendant-respondent filed Civil Appeal in the Court of District Judge, Mathura. On the establishment of the Tribunal that appeal was transferred to this Bench of the Tribunal and was registered as T.A. No.151/86. The appeal was dismissed by this Tribunal by order dated 5.12.86, Annexure-3 where it was held inter alia that no fraud in passing the ex parte decree dated 15.12.80, Annexure-1 was proved and that in respect of the other grounds the proper procedure would have been for the defendant-appellant to get the ex parte decree set aside under Order 9 Rule 13 C.P.C. on the ground that he had no knowledge of the Suit.

3. On 19.2.87 the respondent filed an application under Order 9 Rule 13 C.P.C. registered as Misc. Case No.22/87 in the Court of Munsif, Mathura for setting aside the ex parte decree dated 15.12.80 in Original Suit No.451/78. Just one day earlier i.e. on 18.2.87 the applicant sent a notice, Annexure-4 to the respondent making a demand for appointment in compliance of the judgement of Munsif, Mathura in Original Suit No.451/78, the respondent's Suit for setting aside the same having been dismissed on 22.3.83 and the dismissal having been confirmed by this Tribunal on 5.12.86 by Annexure-3. Demand was also made for payment of damages. The respondent's reply by Annexure-5 dated 21.4.87 stated that action has been taken for setting aside the ex

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parte decree and that the applicant was not entitled to get any damages. It was added that other points raised in the notice would be answered when the summons of the case might be received. Consequently, this Original Application was filed on 28.9.87.

4. When the case was taken up for hearing Shri Sanjay Goswami, Advocate appeared on behalf of the applicant and Shri K.C.Sinha appeared on behalf of the respondent. Shri Sinha said that the restoration application under Order 9 Rule 13 C.P.C. had not been disposed of and that the applicant had filed an Execution Application No.41/81 in the Court of Munsif, Mathura in respect of the ex parte decree that the proceedings therein have been stayed under respondent's objections registered in Misc. Case No.73/81 and they continue to be stayed. It was next said that the applicant had filed cases for wages before the Payment of Wages Authority which were numbers 587/83, 1255/84 and 665/85 which are still pending before the Prescribed Authority under the Payment of Wages Act and therefore the claim for payment of salary is not maintainable.

5. Shri Sanjay Goswami filed the certified copy of an order dated 6.12.90 passed by the Munsif in the restoration Application Misc. Case No.22/87 dismissing the application for default of the respondent while the applicant was present in that Court. Shri K.C.Sinha said that the respondent was not aware of the dismissal of the application under Order 9 Rule 13 C.P.C. and that the respondent may be given an opportunity to file an appeal against the dismissal order. We considered the prayer and rejected the request by order dt. 30.1.91. The arguments were heard on the merits.

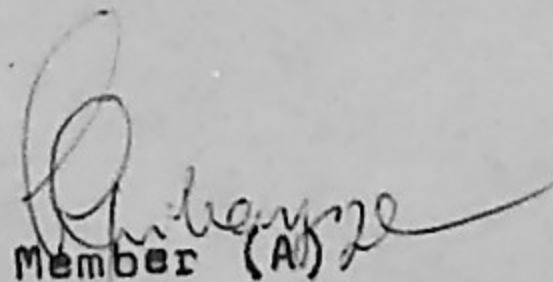
6. The filing of the Execution Application No.41/81 in the Court of Munsif or the stay of the proceedings therein pending disposal of the respondent's objections in Misc. Case No.73/81 do not stand in the way of the hearing ^{and} disposal of the application before us. The ex parte judgement under execution, Exb.I dated 15.12.80 was only declaratory; it simply said that the order terminating the service of the applicant was void and the applicant shall be deemed to have continued in service. There is no further order of payment of arrears of salary or of reinstating the applicant in the job. The stay of the proceedings of execution of a bare declaratory decree is of no consequence because there is nothing to be stayed.

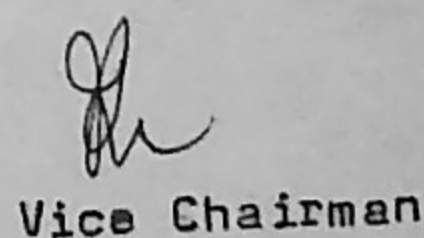
7. The pendency of cases for recovery of wages under Section 15 of the Payment of Wages Act also ^{do} not stand in the way of the hearing and disposal of the present application except that the claim for recovery of arrears of pay before this Tribunal has to be confined only to the period which followed the last application under Section 15 of the Payment of Wages Act. The restoration application under Order 9 Rule 13 C.P.C. having been dismissed there is no reason why the declaration of termination of services in Original Suit No.451/78 may not be given effect to in the present proceedings. We therefore hold that the applicant is entitled to be posted back as Porter in the R.M.S. So far as the payment of arrears of salary is concerned they can be granted only for such period as would be within the limitation on 28.9.87. The period of

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limitation being one year the salary can be ordered to be paid by this Tribunal only for the period from 28.9.86. This is without prejudice to the claims made by the applicant before the Prescribed Authority under the Payment of Wages Act.

8. For reasons indicated above, we direct that the applicant Onkar Singh shall be posted by the respondent as Porter in the R.M.S. within a period of two months from the date of receipt of a copy of this judgement. The respondent shall also determine and fix the salary payable to the applicant on 28.9.86 in accordance with the applicable rules and pay the same to the applicant within a period of three months from the date of receipt of a copy of this judgement. This order for payment of salary shall be without prejudice to the result of the applicant's cases under the Payment of Wages Act pending before the Prescribed Authority. The applicant shall also get costs of the proceedings from the respondent which we fix at Rs. 1000/-.


Member (A)


Vice Chairman

Dated the 15th Feb., 1991

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