

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

Allahabad : Dated this 26th day of February, 2001
Original Application No.663 of 1992

CORAM :-

Hon'ble Mr. V. Srikantan, A.M.

Hon'ble Mr. SKI Nagvi, J.M.

Ram Singh

S/o Roopkishor

R/o 216, Prem Nagar,

Sareilly.

(Sri Arvind Kumar, Advocate)

. Applicant

Versus

1. Employees State Insurance Corporation
Through its Director General, E.S.I.C. Building,
Kotla Road, New Delhi.
2. Chairman Standing Committee,
E.S.I. Corporation,
New Delhi.
3. Secretary Government of India/Vice Chairman
E.S.I. Corporation, Ministry of Labour,
New Delhi.

(Sri BN Asthana/Sri PK Asthana, Advocates)

. Respondents

O R D E R (O_r_a_l)

By Hon'ble Mr. V. Srikantan, A.M.

The applicant is seeking quashing of the order dated April, 1989 (Annexure-A-1) to the extent it directs that the intervenning period from the date of of his premature retirement to the date of his actual reinstatement to be treated as leave of the kind due to him and for direction to the respondents to pay the applicant full wages and other allowances for the intervenning period

V. Ardh

i.e. 1-10-1936 to 7-5-1939.

2. The brief fact as mentioned in the application is that the applicant was prematurely retired vide order dated 1-10-1936 under Rule 48(1)(b) of CCS Pension Rules, 1972 on completing 30 years of qualifying service. The said order was challenged by the applicant in OA No.715 of 1936 before this Tribunal which was disposed of by the order dated 9-2-1988 giving an opportunity to the applicant to seek departmental alternative remedy. The applicant had thereafter filed an Appeal which was decided in April, 1989. In this order it was directed that the intervening period between the premature date of retirement and actual reinstatement will be regularised by grant of leave of the kind due to him. Being aggrieved by this order, the applicant has filed this OA.

3. We have heard counsel for both sides and have perused the material on record.

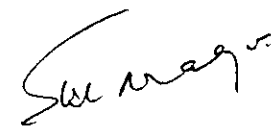
4. The main ground of the applicant is that once the Appellate Authority came to the conclusion that the order of premature retirement is unjustified there is no rationale for him depriving the applicant of consequential benefits and that in a similar case in O.A. No.774/1989 decided in this Tribunal it has been held that the applicant should be paid salary for the period which was earlier declared as paid not. The counsel for the respondents contended that the applicant approached this Tribunal without first exhausting the remedy available to him in terms of departmental instruction dated 5-1-1978 Appendix-10 to CCS(P) Rules and hence the respondents are not responsible for the delay of almost three years in reinstatement of the applicant. It is further contended by the Learned

V. Anil

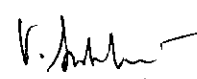
u Counsel for the respondents that under the abovementioned instructions, it was open to the respondents to consider how the intervenning period should be determined and it could be determined either as duty or as leave. In this case the respondents have ^{dec}ided to consider the grant of consequential benefits for the intervenning period which was due to the applicant in the form of leave due.

5. On going through the relevant instructions of 5-1-1978, it is revealed that these are in the nature of instructions and are not covered by the statutory provisions as contended by the counsel for the respondents. The applicant was within his right to approach the Tribunal and file the OA and he cannot be held responsible for intervenning period of three years after his reinstatement.

6. In view of the above circumstances, the application is allowed and the order dated April, 1989 is quashed to the extent that the intervenning period be treated as duty by grant of leave of the kind due to him. The applicant is entitled to the consequential benefits of salary etc. for the above period. Above order to be implemented within two months from the date of receipt of a copy of this order. There shall be no order as to costs.



Member (J)



Member (A)

Dube/

i.e. 1-10-1986 to 7-5-1989.

2. The brief fact as mentioned in the application is that the applicant was prematurely retired vide order dated 1-10-1986 under Rule 48(1)(b) of CCS Pension Rules, 1972 on completing 30 years of qualifying service. The said order was challenged by the applicant in OA No.715 of 1986 before this Tribunal which was disposed of by the order dated 9-2-1988 giving an opportunity to the applicant to seek departmental alternative remedy. The applicant had thereafter filed an Appeal which was decided in April, 1989. In this order it was directed that the intervenning ^{/period} between the premature date of retirement and actual reinstatement will be regularised by grant of leave of the kind due due to him. Being aggrieved by this order, the applicant has filed this OA.

3. We have heard counsel for both sides and have perused the material on record.

4. The main ground ~~by~~ of the applicant is that once the Appellate Authority came to the conclusion that the order of premature retirement is unjustified and there is no rationale for him depriving the applicant of consequential benefits and that in a similar case in OA No.774/1989 decided in this Tribunal it has been held that the applicant should be paid salary for the period which was earlier declared as paid not. The counsel for the respondents contended that [the period of three years between the date of compulsory retirement and reinstatement and immediately after passing of the order of compulsory retirement,] the applicant approached this Tribunal without first exhausting the remedy available to him in terms of departmental instruction dated 5-1-1978 Appendix-10 to CCS(P) Rules and hence the respondents are not responsible for the delay of almost three years in reinstatement of the applicant. It is further

contended by the learned counsel for the ^{respondents} ~~applicant~~ that under the abovementioned instructions, it was open to the respondents to consider how the intervenning period should be determined and it ⁶ should be determined either as duty or as leave. In this case the respondents have ^{acted} ~~deprived~~ ~~the applicant~~ to consider the grant of consequential benefits for the intervenning period which was due to the applicant in the form of leave due.

5. On going through the relevant instructions it reveals that these are in the nature of instructions and are not covered by the statutory provisions as contended by the counsel for the respondents. The applicant was within his right to approach the Tribunal and file the OA and he cannot be held responsible for intervening period of three years after his reinstatement.

6. In view of the above circumstances, the application is allowed and the order dated April, 1989 is quashed to the extent that the intervenning period be treated as duty by grant of leave of the kind due to him. The applicant is entitled to the consequential benefits of salary etc. for the above period. ^{Above order is to be implemented} There shall be no order as to costs.

(A) within two months from the date of receipt of a copy of the order.

Member (J)

Member (A)

Dube/