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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 30TH DAY OF JANUARY, 2001

Original Application No. 1466 of 2000

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

V.S.Verma,son of Late Bhoop Singh Verma  
R/o 16/28, Civil Lines,  
Kanpur.

... Applicant

(By Adv: Shri A.K.Srivastava)

Versus

1. Union of India through the Secretary  
Ministry of Defence, Govt. of India,  
New Delhi.
2. General Manager,  
Ordnance Factory, Kanpur.
3. Controller of Defence Accoucnts(Pension)  
Allahabad.

... Respondents

(By Adv: Ms.Sadhna Srivastava)

O R D E R(Oral)

(By Hon.Mr.Justice R.R.K.Trivedi,V.C.)

By this application u/s 19 of A.T.Act 1985 applicant has prayed for a direction to the respondent to pay difference of monthly salary and subsistence allowance for the period 14.4.1989 to 2.3.1990. He has further prayed that respondents may be directed to pay annual increment,leave benefit and other service benefits for the aforesaid period.

The facts in short giving rise to the controversy are that applicant was serving in Ordnance Factory Kanpur as Supervisor 'A'/MB(Estate). He was served with a memo of charge no.1210 dated 26.4.1989. The Enquiry officer submitted his report and found the charges against the applicant proved. The Punishing Authority after hearing the applicant by order dated 2.3.1990 passed the following order

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"and now, therefore, I undersigned do hereby impose the penalty of 'removal from service'

V.S.Verma, Supervisor 'A'/MB(Estate) under suspension from the date of this order."

Aggrieved by the said order applicant filed an appeal which was dismissed by order dated 5.2.1991. Both the aforesaid orders were challenged before this Tribunal in OA 977/90. The OA was dismissed by order dated 6.11.1995. The order of this Tribunal was challenged before the Hon'ble Supreme Court in SLP No.1328/96. Hon'ble Supreme Court by order dated 8.5.1996 disposed of the appeal by the following order:

"We issued notice limited to the question of punishment. We are of the view that the interest of justice would be met if we set aside the order of removal and instead award punishment of compulsory retirement from service. We order accordingly. The appellant shall be deemed to have been retired from the service from the date of his removal. Needless to say that he shall be entitled to his retiral benefits.

The appeal is disposed of. No costs."

After the order of Hon'ble Supreme Court respondents served a show cause notice dated 10.10.1996 on the applicant to show cause why the applicant should not be allowed only such pay and allowances as has been admitted to him during the said period of suspension and that the said period shall be treated as 'period spent on duty'. Applicant submitted his reply dated 26.10.1996 and questioned the authority of the respondents to reopen the order of punishment which had become final after the order of Hon'ble Supreme Court dated 8.5.1996. The respondents, however, by order dated 12.12.1996 passed the following order:-

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"Consequent upon judgment dated 8.5.96 passed by Hon'ble Supreme Court in SLP.No.1328 of 1996 V.S.Verma Vs.GM/OFC & Others, moderating the penalty of Removal from service so that of Compulsory Retirement from service w.e.f the date of his removal, i.e. 2.3.90, there will be no interruption in service of Shri V.S.Verma, Supr'A'/MB(Estate) due to his suspension from 14.4.89 to 1.3.90, but it will not count towards his increment, leave and pension etc. He is also not entitled for any further pay and allowances beyond the subsistence allowance and other allowances already paid to him."

Following this order the applicant has been refused payment of the remaining salary and other benefits for the period 14.4.1989 to 1.3.1990, aggrieved by which this application has been filed.

Counter affidavit has been filed by the respondents. I have heard Shri A.K.Srivastava counsel for the applicant and Ms.Sadhna Srivastava learned counsel appearing for the respondents.

From the facts narrated above it is apparent that the question for determination in this OA is as to whether the respondents could modify the order of punishment already finalised by the Hon'ble Supreme court. It is not disputed that order depriving the applicant from increment, leave, pension and other benefits which, normally he would have been entitled for the period 14.4.89 to 1.3.1990, shall amount to punishment. While passing the order of punishment dated 2.3.1990 there were "no direction that he shall not be entitled for any other amount except subsistence allowance paid during the period of suspension. This order has become final. The order of punishment in my opinion which had been confirmed by Hon'ble Supreme Court

modifying the order of removal from service into compulsory retirement could not be changed by the respondents by issuing a fresh show cause notice and passing the order dated 12.12.1996 depriving applicant from other monetary benefits, which in normal course he would have been entitled in absence of such order.

Ms. Sadhna Srivastava, however, submitted that this application is time barred as the impugned order was passed in 1996 and this OA has been filed in this Tribunal on 5.12.2000 i.e. after about four years. It is also submitted that there is no prayer for quashing this order.

Shri A.K. Srivastava, learned counsel for the applicant on the other hand placed before me a copy of the order of Hon'ble Supreme Court rejecting/ the review application of the applicant, which was pending earlier. I have considered the submissions of the learned counsel for the parties on the aforesaid questions. However, in the peculiar facts and circumstances of the present case as the order dated 12.12.1996 appears to be without authority, in my opinion the applicant is entitled for a liberal view and for condonation of delay in the interest of justice. The delay if any, in moving this application is accordingly condoned. The relief claimed in this OA is for a direction to the respondents to pay difference of monthly salary and suspension allowance for the period in question and for other benefits during the said period. It is true that order dated 12.12.1996 has not been specifically challenged but the relief claimed is wide enough to include this order which is only impediment in granting relief. If applicant is otherwise found entitled for the relief, in my opinion, he should not be deprived of the same on this technical plea. The court for doing complete justice, may, if necessary, modify the relief.

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though it would have been better on the part of the applicant to challenge this order also.

For the reasons stated above, this application is allowed. The order dated 12.12.1996 is quashed. So far as it deprived the applicant of other monetary benefits during the period of suspension namely 14.4.1989 to 1.3.1990, the applicant shall be paid retiral benefit treating him to have retired on 2.3.1990, with full salary.

There will be no order as to costs.

VICE CHAIRMAN

Dated: 30.1.2001

Uv/