

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 30th day of Nov 2010

Original Application No. 1557 of 2003`
(U/S 19, Administrative Tribunal Act, 1985)

**Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)**

Anuj Srivastava, aged about 31 years, S/o Shri Raj Kumar Srivastava, R/o 333-A, Satya Nagar, Rai Bareilly.

..... *Applicant*
By Adv. : *Shri Rakesh Verma*

V E R S U S

1. *Union of India, through the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi.*
2. *The Accountant General, Indian Audit & Accounts Department, (Accounts & Entitlement) II U.P., 20, Sarojini Naidu Marg, Allahabad.*
3. *The Deputy Accountant General (Works) Office of the Accountant General (A&E) II, 20 Sarojini Naidu Marg, Allahabad.*
4. *The Executive Engineer (Investigation & Planning) Jhansi, through the Secretary Department of Irrigation state of U.P., Lucknow.*
5. *The Executive Engineer Betwa, Canal Division II, Orai, District-Jalaun.*

..... *Respondents*

By Adv. : *Shri Amit Sthalakar*
Shri K.P. Singh

O R D E R

(Delivered by Hon'ble Dr. K.B.S. Rajan, Member-J)

Through this Original Application the Applicant is claiming salary basic Rs.5000/- + DA Rs.1900/- + HRA Rs.340/- totaling to

Rs.7,240/- per month for the period from 16.07.1997 to 12.03.1999 and July 1999 to 07.10.1999, which had not been paid to him and the applicant also claims interest @ 18% per annum on the amount due to him.

2. Brief facts of the case are that the Applicant was appointed as Divisional Accountant in the Indian Audit and Accounts Department with effect from 13.05.1996. He was then sponsored for 3-1/2 months training from 26.11.1996. However, on account of illness, he could not participate in the training and applied for leave on medical ground supported by medical/fitness certificate for the period from 27.11.1996 to 15.07.1997. The Applicant joined duties from 16.07.1997 after he underwent the prescribed training. AnnexureA-2 refers. By letter dated 12.03.1999, he was relieved and posted back to the same division i.e. Executive Engineer (Investigation & Planning Division) WR, Jhansi. Annexure A-3 refers. The Applicant remained in the service of the respondents till 19.01.2001 when his services were terminated on the ground that he could not qualify in the Divisional Accounts Examination within the prescribed chances. The Applicant has not been paid his pay and allowances for the following period:-

16.07.97 to 12.03.99: While the Applicant was undergoing prescribed training.

July, 99 to Sept. 99: While the Applicant was posted in Investigation & Planning Div. Jhansi.

01.10.99 to 07.10.99 ---do--

3. Respondents have contested the O.A. and contended that the OA is barred by limitation and further stated that the applicant has not impleaded Executive Engineer, Betwa Canal Division II, Oral (Jalaun) from where the services of the applicant had been terminated. The applicant was on leave on different spells during the training period; vide Annexure II to the counter affidavit. The I & P Division (Water resources) Jhansi was on 14-05-1999 merged with the I & P Division, Jhansi vide Annexure III to the counter. The service Book could not be traceable in the I & P Division, Jhansi and hence the matter was kept pending as it could not be ascertained whether the leave was sanctioned or not. On 27-03-2004, a cheque for certain amount was drawn in favour of the Executive Engineer, Matatila Dam Division, Jhansi for payment to the applicant and another Senior Clerk for the period from 01-07-1999 to 05-10-1999. While the statement dated 27-03-2004 shows that a sum of Rs 5419/- was paid to the senior clerk, there was no indication whether the balance amount of Rs 22639/- had been paid to the applicant. It has also been contended that the applicant, after his training in March 1999 joined duties only in July 1999 and the applicant actually worked only from July to September, 1999 and this clearly shows that applicant's working was casual and he was irresponsible...

4. The applicant filed his rejoinder wherein he had stated that there was no need to implead the Executive Engineer, Betwa Canal as there was no dispute over the period when he had joined the office of the above authority. The applicant cannot be made to suffer for any

act of commission or omission on the part of the respondents. That on 27-03-2004 a cheque was prepared (for payment to the applicant) when the applicant had quit the service in October 1999 and absence of any particulars about the money having been disbursed goes to show that the applicant had not been paid a single paise. The applicant was drawing a salary of Rs 5,000 plus D.a. thereon Rs 1,900 plus HRA of Rs. 340 totalling Rs 7240.

5. Supplementary counter and supplementary rejoinder were also exchanged.

6. The Executive engineer, Betwa Division, Jalaun, Jhansi had also been subsequently impleaded vide order dated 13-11-2009.

7. Counsel for the applicant submitted that there is no denial of the dues payable to the applicant but the predicament on the part of the respondents is that as to who should make the payment, that unit where the applicant worked during the period for which payment was due or the unit where the applicant served last.

8. Counsel for the respondents submitted that the service book is not available and no other material is available to verify the details of payment due and drawn by the applicant.

9. Arguments were heard and documents perused. The Water Resources Division where the applicant initially served was merged with the main I & P Division Jhansi. Merger is a matter of the

employer and the employee has no concern over it. Once merger takes place, the responsibility of payment of past dues would be based on the terms of merger, which again is the responsibility of the employer and the employees have no say in the same. It is trite knowledge that once the merger takes place, the merger takes into account even the liabilities of the past. In any event, be it one Executive Engineer or the other, the office comes under the same higher authority, i.e. the Accountant General. As such, the liability for payment is to that authority. And the applicant has rightly claimed in the relief clause that Respondent No. 2 be directed to make the payment due to him.

10. When the authorities who are expected to maintain the records, be it of pay disbursement or leave records, and who could not so maintain for whatsoever reason, it is they who are to suffer and the employee cannot be made to suffer for the default or deficiency on the part of the authorities. In this regard, the following two decisions of the Apex Court would be appropriate to be referred to:

(i) *The Apex Court in a recent case decided on 14.12.2007 (Union of India vs. Sadhana Khanna, C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees. In yet another recent case of M.V. Thimmaiah vs. UPSC, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.*

(ii) *It has been held in the case of Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363 wherein the Apex Court has held "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."*

b

11. Thus, the respondents are under an obligation to pay the dues to the applicant. The next question is as to the quantum of payment. The applicant has claimed his dues @ Rs 7240/- per month. The respondents had earlier worked out an amount of Rs 22,639/- as the amount due to the applicant for the period from 01-07-1999 to 05-10-1999. In other words, for three months and 5 days, the amount works out to Rs 22,639/-. This comes to Rs 7134/- per month and the amount demanded by the applicant is Rs 7,240/- per month. Thus, there is not much of the difference between the amount determined by the respondents and the amount claimed. Since the applicant has not submitted any pay slip to substantiate his calculation, the undisputed amount of Rs 7134/- per month could well be taken into account. As admittedly the amount has not been paid and it was only the question of where the amount should be accounted for, the A.G. being the appointing authority, the amount shall be paid to the applicant by respondent No. 2. If the respondents opine that some security should be obtained from the applicant, they could well insist for an indemnity bond for the amount payable to the applicant.

12. **The OA is thus, allowed**, with the direction that the respondents shall calculate the salary of the applicant at Rs 7134/- per month for the period 16-07-1997 to 12-03-19991 1st July 1999 to 5th October, 1999 (as the applicant's leave for 6th and 7th October, 1999 was not sanctioned as per the respondents). Though the applicant has claimed interest @ 18%, since the calculation made does not take into account the possible difference in emoluments for the previous years

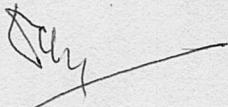
(as the emoluments would be more in the later period due to addition of increment and increase in DA etc.,) and as the amount is calculated at a flat rate of Rs 7134/- for all the period, no interest is ordered to be paid.

13. The amount calculated as above shall be paid within a period of 120 days from the date of receipt of copy of this order. Failure to make the payment within the above said period would make the applicant entitled to interest @ 9% per annum for the period from 1st January 2000 till the date of payment of the dues to the applicant and the amount so payable as interest shall be recovered from the authorities who are responsible for delay in payment. For it has been held in the case of ***Lucknow Development Authority v. M.K. Gupta, (1994) 1 SCC 243*** as under:

"Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socio-economic outlook. The authority empowered to function under a statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and bona fide, loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? **In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary.** It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. **Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system.** Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. **When a citizen seeks to recover compensation from a public authority in respect of injuries**

suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. When the court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission **when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries.** (emphasis supplied)"

14. No cost.



(D.C. Lakha)
Member-A



(Dr. K.B.S. Rajan)
Member-J

Sushil