

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD

(THIS THE 24th DAY of August, 2011)

Hon'ble Mr. A. K. Bhardwaj, Member (J)

Original Application No.592 of 2007
(U/S 19, Administrative Tribunal Act, 1985)

Abdul Wahid S/o Mohd. Abdullah R/o- 9/A Vijay Nagar
Double Pulia Kanpur, District-Kanpur Nagar.

..... Applicant

By Advocates: Shri M. Lal
Shri P.K. Lal

Versus

1. Union of India through the Secretary Ministry of Defence
Production New Delhi.
2. Director General Ordnances Factories, 10-A, Khudi Ram
Bose Road, Kolkata-1.
3. General Manager Ordnance Factory, Dehradun,
Uttanchal State.
4. Principal Controller of Defence Account (Pensions)
Allahabd.

..... Respondents

By Advocates: Shri R.K. Srivastava

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ORDER

(Delivered by Hon. Mr. A.K. Bhardwaj, Member-J)

The grievance raised by the applicant in the present O.A. is that the period during which he remained under suspension in not taken into account by the respondents while determining his retiral benefits. Being detained in Police custody on 17.05.1991, the applicant was placed under suspension vide Factory Order Part II No.3351 dated 10.07.1991. w.e.f. 17.05.1991 i.e. date of his arrest. The suspension of the applicant was revoked vide order dated 19.10.1996 w.e.f. 03.02.1995. In the said order it was stipulated that services of the applicant will not count for the purpose of increment, leave and Pension. Subsequently, in terms of Ordinance Factory Board, Kolkata letter No.01/28/A/SCHL/OFC/98 dated 05.08.1998, the applicant was promoted as TGT and posted at Ordinance Factory, Dehradun w.e.f. 07.09.1998. Thereafter, the applicant was convicted in criminal case No. ST 485/95 for committing offence under Sections 307, 324, 504, 506, 147 and 148 of IPC. He was sentenced with imprisonment for 7 years by IIInd Additional Sessions Judge, Kanpur vide order dated

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04.04.2003. Consequently, he was taken into custody on the same date. Such arrest of the applicant again resulted in his deemed suspension vide order dated 30.06.2003. Subsequently, in exercise of power under Rule 19(1) of the CCS (CC&A) Rules 1965, Disciplinary Authority imposed penalty of compulsory retirement from service on applicant effecting from 12.12.2003 finding him not a fit person to be retained in service.

2. In order to determine the period of suspension from 04.04.2003 to 12.12.2003, the concerned authority issued a Notice to the applicant to show cause and having considered his reply, passed the order dated 16.03.2004, treating the aforementioned period from 04.04.2003 to 12.12.2003 is not spent on duty.

3. Ignoring the period of suspension, the CDA (P) Allahabad granted pension to the applicant vide PPO No. C/Fys/18289/2004. The applicant filed O.A. No.37 of 2007 before this Tribunal challenging the aforementioned PPO. Said O.A. was disposed of by this Tribunal directing CDA (P)

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Allahabad to pass speaking order. Accordingly, order dated 29.03.2007 was passed.

4. Challenging the said order and making a prayer for issuance of direction to the respondents to revise the PPO to the effect that period spent by the applicant under suspension could be taken into account as qualifying service for pension, the applicant again filed the present O.A.

5. In Para-3 of the order dated 29.03.2007, respondents have taken a stand that on the basis of receipt of Subsistence Allowance during suspension period it could not be implied that the period spent under suspension is treated as qualifying service.

6. The issue raised by the respondents in passing impugned order dated 29.03.2007 was examined by Hon'ble Supreme Court in the case of *Bibhuti Bhushan Chaudhary v. Union of India & Another: 1998 Supreme Court Cases (L&S) 158*. The said judgment read as under:-

"1. The question that arises for consideration in this writ petition is whether the period during which the petitioner was under suspension could be excluded for the purpose of computing the pension payable to him

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2. The petitioner was employed as Station Master in the Railway. By order dated 19.1.1962 he was placed under suspension on account of his failure to join duty at the place of transfer. The said order of suspension continued in operation till 8.5.1970 when the petitioner was allowed to join duty. He retired from service on attaining the age of superannuation on 31.1.1980. It appears that disciplinary proceedings had been initiated against the petitioner but the same could not be completed till he retired. The petitioner has been paid subsistence allowances for the period of suspension.

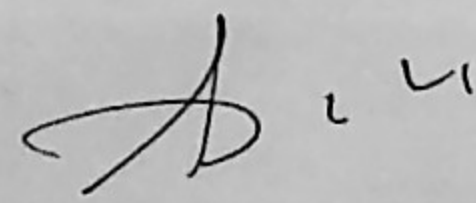
3. The learned counsel for the petitioner has confined his submission to the computation of the pension payable to the petitioner and has urged that although the subsistence allowances has been paid to the petitioner from the period of suspension the said period has been excluded from the qualifying service of the petitioner for the purpose of computing the pension payable to him. Having regard to the fact that the petitioner has been paid the subsistence allowance for the period of suspension, the said period of suspension could not be excluded from the qualifying service for the purpose of computing pension of the petitioner and the pension payable to the petitioner should be calculated by taking into account the said period of suspension as part of his qualifying service. It is, therefore, directed that the petitioner is entitled to count the period of suspension as part of his qualifying service for the purpose of computing the pension payable to him. The amount of pension payable to the petitioner should be reassessed on that basis and the amount arrears found payable to the petitioner as a result of such reassessment shall be paid to the petitioner within a period of three months. The writ petition is disposed of accordingly. No orders as to costs. "

7. As I could see in the aforesaid judgment, the Hon'ble Supreme Court ruled that once the petitioner has been paid subsistence allowance for the period of suspension, the said

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period of suspension could not be excluded from the qualifying service for the purpose of computing pension of the petitioner and the pension payable to the petitioner should be calculated by taking into account the said period of suspension as part of his qualifying service. I am bound by aforementioned decision of the Hon'ble Supreme Court.

8. Following said decision, I quash the impugned order dated 29.03.2007 and direct the respondents to re-examine the claim of the applicant for counting the period spent by the applicant under suspension as part of his qualifying service for the purpose of pension payable to him, within a period of four months from the date of receipt of copy of this order. No costs.


(A.K. Bhardwaj)
Member-J

Sushil