

(71)

3

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 330 of 1990

Date of Decision ... 23rd April, 1991

Dilip Kumar Mohapatra ... Applicant

Versus

Union of India & others Respondents

M/s. A. Patnaik,
L. Pangari,
S. Udgata, Advocates

For the applicant

M/s. K.C. Mohanty,
Govt. Advocate (State)

For the respondents

- - - - -

C O R A M

HON'BLE MR. B.R. PATEL, VICE CHAIRMAN

A N D

HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

- - - - -

1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to the reporters or not ? NO
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

- - - - -

J U D G M E N T

4

B.R. PATEL, VICE-CHAIRMAN, The applicant was deputed for training in 27th Course of National Defence College held at New Delhi from 2.1.1987 to 30.11.1987 (Annexure-4). On his completion of training he put forth his claim for Special Allowances at the rate sanctioned by the Office Memorandum of Finance Department dated 24.3.1983. but before, the allowance could be sanctioned vide Finance Department Memorandum referred to above, it was superseded by the Office Memorandum of the Finance Deptt. dated the 6.5.1988. The applicant has approached this Tribunal with a prayer for issuance of direction quashing the impugned letter issued by the Deputy Secretary to the State Government in Home Department dated 28.3.1991 (Annexure - 10). In this letter it has been mentioned that cases already disposed of on the basis of previous orders were not to be reopened and since order in this case had already been issued prior to issue of the Finance Department Office Memorandum dated 6.5.1988, this case can not be treated as a pending case. The applicant has further requested the Tribunal to direct the respondents to pay him the Special allowance with interest in accordance with the Finance Deptt. Office Memorandum dated 6.5.88 (Annexure - 6).

2. The respondents in their counter affidavit have mentioned that the applicant is not entitled to the relief given in the Finance Deptt. Office order dated 6.5.88 as his training in the National Defence

Amul

College, New Delhi was sanctioned by the earlier memorandum dated 24.3.83 (Annexure R.1/3). They have further said, since the sanction for training was issued on 27.3.87 when Office Memorandum dated 6.5.88 was not in force, the case of the applicant is not covered by the Office Memorandum dated 6.5.88.

3. We have ^{heard} Mr. A. Patnaik, learned Counsel for the applicant and Mr. K.C. Mohanty, Learned Govt. Advocate for the respondents and perused the papers very carefully, particularly the two circulars in question. The Office Memorandum dated 24.3.83 has laid down in Paragraph-5 "This order will be effective from the date of issue. The cases already disposed of on the basis of previous orders shall not be re-opened. Cases pending on the date of issue of the orders may be disposed of in accordance with this order." Exactly similar provision has been made in the Finance Deptt. O.M. dated 6.5.88 (Annexure-6). The limited point for consideration is whether this case would be considered in the light of the circular dated 24.3.83 since that was the instruction which was issued when the applicant was deputed for training or he will be governed by the subsequent OM dated 6.5.1988. Mr. Patnaik strenuously urged that since the applicant's case for the allowance was still pending, when (Annexure-6) Office Memorandum dated 6.5.88 was issued, he is entitled to have his claim decided in accordance to the Office Memorandum dated 6.5.1988.

Bm

- 1 -

Paragraph - 9 of Office Memorandum dated 9.5.88 reads as follows:

"These orders will be effective from the date of issue, cases already disposed of on the basis of previous orders shall not be reopened. Cases pending on the date of issue of these orders may be disposed of in accordance with these orders".

4. Mr. Patnaik submitted that the applicant preferred his claim immediately on completion of his training on 30th November, 1987. Till to-day his claims have not been settled and they are still pending. As they are pending, according to Mr. Patnaik, there is no question for applying OM dated 24.3.83 to the case of the applicant. Mr. Mohanty on the other hand contends that the claim of the applicant is not pending as it was sanctioned by the order of the Home Department dated 26.3.87 (Annexure-R.1/2). We are unable to agree with Mr. Mohanty in as much as the Home Department letter dated 24.3.83 sanctioned only the training to be undergone at the National Defence College, New Delhi. This letter specifically says that he is allowed to draw the Special Allowance at the usual rate for the period of his training as admissible under Office Memorandum dated 24.3.83. This means that the claim preferred by the applicant has to be scrutinised by the Department before sanctioning the amount. **Because** Memorandum dated 24.3.83 as well as in the Memorandum

hmv

dated 6.5.88, it has been specifically mentioned that a claim has to be preferred. This is all the more necessary, because varying rates of special allowance are admissible in the circumstances as stated in Para-III & IV of Office Memorandum dtd.24.3.83 and paragraph-4 (b) & (c) of the OM dated 5.5.88. It is also specifically mentioned in Para-V of the OM dated 24.3.83 that while preferring the claim for special allowances the Government Servant has to give a certificate regarding the period of Training, Facilities availed, Cost actually paid etc. It is absolutely clear that the claim has got to be preferred even in terms of the OM dated 24.3.83 and a claim can not be settled before it is preferred and further that the claim cannot be preferred unless the training is over. The claim cannot be scrutinised before it is preferred. For settling the claim, the claims made have to be scrutinised and after scrutiny, an order sanctioning the amount has to be passed. As the process of scrutiny has not been completed, we have no doubt that sanctioning of the claim is still pending and consequently it is covered by Para-9 of the OM dated 6.5.88 (Annexure-6). It is accordingly directed that the claim of the applicant should be settled under the Government of Orissa, Finance Deptt. OM dated 6.5.88 within two months from the date of receipt of this judgment. Since the delay is genuine due to incorrect interpretation of the Office Memoranda involved in the case we are not inclined to award any costs. The case is accordingly disposed of. No costs.



[Signature]
23.4.91
MEMBER (JUDICIAL)

[Signature] 23.4.91
VICE CHAIRMAN