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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 447 of 1992.

Date of decision : April 6, 1993.

Chandra Sekhar Das ...

Applicant.

Versus

Union of India and others...

Respondents.

For the applicant ...

M/s. S.K. Padhi,
A.S. Parida, Advocates.

For the respondents. ...

Mr. Akhaya Kumar Misra,
Addl. Standing Counsel
(Central)

C O R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *Yes*
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

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J U D G M E N T

K.P.ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to modify the order passed in Annexure-3 to the extent entitling the applicant to all financial emoluments which he would have ordinarily drawn from the date of compulsory retirement till the date of reinstatement.

2. Shortly stated, the case of the applicant is that he was serving in Central Board for Workers Education as Selection Grade Education Officer. The applicant was compulsorily retired from service with effect from 28.8.1990. An appeal was preferred by the applicant and vide Annexure-3 dated 29.8.1991 the order compulsorily retiring the applicant was set aside by the competent authority who further directed the applicant to report to the Regional Director, Workers Education Centre, Cuttack as Selection Grade Education Officer immediately and it was further directed that the intervening period between the date of premature retirement and the date of reinstatement may be regularised by grant of leave due and admissible to the applicant. The applicant feels aggrieved in regard to the later part of the aforesaid order directing the concerned authority to grant the applicant leave due to him during the intervening period. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that since the applicant was retired under F.R.56(J), discretion vests with the concerned authority to direct as to how the

period during which an Officer was out of work could be treated and furthermore, it is stated in the counter that on the principle of 'no work no pay', the competent authority rightly ordered grant of leave due to the applicant.

In a crux, it is maintained that the case being devoid of merit is liable to be dismissed.

4. I have heard Mr. Ashok Mohanty, on behalf of Mr. S.K. Padhi, learned counsel for the applicant and Mr. Akhaya Kumar Mishra, learned Additional Standing Counsel (Central).

Mr. Mohanty relied upon two judgments of the Hon'ble Supreme Court, one reported in AIR 1987 SC 948 (Brij Mohan Singh Chopra v. State of Punjab) and the other case has been reported in AIR 1990 SC 2055 (R.P. Malhotra vrs. Chief Commissioner of Income Tax, Patiala). In both the cases mentioned above, the petitioners before Their Lordships were made to retire according to the provisions contained in F.R. 56(J). In the case of Brij Mohan Singh Chopra (supra), Their Lordships allowed the appeal and set aside the order of premature retirement passed against the appellant and were pleased to observe as follows at paragraph 12 of the judgment, which is as follows:

"We accordingly allow the appeal, set aside the order of the High Court, quash the Govt. order dated 19.3.1980 and direct that the appellant shall be treated as being in service without break. He is entitled to his salary, allowances and such other benefits as may be admissible to him under the rules."

In the case of R.P.Malhotra(supra), Their Lordships at paragraph 6 of the judgment were pleased to observe as follows:


" In that view of the matter, we for the sake of fair play and justice set aside the order of compulsory retirement dated 2nd August, 1985 and direct the authorities concerned to take immediate steps for payment of the emoluments including salary and allowances as he is entitled to under the Rules for the period from the date of compulsory retirement i.e. 2nd August, 1985 till his attaining the age of superannuation on 4-1-89."

I think there is substantial force in the contention of Mr. Ashok Mohanty, learned counsel for the applicant that similar steps should be taken in the present case following the consistent ^{view} ~~law~~ laid down by Their Lordships of the Supreme Court in the aforesaid judgments. I do not feel inclined to accept the arguments advanced by Mr. Akhaya Kumar Mishra that on the principle of 'no work no pay' the applicant should not be entitled to any emoluments. My reason for not accepting this argument of Mr. Akhaya Kumar Mishra is the Supreme Court has not disallowed the claim of the appellants before Their Lordships in both the cases on the principle of 'no work no pay'. The Supreme Court is of the view that since the order of compulsory retirement has been set aside the Officer concerned, is deemed to be on duty. In that view of the matter, Their Lordships have allowed the claim of both the appellants before Their Lordships in both the cases. Therefore, I find no reason to deviate from the principles laid down by Their Lordships as ^{because} ~~both~~ both the cases are practically similar to the facts of the present case

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except that the order of compulsory retirement was quashed by the Supreme Court and in the present case the compulsory retirement order has been set aside by the concerned Administrative authority. Therefore, keeping in view the principles laid down by Their Lordships I would direct that the applicant is entitled to his pay, allowances and other emoluments as admissible under the Rules during the period from 28.8.1990 to 29.8.1991 (the date on which the compulsory retirement order was set aside). Mr. Akhaya Kumar Mishra, learned Additional Standing Counsel (Central) submitted that the applicant has been paid three months' pay in lieu of notice. Hence, that amount should be deducted from the total emoluments to which the applicant would be entitled as per the directions in this judgment. This is a very reasonable request made by Mr. Akhaya Kumar Mishra. Therefore, it is directed that the total amount due to the applicant from 28.8.1990 to 29.8.1991 be calculated and the amount already paid be deducted and the balance amount to be paid to the applicant within 60 (sixty) days from the date of receipt of a copy of this judgment.

5. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.


6/4/93
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VICE-CHAIRMAN

Central Admn. Tribunal,
Cuttack Bench, Cuttack.
April 6, 1993/Sarangi.