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CAT (PROCEDURE) RULES

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS.103 & 104 OF 1996
Cuttack, this the 24th day of May, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI J.S.DHALIWAL, MEMBER(JUDICIAL)
.....

In both the OAs:

1. Sri H.C.Kisku, aged about 47 years, son of Baya Kisku, Helper T.No. 673 of Hadigaon, P.O-Hadigaon, Balasore.
2. Sri K.K.Hembram, of Gunthaband, P.S-Kabatabati, P.S-Raibania, Balasore, Helper T.No. 569
3. N.P.Sethi, aged 60 years, son of Branabas Sethi of Etha, PS-Soro, Dist.Balasore, Helper T.No.410
..... Applicants

Advocates for applicants - Mr.A.K.Misra
B.B.Acharya
J.Sengupta
A.K.Guru

Vrs.

1. Union of India, through Secretary to Government of India, Ministry of Defence, New Delhi.
2. Director General (R&D), Ministry of Defence, Delhi Hd. Quarters, New Delhi-110 001.
3. Commandant, Proof & Experiment Ministry of Defence Research & Development Organisation, Proof & Experimental Establishment, Chandipur, Dist.Balasore
..... Respondents

Advocate for respondents -Mr.S.B.Jena
ACGSC.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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Even though these two applications have been heard separately, the same three applicants have come up in these two OAs and urged the same facts and made two different prayers in these two applications. In OANo.103 of 1996 they have prayed for a direction to the respondents to treat their entire period of absence from duty as duty and to pay the applicants their emoluments. In OANo.104 of 1996 their prayer is for paying them interest at the rate of 10%

from the date of judgment of the Tribunal till final payment was made on 4.1.1996.

2. Facts of these cases are that the three applicants were working as Helpers in Proof and Experiment Establishment. On an allegation that on 19.6.1985 while one of their colleagues one B.Gharani was going from the market to his residence, these three applicants misbehaved with him and one of the petitioners raised his hand against the informant. Shri Gharani lodged an FIR but no chargesheet was filed as the offence was found non-cognizable. Disciplinary proceedings were initiated by the departmental authorities against the three petitioners and on the inquiring officer finding them guilty the petitioners were removed from service. Their appeal was also rejected. The petitioners thereupon came before the Tribunal in OA No.380 of 1987 which was disposed of in order dated 18.7.1988. The Tribunal set aside the order of penalty and imposed punishment of stoppage of increment. The relevant portion of the order of the Tribunal is quoted below:

".....We would therefore set aside the order of removal passed by the competent authority and we would direct that so far as petitioner nos. 2 and 3 are concerned, three of their future increments should be stopped without cumulative effect and so far as petitioner no.1 - H.C.Kisku is concerned, four future increments should be stopped without cumulative effect. We further direct that their period of suspension should be treated as such. They should be reinstated into service within two months hence..."

Against the above order of the Tribunal the departmental authorities went to the Hon'ble Supreme Court in SLP (C) No.11949 of 1988 which was dismissed by the Hon'ble Supreme Court in order dated 6.4.1995. Thereafter the applicants were taken back in duty from 17.7.1995 and their

period of absence from duty including the period of suspension was treated in the following manner:

- (i) The period of absence from 23.7.1986, i.e., the date of removal from service to 16.9.1988 was treated as non-duty;
- (ii) The period of absence from 17.9.1988 to 16.7.1995 was treated as duty; and
- (iii) The period of suspension prior to removal from service was treated as such.

In the context of the above facts, the applicants have come up in these two petitions with the prayers referred to earlier.

3. The respondents in their separate counters filed in the two cases have opposed the prayer of the applicant. It is not necessary to go into the various averments made by the respondents in their counters as these will be considered in the latter part of this order.

4. We have heard Shri Aswini Kumar Mishra, the learned counsel for the petitioner and Shri S.B.Jena, the learned Additional Standing Counsel for the respondents and have also perused the records.

S.P. Das
5. As regards the prayer of the applicants in OA No.103 of 1996 for treating the entire period of absence from duty as duty it has been submitted by the learned counsel for the petitioner that the period of absence from 23.7.1986, i.e., the date of removal from service till 16.9.1988 should not have been treated as non-duty under FR 54 because before passing any order under FR 54 a notice should have been given to the applicants, but this has not been given. It is also stated that as the

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applicants have been taken back in service with minor penalty, the applicants should be given their duty pay during the period of suspension. Both the grounds are without any merit. As regards the period of suspension the Tribunal in their order extracted by us earlier have clearly stated that the period of suspension should be treated as such. It is no longer open for the applicants to claim that the period of suspension should be treated as duty. The Tribunal in their order dated 18.7.1988 have indicated that the applicants should be reinstated in service within two months. Actual reinstatement came with effect from 17.7.1995 after the SLP was dismissed. But the departmental authorities in their order at Annexure-4 have clearly mentioned that from 17.9.1988, i.e., after expiry of a period of two months allowed by the Tribunal, their period of absence till 16.7.1995 has been treated as duty. It is stated by the learned counsel for the petitioners that even though this period is treated as duty, they have not been paid the amoluments for this period. We are unable to accept this proposition because the respondents have stated in their counter to OA No.104 of 1996 that the three applicants have been paid as arrears sums ranging from Rs.1,43,000/- and odd to Rs.1,47,000/- and odd. Moreover, as the respondents have clearly indicated in the order at Annexure-4 that this period from 17.9.1988 to 16.7.1995 has been treated as duty and the payment has been made of the above amounts. Obviously the payment is for the above period only because from 17.7.1995 after they rejoined the service they have got their usual salary.

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6. The only other period which remains is the period from the date of removal from service on 23.7.1986 till 16.9.1988 when the two months period allowed by the Tribunal expired. It is to be noted that the Tribunal in their order dated 18.7.1988 did not pass any order with regard to treating the intervening period. The learned counsel for the petitioners has stated and it has been noted earlier that before treating this period as non-duty no showcause notice has been issued to the applicants and under FR 54 such showcause notice is necessary. In support of his contention the learned counsel for the petitioners has relied on a decision of Ernakulam Bench of the Tribunal in the case of Y.D.Jharakan v. Union of India, 1993 (7) SLR 93. It is not necessary to go into the facts of this case. FR 54 is very clear that in case where a Government servant, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal or review and in case he has been fully exonerated, he should get full pay and allowances during the period of absence. In this case in the order of the Tribunal the applicants have not been exonerated. The Tribunal have found them guilty and have only modified the punishment. In view of this, they are not entitled to the benefit of FR 54 and as the respondents have merely followed the order of the Tribunal in this regard, issuing of showcause notice to the applicants prior to the issue of the order at Annexure-4 is not necessary nor have the applicants been prejudiced in any way. In view of this, the prayer in OA No.103 of 1996 is held to be without any merit and is rejected.

6. In OA No.104 of 1996 the prayer is with regard to payment of interest. The respondents have opposed the prayer for payment of interest saying that SLP filed

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against the order of the Tribunal was pending before the Hon'ble Supreme Court which was dismissed on 6th April 1995. Intimation of dismissal of the SLP was received by the respondents at Chandipur on 4.7.1995 and immediately on 7.7.1995 the applicants were directed to join and accordingly they joined on 17.7.1995. The respondents have stated that there has not been any delay in implementing the order of the Tribunal and therefore the claim for payment of interest is not justified. We find that the Hon'ble Supreme Court dismissed the SLP only on 6.4.1995 and immediately on getting intimation of the order of the Hon'ble Supreme Court the applicants were taken back in service and paid their arrear emoluments on 4.1.1996. During the period the SLP was pending before the Hon'ble Supreme Court no claim for payment of interest is allowable. After the SLP was dismissed the applicants joined on 17.7.1995 and thereafter the respondents have naturally taken time for a few months for working out the arrear emoluments for the period of seven years. The order of the Tribunal stopping their increments had also to be given effect to and detailed calculations were required to be made for this purpose. In consideration of this, we ^{do not} find that the claim for payment of interest is justified and this prayer is also rejected.

7. In the result, therefore, the two Original Applications are held to be without any merit and rejected. No costs.

Sd/- J.S. Bhaliwal
Member (Jud)

MEMBER

24.5.2000

Sd/- Somnath Som
Somnath Som
Vice-Chairman