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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

OA No. 186 of 2003

Subash Chandra Bhattacharya ....Applicant  
-Versus-  
Union of India & Ors. .... Respondents

ORDER DATED – 24<sup>th</sup> April, 2012.

CORAM  
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER, (ADMN.)  
And  
THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)  
.....

Applicant's case is that against the order of recovery he approached this Tribunal in OA No. 508 of 1992. On the strength of the order of stay of the recovery and transfer, applicant submitted his joining report before the AE, Telecom, Koraput, on 5.10.1992. The said joining report of the applicant was not accepted for which by making representations, he had brought the fact to the notice of his authority/higher authority. He was not allowed to resume his duty nor he was paid salary. However, after disposal of the said OA on 20.5.1993, the applicant reported for duty at his transferred place of posting at Sunabeda. But he was not paid his salary for the period from 5.10.92 to 16.6.93. Therefore, he approached this Tribunal in OA No. 236 of 1993 seeking direction for release of his salary. The said OA was disposed of on 11.4.1996 with direction to the Respondents to consider the pending representation of the applicant. The Applicant made a consolidated representation dated 30.4.1996.

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But the Respondents rejected the representation of the applicant vide their dated 17.6.1996. Thereafter, applicant approached this Tribunal in OA No. 227 of 1997 which was disposed of by this Tribunal on 7.12.2001 with liberty to the applicant to make a detailed representation and the same should be considered by the Respondents. The applicant submitted exhaustive representation which was considered but rejected by the Respondents in letter dated 20.5.2002 stating as under:

“The absence from your duty is at your own decision, even after ample opportunities given by this office you have failed to join at Sunabeda and perform duty till the dismissal of the application by the honourable tribunal on 20.5.1993.

As you remained absence without performing duty, it is decided to count the same period i.e. from 5.10.1992 as absence from duty. The period will be treated as dies non. Hence on applying “no work no pay” no pay and allowances can be drawn during the absence period from 5.10.92 to 16.6.1993.”

Hence by filing the instant OA he prays to direct the Respondents; especially Respondent No.3 to allow his representation dated 28.3.2002 by granting him leave from 5.10.1992 to 16.6.1993 with all consequential benefits.

2. Respondents filed their counter in which it has been stated that the applicant accepted the transferable job and he was transferred from Koraput to Sunabeda on 16.6.1992 in public interest and was relieved from duty accordingly on the same day. As the applicant was relieved on 16.6.1992 the stay order of this Tribunal dated 1.10.1992 became infructuous and the OA No. 508 of 1992 was dismissed by this Tribunal on 20.5.1993. However, the representation

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of the applicant dated 30.4.1996 which he submitted in compliance of the order of this Tribunal dated 11.4.96 in OA No. 236 of 1996 was disposed of on 17.6.1996 with instruction to apply for leave and his representation dated 28.3.2002 pursuant to the order of this Tribunal dated 7.12.2001/20.03.2002 has been disposed of on 20.5.2002 and the period of absence from 5.10.1992 to 16.6.1993 was treated as dies non. In view of the above, it has been stated by the Respondents that there being no error in the decision making process of the matter this OA is liable to be dismissed.

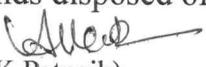
3. Learned Counsel appearing for the parties have reiterated the stand taken in their respective pleadings and having heard them at length, perused the materials placed on record.

4. According to the Applicant pursuant to the stay order of this Tribunal dated 1.10.1992 in OA No. 508 of 1992, the applicant reported to duty on 5.10.1992. The Respondent's stand is that as the applicant was relieved from his place of posting on 16.6.1992 the stay order granted by this Tribunal became infructuous. However, the said OA No. 508 of 1992 was dismissed by this Tribunal on 20.5.1993. In the counter nothing has been stated with regard to the joining report of the applicant. According to the Respondents in letter dated 17.6.1996 the applicant was instructed to apply for leave but as to why the applicant did not apply for leave is not forthcoming either in the pleadings or in course of argument. Be that as it may, by treating

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this period as dies non, the applicant would be deemed to have forfeited his entire service, on account of which, he would not be entitled to get any pension for the period of service which he rendered till 16.6.1993. As it appears the above situation occurred due to the stay order of this Tribunal and non-passing of any order on the joining report of the applicant. Therefore, both the applicant and Department are blameworthy, the applicant should not have been made to suffer unilaterally. In view of the above, we have no hesitation to quash the impugned order at Annexure-12 and direct the Respondents to revisit the issue of unauthorized absence after proper scrutiny of the personal file/service book etc. of the applicant. The Respondents are directed to consider all his leave applications/prayer for Half Pay Leave, E.L., Commuted Leave, extra\$ ordinary leave etc. and grant him leave of the kind due so that applicant's past years of service in the Department, is not totally wiped out for counting his length of service for the purpose of pension and pensionary dues after retirement. The entire exercise should be completed within a period of four months from the date of receipt of a copy of this order.

Ordered accordingly.

5. With the above observation and direction, the O.A. stands disposed of. Parties to bear their own costs.

  
(A.K. Patnaik)  
Member(J)

  
(C.R. Mohapatra)  
Member (A)