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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 498 OF 2008
Cuttack, this the 16th day of January, 2009

Akhy Kumar Parida Applicant
Vs.
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?

(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER

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(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 498 OF 2008
Cuttack, this the 16th day of January, 2009

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member
&
Hon'ble Mr. C.R. Mohapatra, Administrative Member

.....

Akhyar Kumar Parida, aged about 61 years, S/o Late Keshab Chandra
Parida, Village/P.O.-Bilikana, P.S.-Aul, Dist-Kendrapara,
At present: Plot No.161, Chakei Sahani, P.O/P.S.-Mancheswar,
Bhubaneswar, Dist-Khurda. **Applicant**

By the Advocate(s) **In person**
Vs.

1. Union of India, represented through the Comptroller and Auditor
General of India, 10, Bahadur Sah Zafar Marg, Indraprastha Head
Post Office, New Delhi.
2. The Accountant General (A&E), Orissa
3. The Principal Accountant General (Audit-I), Orissa,
4. The Accountant General (Audit-II), Orissa
5. The Senior Deputy Accountant General (Administration), Office of
the Principal Accountant General (Audit-I), Orissa, Address of Sl.
No.2 to 5 are at/Po-Bhubaneswar, Dist-Khurda.

..... **Respondent(s)**

By the Advocate(s)..... **Mr. U.B. Mohapatra,**
Sr. Standing Counsel

O R D E R

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J)

M.A.21/09 has been filed by the applicant to modify the order dated 17.12.08 passed by this Tribunal in this O.A. By order dated 17.12.08 this Tribunal directed as follows:

"It is clear that there is a dispute regarding certain information/document produced by the Respondents and the clarity would emerge only after the inquiry is over in consultation with the Record Officer in charge (Signal) Jabalpur. The inquiry shall be completed within a period of four months from the date of receipt of a copy of this order"

2. In the present M.A. the applicant has prayed that the Hon'ble Tribunal may be kind and gracious enough to allow the M.A. and modify the order that the opposite party be issued with a direction to file their para-wise counter within stipulated time and also direct to stop the investigation as ordered vide order dated 17.12.2008 and also pass any order/orders as the Hon'ble Tribunal deems just and proper for the sake of justice.

3. Heard the petitioner appearing in person at length. It is the case of the applicant that praying for counting his military service for the purpose of pension, he had filed O.A. No.966/02 before this Tribunal. This Tribunal, while disposing of the said O.A. directed as follows:-

"In this view of the matter, we direct, all expeditious actions be taken by Respondent No.1 to settle the case of the applicant for treating/counting his military service for the purpose of pension and the said decision may be communicated to him as soon as final decision, as directed above, is taken by Respondent No.1.

With the above direction, we dispose of this Original Application. In the circumstances, there shall however, be no order as to costs."

4. Since the Respondents did not comply with the direction of this Tribunal, the applicant filed C.P. No.3/2004 which was dismissed as per order dated 09.02.2004. Thereafter, applicant filed M.A.1046/04, in the O.A in which Annexure-A/8 and Annexure-A/9 orders have been passed. In Annexure-A/8 this Tribunal has directed as follows:-

"... We also direct that the applicant to submit a copy of Annexure-1, which he stressed that he had earlier submitted to the Respondents once again and the respondents will be at liberty to have the matter verified with the military authorities as required under law and also to find out from his military service book the payment that he had received from the military Department at the time of his release from Army Service. If after verification, the facts are found to be true, as submitted by the applicant in this O.A., the Respondents shall lose no time to notify his past service for the purpose of pension in civil service. On the other hand, if they find any inaccuracy/mis-statement in the matter of payments that the applicant had received on his retirement from service, it will be open to the Respondents to take such action as deem fit and proper.

Misc. Application No.1046/04 is disposed of accordingly.

As we expect the matter to be decided on a priority basis, we fix it for hearing to 27.06.2005, by which time, it should be possible on the part of the Respondents to complete all the necessary verifications as well as settlement of the claim of the applicant."

5. As per Annexure-A/9 this Tribunal further directed as follows:-

"Though Ld. Sr. Standing Counsel, the Respondents are directed to inform the applicant the amount of retiral benefits that he had reported to have received from the Army authorities as service gratitute/ any other service benefits which he need to refund to enable them to count his past service for the purpose of pension for his civil employment.

Such a letter to be issued to him within 16.07.05 and thereafter the matter may be submitted to the Court interms of our order dated 28.02.05."

6. The above orders having not been complied with, this Tribunal had given further time to comply with the orders by 15.07.2005. Subsequently, on a memo being filed by the Ld. Sr. Standing Counsel, the matter again came up on 20.07.05 wherein it was stated that the applicant had received the benefits of service i.e., (i) Amount of retirement/Service benefits Rs.1331.95 and (ii) D.C.R.G. Rs.36.75 during his discharge from military service w.e.f. 21.08.1976 in pursuance of the letter No.P/1428/051/TI/WEL/NER dated 23.04.2002 issued by the Officer Incharge (Signals Records). The applicant having disputed the certificate as per letter dated 23.04.2002 issued by the Record Officer Incharge (Signals Records), this Tribunal directed the Respondents to institute an inquiry into the matter in consultation with the Record Officer Incharge (Signal), Jabalpur, to verify the authenticity of the record/Annexure-A/1 and take such action as is required under law.

7. While the matter stood thus, the applicant, challenging the orders dated 28.02.2005, 27.06.2005 and 20.07.2005 passed by this Tribunal in M.A. 1046/04 (in

O.A.966/02) and the document dated 23.04.2002 of the Record Officer (Signal) moved the Hon'ble High Court of Orissa in W.P.(C) No.3157/2006. The Hon'ble High Court dismissed the said Writ Petition as per order dated 05.08.08, which reads as under :

"The petitioner in this writ petition prays for quashing the orders in Annexures-6 and 8 and the document dated 23.04.2002 in Annexure-9 and has also prayed for a direction to the Opposite Parties to implement the order dated 19.06.2003 (Annexure-3) passed by the Tribunal in O.A No.966 of 2002 and count the past military service of the petitioner for the purpose of pension and other consequential benefits.

From the Annexures attached to the writ petition it appears that the petitioner had approached the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A No.966 of 2002 with a prayer to direct the opposite parties to count his past military service rendered for the period from 06.10.1969 to 22.08.1976 for the purpose of pension and other consequential service benefits. The case of the petitioner before the Tribunal was that he was recruited by the Respondents as Auditor under the defence quota in the year 1980. A circular was issued on 11.08.1988 to exercise option for counting of service for pension in terms of Government of India, Department of Pension Office Memorandum dated 31.05.1988 and 26.02.1988. The grievance of the petitioner before the Tribunal was that no such circular was ever received by him but on his own motion he had written a letter to the Department on 28.07.1997 requesting for counting of his past military service for the aforesaid period for the purpose of pension. After receipt of the said letter he was called upon to explain as to why he did not exercise his option in time in terms of the aforesaid Office Memorandum and the matter remained like that. The past services in the military having not been taken into account, the petitioner had approached the Tribunal. The Tribunal disposed of the aforesaid Original Application directing the opposite parties to settle the case of the petitioner for treating/counting his military service for the purpose

of pension and decision in that regard was directed to be communicated to the petitioner. No action having been taken pursuant to the order of the Tribunal, the petitioner again approached the Tribunal in the aforesaid Original Application complaining inaction on the part of the opposite parties. By order dated 28.02.2005 in Annexure-6, the Tribunal directed the case to be heard on 27.06.2005 so that the opposite parties can complete all the necessary verifications and settle the claim of the petitioner. Challenging the said order, the petitioner approached this Court in a writ application. But this Court did not interfere with the said order and directed the matter to be disposed of by the Tribunal. The Tribunal in Annexure-8 by order dated 20.07.2005 considering the case of both the parties directed the opposite parties to conduct an enquiry into the matter in consultation with the Record Officer-in-charge (Signal), Jabalpur in order to verify the authenticity of the record and dispose of the Miscellaneous Application filed by the petitioner.

In course of hearing, the petitioner submitted that he is challenging the legality of the order in Annexure-6 and Annexure-8 in this writ petition as well as the document in Annexure-9. So far as Annexure-6 is concerned, it is the order passed by the Tribunal on 28.02.2005 which had been challenged earlier before this Court in a writ application and therefore the said order in Annexure-6 is no more open to be challenged. So far as Annexure-8 is concerned, by order dated 20.07.2005 the Tribunal disposed of Miscellaneous Application No.1046 of 2004 directing the opposite parties to conduct an enquiry for the purpose as mentioned earlier. The petitioner assails the said order on the ground that there was no necessity to direct an enquiry to be conducted considering the fact that no documents are available with the Record Officer-in-charge (Signal) at Jabalpur and the Discharge Certificate itself shows that the petitioner had not been given any pension or gratuity on completion of his service in the military.

From the impugned order, it appears that a letter dated 23.04.2002 was produced before the Tribunal in which the Senior Standing Counsel was

informed that the applicant was paid some amount towards service benefits such as Gratuity and D.C.R.G. and that he was discharged from military service w.e.f. 21.08.1976. This was disputed by the petitioner before the Tribunal and reliance was placed on the Discharge Certificate to show that he had not been paid anything towards pension or D.C.R.G. The petitioner produced the original of the Discharge Certificate and on perusal of the same it appears that against Column No.10 'Nil' has been mentioned which otherwise shows that the petitioner had not been paid anything on discharge from military service. On the other hand, the letter in Annexure-9 clearly shows that he had received some retirement benefits when he was discharged from military service. In view of such nature of documents produced before the Tribunal, the Tribunal though it proper to direct the opposite parties to conduct an enquiry. We do not find any illegality in the order of the Tribunal considering the fact that when there are two documents before the court one indicating payment of pensionary benefits and the other indicating that no such pensionary benefit had been given, an enquiry is required to be conducted to find out the genuineness of both the documents. Moreover, when there is dispute with regard to a particular fact, this Court lacks jurisdiction to decide such a disputed question of fact and the appropriate remedy lies in the Civil Court where parties can lead evidence to prove their respective cases. We, therefore, do not find any justification to interfere with the impugned orders.

The writ petition is accordingly dismissed."

8. The applicant, however, again by filing Misc. case before the Hon'ble High Court prayed for modification of the order dated 05.08.08 passed by the Hon'ble High Court in W.P.(C) No.3157/2006 and as per the order dated 18.11.08, the Hon'ble High Court directed as follows:-

"On consideration of the submission made by the Ld.

Counsel/Petitioner, we direct that the petitioner may approach the Central Administrative Tribunal for the relief claimed, if so advised. However, we make it clear that we have not expressed any opinion relating to jurisdiction of the Central Administrative Tribunal with regard to release of the pensionary benefits of the petitioner."

9. Thus, the applicant has approached this Tribunal in the present O.A. seeking the following relief:

"... The order/letter dated 23.04.2002 (Annexure-A/11) by quashed and necessary direction be issued to the respondents to implement the order dt.19.06.2003 passed vide O.a. No 966/2002 (Annexure-A/4) by this Hon'ble Tribunal and count the past military service of the applicant from 06.10.1969 to 22.08.1976 as qualifying service for pension and other service and consequential benefits as per service Rule and also direct to count the intervening period leaving from military service and joining to civil service i.e. 23.08.76 to 18.03.1977 as qualifying service as per sub-rule-5 of Rule 19 of CCS(Pension) Rules 1972 and also allow cost for such illegal harassment and litigation and also pass the suitable order/orders."

10. When the O.A came up for admission, this Tribunal passed the order on 17.12.08, quoted in paragraph 1 of the present order, which is sought to be modified in M.A. 21/09 filed by the applicant.

11. Having considered the entire background of the case, the question to be decided is whether the Tribunal is justified in issuing any order or direction under Section 27 of the A.T. Act., 1985 to any authority to consider the matter as disputed question of fact involved herein.

(A)

12. The present O.A, as already quoted above, is to quash Annexure-A/11 verification letter issued by the Record Officer in charge (Signal), Jabalpur and to direct the Respondents to implement the order dated 19.06.03 passed in O.A.966/02 and count the past military service of the applicant from 06.10.69 to 21.08.76 as qualifying service for pension and other service benefits. This Tribunal has already issued direction in O.A. No.966/02 in favour of the applicant and subsequent thereto to orders after order on M.A.1046/04 and on the Memo filed by the Respondents. If the applicant is aggrieved for non-compliance of any of the order arising out of O.A.966/02, the remedy available to him is elsewhere than filing the present O.A. It is not expected of the applicant to approach the Tribunal in the manner in which he has approached to comply with the direction issued already in an earlier O.A. or M.A or Memo, as the case may be.

13. Having regard to what has been discussed above, we decide the point in the negative and hold M.A.21/09 and the present O.A. are misconceived and accordingly, the same are dismissed. No costs.


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER