

24

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.344 OF 2012

Cuttack this the 27th day of October, 2015

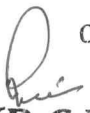
Bijay Kumar Sahoo & Ors. ...Applicants

-VERSUS-

Union of India & Ors. ...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ~~No~~ Yes
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? ~~No~~ Yes


(R.C.MISRA)
MEMBER(A)


(A.K.PATNIK)
MEMBER(J)

25

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.344 OF 2012

Cuttack this the 31st day of October, 2015

CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

1. Sri Bijay Kumar Sahoo
Aged about 50 years,
S/o-Late Kunjabihari Sahoo
At present working as Halwa
2. Sri Arnada Prasad Sahoo
Aged about 48 years,
S/o-Late Karuni Sahoo
At present working as Tea/Coffee maker
3. Sri Durga Charan Mallik
Aged about 45 years,
S/o-Sri Chakradhar Mallik,
At present working as Bearer
4. Sri Abhiram Behera
Aged about 46 years,
S/o-Sri Hagar Behera
At present working as Bearer
5. Sri Laxman Pradhan
Aged about 52 years,
S/o-Sri Khali Pradhan
At present working as Wash Boy

(All above are employed in Bhavishyanidi Departmental Canteen, Office of the Regional Provident Fund Commissioner, Janpath, Unit-9, Bhubaneswar-22, Dist-Khurda).

....Applicants

By the Advocate(s)-M/s.K.C.Kanungo
Ms.C.Padhi
Mr.R.C.Behera

-VERSUS-

Union of India represented through,

1. Central Board of Trustees,



Central Provident Fund Commissioner,
14, Bhikaji Cama Place,
Hudco Vishal,
New Delhi-1110066.

2. Regional Provident Fund Commissioner,
Orissa, Unit-9, Janpath,
Bhubaneswar-751022,
Dist-Khurda, Odisha

...Respondents

By the Advocate(s)-Mr.S.S.Mohanty(res.no.2)

ORDER

R.C.MISRA, MEMBER(A):

Five applicants in this Original Application are the employees of Bhavisyanidhi Departmental Canteen in the Office of Regional Provident Fund Commissioner(in short RPFC), Bhubaneswar. They have invoked the jurisdiction of this Tribunal being aggrieved with the order dated 4.11.2011(A/14 series) issued by the RPF Commissioner (Res.No.2) whereby and whereunder their representations regarding payment of arrear salary, bonus, HRA, CCA and IR for the period from 1.4.1995 to 4.11.2000 have been rejected. In the above background, questioning the legality and validity of the aforesaid orders, applicants in this Original Application have sought for the following relief.

- i. ... to direct the Respondents to treat the period of service from 01.04.1995 to 15.11.2000 as regular/qualifying service for all purposes including future pension and retiral benefits for the ends of justice.

A N D

- ii. ... to direct the respondents to modify the order at A/14 and/or issue separate order treating the period of service from dt.01.04.1995 to dt.15.11.2000 as regular service for all purposes including



computation of the period for the purpose of all benefits including pension and retiral benefits in future for the ends of justice.

A N D

- iii. ...to direct the respondents to modify those orders at Annexure-A/8, Annexure-A/11 and such other orders where the period from dt.01.04.1995 to dt.15.11.2000 was treated as non-duty and not taken as regular service for the ends of justice.

A N D

- iv. ...to issue any other/further order(s) or direction(s) as deemed fit and proper in the circumstances of the case.


2. This O.A., as it appears, has a long standing history and therefore, in order to adjudicate the dispute, facts in issue from start to finish are required to be extensively enumerated which are as under.


3. All the five applicants herein along with three others had earlier approached this Tribunal in O.A.Nos. 81 and 82 of 1995.

In O.A.No.81 of 1995, they had prayed for direction to be issued to Respondent Nos. 1 and 2 to make payment of 30% of the arrear pay and allowances for the period from 1.4.1989 to 28.11.1993 and from 1.5.93 onwards, bonus for the period from 1991-92, 1992-93 and 1993-94 and interim relief from 1.9.1993 along with interest.

4. In O.A.No.82 of 1995, applicants had prayed for direction to Central Provident Fund Commissioner and the Regional Provident Fund Commissioner (Res.Nos. 1 & 2) to regularize their services.

5. While the above two O.As were pending adjudication, by virtue of an order dated 30.3.1995 issued by Respondent No.2

to the effect that as the shed of the canteen was being proposed to be handed over to Bhubaneswar Development Authority for the purpose of demotion with a view to constructing an office building and thereby the work of the canteen was to be suspended without any arrangement being made with regard to functioning of the canteen and the employees working therein with a direction to handover all the documents and materials used in the canteen to Canteen Supervisor on 31.3.1995, ^{and therefore} this  Tribunal intervened in the matter and issued an interlocutory order dated 31.3.1995 in O.A.No.82 of 1995 in the following terms:

"In view of the application after application being filed before this Tribunal with regard to the service conditions of the canteen employees, and some of the applications having been disposed of, there is likelihood of an impression being gathered that to frustrate the prayer made in the main application, the action is being taken. In order to consider what exactly the arrangement is made with regard to the functioning of the canteen and the service conditions of the employees working therein it is found necessary that the status quo should be maintained until further orders from this Tribunal and it is directed that status quo shall be maintained and operations of the directions made in the order dtd.30.3.1995 is stayed. The learned counsel for the respondents shall file his objections to interim application on 1.4.95 as according to him, on the same date the counter to the main application is also directed to be filed. The respondents shall abide by the order strictly as passed today. The learned counsel for respondents informed accordingly". 

29

6. Subsequently, applicants having been issued with the orders of termination of their services being effective from 6.10.1995, they again moved this Tribunal in Misc. Application No.693 of 1995 (arising out of O.A.No.82 of 1995) for quashing the said order of termination of their services or in the alternative for staying the operation of the said order. In consideration of the same, this Tribunal, vide order dated 27.10.1995, disposed of M.A.No.693 of 1995 as under.

"In order to survive at each and every step they are compelled to move this Court. This Court held that even though the canteen building was demolished they still continue to be the employees. When salary payment was not made, this Court interfered and directed payment of salary from February to May, 1995. Counter-affidavit in the main petition has also been filed. *The respondents knew clearly that the main petition of the employees is to secure regularization of their services and in the face of the Original Application pending in this Court, the order of termination is ex facie improper and could have waited till the disposal of this petition. I would, however, instead of quashing these orders, direct suspension of the implementation of these orders till the disposal of the Main Original Application No.82 of 1995. The applicants shall be deemed to continue in service as though the impugned orders of termination never existed and shall continue to draw salary as before and as stipulated.* I would, further record that in the facts and circumstances of this case the Original Application shall be posted and heard during the first week of November, 1995 itself and shall be disposed of as early as possible.

Thus, the Miscellaneous Application No.693 of 1995 is allowed and disposed of accordingly. No costs".

7. While the matter stood thus, both the O.A.Nos.81 and 82 of 1995 were disposed of on 11.8.2000 by this Tribunal in two



30

separate orders. For the sake of convenience, the relevant part of the order dated 11.8.2000 of this Tribunal in O.A.No.82 of 1995 is reproduced hereunder.

"The respondents have themselves mentioned in the circular dated 9.3.1995 that the norms prescribed by the Department of Personnel and Director of Canteens shall be considered. As the applicants have been appointed strictly according to the norms, this condition is also squarely fulfilled in their case. As regards their actual appointment the petitioners have mentioned in Paragraph 4.5 of the O.A. that the appointment letters are in compliance of the provisions as laid down in the Departmental Canteen Employees (Recruitment and Conditions of Service) Rules 1980. The respondents in paragraph 7 of their counter dealing with the averments in paragraphs 4.4. and 4.5 of the O.A., have not denied this. From the copies of appointment letters enclosed to the O.A., it is seen that all the persons were appointed on the basis of their performance in the interview and also recommendation of the Selection Committee. In case of some persons like the Halwai apparently a trade test was also conducted. In view of this, the contention of the learned counsel for the respondents that the applicants were not selected following any rules and procedure is rejected. The instructions also provide that employees in canteens which are run on co-operative basis shall also be eligible for regularization. Where the canteen is run by a co-operative society, the canteen staff are obviously the employees of the co-operative society. But even in those cases, it is provided in this circular dated 9.3.1995, that such employees of the co-operative society will also be regularized as employees of EPF Organization. In the instant case the canteen was run as a departmental unit and therefore the prayer of the applicants for their regularization is squarely covered by this circular dated 9.3.1995.

The next question which arises is that admittedly on 31.3.1995 the canteen was suspended because the concerned portion of the building was demolished and there was no space to run the canteen. But this will not affect the question of regularization for the simple reason that in



31


Paragraph-5 of this circular dated 9.3.1995 it has been provided that regularization of the canteen employees will be nationally effective from October 1991 and such of the employees who are eligible for regularization on the above pattern shall become eligible for certain benefits like medical attendance, bonus, etc., with effect from 2.2.1995 which is the date of approval of the scheme by the Executive Committee. From this it is clear that even though the circular has been issued on 9.3.1995, the benefit of regularization has been given retrospective effect from October 1991 and from 2.2.1995 when the Executive Committee took the decision for regularization. In view of this, it is also provided in the circular that the case of regularization of the canteen employees should be taken up and referred to the Central Office for according necessary clearance for the purpose of initial regularization. As the regularization is to be effective from October 1991 and as these applicants have been appointed as canteen employees on different dates ranging from 26.11.1986 to 11.12.1990 the respondents are directed to consider regularization of these employees, in accordance with the circular dated 9.3.1995 and our observations above, notionally from October 1991 and granting of benefits from 2.2.1995 as provided in the circular. This process of sending proposal to the Central Office for regularization and the decision of the Central Office on the question of regularization should be complete within a period of 90 (ninety) days from the date of receipt of copy of this order.

It has been submitted by the learned counsel for the respondents that on the suspension of the activities of the canteen, the applicants have been retrenched. But as their right for getting regularized accrues from October 1991, the question of regularization will have to be determined with reference to October 1991 notionally and effectively from 2.2.1995. In view of this, their subsequent retrenchment on 31.3.1995 the bona fide of which has been strongly questioned by the learned counsel for the petitioners and which we need not go into in view of our above order, will have no effect on the question of consideration of their regularization.

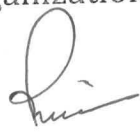


In the result, therefore, the Original Application is allowed in terms of the observations and direction above. No Costs".

8. Similarly, the findings recorded by this Tribunal in disposing of O.A.No.81 of 1995 vide order dated 11.8.1995 reads as under.

"In view of this, we hold that they have no right to claim from respondent No.1 and 2 30% of their wages prior to their regularization as employees of EPF organization. These applicants have been ordered to be regularized nationally from October 1991 and actually from February 1995. This order dated 9.3.1995 of the Central Provident Fund Commissioner has not been challenged by the applicants with regard to notional application of this order from October 1991. ^{In view of this, it is held that} Applicants are not entitled to get 30% of the wages prior to 2.2.1995. 

The second prayer of the applicants is for bonus from 1991-91 onwards. The order dated 9.3.1995 provides that bonus will be paid from 2.2.1995 and therefore, the applicants will not be entitled to bonus for the years 1991-92, 1992-93 and 1993-94. We however note that under respondent No.1 and 2 there are a large number of such non-statutory departmental canteens and if in case of employees of such departmental canteens 30% of the wages and bonus from 1991-92 have been allowed from October 1991, then the same should be allowed in respect of these applicants as well.

As regards House Rent Allowance, City Commentary Allowance and interim relief, we direct that these claims of the applicants for the above period should be disposed of within a period of 90 days from the date of receipt of copy of this order following the same approach which respondent Nos.1 and 2 have adopted with regard to the canteen employees of EPF Organization in other cases. 

33

With the above observations and directions the Original Application is disposed of. No costs".

9. Complying to the orders of the Tribunal as aforesaid, services of the applicants were regularized notionally from October, 1991 and effectively from 2.2.1995 and to that effect appointment orders dated 8.11.2000 were issued in their favour in the respective posts of the Bhavisyanidhi Departmental Canteen which have been submitted at A/6 series. Consequently, pay of the applicants were fixed vide order dated 25.7.2001(A/8) in terms of the office order dated 15.2.2001, with effect from October, 1991, however, by treating the period from 01.04.1995 to 15.11.2000 as non-duty. This being the situation, show cause notices were issued to the applicants vide A/9 dated 1.5.2002 for recovery of amount that had been paid for the period from 1.4.1995 to 31.8.1997, by virtue of interim order dated 31.3.1995 of this Tribunal in O.A.No.82 of 1995, on the ground that the said period was declared as 'no work no pay' vide office order dated 15.2.2001. This matter gave rise to a further litigation in O.A.No.68 of 2001 and this Tribunal, vide order dated 30.7.2003(A/10) allowed the O.A. in the following manner.

"Since the applicants were paid wages for the period from April, 1995 to August, 1997 (both the months inclusive), for the reason of interim orders of this Tribunal, which has merged with the final orders dated 11.08.2002(rendered in O.A. No.82/95) affirmatively (wherein regularization of the services of the applicants were asked to take

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34

effect from 02.02.1995 and which has been accepted by the respondents by regularizing the services of the applicants with effect from 02.02.1995) nothing really is available to be recovered from the applicants; because of the regularization order has taken effect from 02.02.1995. Accordingly, the direction of the respondents under Annexure-11 (to recover the wages paid to the applicants from April, 1995 to August, 1997) is hereby quashed with declaration that nothing which has been paid to the applicants as wages from April, 1995 to August, 1997 under the judicial interim orders, is available to be recovered and, therefore, this Original Application is allowed however, by asking both the parties to bear their own costs".

10. According to applicants, instead of granting the financial upgradation under the ACP Scheme, when they were granted the benefit of MACP Scheme, vide order dated 1.7.2010 (A/11), they were convinced that the period from 1.4.1995 to 14.11.2000 has not been treated as regular service thereby entailing an adverse effect on the retiral benefits. Having come to know about the treatment of the period from 1.4.1995 to 15.11.2000 as non-duty, applicants submitted their representations dated 21.9.2010(A/12 series) to the respondent-authorities to treat the said period as regular service so as to enable them to receive all the service benefits including the retiral benefits. Since there was no response, applicants approached this Tribunal in O.A.No.196 of 2011 for redressal of their grievances and this Tribunal, vide order dated 13.4.2011 directed the respondents to consider and dispose of the representations and communicate the decision thereon to



35

the applicants through a reasoned and speaking order. In obedience to the aforesaid order, respondent-authorities communicated their decision vide Office Memorandum dated 4.11.2011(A/14 series) stating that there is no justification for payment of arrear salary, bonus, HRA, CCA & IR for the period from 1.4.1995 to 14.11.2000 and accordingly, rejected their representations. Hence, this Original Application.

11. The case made out by the applicants are that at Paragraph-9 of the order of this Tribunal in O.A.No.82 of 1995(A/5), it has been categorically held that *"the suspension of the canteen with effect from 31.3.1995 will not affect the question of regularization of services of the applicants"*. Further in Paragraph-10 of the said order, this Tribunal held that *"subsequent retrenchment of services of the canteen services will have no effect on the question of their regularization of services"*. Based on the above observations of the Tribunal, it has been contended by the applicants that they were well protected by interim orders of this Tribunal in the matter of their service conditions from 1.4.1995 to 15.11.2000. In Paragraph-4^Q7 of the O.A., applicant has made the following submissions.

"4.7 That the orders at Annexure-A/13 is required to be modified by incorporating in clearest term the period from dt.01.04.1995 to dt.15.11.2000 as regular service/qualifying service for all purposes. The order at Annexure-A/13 deliberately did not contain the above since the service book of the Applicant also contains exactly the same

36

as has been mentioned in Annexure-A/8 except in case of Applicant No.1, where his service book contains that the period of dt.01.04.95 to dt.15.11.2000 as non-duty. There is no specific entry such as non-qualifying service. The information was available to the Applicants under RTI Act, 2005, when they have been provided with their respective service books".

12. With the above submissions, applicant has sought for the relief as referred to above.

13. Resisting the claims of the applicants, respondents have filed a detailed counter. Since the relevant facts have been put in its proper perspective, we do not like to reiterate the same facts, except the vital points urged by the respondents, which would ^{make} ~~help~~ the decision making process more conducive.

14. In their counter, respondents have pointed out that this Tribunal, keeping the circular dated 9.3.1995 in view passed an order for regularization of the services of the applicants. However, the Tribunal did not pass any order for payment of salary to the applicants for the period from 1.4.1995 to 15.11.2000. According to respondents, in obedience of the orders of this Tribunal, it was instructed to treat the aforesaid period as non-duty in view of the facts that applicants had not performed any duty during that period. As per the decision of this Tribunal, the services of the applicants were regularized notionally from October, 1991 and effectively from 2.2.1995, which however, covers the principle of "no work no pay", respondents have added. It has been submitted that as regards



37

grant of benefits under the ACP/MACP Scheme, 12/10 years regular service in a particular grade is the required condition and as the period from 1.4.1995 to 15.11.2000 has been treated as non-duty, the said period has been precluded from the total period of service, while calculating the eligible service for grant of the said benefits. It has been emphatically stated that applicants are entitled to all service benefits for the eligible period of service excluding the period from 1.4.1995 to 15.11.2000, which has been treated as non-duty. As regards disposal of representations pursuant to the orders of this Tribunal, it has been submitted that applicants are not entitled to arrear salary, bonus, HRA, CCA & IR for the period from 1.4.1995 to 15.11.2000 since they have not performed any duty and the principle of no work no pay applies to them. As regards payment of arrear salary (30%) for the period from 1.10.1991 to 1.2.1995, the same could not be considered as per the direction of this Tribunal.

15. With the above submissions, respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

16. We upon perusal of records, have heard the learned counsel for both the sides. We have also gone through rejoinder to the counter, reply to rejoinder as well as the written notes of submission filed by both the sides.

17. Before considering the matter on merit, we would like to make a mention that applicants have stated that they could



38

gather their knowledge of treating the period from 1.4.1995 to 15.11.2000 as non-duty or no work no pay, as the case may be, only when order at A/11 granting them the benefits of financial upgradation under the MACP Scheme was issued in the year, 2010, whereas in Paragraph-8(iii) under the caption "Relief Sought", they have sought modification of the office order at A/8 dated 25.7.2001. This Office order dated 25.7.2001(A/8) appears to have been issued in terms of office order No.OR/GA.I/12/95/9017 dated 15.2.2001 issued earlier which fact is not denied to be within their knowledge nor has the same been challenged in this O.A. Viewed from this angle, the submission made by the applicants that they gathered their knowledge of treating the period from 1.4.1995 to 15.11.2000 as non-duty only when order at A/11 granting them the benefits of financial upgradation under the MACP Scheme was issued in the year, 2010 is nothing but travesty of truth. Therefore, the point of limitation which stares at the applicants cannot be ruled out. In this regard, a question arises as to whether this Tribunal, at this belated stage, could accede to the prayer of the applicants and direct modification of the order dated 25.7.2001(A/8) that had been passed in pursuance of office order dated 15.2.2001, without a petition for condonation of delay being filed.

18. Secondly, as quoted above, in Paragraph-4.7¹⁸ of the O.A., applicants have submitted that Annexure-A/13 is required to




39

be modified by incorporating in clearest term the period from 1.4.1995 to 15.11.2000 as regular service/qualifying service for all purposes. On a reference being made, it reveals that A/13 is an order of this Tribunal dated 13.4.2011 passed in O.A.No.196 of 2011 directing the respondents to consider and dispose of the representation(Annexure-A/12 series).

19. Keeping all these aspects of the matter in view, we have noticed delay and laches on the part of the applicants in challenging the order of pay fixation dated 25.07.2001 and on this ground, this O.A. is liable to be dismissed. But, considering the fact that a significant point has been raised assailing treatment of the period from 1.4.1995 to 15.11.2000 as non-duty despite there being direction of this Tribunal in O.A.No.82 of 1995, we cannot but decide the matter on merit with the available materials on record.

20. *The bone of contention in this matter is whether the period from 1.4.1995 to 15.11.2000 could be treated as non-duty or otherwise.*

21. Admittedly, applicants had earlier moved this Tribunal in O.A.No.82 of 1995 seeking regularization of their services notwithstanding the fact that they had been drafted through a regular process of selection. While this matter was sub judice, respondent-authorities, despite there being an interim direction of this Tribunal dated 31.3.1995, demolished the shed of the canteen for the purpose of constructing a new office building without determining the service conditions of the



applicants. Consequent upon demotion of the canteen building, their services having not been considered essential, they were issued with the orders of termination. By virtue of interim direction of this Tribunal in M.A.No.693/94 dated 27.10.1995, operation of the orders of termination was stayed till final disposal of O.A.No.82 of 1995, iner alia, with a direction that the applicants should be deemed to continue in service as though the impugned orders of termination never existed and should continue to draw salary as before. While the matter stood thus, this Tribunal again issued further interim direction dated 16.12.1997, the relevant part of which reads as under.

"In this application, prayer has been made for regularizing the services of the eight applicants. During the pendency of this application, applicant Nos.2 to 8 are being given 70% of their wages under orders of the Tribunal from time to time. In this O.A., applicant Nos.2 to 8 have been paid more than Rs.3 lakh over this period of about two years even though the applicants who are canteen employees are not working because the canteen has been discontinued and the kitchen of the Canteen demolished. On 19.9.1997, it was submitted by the learned Senior Standing Counsel appearing on behalf of the respondents that over Rs.3 lakh has been paid during the pendency of this O.A. to applicant Nos. 2 to 8 under orders of the Tribunal, representing 70% of their monthly wages. Learned Senior Standing Counsel submitted that in case the applicants lose the case there is no means available to the respondents to recover the amount from them. In consideration of this, the Division Bench in order dtd.19.9.1997 directed that all future wages, which would be paid to these applicants, should be paid on their giving an undertaking supported by solvent security so that in case they lose the application, the

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41

wages paid to them could be recovered. The interim order was modified to the above extent. On 12.12.1997, at the time of hearing of the O.A., it was submitted by the learned lawyer for the applicants that after the order dated 19.9.1997 applicant nos.2 to 8 are not getting 70% of their wages for the last three months even though they have furnished undertaking and the solvency certificate from the Tahasil authorities. The respondents are directing these applicants to furnish land records showing the property in their name or to provide security in some other form. It has been submitted by the learned lawyer for the applicants that because of this, applicant nos. 2 to 8 are not getting their wages and on this ground, he sought for further modification of the order dated 19.9.1997. His suggestion was that the respondents should be directed to release 70% of the wages on their furnishing an undertaking only and the requirement of furnishing solvent security should be done away with. Learned Senior Standing Counsel was also heard on this point. He submitted that mere undertaking from applicant nos.2 to 8 would be of no help to the respondents to recover the amount in case they lose the Original Application".

We have considered the rival submissions of the learned counsels and we feel that in the interest of justice between the parties, the order dated 19.9.1997 should be modified providing that the wages should be paid to applicant nos. 2 to 8 on their giving undertaking supported by surety bond. This modified order would come into force from 19.9.1997 so that in respect of the three months' wages which are held up this modified condition would apply.

This O.A. already stands posted to 14.1.1998 for further hearing along with O.A. No.81/95. This may be put up on that date".

22. Since the applicants failed to comply with the above direction of the Tribunal, there was no further development in



42

the matter regarding payment of salary after the above interim direction and therefore, the salary that had already been from April, 1995 to August, 1997 held good. In the meantime, O.A.No.82 of 1995 having been disposed of by this Tribunal, as already mentioned above, services of the applicants were regularized with the issuance of appointment orders. Resultantly, their pay was fixed vide order dated 25.7.2001(A/8) by treating the period from 1.4.1995 to 15.11.2000 as non-duty. Treatment of this period as non-duty prompted the respondent-authorities to recover the salary already paid for the period from April, 1995 to August, 1997 and aggrieved with this, applicants moved this Tribunal in O.A.No.68 of 2001 and this Tribunal. This Tribunal, vide order dated 3.7.2003 quashed the said order of recovery by holding that nothing really is available to be recovered from the applicants, because of the regularization order has taken effect from 2.2.1995. Thereafter, applicants were granted the benefit of financial upgradation under the MACP Scheme by excluding the period from 1.4.1995 to 15.11.2000 on the ground that the said period had been treated as non-duty/no work no pay.

23. By drawing our attention to Paragraph-10 of the order of this Tribunal in O.A.No.82 of 1995, it has been submitted by the learned counsel for the applicants that there being a finding recorded therein that the subsequent retrenchment on 31.3.1995 would have no effect on the question of



43

regularization, the services of the applicants for the period from 1.4.1995 to 15.11.2000 should have been treated as regular/qualifying services for all purposes.


24. On the other hand, it is the case of the respondents that during the period from 1.4.1995 to 15.11.2000, the canteen activities remained suspended due to demolition of kitchen shed of the canteen with a view to expansion of office building. As the services of the canteen employees during this period were not felt necessary by the Canteen Committee, they were retrenched from services. According to respondents, in M.A.No.693 of 1995(arising out of O.A.No.82 of 1995), this Tribunal only directed to suspend implementation of the orders till the final disposal of O.A.No.82 of 1995 with a further direction that the applicants shall be deemed to continue in service and shall continue to draw salary as before. Accordingly, applicants were paid salary for the period from 1.4.1995 to 31.8.1997. Since no order was passed by this Tribunal in O.A.No.82 of 1995 regularizing the period from 1.4.1995 to 15.11.2000 as duty nor the retrenchment orders were quashed, the principle of no work no pay was invoked and applied to the case of the applicants.

25. As already mentioned above, admittedly, there was an interim direction of the Tribunal to suspend retrenchment orders and the applicants should be deemed to be in service as before with the admissibility of salary, till final disposal of



O.A.No.82 of 1995. Accordingly, applicants were paid salary from 1.4.1995 to 31.8.1997 and for the rest of the period till disposal of O.A.No.82 of 1995 on 11.8.2000, due to deficiency in complying with the modified interim order of this Tribunal, applicants could not be paid salary.

26. Needless to mention herein that an interim order of the Tribunal always merges with the final order in adherence ^{the} of the principles of doctrine of merger. Therefore, the interim direction of this Tribunal that the applicants shall be deemed to continue in service and shall be paid their salary as before cannot be read in isolation of the orders finally disposing of O.A.No.82 of 1995. With the regularization of the applicants from a retrospective date, i.e., October, 1991, notionally and effectively from February, 1995, the retrenchment/termination orders issued on 6.10.1995 stood nullified and in consequence thereof, there was no apparent reason for the Tribunal for quashing those orders. This being the whole intention, the Tribunal in Paragraph-10 of the order in O.A.No.82 of 1995 held that retrenchment order will have no effect on the question of consideration of regularization. In the circumstances, there was no impediment on the part of the respondents to treat the period from 1.4.1995 to 15.11.2000 as services reckonable for future service benefits thereby restricting the salary that had already been paid to the applicants upto August, 1997 only.



45

27. No doubt after demotion of canteen on 31.3.1995 applicants have not performed their duties and whatever salary they have received, they have received only by dint of the interim direction of this Tribunal. But the peculiarity involved in this case is that retrenchment of services of the applicants is preceded by demolition of the shed of the canteen and not for any other administrative reasons, such as, curtailment in the existing strength and/or abolition of posts. However, the curiosity underlying ⁱⁿ this matter is that whereas canteen was demolished on 31.3.1995 and consequential retrenchment orders were issued in favour of the applicants thereafter, by virtue of the orders of this Tribunal in O.A.No.82 of 1995, their services were regularized notionally from October, 1991 and effectively from February, 1995. In such a scenario, a very pertinent point ^{that} crops up for consideration is whether the conditions of service of a regular employee could be put to his/her disadvantageous position by the reason of demotion of office building. The precise answer to this, in our considered view, is in the negative. Be that as it may, in the given circumstances, the Tribunal is burdened with a pragmatic view to meet the ends of justice.

28. Having considered all aspects of the matter, we make the following orders.

- i) Respondents shall treat the period from 1.4.1995 to 15.11.2000 as notional service.



- 46
- ii) Applicants' pay shall accordingly be fixed and they shall only be granted notional benefits for the period from 1.4.1995 to 15.11.2000 in the matter of fixation of pay.
 - iii) The effective date of granting benefits under the MACP Scheme to the applicants shall remain unaltered.
 - iv) Applicants shall be entitled to receive their higher pay emoluments, if any, flowing from the notional pay fixation from 1.4.1995 to 15.11.2000 only with effect from the date of filing this O.A. before the Tribunal, i.e., 23rd April, 2012.
 - v) The period from 1.4.1995 to 15.11.2000 shall be treated as duty for computation of qualifying period for fixation of pension and retirement benefits

29. Respondents are directed to carry out this order and take follow up action within a period of 120 days from the date of receipt of this order.

30. In the result, the O.A. is allowed to the extent stated above. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNIK)
MEMBER(J)

BKS