

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

O.A.No.327/95

Date of Order : 19.3.1998

Magha Ram Choudhary s/o Sh. Amna Ramji Chaudhary,
r/o Village & Post Alai, Distt. Nagaur,
presently working as Group 'D' in Nagaur City Post Office.

... Applicant

V E R S U S

1. Union of India through the Secretary, Ministry of Communication
Department of Posts, Dak Bhawan, Parliament Street, New Delhi
2. The Director General, Department of Posts, Dak Bhawan,
Parliament Street, New Delhi
3. The Post Master General, Rajasthan
Western Region, Jodhpur
4. The Superintendent of Post Offices,
Nagaur.

... Respondents.

PRESENT :

Mr. S.K. Malik, Counsel for the Applicant.
Mr. R.K. Purohit, Brief holder for Mr. J.P. Joshi, Counsel
for the respondents.

CORAM :

HON'BLE MR. A.K. MISRA, JUDICIAL MEMBER
HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER.

O R D E R
(PER HON'BLE MR. GOPAL SINGH)

The applicant Magha Ram Choudhary has filed the application under Section 19 of the Administrative Tribunals Act 1985, praying for setting aside the order dated 2.8.95 (Annex.A) and Directorate, New Delhi's letter dated 25.7.95 and for issuing direction to the respondents to regularise the period from 3.6 to 24.3.95 that is, from the date of compulsory retirement till date of reinstatement, as spent on duty with consequent benefits. The applicant has also prayed for a direction to respondents to adjust the amount of Rs. 57493/- from his pay allowances for the period from 3.6.93 to 24.3.95. The case of

Gopal Singh

applicant is that he had challenged his compulsory retirement before this Tribunal in OA No. 199/94. While disposing of this application by an order dated 28.9.94 this Tribunal observed as under :-

" In the result, we accept the OA and set aside the order of the appellate authority Annex.A/2 dated 8.3.94. We direct the appellate authority to reconsider the appeal/representation (Annex.A/4) filed by the applicant. He should pass a speaking order on every point of objection raised in the appeal and he should also consider citations referred by the applicant. He should also give an opportunity of personal hearing to the applicant. With these directions, the OA stands disposed of."

That the respondents vide their order dated 21.3.95 reinstated the applicant with immediate effect and the applicant joined his duties on 25.3.95 as directed under the Assistant Superintendent of Post Offices, Nagaur's letter dated 23.3.95. The respondents had also asked the applicant vide their letter dated 23.3.95 to refund the amount of Rs. 57493/- received by the applicant as retirement benefits. That after adjustment his duty pay for the period from 3.6.93 to 24.3.95 from the amount of Rs. 57493/-, the applicant deposited a sum of Rs. 2173/- on 23.3.95. The respondents however has not treated the period from 3.6.93 to 24.3.95, that is the period from the date of compulsory retirement till the reinstatement in service, as spent on duty but it has been ordered by the respondents vide their letter dated 2.8.95 (Annex.A/1) that the intervening period may be treated as leave due admissible. Aggrieved by this order of the respondents the applicant has filed the present OA.

2. The learned counsel for the respondents have contested the OA on the grounds that the competent authority has passed orders for regularisation of the intervening period as leave and admissible and as such the applicant cannot be paid wages for that period.

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3. We have heard the learned counsel for the parties and perused the records of the case.

4. In terms of the order dated 25.9.94 passed by this Tribunal in OA No. 199/94, the case was reviewed by the appellate authority and the orders for reinstatement of the applicant were issued vide letter dated 21.3.95. In this reinstatement order nothing has been mentioned as to how the intervening period from 3.6.93 to 24.3.95 is to be treated. It was only vide letter dated 2.8.95 that the decision of the respondents to treat the intervening period as leave due admissible was conveyed to the applicant. As mentioned above that the appellate authority had issued the orders for reinstatement of the applicant on reconsideration of his case implying thereby that the penalty of compulsory retirement imposed on the applicant earlier was set aside. It can safely be said that ~~that~~ the penalty of compulsory retirement imposed upon the applicant earlier is not in existence after the order of the reinstatement of the applicant by the appellate authority. It has also not been alleged by the respondents that the applicant was gainfully employed elsewhere during this intervening period. The learned counsel for the applicant has cited the case (1994) 28 ATC 709 - Smt. Manorma Verma vs. State of Bihar & Ors. and (1992) 21 ATC 352 - S.K. Vaish vs. U.O.I. We are inclined to agree with the contention of the learned counsel for the applicant in this regard. The applicant has also prayed for adjustment of retiral benefits received by him from the pay and allowances for the intervening period between the date of compulsory retirement and the date of reinstatement. As has been discussed above the applicant should have been paid pay and allowances for the intervening period treating this period as

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spent on duty but the same have not been paid to the applicant or the ground that the competent authority has ordered for treatment of this intervening period as leave due and admissible. As on the date of reinstatement the arrears on account of pay and allowances for the intervening period were little less than the retirement benefits received by the applicant and the applicant has already refunded the balance to the respondents, we feel adjustment of retirement benefits given to the applicant against pay and allowances for the intervening period would be justified.

5. In the result, the OA is allowed with the following observations :

- 1) The intervening period from the date of compulsory retirement to the date of reinstatement in service that is, from 3.6.93 to 24.3.95 be treated as period spent on duty.
- 2) The wages for this intervening period be adjusted against the retirement dues already paid to the applicant. Excess payment, if any, should be recovered from the applicant in one instalment.

6. Parties are left to bear their own costs.

Gopal Singh
(GOPAL SINGH)
Adm. Member

A.K.Misra
(A.K.MISRA)
Judl. Member

cpm

8/5/58
3/1/58
2/1/58
1/1/58

Copy of order
Sent to counsel
for resp by post
AD vich no 132
dt 31.3.98
re
30/3/98

Part II and III destroyed
in my presence on ... 12-3-2003
under the supervision of
section officer () as per
order dated 29/12/2003

Section officer (Ranjan)