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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

.....

Date of order : 08.10.1999

O.A.NO.120/1996

Dwarka Dass aged about 46 years S/o Shri Poonam Dass by caste Goyal, R/o Kumaron Ki Bagechi Ke Pass, Baba Road, Masooriya, Jodhpur, at present working as Field Assistant (GD), O/O the Additional Commissioner, Special Bureau, Jodhpur.

.....APPLICANT.

VERSUS

1. Union of India through the Secretary, Cabinet Secretariat, Bikaner House, Room No. 7, Government of India, Sahajahan Road, New Delhi.
2. The Secretary, Cabinet Secretariat, Bikaner House, Room No. 7, Government of India, Sahajahan Road, New Delhi.
3. The Joint Director, Cabinet Secretariat, Research & Analysis Wing, Government of India, Room No. 7, Bikaner House, Sahajahan Road, New Delhi.

.....RESPONDENTS.

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Mr.M.S.Singhvi, Counsel for the applicant.  
Mr.Vineet Mathur, Counsel for the respondents.

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CORAM :

HON'BLE MR.A.K.MISRA,JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH,ADMINISTRATIVE MEMBER

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PER MR.A.K.MISRA,JUDICIAL MEMBER :

The applicant has filed this O.A. seeking the following reliefs :-

"8.1.By an appropriate order or direction the orders date 20.7.94 and 22.2.96 Annexure A/1 and Annexure A/ respectively in so far as these orders deny the benefit of fixation and counting the service for the benefits othe

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than those specifically refused by the Hon'ble Tribunal be declared illegal and be quashed.

By an appropriate order or direction the respondents be directed to fix the salary on notional basis treating the applicant to be in continuous service by giving benefit of service from 26.8.78 to 20.3.87 with all consequential benefits and they may be directed to pay arrears to the applicant with interest at the rate of 18% per annum from 20.7.94 till the date of payment."

2. Notice of the O.A. was issued to the respondents who have filed their reply in which it is stated that fixation of the applicant has been correctly done as per the order of the Tribunal. The applicant is not entitled to get the relief as prayed for in view of the fact that he remained terminated/removed from service from 26.8.78 to 19.3.87 and was reinstated on 20.3.87. The order in respect of period of removal (Annex.A/1) has been passed and the same has been treated as not on duty and thus the requirement of rules stood fulfilled. The O.A. deserves to be dismissed.

3. We have heard the learned counsel for the parties and have gone through the case file.

4. The applicant in a departmental action was dismissed from service on 26.8.78. He fought for his rights in various courts and was ultimately ordered to be reinstated by order dated 2.7.93 passed by the Central Administrative Tribunal, Jodhpur Bench, in O.A. No. 326/1987. The operative part of the said order is quoted hereunder for further discussion of the controversy in hand :-

"We have considered about the quantum of punishment. Applicant has not worked on account of dismissal or removal from 1978 onwards. It will be a sufficient punishment if the wages from 1978 to 20.3.87 are not given to the applicant and the applicant will have to forego the wages. As far as the wages of the period 20.3.87 are concerned, i.e. the day on which the counsel for the respondents got the appeal of the applicant dismissed inspite of the undertaking given by the counsel for the respondents in



the appeal, on the ground that he will consider the case sympathetically, the wages should be paid and the applicant should be reinstated immediately with all consequential benefits. The orders dated 26.8.78 and 20.3.87 are hereby quashed. The respondents shall take the applicant on duty immediately and he shall be entitled to all future benefits also. If any promotions have taken place during the intervening period, the applicant will not challenge the promotions so effected because of the orders of the Court or because of the dismissal order or removal whatsoever and the applicant will have a right to be considered only from 20.3.87 for promotion and he will not be entitled to challenge any promotion made prior to that of his juniors."

5. It was argued by the learned counsel for applicant that vide the aforesaid order the applicant was deprived of wages for the period he remained under removal but it was not ordered that the period of removal shall not be counted as on duty, therefore, the applicant should have been treated on duty by the respondents during the period of removal. He has further argued that the natural consequence of reinstatement is that the order of dismissal/removal is treated as non-existent as <sup>it</sup> it was never passed and, therefore, the period of removal is to be counted as on duty. He has cited RLR 1987 (1) Page 328 in support of his contention. He has further argued that the service benefits other than ~~those~~ <sup>which</sup> are specifically refused, are to be granted to the applicant by the respondents and, therefore, the applicant is required to be treated on duty because the period of dismissal/removal has not been ordered to be treated as not on duty.

6. On the other hand, the learned counsel for the respondents has argued that the applicant was reinstated in service with a very specific stipulation that he would not be entitled to the wages for the period he remained under removal. It was also ordered that the applicant would be granted future benefits of pay and promotions only from the date of reinstatement. The applicant was also declared to be not entitled to challenge the promotions made prior to the date of his reinstatement in respect



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of his juniors. Therefore, it can be safely inferred from the operative portion of the order that the applicant was not intended to be given the benefit of removal period to be treated as on duty. He has further argued that had it been the intention at the time of passing of the order that the period of dismissal/removal should be treated as spent on duty, then the same would have <sup>been</sup> mentioned in the order that the period of dismissal/removal shall be treated as <sup>such</sup> ~~continuity~~ in service. Therefore, the applicant is not entitled to the benefit as claimed.

7. We have given our earnest consideration to the arguments advanced by the learned counsel for the parties. The competent authority while passing the order Annex.A/1 has passed a specific order in respect of the period between 26.8.1978 to 19.3.1987 and treated the same as <sup>not</sup> on duty. As per the provisions of Pension Rules the competent authority was required to pass order relating to the period of dismissal/termination/removal and if the same has been treated to be as not on duty, in our opinion, the order cannot be found at fault. All what was necessary under the law <sup>was</sup> that ~~orders relating to~~ the period of removal should be regularised. If the same has been regularised as not on duty, the same is not required to be interfered with. Moreover, we are of the view that if the period of removal was to be treated as spent on duty, there was no obstacle in ordering the respondents to treat the period of removal as on duty. But the Tribunal has very specifically stated that the applicant would not be able to challenge the promotions of his junior passed prior to his reinstatement. That means, he was not to be given any benefit <sup>of seniority in</sup> ~~like continuity of~~ service for the period the applicant spent during his removal. The relief which has not specifically been granted ~~that it~~ should be taken to have been refused. It cannot

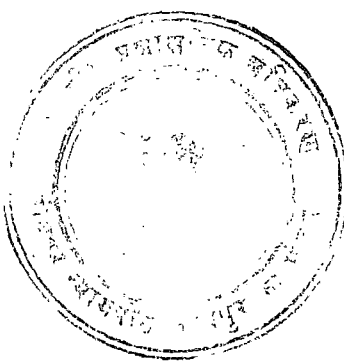
be interpreted that for a period for which the applicant was not found entitled for his wages was intended to be treated as on duty. Therefore, in our opinion, the applicant cannot get the relief as claimed in his O.A. The period of dismissal/removal cannot be treated as on duty as per the interpretation of the learned counsel for applicant of the operative part of the order passed by the Tribunal.

8. We have also considered the rulings cited by the learned counsel for the applicant. On going through the rulings, we find that the rules propounded therein are based on different facts, therefore, the same cannot be made applicable in the instant case. The facts of the case reported in RLR 1987 (1) 328 - M/s Hindustan Zinc Limited Vs. Jia Lal Kapoor, are that the services of the plaintiff Jia Lal were terminated on 6.2.1974. Against the termination order, the applicant filed a civil suit. While decreeing the civil suit, the Court held that termination order passed by the defendant on 6.2.1974 was illegal and void and the plaintiff is deemed to have continued in service of the defendant. He should be reinstated on the post on which he was working on 6.2.1974 and shall be entitled to claim all the salary and other benefits from that date till he joins service. This judgment was upheld by the Hon'ble High Court and it was held that "other benefits" mean notional promotion. But in the instant case, the applicant was not found entitled for promotion and pay for the period of removal. Hence, this ruling does not help the applicant.

9. In the case reported in 1967 SLR 823 - R.S.Naniyar Vs. The State of Mysore, the question of fixation of seniority was involved. This was a case where the applicant had tendered his resignation which was withdrawn by him after more than three

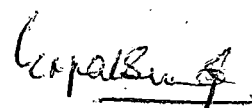



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years and then the question of fixation of seniority came to be disputed by the affected persons. While determining as to what should be the seniority of a person who had earlier resigned and then was taken on duty on withdrawal of resignation, the term, re-instatement and re-employment came to be discussed in detail and in that context other questions relating thereto were decided. But in this case, there is no such controversy ~~is~~ involved. Reinstatement of the applicant has been ordered depriving him of his salary, his right to challenge promotion of his juniors ~~and~~ no orders in respect of his termination/removal <sup>period of</sup> to be treated as spent on duty, therefore, the nicety of re-employment and re-instatement is not required to be gone into in this case. There is even no order in respect of working out the notional pay of the applicant on re-instatement <sup>for the period of removal</sup>. Therefore, the fixation order Annex.A/1 cannot be found at fault.

10. In view of the above discussion, we come to the conclusion that respondents have committed no error of law or of facts in passing the impugned order Annex.A/1 and fixation of applicant's pay and treating the period of termination/removal as "not on duty". Hence, the same cannot be interfered with. The O.A., in our opinion, bears no merit. The same is, therefore, dismissed. The parties are left to bear their own costs.

  
(GOPAL SINGH)  
Adm. Member

  
(A.K. MISRA)  
Judl. Member

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