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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 16/1999
T/A/No.

199 9

DATE OF DECISION 31-08-1999

KRISHAN LAL CHADHA

Petitioner

MR. O.P. SAWHNEY

Advocate for the Petitioner (s)

Versus

UNION OF INDIA & OTHERS

Respondent

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Advocate for the Respondent (s)



le Mr. A.K.Misra, Judicial Member

e Mr. -

her Reporters of local papers may be allowed to see the Judgement ? No.

referred to the Reporter or not ?

r their Lordships wish to see the fair copy of the Judgement ?

it needs to be circulated to other Benches of the Tribunal ? No.

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nn
(A.K.MISRA)
Judicial Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Jodhpur Bench
Jodhpur

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Date of order : 31.8.1999

O.A.NO. 16/1999

Shri Krishan Lal Chadha S/o Shri Amir Chand Chadha aged 69 years by caste Khatri ex Senior Stores Supdt., Pay Account No. 6187, No. 32, Wing, Air Force, C/o 56 A.P.O. resident of 39 E, P.W.D. Colony, Jodhpur.

.....Applicant.

Versus

1. The Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, Government of India, New Delhi.
2. The Chief of Air Staff, Air Headquarters, Vayu Bhawan, New Delhi.
3. The Air Officer, Commanding-in-Chief, Headquarters South Western Air Command, Gandhi Nagar, Gujarat.
4. The Air Officer Commanding, No. 32 Wing, Air Force C/o 56 A.P.O.

.....Respondents.

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CORAM :

Hon'ble Mr. A.K.Misra, Judicial Member

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Mr.O.P.Sawhney

Counsel for the Applicant.

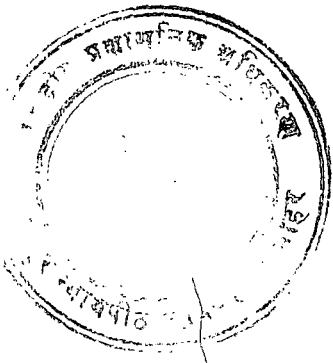
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BY THE COURT :

Heard the admission arguments and considered the O.A.

2. The applicant has filed this O.A. with the prayer that the impugned order dated 3.6.1995 passed by respondent No. 2 be declared illegal, Rule 41 (1) of CCS (Pension) Rules, 1972, be declared un-constitutional and ultra vires and the respondents be directed to award Pension and Gratuity to the applicant with 18% interest.

3. By a separate order passed in M.A.No. 11/1999 the prayer in respect of condonation of delay has been refused and the O.A. has been treated as hopelessly time barred. The O.A. therefore, deserves to be dismissed on the point of Limitation.



3/11/

itself. However, the O.A. is also considered on its merits as per the following order. (9)

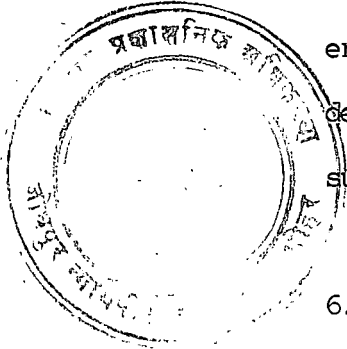
4. From the facts as pleaded in the application, it appears that applicant was served with a Chargesheet dated 9.8.1975 for major penalty while he was serving on the post of Senior Store Superintendent in the South Western Air Command, Ratanada, Jodhpur. After inquiry, the applicant was awarded penalty of dismissal from service against which a departmental appeal was filed by the applicant but the same was rejected by the appellate authority. The applicant, thereafter, challenged the order of dismissal dated 18.12.1975 and the order of the appellate authority dated 26.2.1986 before the Tribunal. The O.A. was accepted and the respondents were directed by the Tribunal vide its order dated 8.6.1989 to afford an opportunity of hearing to the applicant. As per the direction, the appellate authority afforded an opportunity of hearing to the applicant but dismissed the appeal. The applicant, again challenged the order of dismissal from service as well as that of the appellate authority but the O.A. was dismissed by the Tribunal. Against the dismissal order passed by the Tribunal, the applicant preferred a Special Leave Petition (Civil) before Hon'ble the Supreme Court which was dismissed in limine on 24.10.1994. The penalty of dismissal imposed on the applicant, thus, became final. Thereafter, the applicant moved an application before the respondents for grant of pensionary benefits. The prayer of the applicant for grant of pensionary benefits was rejected by the respondent No. 2 vide its letter dated 3.6.1995. The applicant, vide O.A. ~~sought~~ quashing of the order dated 3.6.1995. The O.A. was registered at No. 243 of 1996. In this O.A., the applicant had prayed for the same reliefs which the applicant has prayed in the present O.A. The earlier O.A. moved by the applicant was dismissed at the admission stage by the Tribunal vide its order dated 8.10.1996, which has been annexed in the present O.A. as Annex.A/5.



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Thereafter, the applicant filed a Review Application against the said order which was dismissed after considering all aspects by the Tribunal by its order dated 6.1.1997.

5. The applicant has filed the present O.A. claiming the same relief as he had ^{claimed} in the earlier O.A. In the grounds, the applicant has stated that the earlier O.A. was dismissed without considering the fact that Rule 24 and 41 (1) of CCS (Pension) Rules, cannot automatically deprive a Government servant of his pensionary benefits without specific order passed under Rule 9 of the said Rules. Since the respondents have not passed any such specific order depriving the applicant of his pensionary dues, therefore, the applicant cannot be deprived of his pensionary benefits simply because he was dismissed from service. The applicant has also stated in the O.A. that for the error committed by the Court, the applicant should not be deprived of his legal dues. He has also cited rulings in support of his contentions as mentioned in the O.A.



6. I have considered the contentions of the applicant as pleaded in O.A. and enlarged by the learned counsel for the applicant during his arguments. The Rules 24 and 41 (1) of the said Rules are quoted hereunder :-

"Rule 24.

Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service.

Rule 41(1).

A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity :

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on (compensation pension)".

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These rules came into force on 1.6.1972 and have with- [the judicial scrutiny since then. These rules clearly mention the effect of dismissal of a Government servant on his service and his pensionary benefits. The applicant was dismissed from service on certain charges and these rules go to show the effect of dismissal. Deprivation of pensionary benefits of a Government servant is not one of the penalties, as mentioned in the CCS (CCA) Rules but it is ^{the} effect of the penalty of dismissal which is imposed on a Government servant in respect of proved charges against him. During continuance of service, a penalty can be imposed but if during the service tenure, in an inquiry, a penalty cannot be imposed and the employee superannuates then Rule 9 of CCS (Pension) Rules, comes into play and on successful termination of such inquiry, the order is required to be passed under Section 9 in respect of pension and pensionary benefits of an employee. It is, at this stage, that specific order depriving the Government servant of his dues is required to be made. Therefore, it is difficult to accept the argument of the learned advocate for the applicant that even while dismissing a Government servant, specific order depriving him of his pensionary dues, is required to be passed otherwise he will be entitled to his pensionary benefits. In my opinion during the service tenure, penalty can be imposed but after retirement no such penalty can be imposed. As such, the penalty in terms of deprivation of full or part pension and pensionary benefits, is required to be passed. These are the two different types of punishment which could be awarded to a serving Government servant and a retired Government servant respectively. Therefore, the arguments of the learned counsel for the applicant is difficult to up-hold. The Rulings cited by the learned counsel for the applicant during the course of arguments are quite distinguishable and have no direct application. In none of these rulings, Rule 24 and 41 was held to be un-constitutional. The applicant had not challenged the order of the Tribunal dated 8.10.1996 passed in the O.A. No.



20/11/96



243/1996 by filing a Special Leave Petition, in which the identical relief was claimed by him. The applicant has also not challenged the order passed by the Tribunal and subsequent rejection of the Review Application before the Hon'ble High Court as per the changed situation of Law which came into force after pronouncement of judgment by Hon'ble Supreme Court in L.Chandra Kumar's case, in the month of March 1997. Thus in my opinion, the order rendered by this Bench on 8.10.1996 in O.A. No. 243/1996 became final. The same cannot now be permitted to be disturbed by the applicant through this O.A.

7. Repeated O.A. on the same point claiming the same relief on the same grounds, is, in my opinion, an abuse of process of Law. Therefore, the present O.A., is not maintainable. The O.A. is also hopelessly barred by Limitation.

8. The O.A. is, therefore, dismissed in limine.

31/8/99
(A.K.MISRA)
Judicial Member

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Copy of order received

17-4
7.9.99

(C.P. ~~Save~~ Sawhney)
Advocate
(Counsel for applicant)

Copy of order Sent to Respondent-

No 1 to 4 ^{along with copy of order dt 31/8/99}
~~to~~ ^{passed in MA 11/99 in}
No 276 to 279 _{on 16/99}

dt 10-9-99

AD received from R1, R3 & R4
as they are received by copy

6/10/98

as R and R1 destroyed
my presence on 14-7-06
under the supervision of
action officer () as per
order dated 16-7-06

Section officer (Records)