

Central Administrative Tribunal
Jodhpur Bench, Jodhpur

DR

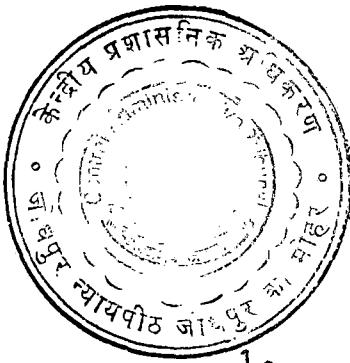
Date of Order : 04/10/2002

O.A. No. 320/2001

1. Bhanwar Lal S/o Shri Pukh Raj aged about 47 years, by caste Goyal, Resident of Type III, 49-J, Bhabha Nagar, Kota Rajasthan, presently working as Tradesman-G, Operation Unit, Rajasthan Atomic Power Station, Nuclear Power Corporation of India Limited, Rawat Bhata, District Chittorgarh, Via Kota.
2. Ramadhar S/o Shri Ram Chandra, aged about 48 years by caste Pandey, resident of Type III, 11-C, Anu-Karan Colony, Bhabha Nagar, Kota, Rajasthan, present working as Tradesman-F, Operation Unit, Rajasthan Atomic Power Station, Nuclear Power Corporation of India Limited, Rawat Bhata, District Chittorgarh, via-Kota.

... Applicants.

versus



1. The Union of India through the Secretary, Ministry of Atomic Energy, Government of India, C.S.M. Marg, O.Y.C. Building, Anu Shakti Bhawan, Mumbai.
2. The Station Director, Rajasthan Atomic Power Station Anu Shakti, Via Kota, Rajasthan.
3. The Manager (P&IR), (Establishment), Rajasthan Atomic Power Station, Anu Shakti Via Kota, Rajasthan.
4. The Nuclear Power Corporation, Vikram Sarabhai Bhawan, Bhabha Atomic Research Centre, Anu Shakti Nagar, Mumbai.

... Respondents

Copy of

...

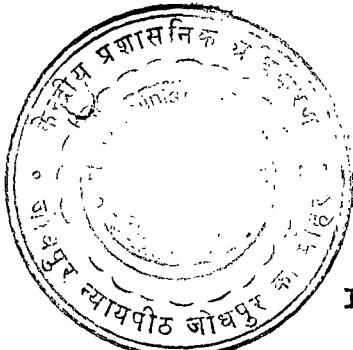
DR

CORAM :

Hon'ble Mr. Justice G.L. Gupta, Vice Chairman
Hon'ble Mr. Gopal Singh, Administrative Member

.....

Mr. Manoj Bhandari, counsel for the applicants.
Mr. Arun Bhansali, counsel for the respondents.



.....

ORDER
(Per Mr. Gopal Singh, M(A))

In this Application under section 19 of the Administrative Tribunals Act, 1985, applicants, Bhanwarlal and Ramadhar, have prayed for a declaration that no penalty order exist against them as on date and the respondents be directed to implement the judgement and order passed by this Tribunal on 23rd June, 1999 in its entirety. It has further been prayed that the respondents be directed to review and modify the order dated 19th September, 2000 (Annex.A/6) and grant promotions to the applicants without taking into account the penalty order dated 2nd August, 1983, (Annex.A/3), with all consequential benefits including increments, promotions and fixation.

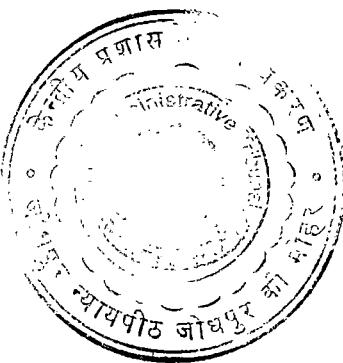
2. Presently, applicant No. 1 is working on the post of Tradesman-G and applicant No. 2 is working as Tradesman-F, in the Operation Unit of Rajasthan Atomic Power Station. Both the applicants had remained absent without permission for the period from 8th May, 1982 to

Gopal Singh

D9

2nd August, 1983 and 1st April 1982 to 2nd August, 1983 respectively and, therefore, they were chargesheeted on 2nd September, 1982 and 11th June, 1982 respectively. Vide order dated 2nd August, 1983, respondent No. 2 imposed upon the applicants, penalty of reduction to a lower grade for a period of two years with further order that the period of absence will be treated as dies non and should be deemed to cause a break in service entailing forfeiture of entire past service. Applicant No. 1 made a representation that his past service may be counted for the purpose of promotion but the same was rejected by the respondents vide their order dated 27th July, 1989. The matter was thereafter taken up before the Deputy Labour Commissioner and the Conciliation Officer, Chhitorgarh. During the pendency of conciliation proceedings before the Deputy Labour Commissioner assurance was given by the respondent department that the matter shall be settled by the department and on that assurance, the proceedings were dropped. However, nothing was done by the respondents and finally, applicants were informed vide letter dated 2nd July, 1994 that the competent authority had not agreed to the contention of the applicants in regard to forfeiture of the past service. Both the applicants challenged the order of penalty before this Tribunal through O.A. No. 344/94 - Bhanwar Lal and Others versus The Union of India & others. The said O.A. was allowed by this Tribunal with a direction to the respondents to process the case of applicants' in the light of Government of India's Instructions No. 123 under FR 17-A and

Capal 32



and pass appropriate orders. In compliance to the orders dated 23rd June, 1999 of this Tribunal, the respondent-department passed an order dated 20th Sept., 1999 declaring that the period of un-authorised absence shall be treated as dies non instead of break-in-service. It is the contention of the applicants that the Tribunal in its order dated 23rd June, 1999 set aside the impugned order of penalty with further direction to respondents to treat the un-authorised absence of the applicants as dies non instead of break in service. However, the respondents have taken into account the penalties imposed upon the applicants while granting promotion to a higher grade. It is also alleged that the respondents had also reduced the pay scale of the applicants to a lower scale for a period of two years. Hence this application.

3. In the counter, the contentions of the applicants have been denied by the respondents. It is pointed-out that the applicants in earlier O.A. No. 344/94 had sought the relief in regard to break in service under F.R. 17-A and the penalty of reduction to a lower grade was not challenged. It is also pointed out that the directions given by the Tribunal in its order dated 23rd June, 1999 passed in O.A. No. 344/94, had been complied with by the respondents vide order dated 20th September, 1999 (Annex.A/5). This order treating the period of unauthorised absence as dies non, has not been challenged by the applicants and it has attained finality and the respondents had no intention to even to make any attempt to dis-obey the orders of this Tribunal.

(In�. S. G.)

It has, therefore, been urged by the respondents that the O.A. is devoid of any merit and is liable to be dismissed.

4. We have heard the learned counsel for the parties and perused the record of the case carefully.

5. For better appreciation of the controversy involved, it is necessary to go through O.A. No. 344/94 with judgement of this Tribunal thereon dated 23rd June, 1999. Relevant portions of O.A. No. 344/94 are extracted below :-

"DETAILS OF THE APPLICATION :

1. Particulars of the order against which the application is made :-

Application is directed against the orders dated 2.7.94 passed by department of Atomic Energy, Government of India against the applicants No. 1 to 6, copies whereof are produced herewith and marked as Annexure No. A/1 to A/6 and the orders dated 2.8.83 passed by respondent No. 2 imposing penalty of reduction to lower grade for two years and for forfeiture of the past services against the applicants No. 1 to 6. Copies whereof are produced herewith and marked as Annexure A/7 to Annexure A/12 respectively.

SUBJECT IN BRIEF :-

Forfeiture of past services and non-consideration of past service for pension and promotion purposes.

4.6 That vide order dated 2.8.83 a respondent No.2 imposed penalty of reduction of the applicants to lower grade for a period of two years with further order that the period of absence will be treated as 'Dies-non' and in accordance with the fundamental Rule 17-A should be deemed to cause a break in service entailing forfeiture of entire past service.

4.7 That in pursuance of this order, applicants joined their duties and applicant No.1 made a representation that his past service may be counted for the purpose of promotion. However, vide

Lipasg

communication dated 27.7.89, it was informed to applicant No. 1 that his request cannot be considered. A copy of communication dated 27.7.89 is produced herewith and marked as Annexure A/19.

4.10 That the applicants submit that the procedure for imposing penalties for mis-conduct is governed by the provision in the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Rule 11 provides for imposition of penalties.

A bare perusal of Rule 11 will reveal that disciplinary authority can impose only one of the penalties and not all the penalties on a Government servant in one Charge-sheet. However, by impugned order more than one penalty has been imposed in as much as the applicants have been reduced to lower grade for two years and their past services have been ordered to be forfeited.

4.11 That assuming without admitting that order could be made under Rule 17-A of the Fundamental Rules in regard to period of absence, then such an interruption shall be for the purposes of leave travel concession quasi permanency and eligibility for appearing in departmental examination for which a minimum period of continuous service is required. For other purposes the past services are required to be counted.

After reproducing FR 17-A, the applicant has observed as under :-

Thus, it is clear that the interruption in service caused on account of unauthorised absence again affect the employee concerned except for leave travel concession quasi permanency and eligibility for appearing in departmental examination where minimum period of continuous service is required.

4.12 That the respondents are not entitled to refuse to count the period of past service for the purpose of promotion as also for pension.

4.13 That in addition to the above, the applicants submit that before passing the order directing action under Rule 17-A, an opportunity of hearing was not given to the applicants. The applicants were only given notice under the Rules of 1965 but no notice was given for taking action under Rule 17-A of the fundamental Rules.

Copy of

5. GROUNDS OF THE APPLICATION :-

5.1 In the first instance, it is submitted that the order dated 2.7.94 rejecting the representation of the applicants is illegal as being non-speaking order. No reasons have been communicated by the respondents for rejecting the representation of the applicants, the order dated 2.7.94 is, therefore, non-speaking and is liable to be set aside on this ground alone.

5.2 That the action of the respondents in not condoning the break in service is unreasonable and arbitrary as also contrary to the Rules. When the respondents had agreed before the Conciliation Officer that they would settle the matter at the departmental level and consequently persuaded the applicants not to get the matter referred to the Industrial Tribunal for adjudication then the respondent No. 3 was obliged to condone the break in service and not to reject the representation of the applicants. The action of the respondents is highly arbitrary and unreasonable so as to be violative of Articles 14 and 16 of the Constitution of India.

5.3 That as a matter of fact the respondent No.3 was obliged to grant the benefit claimed by the applicants in as much as the orders imposing penalties only made an order with reference to Rule 17-A of the fundamental Rules, therefore, the orders could only deprive the applicants of the benefits which are mentioned in Rule 17-A. Rule 17-A read with the clarification issued by the Government of India provides an employee benefits of leave travel concession quasi-permanency eligibility for appearing in the departmental examination. Under this Rule, period of absence does not put any other disadvantage, therefore, it was not open for the respondents to have deprived the applicants of their right to count the past service for pension as also for promotion purposes. The impugned action of the respondents is, therefore, contrary to the Rules and is liable to be struck down.

5.4 That the orders dated 2.8.83 Annexure A/7 to Annexure A/12 in so far as the imposition of penalty of interruption in service is concerned are illegal for the reasons that the same have been passed in the breach of principles of natural justice. The applicants were given charge-sheets under the Rules of 1965 and it was nowhere provided that action will also be taken under Rule 17-A of the Fundamental Rules, therefore, no order could have been passed denying certain benefits to the applicants under Rule 17-A of the fundamental Rules without giving an opportunity

(Copy A.S. G)

D.M

of hearing to the applicants. As a matter of fact as per the decision of the Government of India dated 2.5.85, it is obligatory on the competent authority to provide an opportunity of hearing. Under these circumstances, the orders dated 2.8.83 (Annexure A/7 to Annexure A/13) in so far as they impose penalty with reference to Rule 17-A are illegal and void and deserves to be ignored.

5.5 That as stated above, the respondents have granted benefit of fixation for the past service rendered by the applicants meaning thereby, the applicants have been given benefit of the past services but this benefit has not been given in regard to other matter namely pension and eligibility for promotion. Once past service of the applicants have been counted, then no distinction could be made in regard to the fixation as also for pension and promotion purposes. Therefore, the impugned action of the respondents cannot but be said to be highly unreasonable and discriminatory so as to be violative of Articles 14 & 16 of the Constitution of India.

8. RELIEFS SOUGHT :

It is most respectfully prayed that :-

- (i) by an appropriate order or direction the order dated 2.7.94 (Annexure A/1) to Annexure A/6 be declared illegal and be quashed.
- (ii) by an appropriate order or direction the order dated 2.8.83 (Annexure A/7 to Annexure A/12) in so far as they provide for break in service under Rule 17-A is concerned be declared illegal and void.
- (iii) by an appropriate order or direction respondents may be directed to treat the applicants service from initial appointment as continuous with all consequential benefits.
- (iv) by an appropriate order or direction it may be declared that under Rule 17-A of the fundamental Rules, the applicants are not dis-entitled to count their past services for the purpose of pension, promotion and other matters except those specified in Rule 17-A of the fundamental Rules and the respondents be directed to grant all such benefits to the applicants.
- (v) any other appropriate order or direction which is considered to be just and proper in the facts and circumstances of the case may be passed in favour of the applicants.

Copy of

(vi) Costs of the Original application may kindly be awarded in favour of the applicants."

6. In the relief clause 8(i), the applicants have prayed for quashing the order dated 2.7.1994 (Annexs. A/1 to A/6). This order dated 2.7.1994 rejects the representation of the applicants against break in service. Further, in relief clause 8 (ii), the applicants had prayed for quashing the order dated 2.8.1983 (Annexs. A/7 to A/12) in so far as they provide for break in service. This order dated 2.8.1983 is the order of the disciplinary authority imposing penalty of reduction to a lower grade upon the applicants along with the direction that the period of unauthorised absence would be treated as dies non, resulting in break in service. In relief clause 8 (iii) it has been prayed that applicants services from initial appointment be treated as continuous with all consequential benefits, meaning thereby that there should not be any break in service. In prayer clause 8 (iv), it has been asserted that applicants cannot be denied to count their past services for the purpose of pension, promotion and other matters except those specified in Fundamental Rule 17-A and, therefore, the respondents be directed to grant all such benefits to the applicants. This also implies that the period of unauthorised absence treated as break-in-service should be directed that the past service prior to the period of unauthorised absence, should be permitted to count for the purpose of pension, promotion etc. It would, thus, be seen from the prayer clause that the emphasis here is for a direction to the respondents to

(Signature)

Y)lb

count the past services of the applicants prior to the period of unauthorised absence, as qualifying for pension, promotion etc. Relevant portions of the O.A. 344/94 extracted above, would also go to show that the applicants had been demanding, counting of their past service. Thus, it is clear from the averments made by the applicants in O.A. No. 344/94 that basically this O.A. was filed for a direction to the respondents to count the past services, prior to the period of unauthorised absence as qualifying for the purpose of pension, promotion etc. It is also a fact that the applicants have already suffered penalty imposed by the disciplinary authority vide its order dated 2.8.1983. In this back-ground, this Tribunal has dealt- with only the aspect of treating the period of unauthorised absence as dies non or break in service and has not at all discussed the penalty of reduction to a lower grade imposed upon the applicants in its judgement and order dated 23.6.1999. Relevant portion in this regard ~~etc.~~ from order dated 23rd June, 1999 passed in O.A. No. 344/94 is given below :-

०

"Applicants in this O.A. under Section 19 of the Administrative Tribunals Act, 1985, have prayed for setting aside the impugned orders dated 2.7.1994 (Annexures A/1 to A/6) and impugned orders dated 2.8.1983 (Annexures A/7 to A/14). They have also prayed for a direction to the respondents to treat the applicants' service from initial appointment as continuous with all consequential benefits.

2. The undisputed facts of the case are that the applicants were served with charge sheets for unauthorised absence and after due process, the competent authority imposed the punishment of reduction to the lower grade for a period of two years. It was also ordered that the said period of two years shall operate to postpone the future increments on restoration to higher grade. It was

Copy of

D/17

further ordered that the period of unauthorised absence of the applicants shall be treated as 'dies-non' and in accordance with F.R. 17A shall be deemed to cause a break in service entailing forfeiture of entire past service. The matter was taken up by the staff association on behalf of the applicants before the Deputy Labour Commissioner-cum-Conciliation Officer, Chittorgarh. During the pendency of conciliation proceedings, an assurance was given to the staff association and to the applicants that the matter will be settled by the department and on that assurance, the conciliation proceedings were dropped. Thereafter, the matter was taken up with the respondents, but the representation in this regard for condonation of forfeiture of past service was rejected by the respondents vide their letter dated 2.7.94 (Annexures A/1 to A/6). Feeling aggrieved, the applicants have approached this Tribunal through the present O.A.

5. In this connection, it would be appropriate to go through various ~~judges~~ instructions of Government of India in regard to application of F.R. 17-A. Government of India's Instructions Nos. 1 to 3 which deals with the subject are reproduced below:-

Government of India's Instructions

- (1) Reasonable opportunity to be given
-
- (2) Treatment of unauthorised absence as
-
- (3) Distinction between condonation
-

6. It would be seen from the above instructions that F.R. 17-A has independent existence and the contentions of the respondents that the application of F.R. 17-A in the instant case was a natural consequence of the punishment imposed, is not tenable. The action under F.R. 17-A has to be taken only after giving due notice to the affected parties. In the instant case, no notice was given and the period of absence has been treated as break-in-service. Thus, the order declaring the period of unauthorised absence as break-in-service is bad in law and cannot be sustained.

7. Secondly, it is seen that the order of disciplinary authority imposing punishment on the applicants is self-contradictory. At one place, it was mentioned that the period of unauthorised absence would be treated as dies-non. Simultaneously, it has been mentioned that the period of unauthorised absence would constitute a break-in-service. The implication of dies-non is that the delinquent official on him

Copy attached

a penalty has been imposed does not loose the right to count the past service whereas break-in-service takes away the benefit of the past service rendered by the delinquent official. It can either be 'dies non' or 'break-in-service'. Both dies non and break-in-service cannot be applied to the same case. Thus, the order of the disciplinary authority imposing the penalty is self-contradictory and cannot be sustained in law.

8. In the light of the above discussions, we are of the view that the orders of the disciplinary authority as also that of the appellate authority are bad in law and deserves to be set aside and are hereby set aside. The respondents are, however, directed to process the case of the applicants in the light of the Government of India's instructions Nos. 1 to 3 under F.R. 17-A and pass appropriate orders within a period of three months from the date of receipt of a copy of this order."

6. In the aforesaid order, though, the orders of the disciplinary authority as also that of the appellate authority, have been set aside on the ground that the period of unauthorised absence can either be treated as dies non or break-in-service. It was for this reason that the impugned order were held bad in law and set aside. The merits or de-merits of penalty of reduction to a lower grade imposed upon the applicants was not the subject matter of the earlier OA nor it was discussed in the judgement dated 23.6.1999 passed in OA No. 344/94. It is thus clear that the applicants have been fighting for counting their past service prior to the period of unauthorised absence. It may also be mentioned that the respondents order in regard to break-in-service was taken up by the staff association on behalf of the applicants before the Deputy Labour Commissioner-cum-Conciliation Officer, Chhitorgarh. The conciliation

(Copy of S.C.J.)

proceedings were dropped on assurance from the respondent-department that the matter would be shorted-out mutually. In this connection it would be interesting to go through the order dated 27.7.1994 of the Deputy Labour Commissioner Chhitorgarh, which is extracted below :-

"कार्यालय उपम्रम आयुक्त, चित्तोड़गढ़

दिनांक: 27-7-94,

श्रीमहामंत्री राःपःयिःपरिःरावतभाटा ।
विषयः-विवाद संख्या 2190 की अंतिम कार्यवाही के संबंध में ।

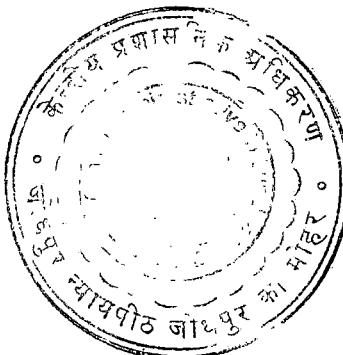
महोदय,

यह सूचित किया जाता है कि प्रकरण संख्या 2190 महामंत्री राजस्थान अनुशक्ति परियोजना कर्मचारी संबंध रावतभाटा बनाम - प्रबन्धक राजस्थान परमाणु बिजलीधर इस कार्यालय में समझौता कार्यवाही में चला है। पत्रावली की प्रौतिष्ठिंग के अनुसार दोनों पक्षों ने समझौता अधिकारी को बताया कि उनके आवास में वार्ता चल रही है। वे इस विवाद को अपसी वार्ता से निपटा लेंगे। अब कोई आगे कार्यवाही नहीं चाहते हैं। अतः इस पत्रावली को बन्द कर दिया गया। विवाद का विषय एफः आरः 17-A की गलत ढंग से व्याख्या करने बाबत था।

एसःडीः,
27/7
उप अम आयुक्त
समझौता अधिकारी, चित्तोड़गढ़ ।

The Deputy Labour Commissioner in its order dated 27.7.1994 has very categorically mentioned that the controversy placed before him related to wrong interpretation of F.R. 17-A. It would thus be seen that the penalty of reduction to a lower grade imposed upon the applicants was nowhere challenged by the applicants either in their earlier application (OA No. 344/94) or before the Deputy Labour Commissioner. It was only the question of treat-

Chalsif



ment of the period of unauthorised absence as 'dies non' or 'break-in-service', was agitated before this Tribunal as also before the Deputy Labour Commissioner in the conciliation proceedings.

7. The order dated 19.05.2001, impugned in the present O.A., is a rejection of the representation dated 17.10.2000 made by one of the applicants. It is also pointed out that in compliance to Tribunal's order dated 23.6.1999, the respondent-department had treated the period of unauthorised absence as dies non instead of break-in-service vide their order dated 20.09.1999 (Annexure A-5). This order has not been challenged by the applicants and, therefore, they cannot derive any benefit of the period of unauthorised absence. Further representation dated 17.10.2000 was made by one of the applicants for full compliance of this Tribunal's order dated 23.06.1999 after more than a year of passing that order. Moreover respondents compliance order dated 20.09.1999 has not been challenged by the applicants. Therefore, the prayer of the applicants now in the present OA for quashing the impugned order dated 19.5.2001 (Annexure A-1) is mis-conceived. Similarly to say that, no penalty order existed as against the applicants, is not tenable. Since the applicants have not challenged the order dated 20.09.1999 treating the period of unauthorised absence as dies non, the order dated 19.9.00 reviewing the promotion of the applicants consequent upon treating the period of unauthorised absence as dies non, cannot be questioned.

8. The learned counsel for the applicants has cited the following judgements in support of his contention that

the applicants are entitled to all the benefits as prayed for :

- 1) 1988 (2) RLR 499 - Sumer Singh Vs. State of Rajasthan & others.
- 2) (2001) 8 SCC 676 - Bharathidasan University and another Vs. All India Council for Technical Education and others.

We have carefully gone through these judgements but find that the facts of the case in these judgements are distinguishable from the facts of the case in hand and, therefore, these judgements do not come to the rescue of the applicants.

9. In the light of above discussions, we do not find any merit in this Original Application and the same deserves to be dismissed.

10. The Original Application is accordingly dismissed with no order as to cost.

Gopal Singh
(Gopal Singh)
Administrative Member

G.L.Gupta
(G.L.Gupta)
Vice Chairman

...
jrm