

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.78/2003

Tuesday, this the 17th day of June, 2003.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.G.Mathaikutty,
Keecheril House,
Kallampally, Sreekariyam.P.O.
Trivandrum. - Applicant

By Advocate Mr R.Krishnaraj

Vs

1. Union of India
represented by Secretary to Government,
Ministry of Defence,
New Delhi.
2. Chairman,
Unit Run Canteen NCC,
Group Head Quarters,
Sasthamangalam, Kochar Road,
Thiruvananthapuram. - Respondents

By Advocate Mr PMM Najeeb Khan, ACGSC

The application having been heard on 17.6.2003, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant while working as Assistant Manager, N.C.C. Group Head Quarters Canteen, Thiruvananthapuram, was served with a show cause notice placing him under suspension and thereafter his services were terminated on 9.1.2001 without holding an inquiry. The applicant challenged the

order of suspension as also the order of termination from service in O.A.262/2001. The Tribunal by order dated 5.9.2002 allowed the application, set aside the impugned orders of termination and suspension and directed reinstatement of the applicant immediately, however, reserving the respondents to proceed further in case they wish to do so with the disciplinary proceedings after due compliance of the rules and instructions. The grievance of the applicant presently is that in purported obedience of the directions contained in the order, though the applicant was directed to report, he was not even reinstated as Assistant Manager but was asked to tender resignation for a fresh appointment and that the arrears of pay and allowances after deducting the subsistence allowance were also not paid to him. The applicant has a further grievance that the bonus for the period 2000 to 2002 have also not been paid to him. Under these circumstances, the applicant has filed this application for a direction to the respondents to give the applicant all the powers of the Assistant Manager which was provided to him prior to his suspension, to pay the applicant balance salary for the period of suspension after deducting the subsistence allowance paid to him with interest, to pay to him bonus for the period 2000-2001 and 2001-2002 and leave encashment for 10 days. The applicant also seeks revised pay scales from time to time.


2. The respondents in the reply statement contend that in obedience to the directions contained in the Tribunal's orders, the applicant was by R-1 letter dated 10.10.2002 directed to report for duty, that he was asked to submit his

✓

resignation and option for the reclassification as is required in accordance with the policy decision taken by the Head Quarters vide its letter dated 14.9.2001 and that as the applicant did not do so, the respondents could not proceed further. They further contend that apart from ordering reinstatement, the Tribunal having not directed payment of back wages, his claim for back wages is not justified.


3. We have carefully gone through the pleadings and all the materials placed on record and have heard Shri Krishna Raj, learned counsel for the applicant and Shri PMM Najeebkhan, learned ACGSC.

4. The contention of the respondents that the Tribunal having not directed payment of back wages, the respondents are not bound to pay back wages and that the applicant having not accepted to submit the letter of resignation, he could not be reinstated is absolutely untenable. The services of the applicant were terminated by order dated 9.1.2001. Since the order of termination as also the order of suspension have been set aside by the Tribunal vide its order in O.A.262/2001, the legal and natural consequence that follows is that the applicant is to be treated continued in service despite the issue of impugned orders and that he is entitled to get the pay and allowances attached to the post. Obeying the direction for reinstatement, the respondents are bound to reinstate the applicant in service as Assistant Manager the post which he occupied prior to the termination of his services by way of restitution. Therefore, the contention of




the respondents that the applicant is not entitled to pay and allowances other than subsistence allowance paid to him has only to be rejected. The further contention of the respondents is based on R-2 policy decision regarding reclassification, change of conditions of service etc. R-2 policy decision is dated 14.9.2001 much after the date on which the applicant's services were terminated. After reinstatement of the applicant in service in terms of the directions contained in O.A.262/2001 as Assistant Manager and making available to him consequential monetary benefits respondents can no doubt, call upon the applicant to submit necessary papers as required in accordance with R-2 for reclassification and change of service conditions etc. but that can be done only after reinstating him as Assistant Manager.

5. In the light of what is stated above, the application is allowed. The respondents are directed to reinstate the applicant in service forthwith as Assistant Manager, to pay him back wages for the period he was kept under suspension deducting the subsistence allowance already paid and to pay him the bonus for the period 2000-01 and 2001-2002. We make it clear that this order would not stand in the way of respondents calling upon the applicant to furnish necessary papers for reclassification in terms of the policy decision as in R-2 after reinstatement. The above direction shall be

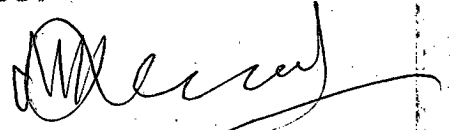


carried out within a period of two months from the date of receipt of copy of this order. There is no order as to costs.

Dated, the 17th June, 2003.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

trs