

**Central Administrative Tribunal ,Lucknow Bench,
Lucknow.**

Original Application No.458/2009

Reserved on 28.3.2014

Pronounced on 19th May, 2014

Hon'ble Sri Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

- 1/1 Mohd.Azhar Ali aged about 55 years
1/2 Mohd.Athar Ali aged about 45 years
1/3 Smt. Safia bano aged about 50 years
1/4 Smt. Ashiya Bano aged about 48 years
All residents of Shahnazaf Imambara, Hazratganj, Lucknow.

Applicants

By Advocate: Sri R.K.Chitravanshi

Versus

1. Union of India through its Secretary of the DST, Department, New Delhi.
2. Director General, Council of Scientific and industrial Research, Rafi Ahmad Marg, New Delhi.
3. National Botanical Research Institute, Rana Pratap Marg, Lucknow through its Director ,

Respondents

By Advocate: Sri PankajAwasthi for Sri A.K.Chaturvedi

ORDER

By Hon'ble SriNavneet Kumar, Member (J)

The present O.A. is preferred by the applicant under section 19 of the AT Act with the following reliefs:-

- i) to issue an appropriate order or directions for commanding the opposite parties to make the payment of the amount of difference of pay for the suspension period from 7.11.75 to 18.7.1977 i.e. 533 days and payment against the annual increments @ Rs. 50/- per month w.e.f. 1986 to 1993 which was not given to the petitioner plus Rs. 200/- which was taken as penalty from the petitioner along with the 18% interest from the date of quashing the said order i.e. 3.9.84.



ii) issue any other order or directions which this Hon'ble Tribunal may deem fit and just and proper in the circumstances of the case be also awarded to the petitioner against the opposite parties.

iii) to award the cost of this petition to the petitioner against the opposite parties.

2. The applicant who was earlier working with the respondents organization died and a substitution application was moved and amendment was incorporated vide order dated 10.4.2014.

3. The brief facts of the case are that the applicant was placed under suspension vide order dated 17.11.1975 and thereafter a punishment order was passed on 18.7.1977. The applicant preferred the appeal against the said punishment order and the said appeal was considered by the Appellate authority sympathetically and the appellate authority after considering the appeal of the applicant quashed the order dated 18.7.1977 of imposition of penalty of recovery of Rs. 200/- from the applicant as well as withhold of his promotion for a year from the date of his reinstatement. However, it is ordered that the official may be given a recordable warning for act, failing which he would be subjected to severe disciplinary action. After this order was passed, the applicant moved a representation for release of pay of suspended period from 1975 to 1977. Apart from this, through his representation, he has also requested for release of 7 years increments and Rs. 200/- recovered from his pay as penalty according to punishment order dated 18.7.1977.

4. Learned counsel appearing on behalf of the respondents filed their objections as well as moved an application for recall of order dated 25th May, 2009 through which this Tribunal condoned the delay in filing the O.A. and directed the respondents to file the detailed counter reply. It is also seen from the record that since ^{then} the said review application is still pending. Through, their preliminary

objections, the respondents have raised the issue of limitation and pointed out that the applicant after attaining the age of superannuation, retired on 31.1.1994 and he has ^{filed} filed the present O.A. in 2008. Apart from this, it is also informed by the learned counsel for respondents that earlier the applicant filed regular suit No. 285/2007 before the Additional Civil Judge, Junior Division, Lucknow wherein he has prayed for the following reliefs:-

“अ यह कि वादी के 7 वर्ष के ई0बी0 द्वारा रोके गये भुगतान 533 दिन के निलम्बन अवधि का बकाया भुगतान तथा ऐनुअल इन्कीमेन्ट के बकाया धनराशि का भुगतान कुल मिलाकर रुपये 10000 को 'दिलान' की डिक्ती बहकवादी खिलाफ प्रतिवादीगण प्रदान करने की कृपा की जाये

ब यह कि खर्चा मुकदमा बहकवादी खिलाफ प्रतिवादीगण दिलाया जाये

स यह कि अन्य अनुरोध जो न्यायालय उचित समझे वादी को प्रतिवादीगण से दिलाया जाय

5. The aforesaid regular suit was dismissed vide order dated 28.7.2008 and it is also pointed out by the learned counsel for respondents that after the receipt of the legal notice under Section 80 Civil Procedure Code, 1908 the matter was examined and through office order dated 9.7.2007, the amount of Rs. 200/- recovered from the applicant was refunded through cheque dated 13.7.2007. The learned counsel for respondents has also raised an objection that the appeal of the applicant was allowed by means of order dated 3.9.1984 whereas the O.A. was filed in the year 2008, as such the present O.A. is barred by limitation and is liable to be dismissed.

6. Learned counsel for applicant has filed reply to the said objection and mostly he has reiterated the averments made in the O.A.

7. Along with the review application, the respondents have filed detailed counter reply on behalf of respondents No. 2 and 3. In the Counter reply, it is pointed out by the learned counsel for respondents that the applicant was placed under suspension vide

order dated 7.11.1975 and thereafter, he was served with the charge sheet and a punishment was awarded which was subsequently quashed in the appeal and has also pointed out that after retirement of the applicant, he was paid all retiral dues as admissible to him. It is also pointed out by the learned counsel for respondents that through the present O.A., the applicant is claiming increments for 7 years, salary for the period of 533 days. It is also indicated that the said representation of the applicant is not available on record of the answering respondents. Apart from this, the learned counsel for the respondents have also pointed out that the CSIR was notified under section 14(2) of the A.T. Act, 1985 through notification dated 30.10.1986 w.e.f. 17.11.1986 and according to Section 21 (2) of the AT Act, the grievance in respect of which an application can be raised at any time during the period of 3 years immediately proceeding to 17.11.1986. According to the applicant, he has preferred the representation dated 18.7.1979 and subsequent representations in 1984 and 1986 and they were all prior to 17.11.1986, as such, the applicant could have preferred the O.A. only upto 16.11.1987 and therefore, this Tribunal does not have any jurisdiction to entertain the present O.A. As such, it is submitted by the learned counsel for the respondents that the present O.A. is barred by limitation and the same is liable to be dismissed.

8. Learned counsel for applicant has filed the objection against the review application as well as rejoinder and mostly reiterated the averments made in the O.A. Apart from this, he has also filed Supple. Affidavit, in which also, he has again reiterated the averments made in the O.A.

9. Heard the learned counsel for parties and perused the records.

10. The applicant was working with the respondents, was placed under suspension in 1975. Thereafter, an enquiry was conducted

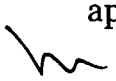
and the applicant was awarded punishment vide order dated 18.7.1977. Undisputedly, the applicant preferred the appeal and the said appeal was also decided by the appellate authority through which the order of punishment dated 8.7.1977 was quashed. The said decision of the appeal is dated 3.9.1984. Apart from this, the applicant has preferred the regular suit No. 285/2007 wherein the applicant has prayed for the following reliefs:-

“अ यह कि वादी के 7 वर्ष के ई0बी0 द्वारा रोके गये भुगतान 533 दिन के निलम्बन अवधि का बकाया भुगतान तथा ऐनुअल इन्कीमेन्ट के बकाया धनराशि का भुगतान कुल मिलाकर रुपये 10000 को 'दिलान' की डिकी बहकवादी खिलाफ प्रतिवादीगण प्रदान करने की कप्या की जाये

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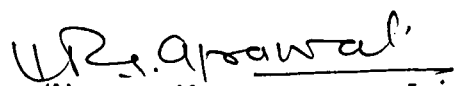
11. It is clear that the said suit was withdrawn and the permission was granted to file it before the appropriate forum vide order dated 28.7.2007. Undisputedly, the appellate order was passed in the year 1984 and the CSIR was notified only vide order dated 31st October, 1986 w.e.f. 17.11.1986, as such preferring the regular suit before the Additional Civil Judge Junior Division is a deliberate act on the part of the applicant and not preferring the O.A. within the time before the Tribunal attracts the provisions of Section 21 of the AT Act which provides for limitation in filing the O.A. Apart from this, as indicted by the respondents through their counter reply that after the appeal was allowed by the appellate authority, the said order was fully implemented and the amount of Rs. 200/- which was recovered from the applicant was also refunded vide memorandum dated 9.7.1977 and the period of suspension from 7.11.1975 to 22.4.1977 was also regularized by sanctioning of leave and leave salary was paid to the applicant in November 1977 itself. No increment was withheld and as such, the applicant was paid all increments. Subsequently, the applicant also



superannuated and he was paid all his retiral dues and this fact was not brought to the notice by the applicant and he kept on sending representation to the authorities. Not only this, the information sought under Right to Information Act was also replied through letter date 16.3.2007. Since the period of suspension was regularized by sanctioning leave and leave salary was also paid to the applicant in November, 1977. The amount of Rs. 200/- recovered from the applicant was also refunded through memorandum dated 9.7.1977 and no increments were withheld and the applicant was also paid all increments. Not only this, he was also paid all retiral dues, as such we do not find any reason to interfere in the present O.A.

12. Accordingly, the O.A. is dismissed on merit as well as on limitation. No order as to costs.


(Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

HLS/-