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CENTRAL ADMINISTRATIVE TRIBUNAL,  
LUCKNOW BENCH,  
LUCKNOW.

O.A.No.401/1992

Arun Kumar Srivastava ::::: Applicant

Vs.

C.D.R.I. & Others ::::: Respondents

Hon. Mr. S.N. Prasad, J.M.

Hon. Mr. B.K.Singh, A.M.

(By Hon. Mr. B.K.Singh, A.M.)

We have heard the learned Counsel Shri Vimal Kumar, on behalf of the applicant and Shri Hari Har Saran, on behalf of the respondents and we have thoroughly studied the application, counter affidavit, rejoinder and other annexures filed as supporting claims and counter-claims of the applicant and respondents.

2. Formerly O.A.No.372/92 was filed by the applicant Shri Arun Kumar Srivastava, ~~viz. C.A.No.372/92, O.A.No.401/92~~ and that O.A. No.372/92 was directed against the order of removal from service and during the pendency of that case, on his appeal the punishment of removal was converted into one of compulsory retirement by the appellate authority with pensionary benefits.

3. This O.A. No.401/92 and M.P. No.1037/92 have been filed for payment of arrears of salary, for payment of bonus for 1989; reimbursement of medical claims and a sum of Rs.25,000/- as compensation for the death of the monther who is alleged to have died because of non-availability of medical advance. O.A. No.372/92 was heard and decided by a Division Bench comprising of the Hon'ble V.C.Mr.Justice U.C.Srivastava and Hon'ble Mr. K. Obayya, A.M. on 3-5-1993. The application was allowed and the impugned order of compulsory retirement of the applicant was quashed and the respondents were

directed to give personal hearing to the applicant on account of non-compliance of section 311(2) of the Constitution and the respondents were also directed to pass a speaking order taking into consideration all the facts and circumstances of the case and it was also stipulated therein that the punishment should not be too harsh if the same is awarded to him.

4. During the pendency of that O.A.No.372/92 another O.A.No.401/92 was filed for grant of interim relief and the Hon'ble V.C. Mr.Justice U.C.Srivastava, passed an order dated 6-11-92 for payment of arrears of salary to the applicant for the period from 1-10-91 to 14-10-91 within a period of 3 weeks and the respondents were also directed to pay retirement benefits admissible to the applicant within this period. The respondents prayed for extension of time for compliance of this order in respect of interim relief and further time was allowed. It was extended upto 21-11-92 vide order sheet Hon'ble dated 17-1-93 by Mr.Justice U.C.Srivastava, V.C. The present Hon.V.C. Mr.Justice R.K.Verma also extended the period for payment of Rs.1600/- <sup>as</sup> ~~for~~ arrears of salary for the period 1-10-91 to 14-10-1991 for another 10 days, by order dated 27-5-1993.

5. This case was heard by us on 13-7-93. Shri Vimal Kumar, Counsel for the applicant, argued that the applicant who joined as Junior Stenographer on 13-12-77 was promoted as Senior Stenographer w.e.f. 1-3-1983. He argued that the applicant could not attend the office on various occasions due to the illness of his mother and some-times it was not possible to give prior information or obtain permission of the authorities. According to him, his mother was critically ill and, therefore, he could not attend to his duties. It was also mentioned that he also fell ill and he had to take rest for a few months as per the advice of the Doctor and sanction of leave


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was sought for on medical grounds and after being declared fit by the Doctor he resumed his duties on 14-7-1989. He prayed for sanction of medical leave from 24-10-1988 to 13-7-89 i.e. for about 9 months.

6. The applicant was away from duty and that too without prior approval of the sanctioning authority or the competent authority. The learned Counsel argued that inspite of repeated reminders the medical leave prayed for was not sanctioned. It was argued that the applicant also applied for medical advance for the treatment of his mother who was ailing but the respondents did not sanction the same pointing out that the application for medical advance was not in prescribed proforma and that they also furnished him with a copy of the proforma for filing the application in the prescribed form. The applicant has stated that for want of proper treatment his mother/ died on 29-9-89.

7. The learned Counsel for the applicant argued that while working as senior stenographer the applicant received information on 17-4-91 that disciplinary proceedings have been initiated against him for misbehaviour and misconduct. As a result of this, enquiry was conducted and the applicant was removed from service w.e.f. 14-10-91 and on appeal the same was converted into compulsory retirement with pensionary benefits. The learned Counsel for the applicant has further argued that the applicant has prayed for arrears of salary, medical reimbursement and an amount of Rs.25,000/- as compensation for the death of the mother applicant and for payment of bonus for the year 1989.

8. The learned Counsel for the respondents Shri Hari Har Saran has argued that the applicant owed a sum of Rs.65,885/- towards House Building Advance, Rs.4,510/- towards L.T.C. and an amount of Rs.23,629/- towards CDRI Co-op. Society loans. The total amount thus comes to Rs.94,024/-. It may be noted here that when a person retires either voluntarily or on superannuation or when he is compulsorily retired, the established procedure is to have a 'no demand certificate' from the retiring persons. The Provident Fund, Gratuity and all other claims are held up till the 'no dues certificate' is received from the concerned authorities. In this connection CDRI wants the question of

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outstanding dues to be settled before the Tribunal could ask them to pay the arrears of salary, medical reimbursement, etc.

9. It was also pointed out by the learned Counsel Shri Hari Har Saran that the applicant was only officiating as Senior Stenographer and he failed in the test prescribed for regular promotion. In a case of officiating promotion, the candidate can ~~be~~<sup>be</sup> reverted at any time without any show cause notice. Officiating promotion does not give any one the status to hold a post in the Constitution according to Articles 58 and 60. It has been clearly held that Article 311(2) will be attracted only when a Government Servant has a confirmed status as a permanent employee and has got a right to hold the post. Here the applicant did not have a right to hold the post since it was only an officiating promotion and he did not pass the test conducted for regular promotion as Senior Stenographer. As the applicant failed <sup>in</sup> the selection test for regular promotion, the respondents reverted him and, therefore, reversion of the applicant cannot be held as malafide. Reversion from a substantive post alone can attract Article 311(2).

10. It is also a fact that the applicant was compulsorily retired and, therefore, the C.D.R.I had a right to recover their outstanding dues from the applicant. The learned Counsel for the applicant states that land was mortgaged with the respondents and that they could have sold the land and recovered the amount of H.B.A. This is certainly not the procedure established in any of the rules of the Central Government. The procedure is that the mortgage bond is returned to the Government servant after the principal amount and interest have been recovered by the sanctioning authorities. It will

be only as a last resort when the arrear claims of the applicant are not enough to meet the demands of the outstanding dues that the respondents, will resort to the auction of the plot mortgaged with them. This will be the last alternative. Therefore, this argument of the learned Counsel for the applicant does not appear to be sound and tenable.

11. The learned Counsel for the respondents further pointed out that this application No.401/92 is not maintainable in the light of Rule 10 of the Central Administrative Tribunal's procedure rules, 1987 :-

Rule 10 :-

" The Central Administrative Procedure Rule 1987 clearly lays down that an application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another."

Rule 10 is mandatory and is of a binding character. This instant rule provides that only one cause of action shall be the subject of an application though more than one reliefs may be sought in respect of an application. The rule says that only a single cause of action should be the basis of an application under section 19 and as such the question of payment of compensation to the tune of Rs.25,000/- for the death of his mother cannot be a part of this application and this was rightly challenged by the learned Counsel for respondents as non-maintainable under the Central Administrative Tribunals Act, 1985. As a matter of fact, after the judgement of the Division Bench dated

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3/5/1993, this petition has lost its glamour since the respondents have been directed to start a fresh enquiry giving an opportunity to the applicant to be heard and to pass a speaking order. Accordingly we hold the view that the application, which needed a lot of amendment before it could be decided in its present form, has not been modified and it remained what it was before the said judgement of the Division Bench dated 3/5/93. This was also admitted by the learned Counsel for the applicant that after quashing the order of compulsory retirement, the matter of the applicant goes back to the original position and during the course of enquiry he has to satisfy the claims of outstanding dues in order to have a right to claim his ~~salary~~ <sup>medical reimbursement</sup>, etc. and accordingly the application in its present form is dismissed as non-maintainable as specified above regarding the payment of compensation.

12. Consequently the application of the applicant is disposed <sup>as</sup> above with above observations. No order <sup>as to costs</sup> as to costs.

Member (A)  
29.7.93

Member (J)

Dated: 28-7/1993, Lucknow.

(tgk)